WEST VIRGINIA CODE CHAPTER 31 ARTICLE 17A

WV Legislature

§31-17A-1. Purpose.

The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon West Virginia's consumers, West Virginia's economy, the neighborhoods and communities of West Virginia and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state's citizens. The Legislature also finds that it is essential for the protection of the citizens of West Virginia and the stability of West Virginia's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this article is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive and fraudulent practices on the part of mortgage loan originators.

WV Legislature

§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 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:

WV Legislature

(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;

(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

WV Legislature

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 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

WV Legislature

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.

WV Legislature

§31-17A-3. License and registration required.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. A Mortgage loan originator licensed under this article may be employed by, or under contract to provide mortgage loan originator services for, only one entity licensed or exempt from licensing under article seventeen of this chapter at any time.

(b) To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section:

(1) For all individuals other than individuals described in subdivision (2) of this subsection shall be January 31, 2010; and

(2) For all individuals licensed as mortgage loan originators before July 1, 2009, shall be January 1, 2011.

(c) The following are exempt from this article:

(1) Registered Mortgage Loan Originators, when acting for an entity described in subdivision (11), section two of this article;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney 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.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) To implement an orderly and efficient licensing and transition process, the commissioner may establish interim policies and procedures for licensing and acceptance of applications as follows:

WV Legislature

(1) Mortgage loan originators employed by or under exclusive contract to licensed mortgage brokers after the effective date of this article shall submit an application on a form prescribed by the commissioner, including all necessary information, fees and authorizations for investigation as the commissioner may determine necessary, and must meet the standards for licensure set forth in this article. Any license issued under this subdivision and any license current as of the effective date of this article will expire on December 31, 2010: Provided, That notwithstanding the licensing requirements under this section, an individual acting exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. In the event this extension of time is denied, such individuals shall apply for a license under this section within ninety days of the denial; and

(2) Mortgage loan originators employed by or under exclusive contract to licensed mortgage lenders and regulated consumer lenders shall comply with this article and submit all applications through the Nationwide Mortgage Licensing System and Registry on or before January 31, 2010.

WV Legislature

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of $200 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry. The commissioner may elect to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations that serve the housing needs of 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.

(b) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage 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 Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage 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.

(d) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage 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.

(e) To reduce the points of contact which the commissioner may have to maintain, the

WV Legislature

commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Nonresident mortgage loan originators 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 and §56-3-33 of this code.

(g) The commissioner may grant a provisional license to a mortgage loan originator who has met all other requirements for licensing under this article but: (1) Has not passed a test regarding West Virginia mortgage laws and regulations required for licensure: Provided, That the provisionally licensed mortgage loan originator takes and passes that test within 60 days of the test becoming available; or (2) for whom the commissioner has not received the results of a criminal background check despite the good faith effort of the applicant to provide in a timely manner the information necessary to obtain a criminal background check.

WV Legislature

§31-17A-5. Issuance of license.

(a) The commissioner may not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation may not be considered a revocation.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court: *Provided,* That any pardon of a conviction may not be a conviction for purposes of this subsection: *Provided, however*, That the commissioner shall apply §31-17A-5(b) and §31-17A-5(c) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(A) During the five-year period preceding the date of the application for licensing and registration; or

(B) At any time preceding the date of application if the crime bears a rational nexus to the license being sought.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article.

For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The commissioner shall not use a credit score as the sole basis for license denial. A determination that an individual has not shown financial responsibility may include, but not be limited to:

(A) Current outstanding judgments, except judgments solely as a result of medical expenses;

(B) Current outstanding tax liens or other government liens and filings;

(C) Foreclosures within the past three years; and

(D) A pattern of seriously delinquent accounts within the past three years.

(4) The applicant has completed the pre-licensing education requirement described in §31-17A-6 of this code.

(5) The applicant has passed a written test that meets the test requirement described in §31-17A-7 of this code.

WV Legislature

(6) The applicant has met the surety bond requirement as required pursuant to §31-17A-13 of this code.

(b) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(c) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(d) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

WV Legislature

§31-17A-6. Prelicensing and relicensing education of loan originators.

(a) To meet the prelicensing education requirement, a person must complete at least 24 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) Four hours of training related to West Virginia mortgage and consumer laws or issues.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry or the Division, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry or the Division in subdivisions (1), (2) and (3) subsection (a) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in West Virginia.

(f) A person previously licensed under this article subsequent to July 1, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

WV Legislature

§31-17A-7. Testing of loan originators.

(a) To meet the written test requirement, an individual must pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test may not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination; and

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(c) Nothing in this section prohibits a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual may not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five consecutive years or longer must retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

WV Legislature

§31-17A-8. Standards for license renewal.

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under section five of this article;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in section nine of this article; and

(3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

WV Legislature

§31-17A-9. Continuing education for mortgage loan originators.

(a) To meet the annual continuing education requirements, a licensed mortgage loan originator must complete at least nine hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) Two hours of West Virginia law or regulations.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for §31-17A-8(b) of this code and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2) and (3), subsection (a) of this section for any state shall be accepted as credit towards completion of

WV Legislature

continuing education requirements in West Virginia.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the renewal requirements of §31-17A-8(a)(1) and §31-17A-8(a)(3) of this code may make up any deficiency in continuing education as established by the commissioner.

WV Legislature

§31-17A-9a. Permitting employees to work from alternate locations.

(a) Notwithstanding any provision of this article to the contrary, but subject to the requirements of this section, employees of a West Virginia mortgage broker, lender, or servicer licensee may perform work for the licensee at their residence: *Provided*, That nothing in this subsection restricts employees of the licensee from conducting business at other locations for limited periods of time. Any activity conducted by an employee of the West Virginia licensee shall be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the employee's location during the activity.

(b) A licensee, prior to authorizing work by employees at a location other than the licensee's designated place of business, shall ensure the following:

(1) No in-person customer interactions will be conducted at the other location;

(2) The other location is not designated as a business location to consumers or customers;

(3) Appropriate data security and privacy safeguards are in place for licensee and consumer data, information, and records at the other location, including, but not limited to, the use and maintenance of secure virtual private networks and maintenance of appropriate security updates, patches, or other alterations to ensure the security of electronic devices;

(4) Appropriate risk-based monitoring and oversight processes of work performed by the employees of a licensee at the other location are in place, and records of such monitoring and processes are maintained;

(5) No consumer information or records are maintained at the other location;

(6) All consumer and licensee information and records remain accessible and available for regulatory oversight and examinations;

(7) Employees are trained and keep confidential all conversations about, and with, consumers that may be conducted at the other location; and

(8) The other location is a safe and secure workplace for employees.

(c) A licensee, prior to authorizing work at a location other than the licensee's designated place of business, shall establish written policies and procedures to ensure compliance with the requirements of subsection (b) of this section.

(d) A licensee that authorizes work at another location pursuant to this section shall:

(1) Periodically review and document compliance with the provisions of this section and the written policies and procedures established pursuant to subsection (c) of this section as it relates to every employee who works at another location;

WV Legislature

(2) Certify annually that the provisions of this section have been met as to each employee working at another location; and

(3) Provide proof of the periodic review and certification upon request by the Division of Financial Institutions.

WV Legislature

§31-17A-10. Authority to require license.

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry to carry out this requirement. The commissioner may establish requirements as necessary, including, but not limited to:

(1) Background checks for:

(A) Criminal history through fingerprint or other databases;

(B) Civil or administrative records;

(C) Credit history; or

(D) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates;

(4) Requirements for amending or surrendering a license; and

(5) Any other activities the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

WV Legislature

§31-17A-11. Nationwide Mortgage Licensing System and Registry information challenge process.

The commissioner shall establish a process in accordance with the Administrative Procedures Act, provided in article five, chapter twenty-nine-a of this code, whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

WV Legislature

§31-17A-12. Enforcement authorities, violations and penalties.

(a) To ensure the effective supervision and enforcement of this article, the commissioner may:

(1) Deny, suspend, revoke, condition or decline to renew a license issued under this article for a violation of this article or rules or order or directive entered under this article;

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section five or eight of this article, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to this article for violations of this article;

(4) Impose civil administrative penalties on persons subject to this article pursuant to subsections (b), (c) and (d) of this section; and

(5) Issue orders or directives under this article as follows:

(A) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(B) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under section three if the commissioner determines that such license was erroneously issued or the licensee is currently in violation of this article; and

(D) Order or direct such other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil administrative penalty on a mortgage loan originator or person subject to this article if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this article has violated or failed to comply with any requirement of this article or any rule prescribed by the commissioner under this article or order issued under authority of this article.

(c) The maximum amount of penalty for each act or omission described in subsection (b) of this section shall be $25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

WV Legislature

(e) If the commissioner takes any enforcement action under this article, he or she shall enter an order to that effect and shall cause a copy of that 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. The commissioner shall also submit a copy of the order for publication in the Nationwide Mortgage Licensing System and Registry when that functionality of the system becomes available. An applicant or licensee adversely affected by an order may request an appeal and shall be provided a hearing as provided in section fourteen, article seventeen of this chapter.

WV Legislature

§31-17A-13. Surety bond required.

(a) Each mortgage loan originator must be covered by a surety bond in accordance with this section in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or unpaid examination invoice. If the mortgage loan originator is an employee or exclusive agent of a person subject to this article, article seventeen of this chapter, or article four, chapter forty-six-a of this code, the surety bond of that person may be used in lieu of the mortgage loan originator's individual surety bond requirement. Any person not subject to licensing as a mortgage lender or broker under article seventeen, chapter thirty-one of this code or article four, chapter forty-six-a of this code that employs a mortgage loan originator licensed under this article may elect to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for the mortgage loan originator employed.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by the commissioner.

(3) The commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this article.

(b) The penal sum of the surety bond shall be maintained in an amount as required by article seventeen of this chapter for licensed mortgage lenders and brokers or article four, chapter forty-six-a of this code for regulated consumer lenders.

(c) When an action is commenced on a licensee's bond or any bond covering the activities of a licensee under this article, the commissioner may require the filing of a new bond.

(d) Immediately upon recovery upon any action on a bond covering any licensee under this article, a new bond shall be filed.

(e) The commissioner may elect to reduce or waive the bond amounts imposed by this section for mortgage loan originators employed by bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, or any agency or instrumentality of this state, federal, county or municipal government 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 if the commissioner determines that a reduction or waiver would not violate any applicable law. 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.

WV Legislature

§31-17A-14. Confidentiality.

(a) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or any provision of this code regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. This information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or any provision of this code.

(b) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) of this section may not be subject to:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, the privilege.

(d) Any provision of this code relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) of this section that is inconsistent with said subsection shall be superseded by the requirements of this section.

(e) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

WV Legislature

§31-17A-15. Investigation and examination authority.

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(1) Criminal, civil and administrative history information, including nonconviction data;

(2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(b) For the purposes of investigating violations or complaints arising under this article, or for the purposes of examination, the commissioner may review, investigate or examine any licensee, individual or person subject to this article and his or her employer or sponsoring company as often as necessary. The commissioner may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena or order such person to produce books, accounts, records, files and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, must make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this article. The commissioner shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person subject to this article concerning their business.

(d) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information considered necessary to carry out the purposes of this section.

WV Legislature

(e) In making any examination or investigation authorized by this article, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, an individual or person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this section, the commissioner may:

(1) Retain attorneys, accountants or other professionals and specialists as examiners, Auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained under this section;

(3) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(g) The authority of this section shall remain in effect whether a licensee, individual or person subject to this article acts or claims to act under any licensing or registration law of this state or claims to act without that authority.

(h) A licensee, individual or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

WV Legislature

§31-17A-16. Prohibited acts and practices.

It is a violation of this article for a person or individual subject to this article to:

(1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(2) Engage in any unfair or deceptive practice toward any person.

(3) Obtain property by fraud or misrepresentation.

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(5) Solicit, advertise or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting.

(6) Conduct any business covered by this article without holding a valid license as required under this article, or assist or aide and abet any person in the conduct of business under this article without a valid license as required under this article.

(7) Fail to make disclosures as required by this article and any other applicable state or federal law including rules and regulations thereunder.

(8) Fail to comply with this article or rules promulgated under this article, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this article.

(9) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(12) Collect, charge, attempt to collect or charge or use or propose any agreement

WV Legislature

purporting to collect or charge any fee prohibited by this article.

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

WV Legislature

§31-17A-17. Report to mortgage licensing system and registry.

The commissioner is required to report violations of this act, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions of section fourteen of this article.

WV Legislature

§31-17A-18. Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

WV Legislature

§31-17A-19. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the remainder of the article or the application of the provision to other persons or circumstances is not affected.

WV Legislature

§31-17A-20. Effective date.

The effective date of this article shall be July 1, 2009.

WV Legislature