

WEST VIRGINIA CODE: §31-17-1

§31-17-1. Definitions and general provisions.

As used in this article:

(a) "Additional charges" means every type of charge arising out of the making or acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with and permitted by section one hundred nine, article three, chapter forty-six-a of this code;

(b) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;

(c) "Amount financed" means the total of the following items to the extent that payment is deferred:

(1) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(2) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(3) If not included in the cash price:

(A) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(B) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(C) Additional charges permitted by this article;

(d) "Applicant" means a person who has applied for a lender or broker license;

(e) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of business if he or

she negotiates or arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from a borrower money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;

(f) "Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision (e) of this section;

(g) "Commissioner" means the Commissioner of Financial Institutions of this state;

(h) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code;

(i) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, any primary or subordinate mortgage loans in any one calendar year.

"Lender" does not include any person who does not currently have and has never held a residential mortgage lender license in this or in any other state and who makes no more than three primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling owned by that person: Provided, That the person is required to report within thirty days of the date of the loan any such mortgage loan to the Division of Financial Institutions on a form available from the division upon request. Failure to timely report as required by this subsection may result in imposition by the commissioner of a civil administrative penalty of up to \$250;

(j) "Licensee" means any person duly licensed by the commissioner under the provisions of this article or article seventeen-a of this chapter as a lender, broker or mortgage loan originator;

(k) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage brokers and lenders licensed under this article and mortgage loan originators licensed under article seventeen-a of this chapter;

(l) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

(m) "Primary mortgage loan" means any loan primarily for personal, family or household use

that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(n) "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect or remit for another lender, note owner or noteholder, payments of principal, interest, including sales finance charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to a residential mortgage loan; and

(o) "Subordinate mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling and is subject to the lien of one or more prior recorded mortgages or deeds of trust.