WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 383
(SENATORS TUCKER, BARNES, D. HALL AND SNYDER
ORIGINAL SPONSORS)

[PASSED MARCH 7, 2014; TO TAKE EFFECT JULY 1, 2014.]
AN ACT to amend and reenact §31-17-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-17A-2 of said code, all relating to permitting certain owners of residential real estate limited exemptions from the licensing requirements of the West Virginia Residential Mortgage Lender, Broker and Servicer Act and the West Virginia Safe Mortgage Licensing Act for self-financed home financing if the owner is not acting within the regular course of business; establishing reporting requirements; and authorizing the Division of Financial Institutions to impose civil administrative penalties for failure to timely report.

Be it enacted by the Legislature of West Virginia:

That §31-17-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-17A-2 of said code 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 (a) "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 definition is to be read in conjunction with and permitted by section one hundred nine, article three, chapter forty-six-a of this code;

(b) "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;

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

(1) 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;
(2) 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

(3) If not included in the cash price:

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

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

(C) Additional charges permitted by this article;

(d) "Applicant" means a person who has applied for a lender or broker license;

(e) "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 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 subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;

(f) "Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision (e) of this section;
(g) "Commissioner" means the Commissioner of Financial Institutions of this state;

(h) "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 extension 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;

(i) "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, any primary or subordinate mortgage loans in any one calendar year.

"Lender" does not include any person who does not currently have and has never held a residential mortgage lender license in this or in any other state and who makes no more than three primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling owned by that person: Provided, That the person is required to report within thirty days of the date of the loan any such mortgage loan to the Division of Financial Institutions on a form available from the division upon request. Failure to timely report as required by this subsection may result in imposition by the commissioner of a civil administrative penalty of up to $250;

(j) "Licensee" means any person duly licensed by the commissioner under the provisions of this article or article seventeen-a of this chapter as a lender, broker or mortgage loan originator;
(k) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage brokers and lenders licensed under this article and mortgage loan originators licensed under article seventeen-a of this chapter;

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

(m) "Primary mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(n) "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; and

(o) "Subordinate mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling and is subject to the lien of one or more prior recorded mortgages or deeds of trust.
ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Financial Institutions of this state;

(b) "Depository institution" has the same meaning as in Section three of the Federal Deposit Insurance Act and includes any federally insured credit union; and

(c) "Division" means the West Virginia Division of Financial Institutions;

(d) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration and the Federal Deposit Insurance Corporation;

(e) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships;

(f) "Individual" means a natural person; and

(g) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under article seventeen of this chapter.
(1) For purposes of this paragraph, "clerical or support duties" may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; or

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(h) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker or regulated consumer lender licensed by the Division of Financial Institutions.

"Mortgage loan originator" does not include:

(1) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section three of this article;
(2) A person or entity who does not currently have and has never held a residential mortgage loan originator license in this or any other state and who acts as a mortgage loan originator on no more than three residential mortgage loans to purchasers of any dwelling owned by the person or entity in any calendar year: Provided, That the person or entity is required to report any such loan within thirty days of the date of the loan to the Division of Financial Institutions on a form available from the division upon request. Failure to timely report as required by this subsection may result in imposition by the commissioner of a civil administrative penalty of up to $250;

(3) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;

(4) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; or

(5) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the sales transaction;

(i) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) Acting as a real estate salesperson or real estate broker for a buyer, seller, lessor or lessee of real property;
(2) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property other than in connection with providing financing with respect to any such transaction;

(4) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in subsection (1), (2), (3) or (4) of this section;

(j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage brokers and lenders licensed pursuant to article seventeen of this chapter and mortgage loan originators licensed pursuant to this article;

(k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage;

(l) "Person" means a natural person, corporation, company, limited liability company, partnership or association;

(m) "Registered mortgage loan originator" means any individual who:
Enr. Com. Sub. for S. B. No. 383]

112 (1) Meets the definition of mortgage loan originator and
113 is an employee of:

114 (A) A depository institution;

115 (B) A subsidiary that is:

116 (i) Owned and controlled by a depository institution; and

117 (ii) Regulated by a federal banking agency; or

118 (C) An institution regulated by the Farm Credit
119 Administration; and

120 (2) Is registered with, and maintains a unique identifier
121 through, the Nationwide Mortgage Licensing System and
122 Registry;

123 (n) "Residential mortgage loan" means any loan primarily
124 for personal, family or household use that is secured by a
125 mortgage, deed of trust or other equivalent consensual
126 security interest on a dwelling as defined in Section 103(w)
127 of the Truth in Lending Act or residential real estate upon
128 which is constructed or intended to be constructed a dwelling;

129 (o) "Residential real estate" means any real property
130 located in West Virginia, upon which is constructed or
131 intended to be constructed a dwelling; and

132 (p) "Unique identifier" means a number or other identifier
133 assigned by protocols established by the Nationwide
134 Mortgage Licensing System and Registry.
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, 2014.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill approved this the 18th Day of March, 2014.