WEST VIRGINIA CODE CHAPTER 46A ARTICLE 6K

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§46A-6K-1. Applicability.

This article applies to the settlement of loans secured by deeds of trust on owner-occupied residential dwellings with accommodations for not more than four families. This article does not apply to construction loans or any other loans which, by agreement of the parties, provide for the disbursement of the proceeds in stages.

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§46A-6K-2. Definitions.

(a) "Collected funds" or "good funds" means moneys used to fund the disbursement of settlement proceeds deposited and irrevocably credited to a settlement agent's account.

(b) "Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in the form of:

(1) Cash;

(2) Wired funds;

(3) Certified check;

(4) Checks issued by the United States treasury, the State of West Virginia or an instrumentality of the United States or state of West Virginia;

(5) Cashier's check or teller's check or other similar draft or obligation of a federally insured bank, savings bank, savings and loan association or credit union or of any holding company or wholly owned subsidiary of the foregoing;

(6) Checks issued by a licensed lender qualified to do business in West Virginia which has posted the surety bond required by subsection (b), section four, article seventeen, chapter thirty-one of this code;

(7) Checks issued by an insurance company licensed and regulated by the West Virginia Insurance Commission, which checks are drawn on a federally insured financial institution;

(8) Checks drawn on the escrow account of an attorney licensed to practice law in West Virginia or on the escrow account of a real estate broker licensed in West Virginia; or

(9) Personal check or checks in an aggregate amount not exceeding $5,000 per loan closing.

(c) "Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto.

(d) "Lender" means any person regularly engaged in making loans secured by deeds of trust to secure debt on West Virginia real estate. A person is considered to be regularly engaged in making loans if he or she makes more than five such loans in any one calendar year.

(e) "Loan closing" means that time agreed upon by the borrower, lender, seller, if applicable, and settlement agent when the execution by the borrower and delivery of the loan documents to the settlement agent occur.

(f) "Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the

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lender to be executed by the borrower as a part of the transaction.

(g) "Loan funds" means the gross or net proceeds of the loan to be disbursed by or on behalf of the lender at loan closing.

(h) "Parties", as used in this subsection, means the seller, purchaser, borrower, lender and the settlement agent, as applicable.

(i) "Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents and other documents and funds required to carry out the terms of the contract between the parties.

(j) "Settlement agent" means the person authorized by law to be responsible for conducting the settlement and disbursement of the settlement proceeds.

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§46A-6K-3. Duty of lender; accrual of interest.

The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent; however, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause disbursement of loan funds to the settlement agent, unless the loan is rescinded by the customer. All funds disbursed by the lender to the settlement agent must be collected funds. The lender may charge and receive interest on the loan during the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.): Provided, That the lender may not receive any interest if the loan is rescinded by the customer: Provided, however, That the lender may not charge or receive interest on the loan during the rescission period, if the loan is for the purpose of paying a prior loan made by the same lender in full.

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§46A-6K-4. Validity of loan documents.

Failure to comply with the provisions of this article does not affect the validity or enforceability of any loan documents executed.

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§46A-6K-5. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to disburse settlement proceeds as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of section three of this article plus reasonable attorneys' fees incurred in the collection thereof.

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