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HB 2776

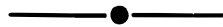
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2007 MAR 20 PM 4: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2776

(By Delegates Moore, Kominar, Perry, Barker,
Carmichael and Ashley)



Passed March 7, 2007

In Effect Ninety Days from Passage

FILED

2007 MAR 20 PM 4: 55

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FOR

H. B. 2776

(BY DELEGATES MOORE, KOMINAR, PERRY, BARKER,
CARMICHAEL AND ASHLEY)

[Passed March 7, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, all relating to mortgage broker, lender and loan originator licenses; requiring certain licensees to license all loan originators; and permitting the Banking Commissioner to enter into information sharing agreements with other mortgage regulators.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, 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
3 made to an individual which is secured, in whole or in part,
4 by a primary mortgage or deed of trust upon any interest in
5 real property used as an owner-occupied residential dwelling
6 with accommodations for not more than four families;

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

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

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

24 (5) "Broker" means any person acting in the regular
25 course of business who, for a fee or commission or other
26 consideration, negotiates or arranges, or who offers to
27 negotiate or arrange, or originates, processes or assigns a
28 primary or subordinate mortgage loan between a lender and
29 a borrower. A person is considered to be acting in the regular
30 course of business if he or she negotiates or arranges, or
31 offers to negotiate or arrange, or originates, processes or
32 assigns any primary or subordinate mortgage loans in any
33 one calendar year; or if he or she seeks to charge a borrower
34 or receive from a borrower money or other valuable

35 consideration in any primary or subordinate mortgage
36 transaction before completing performance of all broker
37 services that he or she has agreed to perform for the
38 borrower;

39 (6) "Brokerage fee" means the fee or commission or other
40 consideration charged by a broker or loan originator for the
41 services described in subdivision (5) of this section;

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

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

56 (9) "Commissioner" means the Commissioner of Banking
57 of this state;

58 (10) "Applicant" means a person who has applied for a
59 lender's, broker's or loan originator's license;

60 (11) "Licensee" means any person duly licensed by the
61 commissioner under the provisions of this article as a lender,
62 broker or loan originator;

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

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

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

71 (c) If not included in the cash price:

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

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

76 (iii) Additional charges permitted by this article;

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

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

98 (15) "Loan originator" means an individual who, on
99 behalf of a licensed mortgage broker, under the direct
100 supervision and control of a licensee who is engaged in
101 brokering activity, and in exchange for compensation by that
102 broker, performs any of the services described in subsection
103 (5) of this section.

104 **§31-17-2. License required for lender, broker or loan**
105 **originator; exemptions.**

106 (a) No person may engage in this state in the business of
107 lender, broker or loan originator unless and until he or she
108 first obtains a license to do so from the commissioner, which
109 license remains unexpired, unsuspended and unrevoked, and
110 no foreign corporation may engage in business in this state
111 unless it is registered with the secretary of state to transact
112 business in this state.

113 (b) An entity applying for or holding both a lender and
114 broker license shall license all of its individual loan
115 originators if that entity brokers a majority of its residential
116 mortgage loans. The determination of whether an entity
117 brokers the majority of its residential mortgage loans is based
118 upon the most recent annual report filed with the division
119 pursuant to section eleven of this article. A new applicant
120 applying for both a lender license and a broker license shall
121 license all of its loan originators unless the applicant can
122 demonstrate, through data compiled for other state regulators,
123 that it acts as a lender for a majority of its residential
124 mortgage loans made.

125 (c) Brokerage fees, additional charges and finance
126 charges imposed by licensed mortgage brokers, lenders and
127 loan originators are exempt from the tax imposed by article
128 fifteen, chapter eleven of this code beginning on the first day
129 of January, two thousand four.

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

132 (1) Federally insured depository institutions;

133 (2) Regulated consumer lender licensees;

134

135 (3) Insurance companies;

136 (4) Any other lender licensed by and under the regular
137 supervision and examination for consumer compliance of any
138 agency of the federal government;

139 (5) Any agency or instrumentality of this state, federal,
140 county or municipal government or on behalf of the agency
141 or instrumentality;

142 (6) By a nonprofit community development organization
143 making mortgage loans to promote home ownership or
144 improvements for the disadvantaged which loans are subject
145 to federal, state, county or municipal government supervision
146 and oversight; or

147 (7) Habitat for Humanity International, Inc., and its
148 affiliates providing low-income housing within this state.

149 Loans made subject to this exemption may be assigned,
150 transferred, sold or otherwise securitized to any person and
151 shall remain exempt from the provisions of this article,
152 except as to reporting requirements in the discretion of the
153 commissioner where the person is a licensee under this
154 article. Nothing herein shall prohibit a broker licensed under
155 this article from acting as broker of an exempt loan and
156 receiving compensation as permitted under the provisions of
157 this article.

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

168 (f) The placement or sale for securitization of a primary
169 or subordinate mortgage loan into a secondary market by a
170 licensee may not subject the warehouse or final
171 securitization holder or trustee to the provisions of this
172 article: *Provided*, That the warehouse, final securitization
173 holder or trustee under an arrangement is either a licensee, or
174 person or entity entitled to make exempt loans of that type
175 under this section, or the loan is held with right of recourse
176 to a licensee.

177 **§31-17-11. Records and reports; examination of records;**
178 **analysis.**

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

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

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

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

212 (e) The commissioner may enter into cooperative and
213 information sharing agreements with regulators in other
214 states or with federal authorities to discharge his or her
215 responsibilities under this article.

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



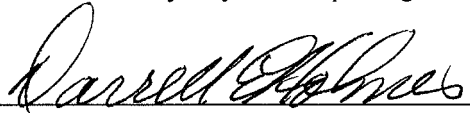
Chairman Senate Committee



Chairman House Committee

Originating in the House.

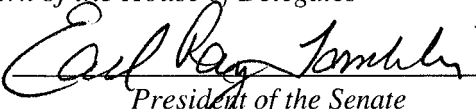
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time

4:00 pm