

Senate Bill No. 47

(By Senators Minard and Barnes)

[Introduced January 12, 2011; referred to the Committee on
Banking and Insurance.]

10 A BILL to amend and reenact §31-17-5, §31-17-8 and §31-17-14 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 mortgage license provisional approval; disclosure of fees in
13 a mortgage loan; and administrative hearing, appeal and
14 scheduling procedures.

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

16 That §31-17-5, §31-17-8 and §31-17-14 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted, all to read
18 as follows:

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

21 **§31-17-5. Refusal or issuance of license.**

22 (a) Upon an applicant's full compliance with the provisions of
23 section four of this article, the commissioner shall investigate

1 ~~the~~ relevant facts with regard to the applicant and his or her
2 application for a lender's or broker's license, as the case may be.
3 Upon ~~the basis of~~ the application and all other information before
4 him or her, the commissioner shall make and enter an order denying
5 the application and refusing the license sought if the commissioner
6 finds: ~~that~~

7 (1) The applicant does not have available the net worth
8 required by the provisions of section four of this article, if
9 applicable;

10 (2) The financial responsibility, character, reputation,
11 experience or general fitness of the applicant, including its
12 officers, directors, principals and employees, reasonably warrants
13 the belief ~~that~~ the business will not be operated lawfully ~~and~~
14 ~~properly~~ in accordance with ~~the provisions of~~ this article; and

15 (3) The applicant has ~~done any act or has failed or refused to~~
16 ~~perform~~ performed or failed or refused to perform any duty ~~or~~
17 ~~obligation~~ for which the license sought could be suspended or
18 revoked were it then issued and outstanding.

19 Otherwise, the commissioner shall issue to the applicant a
20 lender's or broker's license ~~which shall~~ to entitle the applicant
21 to engage in the business of lender or broker, as the case may be,
22 during the period, unless sooner suspended or revoked, for which
23 the license is issued.

24 (b) Every application for a lender's or broker's license shall

1 be ~~passed upon~~ reviewed and the license issued or refused within
2 sixty days after the applicant therefor has fully complied with ~~the~~
3 ~~provisions of~~ this article. The commissioner may grant a
4 provisional license to an applicant pending the outcome of a final
5 background investigation. If the results of the investigation
6 reveal information that would have been grounds for a license
7 denial or revocation, then the commissioner shall suspend or revoke
8 the provisional license. Under no circumstances whatever may a
9 person or licensee act as a broker and lender in the same
10 transaction. Whenever an application for a lender's or broker's
11 license is denied and the ~~license sought is refused, which refusal~~
12 denial has become final, the commissioner shall retain all fees to
13 cover administrative costs of processing the broker or lender
14 application.

15 **§31-17-8. Maximum interest rate on subordinate loans; prepayment**
16 **rebate; maximum points, fees and charges; overriding**
17 **of federal limitations; limitations on lien**
18 **documents; prohibitions on primary and subordinate**
19 **mortgage loans; civil remedy.**

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

23 (b) A borrower shall have the right to prepay his or her debt,

1 in whole or in part, at any time and shall receive a rebate for any
2 unearned finance charge, exclusive of any points, investigation
3 fees and loan origination fees, which rebate shall be computed
4 under the actuarial method.

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

14 (d) Where loan origination fees, investigation fees or points
15 have been charged by the licensee, the charges may not be imposed
16 again in any refinancing of that loan or any additional loan on
17 that property made within twenty-four months, ~~thereof~~ unless the
18 new loan has a reasonable, tangible net benefit to the borrower
19 considering all of the circumstances, including the terms of both
20 the new and the refinanced loans, the cost of the new loan and the
21 borrower's circumstances. The licensee shall document this benefit
22 in writing on a form prescribed by the commissioner and maintain
23 such documentation in the loan file. To the extent this
24 subdivision overrides the preemption on limiting points and other

1 charges on first lien residential mortgage loans contained in the
2 United States Depository Institutions Deregulation and Monetary
3 Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations
4 contained in this section shall apply.

5 (e) Notwithstanding other provisions of this section, a
6 delinquent charge or "late charge" may be charged on any
7 installment made ten or more days after the regularly scheduled due
8 date in accordance with section one hundred twelve or one hundred
9 thirteen, article three, chapter forty-six-a of this code,
10 whichever is applicable. The charge may be made only once on any
11 one installment during the term of the primary or subordinate
12 mortgage loan.

13 (f) Hazard insurance may be required by the lender. The
14 charges for any insurance shall not exceed the standard rate
15 approved by the Insurance Commissioner for the insurance. Proof of
16 all insurance in connection with primary and subordinate mortgage
17 loans subject to this article shall be furnished to the borrower
18 within thirty days from and after the date of application ~~therefor~~
19 by the borrower.

20 (g) Except for fees for services provided by unrelated third
21 parties for appraisals, inspections, title searches and credit
22 reports, no application fee may be allowed whether or not the
23 mortgage loan is consummated; however, the borrower may be required
24 to reimburse the licensee for actual expenses incurred by the

1 licensee in a purchase money transaction after acceptance and
2 approval of a mortgage loan proposal made in accordance with ~~the~~
3 ~~provisions of this article which is~~ not consummated because of:

4 (1) The borrower's willful failure to close the loan; or

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

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

10 (i) No licensee shall induce or permit any borrower to become
11 obligated to the licensee under this article, directly or
12 contingently, or both, under more than one subordinate mortgage
13 loan at the same time for the purpose or with the result of
14 obtaining greater charges than would otherwise be permitted under
15 ~~the provisions of~~ this article.

16 (j) No instrument evidencing ~~or securing~~ a primary or
17 subordinate mortgage loan shall contain:

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

19 (2) Any provision whereby the borrower waives any rights
20 accruing to him or her under ~~the provisions of~~ this article;

21 (3) Any requirement that more than one installment be payable
22 in any one installment period, or that the amount of any
23 installment be greater or less than that of any other installment,
24 except ~~for~~ the final installment ~~which~~ may be ~~in~~ a lesser amount,

1 or unless the loan is structured as a revolving line of credit
2 having no set final payment date;

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

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

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

11 (k) No licensee shall charge a borrower or receive from a
12 borrower money or other valuable consideration as compensation
13 before completing performance of all services the licensee has
14 agreed to perform for the borrower unless the licensee also
15 registers and complies with all requirements set forth for credit
16 service organizations in article six-c, chapter forty-six-a of this
17 code, including all additional bonding requirements as may be
18 established therein.

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

22 (m) In making any primary or subordinate mortgage loan, no
23 licensee may, and no primary or subordinate mortgage lending
24 transaction may, contain terms which:

1 (1) Collect a fee not contained in a good faith estimate
2 disclosed to the borrower at least five business days prior to
3 closing; collect any attorney fee at closing in excess of the fee
4 that has been or will be remitted to the attorney; collect a fee
5 for a product or service where the product or service is not
6 actually provided; misrepresent the amount charged by or paid to a
7 third party for a product or service; or collect duplicate fee or
8 points to act as both broker and lender for the same mortgage loan,
9 however, fees and points may be divided between the broker and the
10 lender as they agree, but may not exceed the total charges
11 otherwise permitted under this article: ~~Provided, That the fact of~~
12 if any fee, point or compensation is disclosed to the borrower
13 consistent with the solicitation representation made to the
14 borrower;

15 (2) Compensate, whether directly or indirectly, coerce or
16 intimidate an appraiser for the purpose of influencing the
17 independent judgment of the appraiser with respect to the value of
18 real estate ~~that is~~ to be covered by a deed of trust or ~~is being~~
19 offered as security according to an application for a primary or
20 subordinate mortgage loan;

21 (3) Make or assist in making any primary or subordinate
22 mortgage loan with the intent that the loan will not be repaid and
23 that the lender will obtain title to the property through
24 foreclosure: *Provided*, That this subdivision shall not apply to

1 reverse mortgages obtained under the provisions of article twenty-
2 four, chapter forty-seven of this code;

3 (4) Require the borrower to pay, in addition to any periodic
4 interest, combined fees, compensation, or points of any kind to the
5 lender and broker to arrange, originate, evaluate, maintain or
6 service a loan secured by any encumbrance on residential property
7 that exceed, in the aggregate, six percent of the loan amount
8 financed, including any yield spread premium paid by the lender to
9 the broker. ~~Provided, That~~ Reasonable closing costs, as defined in
10 section one hundred two, article one, chapter forty-six-a of this
11 code, payable to unrelated third parties may not be included
12 within this limitation. ~~Provided, however, That~~ However, no yield
13 spread premium is permitted for any loan for which the annual
14 percentage rate exceeds eighteen percent per year on the unpaid
15 balance of the amount financed. ~~Provided further, That if~~ Also, if
16 no yield spread premium is charged, the aggregate of fees,
17 compensation or points can be no greater than five percent of the
18 loan amount financed. The financing of the fees and points are
19 permissible and, where included as part of the finance charge, does
20 not constitute charging interest on interest. To the extent ~~that~~
21 this section overrides the preemption on limiting points and other
22 charges on first lien residential mortgage loans contained in the
23 United States Depository Institutions Deregulation and Monetary
24 Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations

1 contained in this section applies;

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

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

8 (7) Require terms of repayment which do not result in
9 continuous monthly reduction of the original principal amount of
10 the loan. ~~Provided, That the provisions of~~ This subdivision ~~may~~
11 does not apply to reverse mortgage loans obtained under article
12 twenty-four, chapter forty-seven of this code, home equity, open-
13 end lines of credit, bridge loans used in connection with the
14 purchase or construction of a new residential dwelling or
15 commercial loans for multiple residential purchases;

16 (8) Secure a primary or subordinate mortgage loan in a
17 principal amount that, when added to the aggregate total of the
18 outstanding principal balances of all other primary or subordinate
19 mortgage loans secured by the same property, exceeds the fair
20 market value of the property on the date that the latest mortgage
21 loan is made. For purposes of this paragraph, a broker or lender
22 may rely upon a bona fide written appraisal of the property made by
23 an independent third-party appraiser, duly licensed or certified by
24 the West Virginia real estate appraiser licensing and certification

1 board and prepared in compliance with the uniform standards of
2 professional appraisal practice;

3 (9) Advise or recommend ~~that~~ the consumer not make timely
4 payments on an existing loan preceding loan closure of a
5 refinancing transaction; or

6 (10) Knowingly violate any provision of any other applicable
7 state or federal law regulating primary or subordinate mortgage
8 loans, including, without limitation, chapter forty-six-a of this
9 code.

10 **§31-17-14. Hearing before commissioner; provisions pertaining to**
11 **hearing.**

12 (a) Any applicant or licensee, ~~as the case may be,~~ adversely
13 affected by an order made and entered by the commissioner in
14 accordance with ~~the provisions of~~ section thirteen of this article,
15 if not previously provided the opportunity to a hearing on the
16 matter, may, in writing, demand a hearing before the commissioner.
17 The commissioner may appoint a hearing examiner to conduct the
18 hearing and prepare a recommended decision. The written demand for
19 a hearing must be filed with the commissioner within ~~thirty~~ ten
20 days after the date upon which the applicant or licensee was served
21 with a copy of the order. The timely filing of a written demand
22 for hearing shall stay or suspend execution of the order in
23 question, pending a final determination, except for an order
24 suspending a license for failure of the licensee to maintain the

1 bond required by section four of this article in full force and
2 effect. If ~~a~~ the written demand is timely filed ~~as aforesaid~~, the
3 aggrieved party is entitled to a hearing as a matter of right.

4 (b) All ~~of the~~ pertinent provisions of article five, chapter
5 twenty-nine-a of this code shall ~~apply to and~~ govern the hearing
6 and ~~the~~ administrative procedures in connection with and following
7 such hearing, with like effect as if the provisions of the article
8 were set forth in extenso in this subsection.

9 (c) For the purpose of conducting any such hearing hereunder,
10 the commissioner or appointed hearing examiner shall have the power
11 and authority to issue subpoenas and subpoenas duces tecum in
12 accordance with ~~the provisions of~~ section one, article five,
13 chapter twenty-nine-a of this code. All subpoenas and subpoenas
14 duces tecum ~~are~~ shall be issued and served in the manner, within
15 the time and for the fees and shall be enforced, as specified in
16 the section, and all of the section ~~provisions~~ dealing with
17 subpoenas and subpoenas duces tecum shall apply to subpoenas and
18 subpoenas duces tecum issued for the purpose of a hearing
19 hereunder.

20 (d) Any hearing shall be held within ~~twenty~~ thirty days after
21 the date upon which the commissioner received the timely written
22 demand ~~therefor~~ unless there is a postponement or continuance. The
23 commissioner or hearing examiner may postpone or continue any
24 hearing on his or her own motion or for good cause shown ~~upon the~~

1 ~~application of~~ by the aggrieved party. At any hearing, the
2 aggrieved party may represent himself or herself or be represented
3 by any attorney-at-law admitted to practice before any circuit
4 court of this state.

5 (e) After the hearing and consideration of all of the
6 testimony, evidence and record in the case, the commissioner shall
7 make and enter an order affirming, modifying or vacating his or her
8 earlier order, or shall make and enter an order as is considered
9 appropriate, meet and proper. If the commissioner appoints a
10 hearing examiner, ~~then~~ the commissioner must issue his or her final
11 order within fifteen days of receiving the recommended decision of
12 the hearing examiner. The order shall be accompanied by findings
13 of fact and conclusions of law as specified in section three,
14 article five, chapter twenty-nine-a of this code and a copy of the
15 order and accompanying findings and conclusions shall be served
16 upon the aggrieved party and his or her attorney of record, if any,
17 in person or by certified mail, return receipt requested, or in any
18 other manner in which process in a civil action in this state may
19 be served. The order of the commissioner is final unless vacated
20 or modified on judicial review ~~thereof~~ in accordance with ~~the~~
21 ~~provisions of~~ section fifteen of this article.

NOTE: The purpose of this bill is to make changes to the disclosure requirements regarding fees in a mortgage loan, grant the commissioner the authority to issue a provisional mortgage

license and to change time frame for hearings.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.