WEST VIRGINIA CODE: §46A-4-109

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

(1) No consumer loan of $2,000 or less may be secured by an interest in land, other than a purchase money loan for that land, unless the lender is licensed in this state as a regulated consumer lender or as a mortgage lender, or is a federally insured depository institution permitted to conduct lending in West Virginia. A security interest taken in violation of this subsection is void.

(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no regulated consumer lender shall take any assignment of or order for payment of any earnings to secure any loan made by any regulated consumer lender under this article. An assignment or order taken in violation of this subsection is void. This subsection does not prohibit a court from ordering a garnishment to affect recovery of moneys owed by a borrower to a lender as part of a judgment in favor of said lender.

(3) Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods, the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

(4) A regulated consumer lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge from any court of the United States of America exercising jurisdiction in insolvency and bankruptcy matters, unless said regulated consumer lender shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized.

(5) In making any loan secured by any encumbrance on residential property, no lender may, and no such lending transaction may contain terms which:

(A) 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 duplicate fee or points

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to act as both broker and lender for the same mortgage loan; collect a fee for a product or service where the product or service is not actually provided; or, misrepresent the amount charged by or paid to a third party for a product or service;

(B) 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 the real estate that is to be encumbered;

(C) Make or assist in making any loan secured by any encumbrance on residential property 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 shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(D) Allow or require a loan secured by any encumbrance on residential property to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(E) Require or contain 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 shall not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases;

(F) Secure a residential mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other residential mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest residential mortgage loan is made. For purposes of this paragraph, a lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the lender does not have actual knowledge that the value is incorrect; or

(G)(1) Require compulsory arbitration which does not comply with federal law; (2) contain a document with blank or blanks to be filled in after the consummation of the loan; (3) contain a power of attorney to confess judgment; (4) contain any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article; (5) contain any requirement that more than one installment be payable in any one installment period; or (6) contain any 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; or

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

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