WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4168

(By Delegates R. M. Thompson, Perry, Frich, Isquinta, G. White and Hrutkay)

Passed March 10, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §31-17-2 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all relating to mortgage loans; exempting mortgage loan closing costs from consumer sales and service tax levied on brokerage fees, additional charges and finance charges; requiring that funds are available for settlement of a real estate mortgage transaction; defining applicability of the law; providing definition of terms used; establishing duty of lender; maintaining validity of loan documents; and providing a penalty for violations of the article.

Be it enacted by the Legislature of West Virginia:

That §31-17-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding
there to a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all to read as follows:

CHAPTER 31. CORPORATIONS.

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

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

(a) No person shall engage in this state in the business of lender, broker or loan originator 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) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on the first day of January, two thousand four.

(c) 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.

(d) A person or entity designated in subsection (c) 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.

(e) 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.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.

ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.

§46A-6K-1. Applicability.

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


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

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

(1) Cash;
(2) Wired funds;
(3) Certified check;
(4) Checks issued by the United States treasury, the state of
West Virginia or an instrumentality of the United States or state
of West Virginia;
(5) Cashier’s check or teller’s check or other similar draft or obligation of a federally insured bank, savings bank, savings and loan association or credit union or of any holding company or wholly owned subsidiary of the foregoing;

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

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

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

(9) Personal check or checks in an aggregate amount not exceeding five thousand dollars per loan closing.

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

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

(e) “Loan closing” means that time agreed upon by the borrower, lender, seller, if applicable, and settlement agent when the execution by the borrower and delivery of the loan documents to the settlement agent occur.
(f) "Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction.

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

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

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

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


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

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

§46A-6K-5. Penalty.

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

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

§46A-6K-5. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to disburse settlement proceeds as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of section three of this article plus reasonable attorneys’ fees incurred in the collection thereof.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Speaker of the House of Delegates

The within is approved this the day of March, 2004.

Governor