

DIS APPROVED AND SIGNED BY THE GOVERNOR

Date April 28, 1981
Time 9:30 pm

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

ENROLLED

HOUSE BILL No. 1618

(By Mr. Shepherd & Mr. Shingleton)

— ● —

Passed April 10, 1981

In Effect Ninety Days From Passage



Mo: 1618 -
Veto

ENROLLED

H. B. 1618

(By MR. SHEPHERD and MR. SHINGLETON)

[Passed April 10, 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seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, seven and eight of said article be amended and reenacted to read as follows: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
3 individual or partnership which is secured in whole or in part

4 by a mortgage or deed of trust upon any interest in real
5 property used as a dwelling with accommodations for not
6 more than four families, which property is subject to the lien
7 of one or more prior recorded mortgages, deeds of trust or
8 vendor's liens. The term does not include a "wraparound
9 mortgage loan," except as specifically provided herein.

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

13 (3) "Lender" means any person who makes or offers to
14 make or accepts or offers to accept any secondary mortgage
15 loan in the regular course of business. A person shall be
16 deemed to be acting in the regular course of business if he
17 makes or accepts, or offers to make or accept, more than
18 five secondary mortgage loans in any 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 loan
22 between a lender and a borrower.

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

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

30 (7) "Charge" or "charges" means every type of charge inci-
31 dent to or arising out of the making or acceptance of a sec-
32 ondary mortgage loan, except interest, including, by whatever
33 name called, but not by way of limitation, title search fees,
34 title report fees, title opinion fees, title guarantee fees, credit
35 report fees, investigation costs, investigation report costs, legal
36 fees, fees for the preparation of instruments, placement fees,
37 discount fees, brokerage fees, recording fees, appraisal costs,
38 closing costs, and insurance costs, except as provided in sub-
39 section (c), section eight, of this article with respect to hazard
40 insurance.

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

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

49 (10) "Commissioner" means the commissioner of banking
50 of this state.

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

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

56 "Wraparound mortgage loan" means a loan secured in
57 whole or in part by a mortgage or deed of trust upon any
58 interest in real property which property is subject to the lien
59 of one or more prior recorded mortgages, deeds of trust or
60 vendor's liens, where the loan so secured (a) matures no
61 earlier than the latest maturity date of the prior indebtedness;
62 (b) equals in principal amounts the aggregate of the outstand-
63 ing prior indebtedness plus the additional funds advanced;
64 (c) requires periodic payments by the borrower sufficient
65 to meet required current payments on prior indebtedness;
66 (d) requires the lender to make payments due on prior in-
67 debtedness as long as payments are received from the bor-
68 rower; (e) gives the lender the right to cure defaults with
69 respect to any prior indebtedness or to satisfy such indebted-
70 ness; and (f) obligates the borrower to reimburse the lender
71 for sums advanced in order to secure or protect the lender's
72 lien.

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

1 (a) It shall be stated on the license whether it is a lender's
2 or broker's license, the location at which the business is to be
3 conducted and the full name of the licensee. A broker's license

4 shall be conspicuously posted in the licensee's place of busi-
5 ness in this state, and a lender's license shall be conspicuously
6 posted in the licensee's place of business if in this state. No
7 license shall be transferable or assignable. Whenever a licensee
8 changes his place of business to a location other than that set
9 forth in his license, he shall give written notice within thirty
10 days of such change to the commissioner.

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

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

1 The maximum rate of interest on or in connection with
2 any such secondary mortgage loan shall be five percent above
3 the maximum rate of interest set by any of the laws governing
4 first mortgages: *Provided*, That the borrower shall have the
5 right to anticipate payment of his debt in whole or in part
6 at any time and shall receive a rebate for any unearned
7 interest, which rebate shall be computed on an actuarial
8 basis. Notwithstanding any other provisions of this article,
9 the interest rate provided in this section may be charged on
10 any wraparound loan as defined in subsection thirteen, section
11 one of this article, as an alternative to any other provision of
12 this code or federal law regulating interest rates.

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

L. P. Bayler
Chairman Senate Committee

Jonny E. Whittow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Smith
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates
Walter R. McLean
President of the Senate

Charles H. Lee, Jr.
Speaker House of Delegates

The within is disapproved this the 28
day of April, 1981.

John D. Ralston
Governor

RECEIVED

APR 24 9 36 AM '81

OFFICE OF THE GOVERNOR

RECEIVED

81 APR 29 9:24

OFFICE
SECY. OF STATE