WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

--- • ---

ENROLLED

HOUSE BILL No. 1618

(By Mr. Shepherd & Mr. Shingleton)

--- • ---

Passed ___________________________ 1981

In Effect Ninety Days From... Passage
AN ACT to repeal section nine, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, seven and eight of said article, relating to secondary mortgages; defining secondary mortgage to exclude wraparound mortgages; defining wraparound mortgage; broker's and lender's license; eliminating restriction of license to one location only; maximum interest; right of borrower to prepay loan indebtedness; rebating on actuarial basis; maximum interest rate applicable to "wraparound mortgage loans"; eliminating provisions regarding maximum period of loan, total permissible charges, insurance and certain prohibitions.

Be it enacted by the Legislature of West Virginia:

That section nine, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, seven and eight of said article be amended and reenacted to read as follows:

ARTICLE 17. SECONDARY MORTGAGES.

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

1 As used in this article:

2 (1) "Secondary mortgage loan" means a loan made to an individual or partnership which is secured in whole or in part
by a mortgage or deed of trust upon any interest in real
property used as a dwelling with accommodations for not
more than four families, which property is subject to the lien
of one or more prior recorded mortgages, deeds of trust or
vendor's liens. The term does not include a "wraparound
mortgage loan," except as specifically provided herein.

(2) "Person" means an individual, partnership, association,
trust, corporation, or any other legal entity, or any combi-
nation thereof.

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

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

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

(6) "Principal" or "principal sum" means the sum de-
divered to the borrower by the lender, or expended by the
lender to third party creditors of the borrower for the dis-
charge of preexisting debts of such borrower.

(7) "Charge" or "charges" means every type of charge inci-
dent to or arising out of the making or acceptance of a sec-
ondary mortgage loan, except interest, including, by whatever
name called, but not by way of limitation, title search fees,
title report fees, title opinion fees, title guarantee fees, credit
report fees, investigation costs, investigation report costs, legal
fees, fees for the preparation of instruments, placement fees,
discount fees, brokerage fees, recording fees, appraisal costs,
closing costs, and insurance costs, except as provided in sub-
section (c), section eight, of this article with respect to hazard
insurance.
(8) “Interest” means the compensation, other than a charge or charges, to be paid for the loan of the principal or principal sum.

(9) “Placement fee” or “discount fee” means a deduction from the principal or principal sum by the lender at the time of the making or accepting of a secondary mortgage loan, which deduction is ultimately charged to or placed upon the borrower.

(10) “Commissioner” means the commissioner of banking of this state.

(11) “Applicant” means a person who has applied for a lender’s or broker’s license.

(12) “Licensee” means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.

“Wraparound mortgage loan” means a loan secured in whole or in part by a mortgage or deed of trust upon any interest in real property which property is subject to the lien of one or more prior recorded mortgages, deeds of trust or vendor’s liens, where the loan so secured (a) matures no earlier than the latest maturity date of the prior indebtedness; (b) equals in principal amounts the aggregate of the outstanding prior indebtedness plus the additional funds advanced; (c) requires periodic payments by the borrower sufficient to meet required current payments on prior indebtedness; (d) requires the lender to make payments due on prior indebtedness as long as payments are received from the borrower; (e) gives the lender the right to cure defaults with respect to any prior indebtedness or to satisfy such indebtedness; and (f) obligates the borrower to reimburse the lender for sums advanced in order to secure or protect the lender’s lien.

§31-17-7. Form of license; posting required; license not transferable or assignable; renewal of license.

(a) It shall be stated on the license whether it is a lender’s or broker’s license, the location at which the business is to be conducted and the full name of the licensee. A broker’s license
shall be conspicuously posted in the licensee’s place of business in this state, and a lender’s license shall be conspicuously posted in the licensee’s place of business if in this state. No license shall be transferable or assignable. Whenever a licensee changes his place of business to a location other than that set forth in his license, he shall give written notice within thirty days of such change to the commissioner.

(b) Every lender’s or broker’s license shall, unless sooner suspended or revoked, expire on December thirty-first of each year, and any such license may be renewed each year in the same manner, for the same license fee and investigation fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least forty-five days before the expiration thereof.

§31-17-8. Maximum interest; right of borrower to prepay loan indebtedness; rebate; maximum interest rate applicable to wraparound mortgage loans.

The maximum rate of interest on or in connection with any such secondary mortgage loan shall be five percent above the maximum rate of interest set by any of the laws governing first mortgages: Provided, That the borrower shall have the right to anticipate payment of his debt in whole or in part at any time and shall receive a rebate for any unearned interest, which rebate shall be computed on an actuarial basis. Notwithstanding any other provisions of this article, the interest rate provided in this section may be charged on any wraparound loan as defined in subsection thirteen, section one of this article, as an alternative to any other provision of this code or federal law regulating interest rates.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 25th
day of April, 1981.

Governor