WEST VIRGINIA CODE: §31-17A-2

§31-17A-2. Definitions.

As used in this article:

(a) “Commissioner” means the Commissioner of Financial Institutions of this state;

(b) “Depository institution” has the same meaning as in Section three of the Federal Deposit Insurance Act and includes any federally insured credit union;

(c) “Division” means the West Virginia Division of Financial Institutions;

(d) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(e) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

(f) “Individual” means a natural person;

(g) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under §31-17-1 *et seq*. of this code.

(1) For purposes of this paragraph, “clerical or support duties” may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; or

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(h) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers

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or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker, or regulated consumer lender licensed by the Division of Financial Institutions. "Mortgage loan originator" does not include:

(1) An individual engaged solely as a loan processor or underwriter except as otherwise provided in §31-17A-3 of this code;

(2) A person or entity who does not currently have and has never held a residential mortgage loan originator license in this or any other state and who acts as a mortgage loan originator on no more than three residential mortgage loans to purchasers of any dwelling owned by the person or entity in any calendar year: *Provided*, That the person or entity is required to report any such loan within 30 days of the date of the loan to the Division of Financial Institutions on a form available from the division upon request. Failure to timely report as required by this subdivision may result in imposition by the commissioner of a civil administrative penalty of up to $250;

(3) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(4) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; or

(5) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable:

(A) Does not receive compensation or gain for engaging in activities described in this subsection, that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer:

(i) In writing, any corporate affiliation with any mortgage lender; and

(ii) If the retailer has a corporate affiliation with any mortgage lender, at least one unaffiliated mortgage lender;

(C) Does not directly negotiate with the consumer or mortgage lender on loan terms (including rates, fees, and other costs); and

(D) Does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, social media, or other promotional items, that the individual can or will perform the activities described in this subsection;

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(i) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) Acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction;

(4) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraph (1), (2), (3), or (4) of this subdivision;

(j) "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 mortgage brokers and lenders licensed pursuant to §31-17-1 *et seq.* of this code and mortgage loan originators licensed pursuant to this article;

(k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage;

(l) "Person" means a natural person, corporation, company, limited liability company, partnership, or association;

(m) "Registered mortgage loan originator" means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration; and

(2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage

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Licensing System and Registry;

(n) “Residential 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) “Residential real estate” means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling; and

(p) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

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