ENROLLED
Committee Substitute for
SENATE BILL NO. 418

(By Senator Mr. President, and Spouse, by request of the Executive)

PASSED April 13, 2001

In Effect July 1, 2001
AN ACT to amend and reenact sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of residential mortgage lenders, brokers and servicers; defining terms; amending licensure exemptions; providing that licensee bonds are for the benefit of consumers; extending the time to pass upon a license application to ninety days; allowing the commissioner to retain fees to cover administrative costs in the event an application is denied; increasing license fee; imposing a per-loan fee; increasing bond for certain brokers; requiring certain disclosures and recordkeeping; requiring continuing education for loan originators employed by licensed brokers; requiring applicants to pay the cost of fingerprint processing; and authorizing the commissioner to impose fines and waive certain license application requirements for nonprofits.

Be it enacted by the Legislature of West Virginia:
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That sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

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

1 As used in this article:

2 (1) "Primary mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a primary mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families;

3 (2) "Subordinate mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages or deeds of trust;

4 (3) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

5 (4) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five primary or subordinate mortgage loans in any one calendar year;

6 (5) "Broker" means any person acting in the regular course of business who, for a fee or commission or other
consideration, negotiates or arranges, or who offers to
negotiate or arrange, or originates, processes or assigns a
primary or subordinate mortgage loan between a lender
and a borrower. A person is considered to be acting in the
regular course of business if he or she negotiates or
arranges, or offers to negotiate or arrange, or originates,
processes, or assigns any primary or subordinate mortgage
loans in any one calendar year; or if he or she seeks to
charge a borrower or receive from a borrower money or
other valuable consideration in any primary or subordi-
nate mortgage transaction before completing performance
of all broker services that he or she has agreed to perform
for the borrower;

(6) “Brokerage fee” means the fee or commission or
other consideration charged by a broker for the services
described in subdivision (5) of this section;

(7) “Additional charges” means every type of charge
arising out of the making or acceptance of a primary or
subordinate mortgage loan, except finance charges,
including, but not limited to, official fees and taxes,
reasonable closing costs and certain documentary charges
and insurance premiums and other charges which defini-
tion is to be read in conjunction with and permitted by
section one hundred nine, article three, chapter forty-six-a
of this code;

(8) “Finance charge” means the sum of all interest and
similar charges payable directly or indirectly by the debtor
imposed or collected by the lender incident to the exten-
sion of credit as coextensive with the definition of “loan
finance charge” set forth in section one hundred two,
article one, chapter forty-six-a of this code;

(9) “Commissioner” means the commissioner of banking
of this state;

(10) “Applicant” means a person who has applied for a
lender’s or broker’s license;
(11) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender or broker;

(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article;

(13) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren; and

(14) "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance for, or the right or
obligation to collect or remit for another lender, note
owner or noteholder, payments of principal, interest,
including sales finance charges in a consumer credit sale,
and escrow items as insurance and taxes for property
subject to a residential mortgage loan.

§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of
lender or broker unless and until he or she shall first
obtain a license to do so from the commissioner, which
license remains unexpired, unsuspended and unrevoked,
and no foreign corporation shall engage in business in this
state unless it is registered with the secretary of state to
transact business in this state.

(b) The provisions of this article do not apply to loans
made by the following:

(1) Federally insured depository institutions;
(2) Regulated consumer lender licensees;
(3) Insurance companies;
(4) Any other lender licensed by and under the regular
supervision and examination for consumer compliance of
any agency of the federal government;
(5) Any agency or instrumentality of this state, federal,
county or municipal government or on behalf of the
agency or instrumentality;
(6) By a nonprofit community development organization
making mortgage loans to promote home ownership or
improvements for the disadvantaged which loans are
subject to federal, state, county or municipal government
supervision and oversight; or
(7) Habitat for Humanity International, Inc. and its
affiliates providing low-income housing within this state.
Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(c) A person or entity designated in subsection (b) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(d) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) Application for a lender’s or broker’s license shall each year be submitted in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each
officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

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

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least two hundred fifty thousand dollars;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of one hundred thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thousand two hundred fifty dollars plus the actual cost of fingerprint processing. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and
(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

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

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of twenty-five thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: Provided, That the bond must be in the amount of fifty thousand dollars before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of three hundred fifty dollars plus the actual cost of fingerprint processing; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.
(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(f) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for nonprofit corporations whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD established median income for their area of residence.

(g) Every licensee shall pay a fee of five dollars for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid semiannually to the division of banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the last six months of the previous calendar year and with the license renewal application required pursuant to subsection (b), section seven of this article for the loans made, brokered or originated in the first six months of that calendar year. In the event a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

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

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and
all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

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

(2) The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

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

Otherwise, the commissioner shall issue to the applicant a lender’s or broker’s license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender’s or broker’s license shall be passed upon and the license issued or refused within ninety days after the applicant therefor has fully complied with the provisions of section four of this article. Under no circumstances whatever shall a person or licensee act as a broker and lender in the same transaction. Whenever an application for a lender’s or broker’s license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain all fees to cover administrative costs of processing the broker or lender application.

§31-17-6. Minimum net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.
At all times, a licensee shall: (1) Have available the net worth required by the provisions of section four of this article; (2) keep the bond required by said section in full force and effect; and (3) if the licensee be a foreign corporation, remain qualified to transact business in this state unless otherwise exempt.

§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; 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. No licensee may offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the division of banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on the thirty-first day of December of each year and any license may be renewed each year in the same manner, for the same license 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 ninety days before the expiration thereof.
(c) The amendments to this article in the year two thousand are effective on and after the first day of July, two thousand. Licenses previously issued and in effect on the first day of July, two thousand, shall be extended for one year and, unless sooner suspended or revoked, shall expire on the thirty-first day of December, two thousand one. Any person, not already licensed, who is operating as a broker or lender on the first day of July, two thousand, and who is registered with the secretary of state to do business in the state, may file an application with the commissioner on or before the first day of August, two thousand. If issued, such licenses shall, unless sooner suspended or revoked, expire on the thirty-first day of December, two thousand one.

(d) Beginning with renewal applications in the year two thousand two, a broker’s license may not be renewed unless that licensee’s executive officer certifies to the commissioner on the renewal application that every loan originator employed by that licensed broker has received at least seven hours of continuing education in the prior year. The continuing education must be related to the laws and regulations applicable to residential mortgage loan origination. Both the course of instruction and the entity providing such continuing education must receive prior approval from the commissioner as satisfying the continuing education requirement established herein before the commissioner may accept a certification from a licensee. The commissioner shall make available a list of entities and courses that have been approved for continuing education hours.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not
(b) A borrower shall have the right to prepay his or her debt, in whole or in part, at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by section one hundred nine, article three, chapter forty-six-a of this code and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made.

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again by the same or affiliated licensee in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain such documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section shall apply.

(e) Notwithstanding other provisions of this section, a delinquent charge or "late charge" may be charged on any installment made ten or more days after the regularly scheduled due date in accordance with section one hundred twelve or one hundred thirteen, article three, chapter forty-six-a of this code, whichever is applicable. The
charge may be made only once on any one installment during the term of the primary or subordinate mortgage loan.

(f) Hazard insurance may be required by the lender and other types of insurance may be offered as provided in section one hundred nine, article three, chapter forty-six-a of this code. The charges for any insurance shall not exceed the standard rate approved by the insurance commissioner for the insurance. Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be furnished to the borrower within thirty days from and after the date of application therefor by the borrower.

(g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches and credit reports, no application fee may be allowed whether or not the mortgage loan is consummated; however, the borrower may be required to reimburse the licensee for actual expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's willful failure to close the loan; or

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

(h) No licensee shall make, offer to make, accept or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) No licensee shall induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the
result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) No instrument evidencing or securing a primary or subordinate mortgage loan shall contain:

(1) Any power of attorney to confess judgment;

(2) Any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date;

(4) 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;

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.
(l) No licensee shall make or broker revolving loans secured by a primary or subordinate mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, no licensee may, and no primary or subordinate mortgage lending transaction may, contain terms which:

1. 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 fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: Provided, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

2. 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 real estate that is to be covered by a deed of trust or is being offered as security according to an application for a primary or subordinate mortgage loan;

3. Make or assist in making any primary or subordinate mortgage loan 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;

4. Require the borrower to pay, in addition to any periodic interest, combined fees, compensation, yield spread premium or points of any kind to the lender and
broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, six percent of the loan amount financed: Provided, That reasonable closing costs, as defined in section one hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may not be included within this limitation: Provided, however, That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed: Provided further, That no yield spread premium is charged, the aggregate of periodic interest, fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points are permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section applies;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(7) Require 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 may 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 a new residential dwelling or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or 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 broker or lender does not have actual knowledge that the value is incorrect;

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

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans, including, without limitation, chapter forty-six-a of this code.

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

(a) Any licensee or person making on his or her own behalf, or as agent, broker or in other representative capacity on behalf of any other person, a primary or subordinate mortgage loan shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or primary and subordinate mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;
(4) The principal and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

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

(8) The charge to be imposed for past-due installments;

(9) A description and the cost of insurance required by the lender or purchased by the borrower in connection with the primary or subordinate mortgage loan;

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

(11) That the borrower may prepay the primary or subordinate mortgage loan, in whole or in part, on any installment date and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the broker, lender or closing representative and a completed and signed copy thereof is retained by the broker or lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property or the authorized agent of the borrower or the borrower's successor, until the time as the indebtedness is satisfied in full. Providing a HUD 1 or HUD 1A settlement statement that provides the disclosures required by this subsection and the residential mortgage disclosures required by federal law is considered to meet the requirements of this subsection.

The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a primary or subordinate mortgage loan instrument shall deliver to the borrower, within ten business days
from and after receipt of the written request, a statement
of the borrower’s account as required by subsection two,
section one hundred fourteen, article two, chapter forty-
six-a of this code.

(c) Upon satisfaction of a primary or subordinate
mortgage loan obligation in full, the holder of the instru-
ment evidencing or securing the obligation shall comply
with the requirements of section one, article twelve,
chapter thirty-eight of this code in the prompt release of
the lien which had secured the primary or subordinate
mortgage loan obligation.

(d) Upon written request or authorization from the
borrower, the holder of a primary or subordinate mortgage
loan instrument shall send or otherwise provide to the
borrower or his or her designee, within three business days
after receipt of the written request or authorization, a
payoff statement of the borrower’s account. Except as
provided by this subsection, no charge may be made for
providing the payoff statement. Charges for the actual
expenses associated with using a third-party courier
delivery or expedited mail delivery service may be assessed
when this type of delivery is requested and authorized by
the borrower following disclosure to the borrower of its
cost. The payoff information is provided by mail, tele-
phone, courier, facsimile or other transmission as re-
quested by the borrower or his or her designee.

(e) A licensee shall keep and maintain for thirty-six
months after the date of final entry the business records
regarding residential mortgage loans applied for,
brokered, originated or serviced in the course of its
business.

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

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

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

(2) Has knowingly made any material misstatement in the application for the license; or

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

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

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

(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or
any ground which would be cause for refusing a license to
the licensee were he or she then applying for the same.
The commissioner may also suspend or revoke the license
of a licensee pursuant to his or her authority under section
thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any
licensee shall not impair or affect the obligation of any
preexisting lawful mortgage loan between the licensee and
any obligor.

(c) The commissioner may reinstate a suspended license,
or issue a new license to a licensee whose license has been
revoked, if the grounds upon which any license was
suspended or revoked have been eliminated or corrected
and the commissioner is satisfied that the grounds are not
likely to recur.

(d) In addition to the authority conferred under this
section, the commissioner may impose a fine or penalty not
exceeding one thousand dollars upon any lender or broker
required to be licensed under this chapter who the com-
missioner determines has violated any of the provisions of
this chapter. For the purposes of this section, each sepa-
rate violation is subject to the fine or penalty herein
prescribed and each day after the date of notification,
excluding Sundays and holidays, that an unlicensed
person engages in the business or holds himself or herself
out to the general public as a mortgage lender or broker
shall constitute a separate violation.

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

(a) Any applicant or licensee, as the case may be,
adversely affected by an order made and entered by the
commissioner in accordance with the provisions of section
thirteen of this article, if not previously provided the
opportunity to a hearing on the matter, may in writing
demand a hearing before the commissioner. The commis-
sioner may appoint a hearing examiner to conduct the
hearing and prepare a recommended decision. The written
demand for a hearing must be filed with the commissioner
within thirty days after the date upon which the applicant
or licensee was served with a copy of the order. The timely
filing of a written demand for hearing shall stay or
suspend execution of the order in question, pending a final
determination, except for an order suspending a license for
failure of the licensee to maintain the bond required by
section four of this article in full force and effect. If a
written demand is timely filed as aforesaid, the aggrieved
party is entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern the
hearing and the administrative procedures in connection
with and following such hearing, with like effect as if the
provisions of the article were set forth in extenso in this
subsection.

(c) For the purpose of conducting any such hearing
hereunder, the commissioner or appointed hearing exam-
iner shall have the power and authority to issue subpoenas
and subpoenas duces tecum in accordance with the
provisions of section one, article five, chapter twenty-
ine-a of this code. All subpoenas and subpoenas duces
tecum are issued and served in the manner, within the time
and for the fees and shall be enforced, as specified in the
section, and all of the section provisions dealing with
subpoenas and subpoenas duces tecum shall apply to
subpoenas and subpoenas duces tecum issued for the
purpose of a hearing hereunder.

(d) Any hearing shall be held within twenty days after
the date upon which the commissioner received the timely
written demand therefor unless there is a postponement or
continuance. The commissioner or hearing examiner may
postpone or continue any hearing on his or her own motion
or for good cause shown upon the application of the
aggrieved party. At any hearing, the aggrieved party may
represent himself or herself or be represented by any
attorney-at-law admitted to practice before any circuit court of this state.

(e) After the hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his or her earlier order, or shall make and enter an order as is considered appropriate, meet and proper. If the commissioner appoints a hearing examiner then the commissioner must issue his or her final order within fifteen days of receiving the recommended decision of the hearing examiner. The order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon the aggrieved party and his or her attorney of record, if any, in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner is final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved bill this the day of May, 2001.

Governor