

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Comm. Sub. for

SENATE BILL NO. 42

(By Mr. Moreland and Mr. McKinnon
original sponsors)

PASSED March 10, 1967

In Effect Ninety days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

#42

ENROLLED
JUDICIARY
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 42

(Mr. MORELAND and Mr. McKOWN original sponsors).

[Passed March 10, 1967; in effect ninety days from passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to secondary mortgage loans; providing for the qualification, regulation and licensing of persons engaged as lenders or brokers in the secondary mortgage loan business; relating to the responsibilities, duties and powers of the commissioner of banking in connection therewith; specifying the interest and charges to be paid by a borrower with respect to a secondary mortgage loan;

authorizing injunctive relief; declaring secondary mortgage loans made in violation of certain provisions of the article to be void; and providing penalties and a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. SECONDARY MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.

As used in this article:

2 (1) "Secondary mortgage loan" means a loan made
3 to an individual or partnership which is secured in whole
4 or in part by a mortgage or deed of trust upon any inter-
5 est in real property used as a dwelling with accommoda-
6 tions for not more than four families, which property is
7 subject to the lien of one or more prior recorded mort-
8 gages, deeds of trust or vendor's liens.

9 (2) "Person" means an individual, partnership, associa-
10 tion, trust, corporation, or any other legal entity, or any
11 combination thereof.

12 (3) "Lender" means any person who makes or offers
13 to make or accepts or offers to accept any secondary
14 mortgage loan in the regular course of business. A per-
15 son shall be deemed to be acting in the regular course of
16 business if he makes or accepts, or offers to make or
17 accept, more than five secondary mortgage loans in any
18 one calendar year.

19 (4) "Broker" means any person who, for a fee or com-
20 mission or other consideration, negotiates or arranges, or
21 who offers to negotiate or arrange, a secondary mortgage
22 loan between a lender and a borrower.

23 (5) "Brokerage fee" means the fee or commission or
24 other consideration charged by a broker for the services
25 described in paragraph (4) of this section.

26 (6) "Principal" or "principal sum" means the sum
27 delivered to the borrower by the lender, or expended by
28 the lender to third party creditors of the borrower for the
29 discharge of pre-existing debts of such borrower.

30 (7) "Charge" or "charges" means every type of charge
31 incident to or arising out of the making or acceptance of
32 a secondary mortgage loan, except interest, including, by

33 whatever name called, but not by way of limitation,
34 title search fees, title report fees, title opinion fees, title
35 guarantee fees, credit report fees, investigation costs, in-
36 vestigation report costs, legal fees, fees for the prepara-
37 tion of instruments, placement fees, discount fees, broker-
38 age fees, recording fees, appraisal costs, closing costs, and
39 insurance costs, except as provided in subsection (c),
40 section eight of this article with respect to hazard insur-
41 ance.

42 (8) "Interest" means the compensation, other than a
43 charge or charges, to be paid for the loan of the principal
44 or principal sum.

45 (9) "Placement fee" or "discount fee" means a deduc-
46 tion from the principal or principal sum by the lender at
47 the time of the making or accepting of a secondary
48 mortgage loan, which deduction is ultimately charged to
49 or placed upon the borrower.

50 (10) "Commissioner" means the commissioner of bank-
51 ing of this state.

52 (11) "Applicant" means a person who has applied for
53 a lender's or broker's license.

54 (12) "Licensee" means any person duly licensed by the
55 commissioner under the provisions of this article as a
56 lender or broker.

§31-17-2. License required; exemptions.

(a) No person shall engage in this state in the busi-
2 ness of lender or broker unless and until he shall first
3 obtain a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked,
5 and no foreign corporation shall, notwithstanding the
6 provisions of section seventy-nine-a, article one of this
7 chapter, engage in such business in this state unless it
8 shall qualify to hold property and transact business in this
9 state: *Provided*, That during the first ninety days after the
10 effective date of this article any person who has filed an
11 application for a lender's broker's license and whose ap-
12 plication for such license has not been denied and the
13 license sought refused may engage in the business of
14 lender or broker, as the case may be, without a lender's or
15 broker's license, until his application is ruled upon and
16 thereafter if the same is granted and the license sought is
17 issued.

18 (b) The provisions of this article do not apply to loans
19 made by banking institutions, trust companies, savings and
20 loan associations, building and loan associations, industrial
21 loan companies, insurance companies, credit unions or
22 small loan companies pursuant to article seven-a, chapter
23 forty-seven of this code, or to loans made by any other
24 lender licensed by and under the supervision of the com-
25 missioner by authority of any other provisions of this
26 code or licensed by and under the supervision of any
27 agency of the federal government, or to loans made by
28 any agency of the federal government.

**§31-17-3. Supervision by commissioner; rules and regulations;
personnel.**

It shall be the duty of the commissioner to enforce the
2 provisions of this article, and, to implement and make
3 effective such provisions, he is hereby authorized and em-
4 powered to promulgate reasonable rules and regulations,
5 in accordance with the provisions of article three, chapter
6 twenty-nine-a of this code, and to employ such personnel
7 as may be necessary.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

(a) Application for a lender's or broker's license shall
2 be in writing under oath, in the form prescribed by the
3 commissioner, and shall contain the full name and address
4 (both of the residence and place of business) of the ap-
5 plicant and, if the applicant is a partnership or association,
6 of every member thereof, and, if a corporation, of each
7 officer, director and owner of five per cent or more of the
8 capital stock thereof, and such further information as the
9 commissioner may reasonably require. Any application
10 shall also disclose the location in this state at which the
11 business of lender or broker is to be conducted.

(b) At the time of making application for a lender's
12 license, the applicant therefor shall:
13

(1) If a foreign corporation, submit a certificate
14 from the secretary of state certifying that such applicant
15 has qualified to hold property and transact business in this
16 state;
17

(2) Submit proof that he has available for the
18 operation of the business at the location specified in the
19

20 application net assets of at least two hundred fifty thou-
21 sand dollars.

22 (3) File with the commissioner a bond in favor of
23 the state in the amount of one hundred thousand dollars,
24 in such form and with such conditions as the commissioner
25 may prescribe, and executed by a surety company author-
26 ized to do business in this state; and

27 (4) Pay to the commissioner a license fee of one
28 thousand dollars and an investigation fee of two hundred
29 fifty dollars. If the commissioner shall determine that an
30 investigation outside this state is required to ascertain
31 facts or information relative to the applicant or infor-
32 mation set forth in the application, the applicant may be
33 required to advance sufficient funds to pay the estimated
34 cost of such investigation. An itemized statement of the
35 actual cost of the investigation outside this state shall be
36 furnished to the applicant by the commissioner, and the
37 applicant shall pay or shall have returned to him, as the
38 case may be, the difference between his payment in ad-
39 vance of the estimated cost and the actual cost of such in-
40 vestigation.

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

43 (1) If a foreign corporation, submit a certificate
44 from the secretary of state certifying that such applicant
45 has qualified to hold property and transact business in this
46 state;

47 (2) Submit proof that he has available for the
48 operation of the business at the location specified in the
49 application net assets of at least ten thousand dollars;

50 (3) File with the commissioner a bond in favor
51 of the state in the amount of ten thousand dollars, in such
52 form and with such conditions as the commissioner may
53 prescribe, and executed by a surety company authorized
54 to do business in this state; and

55 (4) Pay to the commissioner a license fee of one
56 hundred dollars and an investigation fee of fifty dollars.

57 Every individual applicant for a broker's license, and if
58 the applicant is a partnership or association, every mem-
59 ber thereof, shall be at the time of the filing of the ap-
60 plication for such license a bona fide resident of this
61 state and shall have been such a resident for a period

62 of at least one year prior to the date of such filing. In
63 the case of a corporate applicant for a broker's license,
64 the owner or owners of at least fifty-one per cent of the
65 capital stock of such corporation shall be at the time of
66 the filing of the application for such license bona fide
67 residents of this state and shall have been such residents
68 for a period of at least one year prior to the date of
69 such filing.

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

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

(a) Upon an applicant's full compliance with the pro-
2 visions of section four of this article, the commissioner
3 shall investigate the relevant facts with regard to such
4 applicant and his application for a lender's or broker's
5 license, as the case may be. Upon the basis of the appli-
6 cation and all other information before him, the commis-
7 sioner shall make and enter an order denying the applica-
8 tion and refusing the license sought if the commissioner
9 finds that:

10 (1) The applicant does not have available the net
11 assets required by the provisions of section four of this
12 article;

13 (2) The applicant (individually, if an individual,
14 or the partners, if a partnership, or the officers and direc-
15 tors, if a corporation) is of such character and reputation
16 as reasonably to warrant the belief that the business will
17 not be operated lawfully and properly in accordance with
18 the provisions of this article;

19 (3) In the case of an application for a broker's
20 license, the applicant does not meet the residency qualifi-
21 cations specified in said section four;

22 (4) The applicant has habitually defaulted on
23 financial obligations; or

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

28 Otherwise, the commissioner shall issue to the applicant a
29 lender's or broker's license which shall entitle such appli-
30 cant to engage in the business of lender or broker, as the

31 case may be, during the period, unless sooner suspended
32 or revoked, for which the license is issued.

33 (b) Every application for a lender's or broker's license
34 shall be passed upon and the license issued or refused
35 within forty-five days after the applicant therefor has
36 fully complied with the provisions of section four of this
37 article. Under no circumstances whatever shall the same
38 person hold both a lender's and a broker's license. When-
39 ever an application for a lender's or broker's license is
40 denied and the license sought is refused, which refusal
41 has become final, the commissioner shall retain the in-
42 vestigation fee or fees but shall return the license fee to
43 the applicant.

**§31-17-6. Minimum net assets to be maintained; bond to be
kept in full force and effect; broker residency quali-
fications to be maintained; foreign corporation to re-
main qualified to do business in this state.**

At all times, a licensee shall (1) have available the net
2 assets required by the provisions of section four of this
3 article, (2) keep the bond required by said section four
4 in full force and effect, (3) if such licensee be a broker,

5 continue to meet the residency qualifications set forth in
6 said section four, and (4) if such licensee be a foreign
7 corporation, remain qualified to hold property and trans-
8 act business in this state.

**§31-17-7. Form of license; posting of license required; license
not transferable or assignable; one location only; re-
newal of license.**

(a) It shall be stated on the license whether it is a
2 lender's or broker's license, the location at which the busi-
3 ness is to be conducted and the full name of the licensee.
4 A broker's license shall be conspicuously posted in the
5 licensee's place of business in this state, and a lender's
6 license shall be conspicuously posted in the licensee's
7 place of business if in this state. No license shall be trans-
8 ferable or assignable. Not more than one location or place
9 of business in this state shall be maintained under the
10 same license, but the commissioner is authorized to issue
11 more than one license to the same licensee upon com-
12 pliance with all the provisions of this article governing
13 the original issuance of a license. Whenever a licensee
14 changes his place of business to a location other than that

15 set forth in his license, he shall give written notice within
16 thirty days of such change to the commissioner.

17 (b) Every lender's or broker's license shall, unless
18 sooner suspended or revoked, expire on December thirty-
19 first of each year, and any such license may be renewed
20 each year in the same manner, for the same license fee
21 and investigation fee or fees specified above and upon the
22 same basis as an original license is issued in accordance
23 with the provisions of section five of this article. All ap-
24 plications for the renewal of licenses shall be filed with
25 the commissioner at least forty-five days before the ex-
26 piration thereof.

§31-17-8. Maximum period of a secondary mortgage loan; maximum interest and charge or charges on a secondary mortgage loan; insurance; other prohibitions.

(a) A secondary mortgage loan shall be payable over
2 a period not in excess of sixty months, and the maximum
3 rate of interest and maximum total charge or charges on
4 or in connection with any such secondary mortgage loan
5 shall be as follows:

6 (1) The maximum rate of interest on the principal

7 sum shall be six dollars upon each one hundred dollars
8 for a year, and proportionately for a greater or lesser
9 sum, or for a longer or shorter time: *Provided*, That the
10 borrower shall have the right to anticipate payment of
11 his debt in whole or in part at any time and shall receive
12 a rebate for any unearned interest, which rebate shall
13 be computed in accordance with the "Standard Rule
14 of 78";

15 (2) The total charge or charges may equal, but
16 shall not be in excess of, ten per cent of the principal
17 sum: *Provided, however*, That where the principal sum
18 at the inception of the secondary mortgage loan is one
19 thousand five hundred dollars or less, the total charge
20 or charges may exceed said ten per cent, but shall not
21 be in excess of one hundred fifty dollars: *Provided fur-*
22 *ther*, That such charges may not be imposed more often
23 than once each thirty-six months by renewal of a sec-
24 ondary mortgage loan or an additional secondary mort-
25 gage loan on the same residential property.

26 (b) Notwithstanding the provisions of subsection (a)
27 of this section, a delinquent or "late charge" not exceed-

28 ing five per cent of the monthly payment, may be charged
29 on any installment made fifteen or more days after the
30 regularly scheduled due date, said charge to be made
31 only once on any one installment during the term of the
32 secondary mortgage loan.

33 (c) Hazard insurance may be required by the lender
34 of the borrower and the premium shall not be considered
35 as a charge. Decreasing term life insurance, in an amount
36 not exceeding the amount of the secondary mortgage
37 loan and for a period not exceeding the term of such
38 loan, and accident and health insurance in an amount
39 sufficient to make the monthly payments due on said loan
40 in the event of the disability of the borrower and for
41 a period not exceeding the life of said loan, may also be
42 required by the lender of the borrower and the premium
43 therefor, if included in the loan, may bear interest, and
44 may be included in computing the charge or charges,
45 but shall not exceed the standard rate approved by the
46 insurance commissioner for such insurance. Proof of all
47 insurance in connection with secondary mortgage loans
48 subject to this article shall be furnished to the borrower

49 within ten days from and after the date of application
50 therefor by said borrower.

51 (d) No application fee may be allowed whether or
52 not the secondary mortgage loan is consummated; how-
53 ever, the borrower may be required to reimburse the
54 lender for actual expenses incurred by the lender after
55 acceptance and approval of a secondary mortgage loan
56 proposal made in accordance with the provisions of this
57 article which is not consummated because of:

58 (1) The borrower's wilful failure to close said loan;
59 or

60 (2) The borrower's false or fraudulent representation
61 of a material fact which prevents closing of said loan as
62 proposed.

63 (e) No licensee shall make, offer to make, accept or
64 offer to accept, any secondary mortgage loan except
65 on the terms and conditions authorized in this article.

66 (f) No licensee shall induce or permit any husband
67 and wife, jointly and severally, to become obligated to
68 such licensee under this article, directly or contingently,
69 or both, under more than one secondary mortgage loan

70 at the same time for the purpose or with the result of
71 obtaining greater charges than would otherwise be per-
72 mitted under the provisions of this article.

73 (g) No instrument evidencing or securing a secondary
74 mortgage loan shall contain:

75 (1) Any acceleration clause under which any part
76 or all of the unpaid balance of the obligation not yet
77 matured may be declared due and payable because the
78 holder deems himself to be insecure;

79 (2) Any power of attorney to confess judgment
80 or any other power of attorney;

81 (3) Any provision whereby the borrower waives
82 any rights accruing to him under the provisions of this
83 article;

84 (4) Any requirement that more than one install-
85 ment be payable in any one installment period, or that
86 the amount of any installment be greater or less than
87 that of any other installment, except for the final in-
88 stallment which may be in a lesser amount; or

89 (5) Any assignment of or order for the payment
90 of any salary, wages, commissions, or other compensation
91 for services, or any part thereof, earned or to be earned.

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

(a) Any licensee or person making on his own behalf,
2 or as agent, broker, or in other representative capacity on
3 behalf of any other person, a secondary mortgage loan,
4 whether lawfully or unlawfully, shall at the time of the
5 closing furnish to the borrower a complete and itemized
6 closing statement which shall show in detail:

7 (1) The amount and date of the note or secondary
8 mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The interest and charges;

11 (4) The principal of the loan before adding the in-
12 terest and charges;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

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

17 (8) The charge to be imposed for past due install-
18 ments;

19 (9) A description of insurance required by the
20 lender or purchased by the borrower in connection with
21 the secondary mortgage loan;

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

24 (11) That the borrower may prepay the secondary
25 mortgage loan in whole or in part on any installment date,
26 and that the borrower will receive a rebate in full for
27 any interest prepayment.

28 Such detailed closing statement shall be signed by the
29 lender or his representative, and a completed and signed
30 copy thereof shall be retained by the lender and made
31 available at all reasonable times to the borrower, the
32 borrower's successor in interest to the residential prop-
33 erty, or the authorized agent of the borrower or the bor-
34 rower's successor, until such time as the indebtedness
35 shall be satisfied in full.

36 The commissioner may, from time to time, by rules and
37 regulations prescribe additional information to be in-
38 cluded in a closing statement.

39 (b) Upon written request from the borrower, the
40 holder of a secondary mortgage loan instrument shall
41 deliver to the borrower, within ten days from and after
42 receipt of such written request, a statement of the bor-
43 rower's account showing the date and amount of all pay-
44 ments made or credited to the account and the total
45 unpaid balance. Not more than two such statements shall
46 be requested in any twelve-month period.

47 (c) Upon satisfaction of a secondary mortgage loan
48 obligation in full, the holder of the instrument evidencing
49 or securing such obligation shall deliver to the borrower
50 a recordable release and all writings signed by the bor-
51 rower which were incident to applying for and obtaining
52 such secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful for any person to cause to be placed
2 before the public in this state, directly or indirectly, any
3 false, misleading or deceptive advertising matter pertain-
4 ing to secondary mortgage loans or the availability there-
5 of: *Provided*, That this section shall not apply to the
6 owner, publisher, operator or employees of any publica-

7 tion or radio or television station which disseminates such
8 advertising matter without actual knowledge of the false
9 or misleading character thereof.

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

(a) Every licensee shall maintain at his place of busi-
2 ness in this state, if any, or if he has no place of business
3 in this state at his principal place of business outside this
4 state, such books, accounts and records relating to all
5 transactions within this article as are necessary to enable
6 the commissioner to enforce the provisions of this article.
7 All such books, accounts and records shall be preserved,
8 exhibited to the commissioner and kept available as pro-
9 vided herein for such reasonable period of time as the
10 commissioner may by rules and regulations require. The
11 commissioner is hereby authorized to prescribe by rules
12 and regulations the minimum information to be shown in
13 such books, accounts and records.

(b) Each licensee shall file with the commissioner on
15 or before the fifteenth of April of each year a report under
16 oath or affirmation concerning his business and operations

17 in this state for the preceding license year in the form
18 prescribed by the commissioner, which shall show the
19 annual volume and outstanding amounts of secondary
20 mortgage loans, the classification of such secondary mort-
21 gage loans by size and by security, and the gross income
22 from, and expenses properly chargeable to, such secon-
23 dary mortgage loans.

24 (c) At least once each year the commissioner shall
25 make or cause to be made an examination of the books,
26 accounts and records of every licensee pertaining to sec-
27 ondary mortgage loans made in this state under the pro-
28 visions of this article, for the purpose of determining
29 whether each licensee is complying with the provisions
30 hereof and for the purpose of verifying each licensee's
31 annual report. If the examination is made outside this
32 state, the licensee shall pay the cost thereof in like manner
33 as applicants are required to pay the cost of investigations
34 outside this state.

35 (d) The commissioner shall publish annually an an-
36 alysis of the information furnished in accordance with the
37 provisions of subsection (b) of this section, but the in-

38 individual reports shall not be public records and shall not
39 be open to public inspection.

**§31-17-12. Grounds for suspension or revocation of license; sus-
pension and revocation generally; reinstatement or new
license.**

(a) The commissioner may suspend or revoke any
2 license issued hereunder if he finds that the licensee
3 and/or any owner, director, officer, member, partner,
4 stockholder, employee or agent of such licensee:

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

9 (2) Has knowingly made any material misstate-
10 ment in the application for such license; or

11 (3) Does not have available the net assets required
12 by the provisions of section four of this article; or

13 (4) Has failed or refused to keep the bond required
14 by section four of this article in full force and effect; or

15 (5) In the case of a broker's license, does not con-
16 tinue to meet the residency qualifications set forth in sec-
17 tion four of this article; or

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

20 (7) Has committed any fraud or engaged in any
21 dishonest activities with respect to such secondary mort-
22 gage loan business in this state, or failed to disclose any
23 of the material particulars of any secondary mortgage
24 loan transaction in this state to anyone entitled to such
25 information; or

26 (8) Has otherwise demonstrated bad faith, dis-
27 honesty or any other quality indicating that the business
28 of the licensee in this state has not been or will not be
29 conducted honestly or fairly within the purposes of this
30 article.

31 The commissioner may also suspend or revoke the license
32 of a licensee if he finds the existence of any ground upon
33 which the license could have been refused, or any ground
34 which would be cause for refusing a license to such
35 licensee were he then applying for the same.

36 (b) The suspension or revocation of the license of any
37 licensee shall not impair or affect the obligation of any
38 pre-existing lawful secondary mortgage loan between
39 such licensee and any obligor.

40 (c) The commissioner may reinstate a suspended li-
41 cense, or issue a new license to a licensee whose license
42 has been revoked, if the grounds upon which any such
43 license was suspended or revoked have been eliminated or
44 corrected and the commissioner is satisfied that such
45 grounds are not likely to recur.

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

(a) Whenever the commissioner shall refuse to issue
2 a license, or shall suspend or revoke a license, he shall
3 make and enter an order to that effect and shall cause a
4 copy of such order to be served in person or by certified
5 mail, return receipt requested, or in any other manner in
6 which process in a civil action in this state may be served,
7 on the applicant or licensee, as the case may be.

8 (b) Whenever a license is suspended or revoked, the
9 commissioner shall in the order of suspension or revoca-
10 tion direct the licensee to return to the commissioner his
11 license. It shall be the duty of the licensee to comply
12 with any such order following expiration of the period
13 provided in section fourteen of this article in which such

14 licensee may demand a hearing before the commissioner
15 without such demand having been timely made, and im-
16 mediately if the license were suspended for failure to keep
17 the bond required by the provisions of section four of
18 this article in full force and effect.

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

(a) Any applicant or licensee, as the case may be,
2 adversely affected by an order made and entered by the
3 commissioner in accordance with the provisions of sec-
4 tion thirteen of this article may in writing demand a hear-
5 ing before the commissioner. The written demand for a
6 hearing must be filed with the commissioner within
7 thirty days after the date upon which the applicant or
8 licensee was served with a copy of such order. The timely
9 filing of a written demand for hearing shall stay or
10 suspend execution of the order in question, pending a
11 final determination, except for an order suspending a
12 license for failure of the licensee to keep the bond re-
13 quired by the provisions of section four of this article in
14 full force and effect. If a written demand is timely filed

15 as aforesaid, the aggrieved party shall be entitled to a
16 hearing as a matter of right.

17 (b) All of the pertinent provisions of article five, chap-
18 ter twenty-nine-a of this code shall apply to and govern
19 the hearing and the administrative procedures in connec-
20 tion with and following such hearing, with like effect as
21 if the provisions of said article five were set forth in
22 extenso in this subsection.

23 (c) For the purpose of conducting any such hearing
24 hereunder, the commissioner shall have the power and
25 authority to issue subpoenas and subpoenas duces tecum,
26 in accordance with the provisions of section one, article
27 five, chapter twenty-nine-a of this code. All subpoenas
28 and subpoenas duces tecum shall be issued and served in
29 the manner, within the time and for the fees and shall
30 be enforced, as specified in section one, article five of said
31 chapter twenty-nine-a, and all of the said section one
32 provisions dealing with subpoenas and subpoenas duces
33 tecum shall apply to subpoenas and subpoenas duces
34 tecum issued for the purpose of a hearing hereunder.

35 (d) Any such hearing shall be held within twenty days

36 after the date upon which the commissioner received the
37 timely written demand therefor, unless there is a post-
38 ponement or continuance. The commissioner may post-
39 pone or continue any hearing on his own motion, or for
40 good cause shown upon the application of the aggrieved
41 party. At any such hearing, the aggrieved party may
42 represent himself or be represented by any attorney at
43 law admitted to practice before any circuit court of this
44 state.

45 (e) After such hearing and consideration of all of the
46 testimony, evidence and record in the case, the commis-
47 sioner shall make and enter an order affirming, modifying
48 or vacating his earlier order, or shall make and enter such
49 order as is deemed appropriate, meet and proper. Such
50 order shall be accompanied by findings of fact and con-
51 clusions of law as specified in section three, article five,
52 chapter twenty-nine-a of this code, and a copy of such
53 order and accompanying findings and conclusions shall
54 be served upon the aggrieved party and his attorney of
55 record, if any, in person or by certified mail, return receipt
56 requested, or in any other manner in which process in a

57 civil action in this state may be served. The order of the
58 commissioner shall be final unless vacated or modified on
59 judicial review thereof in accordance with the provisions
60 of section fifteen of this article.

§31-17-15. Judicial review.

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

9 (b) The judgment of the circuit court shall be final
10 unless reversed, vacated or modified on appeal to the
11 supreme court of appeals in accordance with the pro-
12 visions of section one, article six, chapter twenty-nine-a of
13 this code.

14 (c) Legal counsel and services for the commissioner in
15 all appeal proceedings in any circuit court and the
16 supreme court of appeals shall be provided by the at-

17 torney general or his assistants, and in appeal proceedings
18 in any circuit court by the prosecuting attorney of the
19 county as well, all without additional compensation.

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

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

18 (b) Upon application by the commissioner as aforesaid,
19 the circuit courts of this state may by mandatory or pro-
20 hibitory injunction compel compliance with the provi-
21 sions of this article, any rules and regulations of the com-
22 missioner and all final orders of the commissioner. The
23 court may issue a temporary injunction in any case pend-
24 ing a decision on the merits of any application filed.

25 (c) The judgment of the circuit court upon any appli-
26 cation permitted by the provisions of this section shall
27 be final unless reversed, vacated or modified on appeal
28 to the supreme court of appeals. Any such appeal shall
29 be sought in the manner and within the time provided
30 by law for appeals from circuit courts in other civil
31 cases.

32 (d) The commissioner shall be represented in all such
33 proceedings by the attorney general or his assistants and
34 in such proceedings in the circuit courts by the prose-
35 cuting attorneys of the several counties as well, all with
36 out additional compensation.

**§31-17-17. Loans made in violation of this article void; agree-
ments to waive article void.**

(a) If any secondary mortgage loan is made in viola-

2 tion of the provisions of this article, except as a result
3 of a bona fide error, such loan shall be void and neither
4 the lender nor any holder of the obligation secured by
5 such secondary mortgage shall have the right to collect
6 or receive any principal, interest or charges whatsoever,
7 and the lender shall refund all payments on or with
8 respect to such loan which have been made by the
9 borrower.

10 (b) Any agreement whereby the borrowed waives the
11 benefits of this article shall be deemed to be against pub-
12 lic policy and void.

§31-17-18. Violations and penalties.

Any person, or any member, officer, director, agent, or
2 employee of such person, who violates or participates in
3 the violation of this article shall be guilty of a misde-
4 meanor, and, upon conviction thereof, shall be punished
5 by a fine of not more than five hundred dollars, or by
6 imprisonment of not more than six months, or by both
7 such fine and imprisonment, in the discretion of the
8 court.

§31-17-19. Severability.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompax
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Thayer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

W. Laban White
Speaker House of Delegates

The within *approved* this the *17*
day of *March*, 1967.

Hubert C. Smith
Governor



**PRESENTED TO THE
GOVERNOR**

Date 3/17/67

Time 3:21 p.m.