WEST VIRGINIA CODE: §31-17-17

§31-17-17. Loans made in violation of this article void; agreements to waive article void.

(a) If any primary or subordinate mortgage loan is made in willful violation of the provisions of this article, except as a result of a bona fide error, such loan may be canceled by a court of competent jurisdiction: Provided, That it may not be construed to have been a willful violation of the provisions of this article if the violation is due to a violation of subdivision (3), subsection (j) or subdivision (8), subsection (m), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(b) Any agreement whereby the borrower waives the benefits of this article shall be deemed to be against public policy and void.

(c) Any residential mortgage loan transaction in violation of this article shall be subject to an action, which may be brought in a circuit court having jurisdiction, by the borrower seeking damages, reasonable attorneys fees and costs: Provided, That this action may not be brought if the violation is due to a violation of subdivision (3), subsection (j) or subdivision (8), subsection (m), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(d) A licensee who, when acting in good faith in a lending transaction, inadvertently and without intention, violates any provision of this article or fails to comply with any provision of this article, will be excused from such violation if within thirty days of becoming aware of such violation, or being notified of such violation, and prior to the institution of any civil action or criminal proceeding against the licensee, the licensee notifies the borrower of the violation, makes full restitution of any overcharges, and makes all other adjustments as are necessary to make the lending transaction comply with this article.

WV Legislature