



**ENROLLED
H. B. 4139**

(By Delegates Thompson and Staton)
[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred five, article one, chapter forty-six-a of said code; and to amend and reenact sections one hundred two and one hundred nine, article four of said chapter, all relating to the regulation of residential mortgage lenders and brokers; providing definitional changes; changing reference to secondary mortgage to primary and subordinate mortgages; eliminating the term restrictions on subordinate lien mortgage loans; requiring licenses for primary and subordinate mortgage brokers and lenders; establishing broker and lender licensing requirements, form of licenses, license fees, bonding and net worth requirements; extending present licenses for one year; limiting interest rates on subordinate loans; requiring rebate of unearned finance charges on loan prepayments; restricting charges unless loans made; requiring rebates on refinancing transactions by lenders and their affiliates; defining affiliates; prohibiting loan application fees; providing borrower protection provisions; prohibiting fees not disclosed to borrowers and for products and services not rendered; prohibit intimidation of appraisers; prohibit loans made with the intent of foreclosure; prohibit fees and points in excess of limits; prohibit certain loan practices; allowing compliance with federal disclosures to meet state law disclosure requirements; limiting interest rates on primary and subordinate loans; providing civil remedies for willful violations; providing excuses from inadvertent violations; allowing the commissioner to appoint a hearing examiner in contested cases; and providing similar restrictions and limitations on charges for refinancing transactions by regulated consumer lenders. *Be it enacted by the Legislature of West Virginia:*

That sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred five, article one, chapter forty-six-a of said code be amended and reenacted; and that sections one hundred two and one hundred nine, article four of said chapter be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 17. MORTGAGE LOANS.

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

As used in this article:

(1) "Primary mortgage loan" means a 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 a residential dwelling with accommodations for not more than four families.

(2) "Subordinate mortgage loan" means a 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 a 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.

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

(4) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases any primary or subordinate mortgage loan in the regular course of business. A person shall be deemed 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.

(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, a primary or subordinate mortgage loan between a lender and a borrower. A person shall be deemed to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, more than five 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.

(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 definition 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 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.

(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.

§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 such 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 federally insured depository institutions, regulated consumer lender licensees, insurance companies, or to loans made by any other lender licensed by and under the supervision of any agency of the federal government, or to loans made by, or on behalf of, any agency or instrumentality of this state or federal government or by a nonprofit community development organization which loans are subject to federal or state government supervision and oversight. 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 such 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 shall not subject the warehouse or final securitization holder or trustee to the provisions of this article: *Provided*, That the warehouse, final securitization holder or trustee under such 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.

(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 such 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 such 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 assets of at least two hundred fifty thousand dollars;
- (3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such 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. 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 in the amount of twenty-five thousand dollars, in such form and with such 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 hundred fifty dollars; 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 such bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of such 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.

§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 are registered with the division of banking by the licensee. Whenever a licensee changes his place of business to a location other than that set forth in his license and branch registration, he 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 December thirty-first of each year, and any such 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.

§31-17-8. Maximum interest rate on primary and 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 shall not exceed eighteen percent per year on the unpaid balance of the amount financed.

(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 (h) 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, points, have been charged by the licensee, such charges may not be imposed again by the same or affiliated lender in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method, or the total of the earlier and current charges does not exceed the limitation specified in subsection (n)(4) of this section. To the extent this subdivision overrides the preemption on limiting points and other the 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. "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 shall be deemed 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, step mother, father, step father, sister, step sister, brother, step brother, spouse, child and grandchildren.

(e) Notwithstanding other provisions of this section, a delinquent 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 such 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 said borrower.

(g) Except for fees for services provided by independent third parties for appraisals, inspections, title searches and credit reports, no application fee may be allowed whether or not mortgage loan is consummated; however, the borrower may be required to reimburse the lender for actual expenses incurred by the lender 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 said loan; or
- (2) The borrower's false or fraudulent representation of a material fact which prevents closing of said 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.

(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; 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 and 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, five percent of the loan amount

financed: *Provided*, That reasonable closing costs payable to unrelated third parties as permitted under section one hundred nine, article three, chapter forty-six-a of this code shall not be included within this limitation: *Provided, however*, That yield spread premiums or compensation of two points or less paid by the lender to the broker shall not be included in this limitation: *Provided further*, That no yield spread premium shall be permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed. The financing of the fees and points shall be 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 shall apply;

(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 shall 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 another 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.

(a) Any licensee or person making on his 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 amount financed 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 shall be 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 shall be satisfied in full. Compliance with residential mortgage disclosures required by federal law shall be deemed 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 instrument 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 shall be provided by mail, telephone, courier, facsimile, or other transmission as requested by the borrower or his or her designee.

§31-17-10. Advertising requirements.

It shall be unlawful and an unfair trade practice for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to primary or subordinate mortgage loans or the availability thereof: *Provided*, That this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without actual knowledge of the false or misleading character thereof.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each licensee is complying with the provisions hereof and for the purpose of verifying each licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the individual reports shall not be public records and shall not be open to public inspection.

§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 and/or any owner, director, officer, member, partner, stockholder, employee or agent of such 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 such 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 shall 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 such licensee were he 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 such 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 such license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur. **§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 commissioner 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 such 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 shall be 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 said article were set forth in extenso in this subsection. (c) For the purpose of conducting any such hearing hereunder, the commissioner or appointed hearing examiner 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-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served in the manner, within the time and for the fees and shall be enforced, as specified in said section, and all of the said 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 such 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 such 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 such 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 such order as is deemed appropriate, meet and proper. Such 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 such order and accompanying findings and conclusions shall be served upon the aggrieved party and his 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 shall be final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.

§31-17-17. Loans made in violation of this article void; agreements to waive article void. (a) If any primary or subordinate mortgage loan is made in willful violation of the provisions of this article, except as a result of a bona fide error, such loan may be cancelled by a court of competent jurisdiction. (b) Any agreement whereby the borrower waives the benefits of this article shall be deemed to be against public policy and void. (c) Any residential mortgage loan transaction in violation of this article shall be subject to an action, which may be brought in a circuit court having jurisdiction, by the borrower seeking damages, reasonable attorneys fees and costs. (d) A licensee who, when acting in good faith in a lending transaction, inadvertently and without intention, violates any provision of this article or fails to comply with any provision of this article, will be excused from such violation if within thirty days of becoming aware of such violation, or being notified of such violation, and prior to the institution of any civil action or criminal proceeding against the licensee, the licensee notifies the borrower of the violation, makes full restitution of any overcharges, and makes all other adjustments as are necessary to make the lending transaction comply with

this article.**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS. §46A-1-105.**

Exclusions. (a) This chapter does not apply to: (1) Extensions of credit to government or governmental agencies or instrumentalities; (2) The sale of insurance by an insurer, except as otherwise provided in this chapter; (3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or (4) Licensed

pawnbrokers. (b) Mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS. §46A-4-102. License to make regulated consumer loans. (1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may issue a license. At the time of the filing of the application, the sum of seven hundred fifty dollars shall be paid to the commissioner as an investigation fee. (2) No license shall be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state, or to one licensed under the provisions of the West Virginia mortgage loan act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. No license will be granted to any office located outside this state: *Provided*, That the limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least ten thousand dollars in capital and has, for each specified location of operation assets of at least two thousand dollars. (3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if: (a) The commissioner has notified the applicant in writing that his application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application. (4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license, for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked. (5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality. (6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he holds a license and not under any other name than that stated in the license. (7) A license issued under the provisions of this section shall not be transferable or assignable. (8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of

loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

(1) No consumer loan of two thousand dollars or less may be secured by an interest in land, other than a purchase money loan for that land, unless the lender is licensed in this state as a regulated consumer lender or as a mortgage lender, or is a federally insured depository institution permitted to conduct lending in West Virginia. A security interest taken in violation of this subsection is void.

(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no regulated consumer lender shall take any assignment of or order for payment of any earnings to secure any loan made by any regulated consumer lender under this article. An assignment or order taken in violation of this subsection is void. This subsection does not prohibit a court from ordering a garnishment to affect recovery of moneys owed by a borrower to a lender as part of a judgment in favor of said lender.

(3) Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods,

the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: *Provided*, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

(4) A regulated consumer lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due

thereon at the time of said discharge from any court of the United States of America exercising jurisdiction in insolvency and bankruptcy matters, unless said regulated consumer lender shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized.

(5) In making any loan secured by any encumbrance on residential property, no lender may, and no such lending transaction may contain terms which:

(A) 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 duplicate fee or points to act as both broker and lender for the same mortgage loan; collect a fee for a product or service where the product or service is not actually provided; or, misrepresent the amount charged by or paid to a third party for a product or service;

(B) 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 the real estate that is to be encumbered;

(C) Make or assist in making any loan secured by any encumbrance on residential property 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;

(D) Allow or require a loan secured by any encumbrance on residential property to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(E) Require or contain 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 shall 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 another residential dwelling, or commercial loans for multiple residential purchases;

(F) Secure a residential mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other residential mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest residential mortgage loan is made. For purposes of this

paragraph, a 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 lender does not have actual knowledge that the value is incorrect; or (G) (1) Require compulsory arbitration which does not comply with federal law; (2) Contain a document with blank or blanks to be filled in after the consummation of the loan; (3) Contain a power of attorney to confess judgment; (4) Contain any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article; (5) Contain any requirement that more than one installment be payable in any one installment period; or, (6) Contain 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; or (H) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction.

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