

HB 4630

2010 APR -2 PM 4:06

SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4630**

(By Delegates J. Miller and Andes)



Passed March 12, 2010  
In Effect Ninety Days From Passage

**E N R O L L E D**

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COMMITTEE SUBSTITUTE

OFFICE OF THE CLERK  
SECRETARY OF STATE

FOR

**H. B. 4630**

(BY DELEGATE J. MILLER AND ANDES)

[Passed March 12, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to refunding of appraisal fees collected by lenders, brokers and mortgage loan originators licensed by the Commissioner of Banking; providing that in the event a loan is not made, the licensee is not required to refund an appraisal fee that is collected and paid to an unrelated third-party appraiser unless required to be refunded pursuant to federal law.

*Be it enacted by the Legislature of West Virginia:*

That §31-17-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§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.**

1 (a) The maximum rate of finance charges on or in  
2 connection with any subordinate mortgage loan may not  
3 exceed eighteen percent per year on the unpaid balance of the  
4 amount financed.

5 (b) A borrower shall have the right to prepay his or her  
6 debt, in whole or in part, at any time and shall receive a  
7 rebate for any unearned finance charge, exclusive of any  
8 points, investigation fees and loan origination fees, which  
9 rebate shall be computed under the actuarial method.

10 (c) Except as provided by section one hundred nine,  
11 article three, chapter forty-six-a of this code and by  
12 subsection (g) of this section, no additional charges may be  
13 made, nor may any charge permitted by this section be  
14 assessed unless the loan is made: *Provided*, That in the event  
15 the loan is not made, the licensee is not required to refund an  
16 appraisal fee that is collected from a loan applicant by the  
17 licensee and paid to an unrelated third-party appraiser unless  
18 the fee is required to be refunded pursuant to federal law.

19 (d) Where loan origination fees, investigation fees or  
20 points have been charged by the licensee, the charges may  
21 not be imposed again in any refinancing of that loan or any  
22 additional loan on that property made within twenty-four  
23 months thereof, unless the new loan has a reasonable,  
24 tangible net benefit to the borrower considering all of the  
25 circumstances, including the terms of both the new and the  
26 refinanced loans, the cost of the new loan and the borrower's  
27 circumstances. The licensee shall document this benefit in  
28 writing on a form prescribed by the commissioner and

29 maintain such documentation in the loan file. To the extent  
30 this subdivision overrides the preemption on limiting points  
31 and other charges on first lien residential mortgage loans  
32 contained in the United States Depository Institutions  
33 Deregulation and Monetary Control Act of 1980, 12 U.S.C.  
34 §1735f-7a, the state law limitations contained in this section  
35 shall apply.

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

44 (f) Hazard insurance may be required by the lender. The  
45 charges for any insurance shall not exceed the standard rate  
46 approved by the Insurance Commissioner for the insurance.  
47 Proof of all insurance in connection with primary and  
48 subordinate mortgage loans subject to this article shall be  
49 furnished to the borrower within thirty days from and after  
50 the date of application therefor by the borrower.

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

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

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

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

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

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

75 (1) Any power of attorney to confess judgment;

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

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

85 (4) Any assignment of or order for the payment of any  
86 salary, wages, commissions or other compensation for  
87 services, or any part thereof, earned or to be earned;

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

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

94 (k) No licensee shall charge a borrower or receive from  
95 a borrower money or other valuable consideration as  
96 compensation before completing performance of all services  
97 the licensee has agreed to perform for the borrower unless the  
98 licensee also registers and complies with all requirements set  
99 forth for credit service organizations in article six-c, chapter  
100 forty-six-a of this code, including all additional bonding  
101 requirements as may be established therein.

102 (l) No licensee shall make or broker revolving loans  
103 secured by a primary or subordinate mortgage lien for the  
104 retail purchase of consumer goods and services by use of a  
105 lender credit card.

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

109 (1) Collect a fee not disclosed to the borrower; collect  
110 any attorney fee at closing in excess of the fee that has been  
111 or will be remitted to the attorney; collect a fee for a product  
112 or service where the product or service is not actually  
113 provided; misrepresent the amount charged by or paid to a  
114 third party for a product or service; or collect duplicate fee or  
115 points to act as both broker and lender for the same mortgage  
116 loan, however, fees and points may be divided between the  
117 broker and the lender as they agree, but may not exceed the  
118 total charges otherwise permitted under this article:  
119 *Provided*, That the fact of any fee, point or compensation is  
120 disclosed to the borrower consistent with the solicitation  
121 representation made to the borrower;

122 (2) Compensate, whether directly or indirectly, coerce or  
123 intimidate an appraiser for the purpose of influencing the  
124 independent judgment of the appraiser with respect to the  
125 value of real estate that is to be covered by a deed of trust or  
126 is being offered as security according to an application for a  
127 primary or subordinate mortgage loan;

128 (3) Make or assist in making any primary or subordinate  
129 mortgage loan with the intent that the loan will not be repaid  
130 and that the lender will obtain title to the property through  
131 foreclosure: *Provided*, That this subdivision shall not apply  
132 to reverse mortgages obtained under the provisions of article  
133 twenty-four, chapter forty-seven of this code;

134 (4) Require the borrower to pay, in addition to any  
135 periodic interest, combined fees, compensation, or points of  
136 any kind to the lender and broker to arrange, originate,  
137 evaluate, maintain or service a loan secured by any  
138 encumbrance on residential property that exceed, in the  
139 aggregate, six percent of the loan amount financed, including  
140 any yield spread premium paid by the lender to the broker:  
141 *Provided*, That reasonable closing costs, as defined in section  
142 one hundred two, article one, chapter forty-six-a of this code,  
143 payable to unrelated third parties may not be included within  
144 this limitation: *Provided, however*, That no yield spread  
145 premium is permitted for any loan for which the annual  
146 percentage rate exceeds eighteen percent per year on the  
147 unpaid balance of the amount financed: *Provided further*,  
148 That if no yield spread premium is charged, the aggregate of  
149 fees, compensation or points can be no greater than five  
150 percent of the loan amount financed. The financing of the  
151 fees and points are permissible and, where included as part of  
152 the finance charge, does not constitute charging interest on  
153 interest. To the extent that this section overrides the  
154 preemption on limiting points and other charges on first lien  
155 residential mortgage loans contained in the United States

156 Depository Institutions Deregulation and Monetary Control  
157 Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations  
158 contained in this section applies;

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

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

165 (7) Require terms of repayment which do not result in  
166 continuous monthly reduction of the original principal  
167 amount of the loan: *Provided*, That the provisions of this  
168 subdivision may not apply to reverse mortgage loans  
169 obtained under article twenty-four, chapter forty-seven of this  
170 code, home equity, open-end lines of credit, bridge loans  
171 used in connection with the purchase or construction of a new  
172 residential dwelling or commercial loans for multiple  
173 residential purchases;

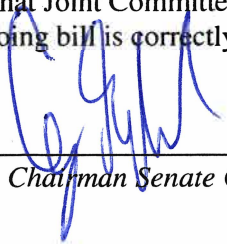
174 (8) Secure a primary or subordinate mortgage loan in a  
175 principal amount that, when added to the aggregate total of  
176 the outstanding principal balances of all other primary or  
177 subordinate mortgage loans secured by the same property,  
178 exceeds the fair market value of the property on the date that  
179 the latest mortgage loan is made. For purposes of this  
180 paragraph, a broker or lender may rely upon a bona fide  
181 written appraisal of the property made by an independent  
182 third-party appraiser, duly licensed or certified by the West  
183 Virginia real estate appraiser licensing and certification board  
184 and prepared in compliance with the uniform standards of  
185 professional appraisal practice;

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



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

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


  
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Chairman Senate Committee

  
\_\_\_\_\_  
Chairman House Committee


Originating in the House.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 2nd  
day of April, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 22 2010

Time 3:40 pm