WEST VIRGINIA CODE: §31-17-8

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed 18 percent per year on the unpaid balance of the amount financed.

(b) A borrower has the right to prepay his or her debt, in whole or in part, at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by §46A-3-109 of this code and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made: *Provided*, That if the loan is not made, the licensee is not required to refund an appraisal fee that is collected from a loan applicant by the licensee and paid to an unrelated third-party appraiser unless the fee is required to be refunded pursuant to federal law.

(d) Where loan origination fees, investigation fees, or points have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan on that property made within 24 months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan, and the borrower's circumstances. The licensee shall document this benefit in writing and maintain the documentation in the loan file. To the extent this subsection overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply.

(e) Notwithstanding other provisions of this section, a delinquent charge or late charge may be charged on any installment made 10 or more days after the regularly scheduled due date in accordance with §46A-3-112 or §46A-3-113 of this code, whichever is applicable. The charge may be made only once on any one installment during the term of the primary or subordinate mortgage loan.

(f) Hazard insurance may be required by the lender. The charges for any insurance may not exceed the standard rate approved by the Insurance Commissioner for the insurance. Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be furnished to the borrower within 30 days from and after the date of application therefor by the borrower.

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(g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches, and credit reports, no application fee is allowed whether or not the mortgage loan is consummated; however, the borrower may be required to reimburse the licensee for actual expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's willful failure to close the loan; or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of the loan as proposed.

(h) A licensee may not make, offer to make, accept, or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) A licensee may not induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) An instrument evidencing or securing a primary or subordinate mortgage loan may not contain:

(1) A power of attorney to confess judgment;

(2) A provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) A requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount or no more than $5 greater than any previous payment installment, or unless the loan is structured as a revolving line of credit having no set final payment date: *Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made 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;

(4) An assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

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(k) A licensee may not charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in §46A-6C-1 *et seq*. of this code, including all additional bonding requirements as may be established therein.

(l) A licensee may not make or broker revolving loans secured by a primary or subordinate mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, a licensee may not, and a primary or subordinate mortgage lending transaction may not, contain terms which:

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: *Provided*, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

(2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being offered as security according to an application for a primary or subordinate mortgage loan;

(3) Make or assist in making any primary or subordinate mortgage loan with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: *Provided*, That this subdivision may not apply to reverse mortgages obtained under §47-24-1 *et seq*. of this code;

(4) Require the borrower to pay, in addition to any periodic interest, combined fees, compensation or points of any kind to the lender and broker to arrange, originate, evaluate, maintain, or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, six percent of the loan amount financed, including any yield spread premium paid by the lender to the broker: *Provided*, That reasonable closing costs, as defined in §46A-1-102 of this code, payable to unrelated third parties may not be included within this limitation: *Provided, however*, That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds 18 percent per year on the unpaid balance of the amount financed*: Provided further*, That if no yield spread premium is charged, the aggregate of fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points is permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To

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the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: *Provided*, That the provisions of this subdivision do not apply to reverse mortgage loans obtained under §47-24-1 *et seq*. of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of a new residential dwelling, or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this subdivision, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and Certification Board and prepared in compliance with the uniform standards of professional appraisal practice: *Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made 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;

(9) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction; or

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans, including, without limitation, §46A-1-101 *et seq*. of this code.

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