WEST VIRGINIA CODE CHAPTER 31 ARTICLE 17

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§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 §46A-3-109 of this code;

(b) "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;

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

(d) "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;

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

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

(g) "Control" means:

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(1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting interests of a licensee or person in control of a licensee;

(B) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable presumption of control:

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(B) A person presumed to exercise a controlling influence as defined in this section can rebut the presumption of control if the person is a passive investor.

(3) For the purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares such person's home.

(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) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(j) "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 30 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

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this subsection may result in imposition by the commissioner of a civil administrative penalty of up to $250;

(k) "Licensee" means any person duly licensed by the commissioner under the provisions of this article or §31-17A-1 *et seq*. of this code as a lender, broker, or mortgage loan originator;

(l) "Nationwide Multistate 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§31-17A-1 *et seq*. of this code;

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

(n) "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;

(o) "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

(p) "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.

(q) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

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§31-17-2. License required for lender and broker originator; exemptions.

(a) A person may not engage in this state in the business of lender or broker unless and until he or she first obtains a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation may engage in business in this state unless it is registered with the Secretary of State to transact business in this state.

(b) All mortgage loan originators, as that term is defined by section two, article seventeen-a of this chapter, shall obtain a mortgage loan originator license pursuant to said article.

(c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on January 1, 2004.

(d) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(5) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(6) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state. Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(e) The provisions of this article do not apply to loans brokered by a federally insured depository institution.

(f) A person or entity designated in subsection (d) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be

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preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(g) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

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§31-17-3. Supervision by Commissioner of Financial Institutions; rules and regulations; personnel; participation in the Nationwide Multistate Licensing System and Registry.

(a) It shall be the duty of the commissioner to enforce the provisions of this article and, to implement and make effective such provisions, he or she is hereby authorized and empowered to promulgate reasonable rules in accordance with the provisions of article three, chapter twenty-nine-a of this code and to employ such personnel as may be necessary. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the amendments made during the regular session of the Legislature, 2024, as they relate to the licensure and regulation of mortgage brokers, lenders, and loan originators.

(b) The commissioner may participate in the Nationwide Multistate Licensing System and Registry and permit such system to process applications for mortgage lender and mortgage broker licenses in this state and receive and maintain records related to such licenses that are allowed or required to be maintained by the commissioner. The commissioner is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System and Registry, or other entities designated by the Nationwide Multistate Licensing System and Registry, to collect and maintain records and process transaction fees or other fees related to licensees subject to this article. The Nationwide Licensing System and Registry shall transfer, electronically, all fees payable to the Division of Financial Institutions directly to the credit of the commissioner's special revenue account with the state Treasurer.

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§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) In connection with an application for licensing as a mortgage lender or mortgage broker, the applicant shall, at a minimum, furnish to the Nationwide Multistate Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(b) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this article, the commissioner may use the Nationwide Multistate Licensing System and Registry or its designated vendor as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(c) In order to reduce the points of contact which the commissioner may have to maintain, for purposes of this article, the commissioner may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(d) Application for a lender's or broker's license shall each year be submitted under oath, in the form prescribed by the commissioner. Background and credit checks shall be conducted in accordance with this article. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

(e) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application, tangible net worth of at least $250,000 computed according to the United States generally accepted accounting principles as shown by the most recent

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audited financial statement;

(3) File an electronic surety bond through the Nationwide Multistate Licensing System and Registry in favor of the state for the benefit of consumers, or for a claim by the commissioner for an unpaid civil administrative penalty, or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia annual loan originations of $0 to $3 million, $150,000 for West Virginia annual loan originations greater than $3 million and up to $10 million, and $250,000 for West Virginia annual loan originations over $10 million, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: *Provided*, That lender licensees who service West Virginia mortgage loans shall file with the commissioner a bond under the same conditions listed above in the amount of $200,000;

(4) Pay to the commissioner a license fee of $1,250 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Multistate Licensing System and Registry. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay, or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(f) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application, tangible net worth of at least $10,000 computed according to the United States generally accepted accounting principles as shown by the most recent compiled, reviewed, or audited financial statement;

(3) File an electronic surety bond through the Nationwide Multistate Licensing System and Registry in favor of the state for the benefit of consumers, or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $50,000 for licensees with West Virginia loan originations of $0 to $3 million, $75,000 for West Virginia loan originations greater than $3 million and up to $10 million, and $100,000 for West Virginia loan originations over $10 million in a form and with conditions as the commissioner may prescribe, and executed by a surety company

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authorized to do business in this state: *Provided*, That the bond must be in the amount of $150,000 before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of $350 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Multistate Licensing System and Registry; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(g) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(h) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to §46A-2-137 of this code and §56-3-33 of this code.

(i) The commissioner may elect to reduce or waive the application fees, bond amounts, and net worth requirements imposed by this section for bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-established median income for their area of residence. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.

(j) Every broker and lender licensee shall pay a fee of $5 for each residential mortgage loan originated, made, or brokered in a calendar year. This fee shall be paid annually for the benefit of the Division of Financial Institutions and remitted promptly through the Nationwide Multistate Licensing System and Registry when the invoice is received. If a licensee ceases operation, it shall complete the Statistical Activity Report and remit any fees due since the last reporting period when it relinquishes its license when invoiced by the Division through the Nationwide Multistate Licensing System and Registry.

(k) If a claim for a consumer restitution is pending on a bond required pursuant to this section when the commissioner makes a claim for a civil administrative penalty or an unpaid examination invoice, the consumer claim shall be resolved before any payments may be made for an unpaid penalty or examination invoice.

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§31-17-4a. Information requirements for certain individuals and change in control.

(a) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last 10 years;

(2) Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:

(A) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case this requirement shall be waived;

(B) Information related to any criminal convictions or pending charges; and

(C) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(b) If the individual has resided outside of the United States at any time in the last 10 years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) Not be affiliated with, or have an interest with, the individual it is researching.

(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:

(A) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(B) Criminal records information for the past 10 years, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

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(C) Employment history;

(D) Media history, including an electronic search of national and local publications, wire services, and business applications; and

(E) Financial services-related regulatory history, including, but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

(c) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(d) A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed by the commissioner.

(e) Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner without using the Nationwide Multistate Licensing System and Registry.

(f) The application required by this section shall include information required for any new key individuals that have not previously completed the requirements for a licensee.

(g) When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application shall be considered complete and:

(1) The commissioner shall approve or deny the application within 90 days after the completion date; or

(2) If the application is not approved or denied within 90 days after the completion date, the application is deemed approved, and the person, or group of persons acting in concert, are not prohibited from acquiring control.

(3) The commissioner may extend the application period for good cause.

(h) A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(i) When an application is filed and considered complete, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire

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control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions for the change in control have been fulfilled:

(1) The requirements of subsections (d) and (f) of this section have been met, as applicable; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control, and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner is authorized to accept the investigation results of a lead investigative state if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If the division is a lead investigative state, the commissioner is authorized to investigate the applicant and the time frames established by agreement through the multistate licensing process.

(k) The commissioner shall issue a formal written notice of the denial of an application to acquire control within 30 days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied under this section may appeal the denial using the procedures set forth in §31-17-14 of this code.

(l) The requirements of subsections (c) and (d) of this section do not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction, or by operation of law;

(4) A person that is otherwise exempt under this article;

(5) A person that the commissioner determines is not subject to subsection (c) of this section

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based on the public interest;

(6) A public offering of securities of a licensee or a person in control of a licensee; or

(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section, in cooperation with the licensee, shall notify the commissioner within 15 days after the acquisition of control.

(n) Streamlined acquisition of control:

(1) The requirements of subsections (c) and (d) of this section do not apply to a person that has complied with and received approval to engage in mortgage activity under this article or was identified as a person in control in a prior application filed with and approved by the commissioner or pursuant to a multistate licensing process: *Provided*, That:

(A) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(B) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by a reciprocal state or federal agency approved by the division if such rating was given;

(C) The licensee to be acquired is projected to meet the requirements of net worth and surety bond after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of net worth and surety bond after the acquisition of control is completed;

(D) The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(E) The person provides notice of the acquisition in cooperation with the licensee and attests to the requirements in this subsection in a form and in a medium prescribed by the commissioner.

(2) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice is deemed approved.

(o) Before filing an application for approval to acquire control of a licensee, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If

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the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of this section.

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§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

(1) The applicant does not have available the net worth required by the provisions of section four of this article, if applicable;

(2) The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article; and

(3) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within sixty days after the applicant therefor has fully complied with the provisions of this article. Under no circumstances whatever may a person or licensee act as a broker and lender in the same transaction. Whenever an application for a lender's or broker's license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain all fees to cover administrative costs of processing the broker or lender application.

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§31-17-6. Minimum tangible net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

At all times, a lender and broker licensee shall: (1) Have available the tangible net worth required by the provisions of §31-17-4 of this code; (2) keep the bond required by said section in full force and effect; and (3) if the licensee be a foreign corporation, remain qualified to transact business in this state unless otherwise exempt.

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§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.

(a) A license may not be transferable or assignable. A licensee may not offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the Division of Financial Institutions by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice 30 days prior to such change to the commissioner and pay a relocation fee of $100 for each office relocation.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on December 31 of each year and any license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of this article. All applications for the renewal of licenses shall be filed with the Nationwide Multistate Licensing System and Registry according to the renewal schedule published for the system, but no later than 60 days before the expiration thereof.

(c) Any change in control of a licensee whereby equitable interest of 50 percent or more is transferred to an outside party, a new application must be submitted according to this article.

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§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.

(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

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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.

(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

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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 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

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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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§31-17-9. Disclosure; closing statements; other records required; record-keeping requirements.

(a) Any licensee or person making on his or her own behalf, or as agent, broker, or in other representative capacity on behalf of any other person, a primary or subordinate mortgage loan shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or primary and subordinate mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;

(4) The principal and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

(7) The terms on which additional advances, if any, will be made;

(8) The charge to be imposed for past-due installments, including the late payment penalty maximum;

(9) A description and the cost of insurance required by the lender or purchased by the borrower in connection with the primary or subordinate mortgage loan;

(10) The name and address of the borrower and of the lender; and

(11) That the borrower may prepay the primary or subordinate mortgage loan, in whole or in part, on any installment date and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the broker, lender, or closing representative and by all borrowers and a completed and signed copy thereof is retained by the broker or lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower, or the borrower's successor, until the time as the indebtedness is satisfied in full. Providing the closing disclosure required by the Truth-In-Lending Act (TILA)-Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) Rules or applicable federal closing disclosure that provides the loan details required by this subsection, including the late payment penalty language set forth by §46A-3-112 and §46A-3-113 of this code, is considered to meet the requirements of this subsection. A separate state-specific closing

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disclosure is not required if the federal closing disclosure contains all information required under state and federal law.

The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a primary or subordinate mortgage loan instrument shall deliver to the borrower, within 10 business days from and after receipt of the written request, a statement of the borrower's account as required by §46A-2-114 of this code.

(c) Upon satisfaction of a primary or subordinate mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall comply with the requirements of §38-12-1 of this code in the prompt release of the lien which had secured the primary or subordinate mortgage loan obligation.

(d) Upon written request or authorization from the borrower, the holder of a primary or subordinate mortgage loan instrument shall send or otherwise provide to the borrower or his or her designee, within three business days after receipt of the written request or authorization, a payoff statement of the borrower's account. Except as provided by this subsection, no charge may be made for providing the payoff statement. Charges for the actual expenses associated with using a third-party courier delivery or expedited mail delivery service may be assessed when this type of delivery is requested and authorized by the borrower following disclosure to the borrower of its cost. The payoff information is provided by mail, telephone, courier, facsimile, or other transmission as requested by the borrower or his or her designee.

(e) A licensee shall keep and maintain for 36 months after the date of final entry the business records regarding residential mortgage loans applied for, brokered, originated, or serviced in the course of its business.

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§31-17-10. Advertising requirements.

It shall be unlawful and an unfair trade practice for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to primary or subordinate mortgage loans or the availability thereof: Provided, That this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without actual knowledge of the false or misleading character thereof.

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§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state, at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file a report through the Nationwide Multistate Licensing System and Registry under oath or affirmation concerning his or her business and operations in this state for the defined reporting period established by the Nationwide Multistate Licensing System and Registry and on a date established by the Nationwide Multistate Licensing System and Registry. The commissioner may direct that the reports required by this subsection and any other reports, data or information deemed necessary by the commissioner be filed directly with the Division of Financial Institutions on a date to be determined by the commissioner. The reports, data and information filed pursuant to this subsection are not public records and may not be open to public inspection.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually a list of the licenses issued under this chapter and shall direct consumers to public information available through the Nationwide Multistate Licensing System and Registry.

(e) The commissioner may enter into cooperative and information-sharing agreements with regulators in other states or with federal authorities to discharge his or her responsibilities under this article and may cooperate with federal and state agencies in discharging the commissioner's responsibilities under this article. The commissioner may:

(1) Arrange for the exchange of information among government officials concerning the regulation of the mortgage industry;

(2) Cooperate in and coordinate training programs concerning the regulation of the mortgage industry;

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(3) Assist state and federal agencies in their enforcement and investigatory activities and supply those agencies with documentation and information; and

(4) Share, leverage, and accept examination reports from other state regulatory agencies that meet established and agreed upon uniform standards.

(f) Reports of investigation and examination, together with related documents and financial information not normally available to the public that is submitted in confidence by a person regulated under this article, including, but not limited to, that person's evaluation of the expected outcome of pending litigation, are confidential and may not be disclosed to the public by the commissioner or employees of the Division of Financial Institutions, and are not subject to the state’s Freedom of Information Act. The commissioner may release information if:

(1) The commissioner finds that immediate and irreparable harm is threatened to the licensee's customers, or potential customers, or the general public;

(2) The licensee consents before the release;

(3) The commissioner finds that release of the information is required in connection with a hearing under this article, in which event information may be related to the parties of that hearing; or

(4) The commissioner finds that the release is reasonably necessary for the protection of the public and in the interest of justice, in which event information may be distributed to representative of an agency, department, or instrumentality of this state, any other state, or the federal government.

(g) Nothing in this section prevents release to the public of any list of licensees or aggregated financial data for the licensees, prevents disclosure of information the presiding officer considers relevant to the proper adjudication or administration of justice at public administrative or judicial hearings, or prevent disclosure of information relative to supporting the issuance of any administrative or judicial order.

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§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license; penalties and fines for violation of this article.

(a) The commissioner may suspend or revoke any broker or lender license issued hereunder if he or she finds that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of the licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article;

(2) Has knowingly made any material misstatement in the application for the license;

(3) Does not have available the net worth required by the provisions of section four of this article, if applicable;

(4) Has failed or refused to keep the bond required by this article in full force and effect, if applicable;

(5) In the case of a foreign corporation, does not remain qualified to do business in this state;

(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or any ground which would be cause for refusing a license to the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee does not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any license was suspended or

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revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.

(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding$2,000 upon any lender or broker required to be licensed under this article who the commissioner determines has violated any of the provisions of this article. For the purposes of this section, each separate violation is subject to the fine or penalty provided in this section. Each day excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a mortgage lender or broker is a separate violation.

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§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, he shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be. The commissioner shall also submit a copy of any such order for publication by the Nationwide Mortgage Licensing System and Registry.

(b) It shall be the duty of the licensee to comply with any such order: (i) Immediately if the license was suspended either following a hearing or for failure to keep the bond required by the provisions of section four of this article in full force and effect; or otherwise (ii) following expiration of the period provided in section fourteen of this article in which such licensee, if not previously provided the opportunity to a hearing on the matter, may demand a hearing before the commissioner without such demand having been timely made.

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§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section thirteen of this article, if not previously provided the opportunity to a hearing on the matter, may in writing demand a hearing before the commissioner. The commissioner may appoint a hearing examiner to conduct the hearing and prepare a recommended decision. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of the order. The timely filing of a written demand for hearing shall stay or suspend execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to maintain the bond required by section four of this article in full force and effect. If a written demand is timely filed as aforesaid, the aggrieved party is entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of the article were set forth in extenso in this subsection.

(c) For the purpose of conducting any such hearing hereunder, the commissioner or appointed hearing examiner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum are issued and served in the manner, within the time and for the fees and shall be enforced, as specified in the section, and all of the section provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) Any hearing shall be held within twenty days after the date upon which the commissioner received the timely written demand therefor unless there is a postponement or continuance. The commissioner or hearing examiner may postpone or continue any hearing on his or her own motion or for good cause shown upon the application of the aggrieved party. At any hearing, the aggrieved party may represent himself or herself or be represented by any attorney-at-law admitted to practice before any circuit court of this state.

(e) After the hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his or her earlier order, or shall make and enter an order as is considered appropriate, meet and proper. If the commissioner appoints a hearing examiner then the commissioner must issue his or her final order within fifteen days of receiving the recommended decision of the hearing examiner. The order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon the aggrieved party and his or her attorney of record, if any, in person or by certified mail, return receipt

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requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner is final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.

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§31-17-15. Judicial review.

(a) Any person adversely affected by a final order made and entered by the commissioner after hearing held in accordance with the provisions of section fourteen of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the Supreme Court of Appeals shall upon request be provided by the Attorney General or his assistants, all without additional compensation.

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§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any rules of the commissioner or any final order of the commissioner, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations, or any part thereof, has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eighteen of this article.

(b) Upon application by the commissioner as aforesaid, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, any rules of the commissioner and all final orders of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

(d) The commissioner shall upon request be represented in all such proceedings by the Attorney General or his assistants, all without additional compensation.

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§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.

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§31-17-18. Violations and penalties.

(a) Any person, or any member, officer, director, agent or employee of such person, who violates or participates in the violation of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or imprisoned in a county or regional jail for not more than six months, or both fined and imprisoned, at the discretion of the court.

(b) The penalties and remedies embodied in this article are not exclusive, but are cumulative with other applicable provisions of this code, including, but not limited to, the consumer protection laws in chapter forty-six-a of this code.

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§31-17-19. Severability.

If any provision of this article or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are hereby declared to be severable.

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§31-17-20. Effective date.

The amendments to this article enacted during the regular session of the Legislature in the year 2009 shall be effective as of July 1, 2009.

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