

Senate Bill No. 361

(By Senators Unger and Nohe)

[Introduced February 25, 2013; referred to the Committee on
Banking and Insurance; and then to the Committee on the
Judiciary.]

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §31-17B-1, §31-17B-2,
13 §31-17B-3, §31-17B-4, §31-17B-5, §31-17B-6, §31-17B-7,
14 §31-17B-8, §31-17B-9, §31-17B-10, §31-17B-11, §31-17B-12,
15 §31-17B-13, §31-17B-14, §31-17B-15, §31-17B-16, §31-17B-17,
16 §31-17B-18, §31-17B-19, §31-17B-20 and §31-17B-21, all
17 relating to creating the West Virginia Homeowner Bill of
18 Rights; stating legislative findings and purpose in relation
19 to foreclosures in the state generally; requiring mortgage
20 servicers to contact the borrower prior to filing a notice of
21 default; requiring mortgage servicers to explore options for
22 the borrower to avoid foreclosure; requiring the borrower to
23 be provided with specified information in writing prior to
24 recordation of a notice of default; establishing additional

1 procedures to be followed regarding a first lien loan
2 modification application and the denial of an application;
3 providing for a borrower's right to appeal a denial;
4 authorizing a borrower to seek an injunction and damages for
5 violations; authorizing the greater of treble actual damages
6 or \$50,000 in statutory damages if a violation is found to be
7 intentional or reckless or resulted from willful misconduct;
8 providing that violations by licensees of certain state
9 agencies are also violations of those respective licensing
10 laws; requiring a mortgage servicer who conducts more than one
11 hundred seventy-five foreclosure sales per year or annual
12 reporting period to establish a single point of contact with
13 the borrower; requiring that, before recording or filing any
14 of certain documents, a mortgage servicer shall ensure that it
15 has reviewed competent and reliable evidence to substantiate
16 the borrower's default and the right to foreclose, including
17 the borrower's loan status and loan information; authorizing
18 administrative enforcement against licensees by certain state
19 agencies; defining terms; setting forth requirements;
20 establishing effective and termination dates; and authorizing
21 rulemaking.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §31-17B-1, §31-17B-2,

1 §31-17B-3, §31-17B-4, §31-17B-5, §31-17B-6, §31-17B-7, §31-17B-8,
2 §31-17B-9, §31-17B-10, §31-17B-11, §31-17B-12, §31-17B-13,
3 §31-17B-14, §31-17B-15, §31-17B-16, §31-17B-17, §31-17B-18,
4 §31-17B-19, §31-17B-20 and §31-17B-21, all to read as follows:

5 **ARTICLE 17B. THE WEST VIRGINIA HOMEOWNER BILL OF RIGHTS.**

6 §31-17B-1. Legislative findings.

7 The Legislature finds the following:

8 (1) The country is still reeling from the economic impacts of
9 a wave of residential property foreclosures that began in 2007. All
10 of this foreclosure activity has adversely affected property values
11 and resulted in less money for schools, public safety, and other
12 public services.

13 (2) It is essential to the economic health of this state to
14 mitigate the negative effects on the state and local economies and
15 the housing market that are the result of continued foreclosures by
16 modifying the foreclosure process to ensure that borrowers who may
17 qualify for a foreclosure alternative are considered for, and have
18 a meaningful opportunity to obtain, available loss mitigation
19 options. These changes to the state's foreclosure process are
20 essential to ensure that the current crisis is not worsened by
21 unnecessarily adding foreclosed properties to the market when an
22 alternative to foreclosure may be available. Avoiding foreclosure,
23 where possible, will help stabilize the state's housing market and
24 avoid the substantial, corresponding negative effects of

1 foreclosures on families, communities and the state and local
2 economy.

3 (3) This article is necessary to provide stability to West
4 Virginia's statewide and regional economies and housing market by
5 facilitating opportunities for borrowers to pursue loss mitigation
6 options.

7 **§31-17B-2. Definitions.**

8 For purposes of this article:

9 "Borrower" means, unless otherwise provided and for purposes
10 of sections three, four, five, six, eight, nine, eleven, twelve,
11 thirteen, fourteen, twenty and twenty-one of this article, any
12 natural person who is a mortgagor or trustor and who is potentially
13 eligible for any federal, state or proprietary foreclosure
14 prevention alternative program offered by, or through, his or her
15 mortgage servicer. "Borrower" does not include: An individual who
16 has surrendered the secured property as evidenced by either a
17 letter confirming the surrender or delivery of the keys to the
18 property to the mortgagee, trustee, beneficiary or authorized
19 agent; an individual who has contracted with an organization,
20 person, or entity whose primary business is advising people who
21 have decided to leave their homes on how to extend the foreclosure
22 process and avoid their contractual obligations to mortgagees or
23 beneficiaries; or an individual who has filed a case under Chapter
24 7, 11, 12, or 13 of Title 11 of the United States Code and the

1 bankruptcy court has not entered an order closing or dismissing the
2 bankruptcy case, or granting relief from a stay of foreclosure.

3 "First lien" means the most senior mortgage or deed of trust
4 on the property that is the subject of the notice of default or
5 notice of sale.

6 "Foreclosure prevention alternative" means a first lien loan
7 modification or another available loss mitigation option.

8 "Mortgage servicer" means a person or entity who directly
9 services a loan, or who is responsible for interacting with the
10 borrower, managing the loan account on a daily basis including
11 collecting and crediting periodic loan payments, managing any
12 escrow account or enforcing the note and security instrument,
13 either as the current owner of the promissory note or as the
14 current owner's authorized agent. "Mortgage servicer" also means a
15 subservicing agent to a master servicer by contract. "Mortgage
16 servicer" does not include a trustee, or a trustee's authorized
17 agent, acting under a power of sale pursuant to a deed of trust.

18 **§31-17B-3. Purpose.**

19 (a) The purpose of this article is to ensure that, as part of
20 the nonjudicial foreclosure process, borrowers are considered for,
21 and have a meaningful opportunity to obtain, available loss
22 mitigation options, if any, offered by or through the borrower's
23 mortgage servicer, such as loan modifications or other alternatives
24 to foreclosure. This article does not require a particular result

1 of that process.

2 (b) Nothing in this article obviates or supersedes the
3 obligations of the signatories to the consent judgment entered on
4 April 4, 2012 in *United States of America, et al. v. Bank of*
5 *America Corporation, et al.*, filed in the *United States District*
6 *Court for the District of Columbia*, Case Number 1:12-cv-00361 RMC.

7 **§31-17B-4. Notice of default; recording; contact with borrower;**
8 **conditions; due diligence; termination date.**

9 (a) (1) A mortgage servicer, mortgagee, trustee, beneficiary
10 or authorized agent may not record a notice of default pursuant to
11 section ten of this article until:

12 (A) Either thirty days after initial contact is made as
13 required by subdivision (2) of this subsection or thirty days after
14 satisfying the due diligence requirements of subsection (e) of this
15 section; and

16 (B) The mortgage servicer complies with subdivision (1),
17 subsection (a), section twenty of this article, if the borrower has
18 provided a complete application as defined in subsection (d) of
19 that section.

20 (2) A mortgage servicer shall contact the borrower in person
21 or by telephone in order to assess the borrower's financial
22 situation and explore options for the borrower to avoid
23 foreclosure. During the initial contact, the mortgage servicer

1 shall advise the borrower that he or she has the right to request
2 a subsequent meeting and, if requested, the mortgage servicer shall
3 schedule the meeting to occur within fourteen days. The assessment
4 of the borrower's financial situation and discussion of options may
5 occur during the first contact, or at the subsequent meeting
6 scheduled for that purpose. In either case, the borrower shall be
7 provided the toll-free telephone number made available by the
8 Department of Housing and Urban Development to find a Department of
9 Housing and Urban Development-certified housing counseling agency.
10 Any meeting may occur telephonically.

11 (b) A notice of default recorded pursuant to section ten of
12 this article shall include a declaration that the mortgage servicer
13 has contacted the borrower, has tried with due diligence to contact
14 the borrower as required by this section, or that no contact was
15 required because the individual did not meet the definition of
16 "borrower" pursuant to section two of this article.

17 (c) A mortgage servicer's loss mitigation personnel may
18 participate by telephone during any contact required by this
19 section.

20 (d) A borrower may designate, with consent given in writing,
21 a Housing and Urban Development-certified housing counseling
22 agency, attorney or other advisor to discuss with the mortgage
23 servicer, on the borrower's behalf, the borrower's financial
24 situation and options for the borrower to avoid foreclosure. That

1 contact made at the direction of the borrower satisfies the contact
2 requirements of subdivision (2), subsection (a) of this section.
3 Any loan modification or workout plan offered at the meeting by the
4 mortgage servicer is subject to approval by the borrower.

5 (e) A notice of default may be recorded pursuant to section
6 ten of this article when a mortgage servicer has not contacted a
7 borrower as required by subdivision (2), subsection (a) of this
8 section: *Provided*, That the failure to contact the borrower
9 occurred despite the due diligence of the mortgage servicer. For
10 purposes of this section, "due diligence" requires and means all of
11 the following:

12 (1) A mortgage servicer shall first attempt to contact a
13 borrower by sending a first-class letter that includes the
14 toll-free telephone number made available by Housing and Urban
15 Development to find a Department of Housing and Urban
16 Development-certified housing counseling agency;

17 (2) (A) After the letter has been sent, the mortgage servicer
18 shall attempt to contact the borrower by telephone at least three
19 times at different hours and on different days. Telephone calls
20 shall be made to the primary telephone number on file;

21 (B) A mortgage servicer may attempt to contact a borrower
22 using an automated system to dial borrowers if, when the telephone
23 call is answered, the call is connected to a live representative of
24 the mortgage servicer;

1 (C) A mortgage servicer satisfies the telephone contact
2 requirements of this subdivision if it determines, after attempting
3 contact pursuant to this subdivision, that the borrower's primary
4 telephone number and secondary telephone number or numbers on file,
5 if any, have been disconnected;

6 (3) If the borrower does not respond within two weeks after
7 the telephone call requirements of subdivision (2) of this
8 subsection have been satisfied, the mortgage servicer shall then
9 send a certified letter, with return receipt requested;

10 (4) The mortgage servicer shall provide a means for the
11 borrower to contact it in a timely manner, including a toll-free
12 telephone number that will provide access to a live representative
13 during business hours; and

14 (5) The mortgage servicer has posted a prominent link on the
15 homepage of its Internet Web site, if any, to the following
16 information:

17 (A) Options that may be available to borrowers who are unable
18 to afford their mortgage payments and who wish to avoid
19 foreclosure, and instructions to borrowers advising them on steps
20 to take to explore those options;

21 (B) A list of financial documents borrowers should collect and
22 be prepared to present to the mortgage servicer when discussing
23 options for avoiding foreclosure;

24 (C) A toll-free telephone number for borrowers who wish to

1 discuss options for avoiding foreclosure with their mortgage
2 servicer; and

3 (D) The toll-free telephone number made available by
4 Department of Housing and Urban Development to find a Department of
5 Housing and Urban Development-certified housing counseling agency.

6 (f) This section applies only to mortgages or deeds of trust
7 described in sections sixteen and seventeen of this article.

8 (g) This section applies only to entities described in
9 subsection (b), section twenty of this article.

10 (h) This section remains in effect only until January 1, 2018,
11 and as of that date is repealed, unless a later enacted statute,
12 that is enacted before January 1, 2018, deletes or extends that
13 date.

14 **§31-17B-5. Notice of default; recording; contact with borrower;**
15 **conditions; due diligence; applicability; effective**
16 **date.**

17 (a) (1) A mortgage servicer, mortgagee, trustee, beneficiary,
18 or authorized agent may not record a notice of default pursuant to
19 section ten of this article until:

20 (A) Either thirty days after initial contact is made as
21 required by subdivision (2) of this subsection or thirty days after
22 satisfying the due diligence requirements as described in
23 subsection (e) of this section; and

24 (B) The mortgage servicer complies with subsection (a),

1 section thirteen of this article, if the borrower has provided a
2 complete application as defined in subsection (f), section fourteen
3 of this article; and

4 (2) A mortgage servicer shall contact the borrower in person
5 or by telephone in order to assess the borrower's financial
6 situation and explore options for the borrower to avoid
7 foreclosure. During the initial contact, the mortgage servicer
8 shall advise the borrower that he or she has the right to request
9 a subsequent meeting and, if requested, the mortgage servicer shall
10 schedule the meeting to occur within fourteen days. The assessment
11 of the borrower's financial situation and discussion of options may
12 occur during the first contact, or at the subsequent meeting
13 scheduled for that purpose. In either case, the borrower shall be
14 provided the toll-free telephone number made available by the
15 Department of Housing and Urban Development to find a Housing and
16 Urban Development-certified housing counseling agency. Any meeting
17 may occur telephonically.

18 (b) A notice of default recorded pursuant to section ten of
19 this article shall include a declaration that the mortgage servicer
20 has contacted the borrower, has tried with due diligence to contact
21 the borrower as required by this section, or that no contact was
22 required because the individual did not meet the definition of
23 "borrower" pursuant to section two of this article.

24 (c) A mortgage servicer's loss mitigation personnel may

1 participate by telephone during any contact required by this
2 section.

3 (d) A borrower may designate, with consent given in writing,
4 a Housing and Urban Development-certified housing counseling
5 agency, attorney or other advisor to discuss with the mortgage
6 servicer, on the borrower's behalf, the borrower's financial
7 situation and options for the borrower to avoid foreclosure. That
8 contact made at the direction of the borrower shall satisfy the
9 contact requirements of subdivision (2), subsection (a) of this
10 section. Any loan modification or workout plan offered at the
11 meeting by the mortgage servicer is subject to approval by the
12 borrower.

13 (e) A notice of default may be recorded pursuant to section
14 ten of this article when a mortgage servicer has not contacted a
15 borrower as required by subdivision (2), subsection (a) of this
16 section: *Provided*, That the failure to contact the borrower
17 occurred despite the due diligence of the mortgage servicer. For
18 purposes of this section, "due diligence" requires and means all of
19 the following:

20 (1) A mortgage servicer shall first attempt to contact a
21 borrower by sending a first-class letter that includes the
22 toll-free telephone number made available by Housing and Urban
23 Development to find a Housing and Urban Development-certified
24 housing counseling agency;

1 (2) (A) After the letter has been sent, the mortgage servicer
2 shall attempt to contact the borrower by telephone at least three
3 times at different hours and on different days. Telephone calls
4 shall be made to the primary telephone number on file;

5 (B) A mortgage servicer may attempt to contact a borrower
6 using an automated system to dial borrowers if, when the telephone
7 call is answered, the call is connected to a live representative of
8 the mortgage servicer; and

9 (C) A mortgage servicer satisfies the telephone contact
10 requirements of this subdivision if it determines, after attempting
11 contact pursuant to this subdivision, that the borrower's primary
12 telephone number and secondary telephone number or numbers on file,
13 if any, have been disconnected;

14 (3) If the borrower does not respond within two weeks after
15 the telephone call requirements of subdivision (2) of this
16 subsection have been satisfied, the mortgage servicer shall then
17 send a certified letter, with return receipt requested;

18 (4) The mortgage servicer shall provide a means for the
19 borrower to contact it in a timely manner, including a toll-free
20 telephone number that will provide access to a live representative
21 during business hours; and

22 (5) The mortgage servicer has posted a prominent link on the
23 homepage of its Internet Web site, if any, to the following
24 information:

1 (A) Options that may be available to borrowers who are unable
2 to afford their mortgage payments and who wish to avoid
3 foreclosure, and instructions to borrowers advising them on steps
4 to take to explore those options;

5 (B) A list of financial documents borrowers should collect and
6 be prepared to present to the mortgage servicer when discussing
7 options for avoiding foreclosure;

8 (C) A toll-free telephone number for borrowers who wish to
9 discuss options for avoiding foreclosure with their mortgage
10 servicer; and

11 (D) The toll-free telephone number made available by Housing
12 and Urban Development to find a Housing and Urban
13 Development-certified housing counseling agency.

14 (f) This section applies only to mortgages or deeds of trust
15 described in sections seventeen and eighteen of this article.

16 (g) This section becomes operative on January 1, 2018.

17 **§31-17B-6. Notice of default; recording; conditions; contact with**
18 **borrower; due diligence; applicability; termination**
19 **date.**

20 (a) A mortgage servicer, mortgagee, trustee, beneficiary, or
21 authorized agent may not record a notice of default pursuant to
22 section ten of this article until all of the following have been
23 completed:

24 (1) The mortgage servicer has satisfied the requirements of

1 subdivision (1), subsection (b) of this section;

2 (2) Either thirty days after initial contact is made as
3 required by subdivision (2), subsection (b) of this section or
4 thirty days after satisfying the due diligence requirements as
5 described in subsection (f) of this section;

6 (3) The mortgage servicer complies with subsection (c) of this
7 section and subsection (c), section seven of this article, if the
8 borrower has provided a complete application.

9 (b) (1) A mortgage servicer shall send the following
10 information in writing to the borrower:

11 (A) A statement that if the borrower is a service member or a
12 dependent of a service member, he or she may be entitled to certain
13 protections under the federal Service Members Civil Relief Act, 50
14 U.S.C. §501 et seq., regarding the service member's interest rate
15 and the risk of foreclosure, and counseling for covered Service
16 members that is available at agencies such as Military One Source
17 and Armed Forces Legal Assistance; and

18 (B) A statement that the borrower may request the following:

19 (i) A copy of the borrower's promissory note or other evidence
20 of indebtedness;

21 (ii) A copy of the borrower's deed of trust or mortgage;

22 (iii) A copy of any assignment, if applicable, of the
23 borrower's mortgage or deed of trust required to demonstrate the
24 right of the mortgage servicer to foreclose; and

1 (iv) A copy of the borrower's payment history since the
2 borrower was last less than sixty days past due; and

3 (2) A mortgage servicer shall contact the borrower in person
4 or by telephone in order to assess the borrower's financial
5 situation and explore options for the borrower to avoid
6 foreclosure. During the initial contact, the mortgage servicer
7 shall advise the borrower that he or she has the right to request
8 a subsequent meeting and, if requested, the mortgage servicer shall
9 schedule the meeting to occur within fourteen days. The assessment
10 of the borrower's financial situation and discussion of options may
11 occur during the first contact, or at the subsequent meeting
12 scheduled for that purpose. In either case, the borrower shall be
13 provided the toll-free telephone number made available by the
14 Housing and Urban Development to find a Housing and Urban
15 Development-certified housing counseling agency. Any meeting may
16 occur telephonically.

17 (c) A notice of default recorded pursuant to section ten of
18 this article shall include a declaration that the mortgage servicer
19 has contacted the borrower, has tried with due diligence to contact
20 the borrower as required by this section, or that no contact was
21 required because the individual did not meet the definition of
22 "borrower" pursuant to section two of this article.

23 (d) A mortgage servicer's loss mitigation personnel may
24 participate by telephone during any contact required by this

1 section.

2 (e) A borrower may designate, with consent given in writing,
3 a Housing and Urban Development-certified housing counseling
4 agency, attorney, or other advisor to discuss with the mortgage
5 servicer, on the borrower's behalf, the borrower's financial
6 situation and options for the borrower to avoid foreclosure. That
7 contact made at the direction of the borrower shall satisfy the
8 contact requirements of subdivision (2), subsection (b) of this
9 section. Any foreclosure prevention alternative offered at the
10 meeting by the mortgage servicer is subject to approval by the
11 borrower.

12 (f) A notice of default may be recorded pursuant to section
13 ten when a mortgage servicer has not contacted a borrower as
14 required by this article, provided that the failure to contact the
15 borrower occurred despite the due diligence of the mortgage
16 servicer. For purposes of this section, "due diligence" requires
17 and means all of the following:

18 (1) A mortgage servicer shall first attempt to contact a
19 borrower by sending a first-class letter that includes the
20 toll-free telephone number made available by Department of Housing
21 and Urban Development to find a Department of Housing and Urban
22 Development-certified housing counseling agency;

23 (2) (A) After the letter has been sent, the mortgage servicer
24 shall attempt to contact the borrower by telephone at least three

1 times at different hours and on different days. Telephone calls
2 shall be made to the primary telephone number on file.

3 (B) A mortgage servicer may attempt to contact a borrower
4 using an automated system to dial borrowers if, when the telephone
5 call is answered, the call is connected to a live representative of
6 the mortgage servicer.

7 (C) A mortgage servicer satisfies the telephone contact
8 requirements of this subdivision if it determines, after attempting
9 contact pursuant to this subdivision, that the borrower's primary
10 telephone number and secondary telephone number or numbers on file,
11 if any, have been disconnected;

12 (3) If the borrower does not respond within two weeks after
13 the telephone call requirements of subdivision (2) of this
14 subsection have been satisfied, the mortgage servicer shall then
15 send a certified letter, with return receipt requested, that
16 includes the toll-free telephone number made available by Housing
17 and Urban Development to find a Housing and Urban
18 Development-certified housing counseling agency;

19 (4) The mortgage servicer shall provide a means for the
20 borrower to contact it in a timely manner, including a toll-free
21 telephone number that will provide access to a live representative
22 during business hours; and

23 (5) The mortgage servicer has posted a prominent link on the
24 homepage of its Internet Web site, if any, to the following

1 information:

2 (A) Options that may be available to borrowers who are unable
3 to afford their mortgage payments and who wish to avoid
4 foreclosure, and instructions to borrowers advising them on steps
5 to take to explore those options;

6 (B) A list of financial documents borrowers should collect and
7 be prepared to present to the mortgage servicer when discussing
8 options for avoiding foreclosure;

9 (C) A toll-free telephone number for borrowers who wish to
10 discuss options for avoiding foreclosure with their mortgage
11 servicer; and

12 (D) The toll-free telephone number made available by Housing
13 and Urban Development to find a Housing and Urban
14 Development-certified housing counseling agency.

15 (g) This section does not apply to entities described in
16 subsection (b), section twenty of this article.

17 (h) This section applies only to mortgages or deeds of trust
18 described in seventeen and eighteen of this article.

19 (i) This section remains in effect only until January 1, 2018,
20 and as of that date is repealed, unless a later enacted statute,
21 that is enacted before January 1, 2018, deletes or extends that
22 date.

23 **§31-17B-7. Legislative declaration; loan modification; notice;**
24 **applicability; exceptions; requirements; termination date.**

1 (a) The Legislature finds:

2 (1) That any duty that mortgage servicers may have to maximize
3 net present value under their pooling and servicing agreements is
4 owed to all parties in a loan pool, or to all investors under a
5 pooling and servicing agreement, not to any particular party in the
6 loan pool or investor under a pooling and servicing agreement; and

7 (2) That a mortgage servicer acts in the best interests of all
8 parties to the loan pool or investors in the pooling and servicing
9 agreement if it agrees to or implements a loan modification or
10 workout plan for which both of the following apply:

11 (A) The loan is in payment default, or payment default is
12 reasonably foreseeable; and

13 (B) Anticipated recovery under the loan modification or
14 workout plan exceeds the anticipated recovery through foreclosure
15 on a net present value basis.

16 (b) It is the intent of the Legislature that the mortgage
17 servicer offer the borrower a loan modification or workout plan if
18 the modification or plan is consistent with its contractual or
19 other authority.

20 (c) If a borrower submits a complete application for a first
21 lien loan modification offered by, or through, the borrower's
22 mortgage servicer, a mortgage servicer, mortgagee, trustee,
23 beneficiary, or authorized agent may not record a notice of default
24 or notice of sale, or conduct a trustee's sale, while the complete

1 first lien loan modification application is pending. A mortgage
2 servicer, mortgagee, trustee, beneficiary, or authorized agent may
3 not record a notice of default or notice of sale or conduct a
4 trustee's sale until any of the following occurs:

5 (1) The mortgage servicer makes a written determination that
6 the borrower is not eligible for a first lien loan modification,
7 and any appeal period pursuant to subsection (d) of this section
8 has expired;

9 (2) The borrower does not accept an offered first lien loan
10 modification within fourteen days of the offer; or

11 (3) The borrower accepts a written first lien loan
12 modification, but defaults on, or otherwise breaches the borrower's
13 obligations under, the first lien loan modification.

14 (d) If the borrower's application for a first lien loan
15 modification is denied, the borrower has at least thirty days from
16 the date of the written denial to appeal the denial and to provide
17 evidence that the mortgage servicer's determination was in error.

18 (e) If the borrower's application for a first lien loan
19 modification is denied, the mortgage servicer, mortgagee, trustee,
20 beneficiary, or authorized agent may not record a notice of default
21 or, if a notice of default has already been recorded, record a
22 notice of sale or conduct a trustee's sale until the later of:

23 (1) Thirty-one days after the borrower is notified in writing
24 of the denial; or

1 (2) If the borrower appeals the denial pursuant to subsection
2 (d) of this section, the later of fifteen days after the denial of
3 the appeal or fourteen days after a first lien loan modification is
4 offered after appeal but declined by the borrower, or, if a first
5 lien loan modification is offered and accepted after appeal, the
6 date on which the borrower fails to timely submit the first payment
7 or otherwise breaches the terms of the offer.

8 (f) Following the denial of a first lien loan modification
9 application, the mortgage servicer shall send a written notice to
10 the borrower identifying the reasons for denial, including the
11 following:

12 (1) The amount of time from the date of the denial letter in
13 which the borrower may request an appeal of the denial of the first
14 lien loan modification and instructions regarding how to appeal the
15 denial;

16 (2) If the denial was based on investor disallowance, the
17 specific reasons for the investor disallowance;

18 (3) If the denial is the result of a net present value
19 calculation, the monthly gross income and property value used to
20 calculate the net present value and a statement that the borrower
21 may obtain all of the inputs used in the net present value
22 calculation upon written request to the mortgage servicer;

23 (4) If applicable, a finding that the borrower was previously
24 offered a first lien loan modification and failed to successfully

1 make payments under the terms of the modified loan; and

2 (5) If applicable, a description of other foreclosure
3 prevention alternatives for which the borrower may be eligible, and
4 a list of the steps the borrower shall take in order to be
5 considered for those options. If the mortgage servicer has already
6 approved the borrower for another foreclosure prevention
7 alternative, information necessary to complete the foreclosure
8 prevention alternative.

9 (g) In order to minimize the risk of borrowers submitting
10 multiple applications for first lien loan modifications for the
11 purpose of delay, the mortgage servicer is not obligated to
12 evaluate applications from borrowers who have already been
13 evaluated or afforded a fair opportunity to be evaluated for a
14 first lien loan modification prior to January 1, 2013, or who have
15 been evaluated or afforded a fair opportunity to be evaluated
16 consistent with the requirements of this section, unless there has
17 been a material change in the borrower's financial circumstances
18 since the date of the borrower's previous application and that
19 change is documented by the borrower and submitted to the mortgage
20 servicer.

21 (h) For purposes of this section, an application is complete
22 when a borrower has supplied the mortgage servicer with all
23 documents required by the mortgage servicer within the reasonable
24 time frames specified by the mortgage servicer.

1 (i) Subsections (c) through (h) of this section, inclusive, do
2 not apply to entities described in subsection (b), section twenty
3 of this article.

4 (j) This section applies only to mortgages or deeds of trust
5 described in sections seventeen and eighteen of this article.

6 (k) This section remains in effect only until January 1, 2018,
7 and as of that date is repealed, unless a later enacted statute,
8 that is enacted before January 1, 2018, deletes or extends that
9 date.

10 **§31-17B-8. Legislative declaration; intent; applicability; loan**
11 **modification; effective date.**

12 (a) The Legislature finds:

13 (1) That any duty mortgage servicers may have to maximize net
14 present value under their pooling and servicing agreements is owed
15 to all parties in a loan pool, or to all investors under a pooling
16 and servicing agreement, not to any particular party in the loan
17 pool or investor under a pooling and servicing agreement; and

18 (2) That a mortgage servicer acts in the best interests of all
19 parties to the loan pool or investors in the pooling and servicing
20 agreement if it agrees to or implements a loan modification or
21 workout plan for which both of the following apply:

22 (A) The loan is in payment default, or payment default is
23 reasonably foreseeable; and

24 (B) Anticipated recovery under the loan modification or

1 workout plan exceeds the anticipated recovery through foreclosure
2 on a net present value basis.

3 (b) It is the intent of the Legislature that the mortgage
4 servicer offer the borrower a loan modification or workout plan if
5 the modification or plan is consistent with its contractual or
6 other authority.

7 (c) This section becomes operative on January 1, 2018.

8 **§31-17B-9. Foreclosure prevention; single point of contact;**
9 **requirements; limitation of liability**
10 **applicability; defaults; exceptions.**

11 (a) Upon request from a borrower who requests a foreclosure
12 prevention alternative, the mortgage servicer shall promptly
13 establish a single point of contact and provide to the borrower one
14 or more direct means of communication with the single point of
15 contact.

16 (b) The single point of contact is responsible for doing all
17 of the following:

18 (1) Communicating the process by which a borrower may apply
19 for an available foreclosure prevention alternative and the
20 deadline for any required submissions to be considered for these
21 options;

22 (2) Coordinating receipt of all documents associated with
23 available foreclosure prevention alternatives and notifying the
24 borrower of any missing documents necessary to complete the

1 application;

2 (3) Having access to current information and personnel
3 sufficient to timely, accurately, and adequately inform the
4 borrower of the current status of the foreclosure prevention
5 alternative;

6 (4) Ensuring that a borrower is considered for all foreclosure
7 prevention alternatives offered by, or through, the mortgage
8 servicer, if any; and

9 (5) Having access to individuals with the ability and
10 authority to stop foreclosure proceedings when necessary.

11 (c) The single point of contact remains assigned to the
12 borrower's account until the mortgage servicer determines that all
13 loss mitigation options offered by, or through, the mortgage
14 servicer have been exhausted or the borrower's account becomes
15 current.

16 (d) The mortgage servicer shall ensure that a single point of
17 contact refers and transfers a borrower to an appropriate
18 supervisor upon request of the borrower, if the single point of
19 contact has a supervisor.

20 (e) For purposes of this section, "single point of contact"
21 means an individual or team of personnel each of whom has the
22 ability and authority to perform the responsibilities described in
23 subsections (b) through (d) of this section, inclusive. The
24 mortgage servicer shall ensure that each member of the team is

1 knowledgeable about the borrower's situation and current status in
2 the alternatives to foreclosure process.

3 (f) This section applies only to mortgages or deeds of trust
4 described in sections seventeen and eighteen of this article.

5 (g) (1) This section does not apply to a depository
6 institution chartered under state or federal law that foreclosed on
7 one hundred seventy-five or fewer residential real properties,
8 containing no more than four dwelling units, that are located in
9 West Virginia.

10 (2) Within three months after the close of any calendar year
11 or annual reporting period as established with its primary
12 regulator during which an entity or person described in subdivision
13 (1) of this subsection exceeds the threshold of one hundred
14 seventy-five specified in that subdivision, that entity shall
15 notify its primary regulator, in a manner acceptable to its primary
16 regulator, and any mortgagor or trustor who is delinquent on a
17 residential mortgage loan serviced by that entity of the date on
18 which that entity will be subject to this section, which date is
19 the first day of the first month that is six months after the close
20 of the calendar year or annual reporting period during which that
21 entity exceeded the threshold.

22 **§31-17B-10. Property interest transfer; recording; requirements;**
23 **termination date; privileged communication.**

24 (a) Every transfer of an interest in property, other than in

1 trust, made only as a security for the performance of another act,
2 is a mortgage, except when in the case of personal property it is
3 accompanied by actual change of possession, in which case it is a
4 pledge. Where, by a mortgage created after July 27, 1917, of any
5 estate in real property, other than an estate at will or for years,
6 less than two, or in any transfer in trust made after July 27,
7 1917, of a like estate to secure the performance of an obligation,
8 a power of sale is conferred upon the mortgagee, trustee, or any
9 other person, to be exercised after a breach of the obligation for
10 which that mortgage or transfer is a security, the power may not be
11 exercised except where the mortgage or transfer is made pursuant to
12 an order, judgment, or decree of a court of record, or to secure
13 the payment of bonds or other evidences of indebtedness authorized
14 or permitted, until all of the following apply:

15 (1) The trustee, mortgagee, or beneficiary, or any of their
16 authorized agents first files for record, in the office of the
17 county clerk of each county where the mortgaged or trust property
18 or some part or parcel thereof is situated, a notice of default.
19 That notice of default shall include all of the following:

20 (A) A statement identifying the mortgage or deed of trust by
21 stating the name or names of the trustor or trustors and giving the
22 book and page, or instrument number, if applicable, where the
23 mortgage or deed of trust is recorded or a description of the
24 mortgaged or trust property;

1 (B) A statement that a breach of the obligation for which the
2 mortgage or transfer in trust in security has occurred; and

3 (C) A statement setting forth the nature of each breach
4 actually known to the beneficiary and of his or her election to
5 sell or cause to be sold the property to satisfy that obligation
6 and any other obligation secured by the deed of trust or mortgage
7 that is in default;

8 (2) Not less than three months must elapse from the filing of
9 the notice of default;

10 (3) After the lapse of the three months described in
11 subdivision (2) of this subsection, the mortgagee, trustee, or
12 other person authorized to take the sale shall give notice of sale,
13 stating the time and place of the sale;

14 (4) Notwithstanding subdivision (3) of this subsection, the
15 mortgagee, trustee, or other person authorized to take sale may
16 record a notice of sale up to five days before the lapse of the
17 three-month period described in subdivision (2) of this subsection:
18 *Provided*, That the date of sale is no earlier than three months and
19 twenty days after the recording of the notice of default;

20 (5) Until January 1, 2018, whenever a sale is postponed for a
21 period of at least ten business days a mortgagee, beneficiary, or
22 authorized agent shall provide written notice to a borrower
23 regarding the new sale date and time, within five business days
24 following the postponement. Failure to comply with this subdivision

1 does not invalidate any sale that would otherwise be valid. This
2 subdivision becomes inoperative on January 1, 2018; and

3 (6) No entity may record or cause a notice of default to be
4 recorded or otherwise initiate the foreclosure process unless it is
5 the holder of the beneficial interest under the mortgage or deed of
6 trust, the original trustee or the substituted trustee under the
7 deed of trust, or the designated agent of the holder of the
8 beneficial interest. No agent of the holder of the beneficial
9 interest under the mortgage or deed of trust, original trustee or
10 substituted trustee under the deed of trust may record a notice of
11 default or otherwise commence the foreclosure process except when
12 acting within the scope of authority designated by the holder of
13 the beneficial interest.

14 (b) In performing acts required by this article, the trustee
15 does not incur any liability for any good faith error resulting
16 from reliance on information provided in good faith by the
17 beneficiary regarding the nature and the amount of the default
18 under the secured obligation, deed of trust, or mortgage.

19 (c) A recital in the deed executed pursuant to the power of
20 sale of compliance with all requirements of law regarding the
21 mailing of copies of notices or the publication of a copy of the
22 notice of default or the personal delivery of the copy of the
23 notice of default or the posting of copies of the notice of sale or
24 the publication of a copy is prima facie evidence of compliance

1 with these requirements and conclusive evidence thereof in favor of
2 bona fide purchasers and encumbrancers for value and without
3 notice.

4 (d) All of the following are privileged communications:

5 (1) The mailing, publication, and delivery of notices as
6 required by this section; and

7 (2) Performance of the procedures set forth in this article.

8 (e) There is a rebuttable presumption that the beneficiary
9 actually knew of all unpaid loan payments on the obligation owed to
10 the beneficiary and secured by the deed of trust or mortgage
11 subject to the notice of default. However, the failure to include
12 an actually known default does not invalidate the notice of sale
13 and the beneficiary is not precluded from asserting a claim to this
14 omitted default or defaults in a separate notice of default.

15 **§31-17B-11. Foreclosure prevention alternative; applicability;**
16 **termination date.**

17 (a) Unless a borrower has previously exhausted the first lien
18 loan modification process offered by, or through, his or her
19 mortgage servicer described in section seven or eight of this
20 article, a mortgage servicer that offers one or more foreclosure
21 prevention alternatives shall, within five business days after
22 recording a notice of default pursuant to section ten of this
23 article, send a written communication to the borrower that includes
24 all of the following information:

1 (1) That the borrower may be evaluated for a foreclosure
2 prevention alternative or, if applicable, foreclosure prevention
3 alternatives;

4 (2) Whether an application is required to be submitted by the
5 borrower in order to be considered for a foreclosure prevention
6 alternative; and

7 (3) The means and process by which a borrower may obtain an
8 application for a foreclosure prevention alternative.

9 (b) This section does not apply to entities described in
10 subsection (b), section twenty of this article.

11 (c) This section applies only to mortgages or deeds of trust
12 described in sections seventeen and eighteen of this article.

13 (d) This section remains in effect only until January 1,
14 2018, and as of that date is repealed, unless a later enacted
15 statute, that is enacted before January 1, 2018, deletes or extends
16 that date.

17 **§31-17B-12. First lien modification; requirements; applicability;**
18 **termination date.**

19 (a) When a borrower submits a complete first lien modification
20 application or any document in connection with a first lien
21 modification application, the mortgage servicer shall provide
22 written acknowledgment of the receipt of the documentation within
23 five business days of receipt. In its initial acknowledgment of
24 receipt of the loan modification application, the mortgage servicer

1 shall include the following information:

2 (1) A description of the loan modification process, including
3 an estimate of when a decision on the loan modification will be
4 made after a complete application has been submitted by the
5 borrower and the length of time the borrower will have to consider
6 an offer of a loan modification or other foreclosure prevention
7 alternative;

8 (2) Any deadlines, including deadlines to submit missing
9 documentation, that would affect the processing of a first lien
10 loan modification application;

11 (3) Any expiration dates for submitted documents; and

12 (4) Any deficiency in the borrower's first lien loan
13 modification application.

14 (b) For purposes of this section, a borrower's first lien loan
15 modification application is complete when a borrower has supplied
16 the mortgage servicer with all documents required by the mortgage
17 servicer within the reasonable time frames specified by the
18 mortgage servicer.

19 (c) This section does not apply to entities described in
20 subsection (b), section twenty of this article.

21 (d) This section applies only to mortgages or deeds of trust
22 described in seventeen and eighteen of this article.

23 (e) This section remains in effect only until January 1,
24 2018, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2018, deletes or extends
2 that date.

3 **§31-17B-13. Notice of default; requirements; foreclosure**
4 **prevention; applicability; termination date.**

5 (a) If a foreclosure prevention alternative is approved in
6 writing prior to the recordation of a notice of default, a mortgage
7 servicer, mortgagee, trustee, beneficiary, or authorized agent may
8 not record a notice of default under either of the following
9 circumstances:

10 (1) The borrower is in compliance with the terms of a written
11 trial or permanent loan modification, forbearance or repayment
12 plan; or

13 (2) A foreclosure prevention alternative has been approved in
14 writing by all parties, including, for example, the first lien
15 investor, junior lienholder and mortgage insurer, as applicable,
16 and proof of funds or financing has been provided to the servicer.

17 (b) If a foreclosure prevention alternative is approved in
18 writing after the recordation of a notice of default, a mortgage
19 servicer, mortgagee, trustee, beneficiary or authorized agent may
20 not record a notice of sale or conduct a trustee's sale under
21 either of the following circumstances:

22 (1) The borrower is in compliance with the terms of a written
23 trial or permanent loan modification, forbearance or repayment
24 plan; or

1 (2) A foreclosure prevention alternative has been approved in
2 writing by all parties, including, for example, the first lien
3 investor, junior lienholder and mortgage insurer, as applicable,
4 and proof of funds or financing has been provided to the servicer.

5 (c) When a borrower accepts an offered first lien loan
6 modification or other foreclosure prevention alternative, the
7 mortgage servicer shall provide the borrower with a copy of the
8 fully executed loan modification agreement or agreement evidencing
9 the foreclosure prevention alternative following receipt of the
10 executed copy from the borrower.

11 (d) A mortgagee, beneficiary, or authorized agent shall record
12 a rescission of a notice of default or cancel a pending trustee's
13 sale, if applicable, upon the borrower executing a permanent
14 foreclosure prevention alternative. In the case of a short sale,
15 the rescission or cancellation of the pending trustee's sale shall
16 occur when the short sale has been approved by all parties and
17 proof of funds or financing has been provided to the mortgagee,
18 beneficiary, or authorized agent.

19 (e) The mortgage servicer may not charge any application,
20 processing, or other fee for a first lien loan modification or
21 other foreclosure prevention alternative.

22 (f) The mortgage servicer may not collect any late fees for
23 periods during which a complete first lien loan modification
24 application is under consideration or a denial is being appealed,

1 the borrower is making timely modification payments, or a
2 foreclosure prevention alternative is being evaluated or exercised.

3 (g) If a borrower has been approved in writing for a first
4 lien loan modification or other foreclosure prevention alternative,
5 and the servicing of that borrower's loan is transferred or sold to
6 another mortgage servicer, the subsequent mortgage servicer shall
7 continue to honor any previously approved first lien loan
8 modification or other foreclosure prevention alternative, in
9 accordance with the provisions of this article.

10 (h) This section applies only to mortgages or deeds of trust
11 described in sections seventeen and eighteen of this article.

12 (i) This section does not apply to entities described in
13 subsection (b), section twenty of this article.

14 (j) This section remains in effect only until January 1, 2018,
15 and as of that date is repealed, unless a later enacted statute,
16 that is enacted before January 1, 2018, deletes or extends that
17 date.

18 **§31-17B-14. Foreclosure prevention alternative; requirements;**
19 **effective date.**

20 (a) If a borrower submits a complete application for a
21 foreclosure prevention alternative offered by, or through, the
22 borrower's mortgage servicer, a mortgage servicer, trustee,
23 mortgagee, beneficiary or authorized agent may not record a notice
24 of sale or conduct a trustee's sale while the complete foreclosure

1 prevention alternative application is pending, and until the
2 borrower has been provided with a written determination by the
3 mortgage servicer regarding that borrower's eligibility for the
4 requested foreclosure prevention alternative.

5 (b) Following the denial of a first lien loan modification
6 application, the mortgage servicer shall send a written notice to
7 the borrower identifying with specificity the reasons for the
8 denial and shall include a statement that the borrower may obtain
9 additional documentation supporting the denial decision upon
10 written request to the mortgage servicer.

11 (c) If a foreclosure prevention alternative is approved in
12 writing prior to the recordation of a notice of default, a mortgage
13 servicer, mortgagee, trustee, beneficiary or authorized agent may
14 not record a notice of default under either of the following
15 circumstances:

16 (1) The borrower is in compliance with the terms of a written
17 trial or permanent loan modification, forbearance, or repayment
18 plan; or

19 (2) A foreclosure prevention alternative has been approved in
20 writing by all parties, including, for example, the first lien
21 investor, junior lienholder and mortgage insurer, as applicable,
22 and proof of funds or financing has been provided to the servicer.

23 (d) If a foreclosure prevention alternative is approved in
24 writing after the recordation of a notice of default, a mortgage

1 servicer, mortgagee, trustee, beneficiary, or authorized agent may
2 not record a notice of sale or conduct a trustee's sale under
3 either of the following circumstances:

4 (1) The borrower is in compliance with the terms of a written
5 trial or permanent loan modification, forbearance, or repayment
6 plan; or

7 (2) A foreclosure prevention alternative has been approved in
8 writing by all parties, including, for example, the first lien
9 investor, junior lienholder and mortgage insurer, as applicable,
10 and proof of funds or financing has been provided to the servicer.

11 (e) This section applies only to mortgages or deeds of trust
12 as described in sections seventeen and eighteen of this article

13 (f) For purposes of this section, an application is complete
14 when a borrower has supplied the mortgage servicer with all
15 documents required by the mortgage servicer within the reasonable
16 time frames specified by the mortgage servicer.

17 (g) This section becomes operative on January 1, 2018.

18 **§31-17B-15. Trustee's deed; recording; injunctions; violations;**
19 **exceptions; damages; attorney's fees; termination**
20 **date.**

21 (a) (1) If a trustee's deed upon sale has not been recorded,
22 a borrower may bring an action for injunctive relief to enjoin a
23 material violation of section six, seven, eight, nine, eleven,
24 twelve, thirteen, fourteen or nineteen of this article.

1 (2) Any injunction remains in place and any trustee's sale
2 shall be enjoined until the court determines that the mortgage
3 servicer, mortgagee, trustee, beneficiary or authorized agent has
4 corrected and remedied the violation or violations giving rise to
5 the action for injunctive relief. An enjoined entity may move to
6 dissolve an injunction based on a showing that the material
7 violation has been corrected and remedied.

8 (b) After a trustee's deed upon sale has been recorded, a
9 mortgage servicer, mortgagee, trustee, beneficiary or authorized
10 agent is liable to a borrower for actual economic damages,
11 resulting from a material violation of section six, seven, eight,
12 nine, eleven, twelve, thirteen, fourteen or nineteen of this
13 article by that mortgage servicer, mortgagee, trustee, beneficiary
14 or authorized agent where the violation was not corrected and
15 remedied prior to the recordation of the trustee's deed upon sale.
16 If the court finds that the material violation was intentional or
17 reckless, or resulted from willful misconduct by a mortgage
18 servicer, mortgagee, trustee, beneficiary or authorized agent, the
19 court may award the borrower the greater of treble actual damages
20 or statutory damages of \$50,000.

21 (c) A mortgage servicer, mortgagee, trustee, beneficiary or
22 authorized agent is not liable for any violation that it has
23 corrected and remedied prior to the recordation of a trustee's deed
24 upon sale, or that has been corrected and remedied by third parties

1 working on its behalf prior to the recordation of a trustee's deed
2 upon sale.

3 (d) A violation of section six, seven, eight, nine, eleven,
4 twelve, thirteen, fourteen or nineteen of this article by a person
5 licensed by the Commissioner of Banking, the West Virginia Real
6 Estate Commission or subject to the jurisdiction of the West
7 Virginia Business Corporation Act is a violation of that person's
8 licensing requirements or other statutory requirements.

9 (e) A violation of this article does not affect the validity
10 of a sale in favor of a bona fide purchaser and any of its
11 encumbrancers for value without notice.

12 (f) A third-party encumbrancer is not relieved of liability
13 resulting from violations of section six, seven, eight, nine,
14 eleven, twelve, thirteen, fourteen or nineteen of this article
15 committed by that third-party encumbrancer, that occurred prior to
16 the sale of the subject property to the bona fide purchaser.

17 (g) A signatory to a consent judgment entered on April 4, 2012
18 in *United States of America, et al. v. Bank of America Corporation,*
19 *et al.*, filed in the *United States District Court for the District*
20 *of Columbia*, Case Number 1:12-cv-00361 RMC., that is in compliance
21 with the relevant terms of the Settlement Term Sheet of that
22 consent judgment with respect to the borrower who brought an action
23 pursuant to this section while the consent judgment is in effect
24 has no liability for a violation of section six, seven, eight,

1 nine, eleven, twelve, thirteen, fourteen or nineteen of this
2 article.

3 (h) The rights, remedies, and procedures provided by this
4 section are in addition to and independent of any other rights,
5 remedies or procedures under any other law. Nothing in this section
6 alters, limits or negates any other rights, remedies or procedures
7 provided by law.

8 (i) A court may award a prevailing borrower reasonable
9 attorney's fees and costs in an action brought pursuant to this
10 section. A borrower has prevailed for purposes of this subsection
11 if the borrower obtained injunctive relief or was awarded damages
12 pursuant to this section.

13 (j) This section does not apply to entities described in
14 subsection (b), section twenty of this article.

15 (k) This section remains in effect only until January 1, 2018,
16 and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, 2018, deletes or extends that
18 date.

19 **§31-17B-16. Trustee's deed; recording; injunctive relief;**
20 **liability; violations; exception; damages;**
21 **attorney's fees; effective date.**

22 (a) (1) If a trustee's deed upon sale has not been recorded,
23 a borrower may bring an action for injunctive relief to enjoin a
24 material violation of section four, five, nine, thirteen, fourteen

1 or nineteen of this article.

2 (2) Any injunction remains in place and any trustee's sale
3 shall be enjoined until the court determines that the mortgage
4 servicer, mortgagee, trustee, beneficiary or authorized agent has
5 corrected and remedied the violation or violations giving rise to
6 the action for injunctive relief. An enjoined entity may move to
7 dissolve an injunction based on a showing that the material
8 violation has been corrected and remedied.

9 (b) After a trustee's deed upon sale has been recorded, a
10 mortgage servicer, mortgagee, trustee, beneficiary or authorized
11 agent is liable to a borrower for actual economic damages resulting
12 from a material violation of section four, five, nine, thirteen,
13 fourteen or nineteen of this article by that mortgage servicer,
14 mortgagee, trustee, beneficiary or authorized agent where the
15 violation was not corrected and remedied prior to the recordation
16 of the trustee's deed upon sale. If the court finds that the
17 material violation was intentional or reckless, or resulted from
18 willful misconduct by a mortgage servicer, mortgagee, trustee,
19 beneficiary or authorized agent, the court may award the borrower
20 the greater of treble actual damages or statutory damages of
21 \$50,000.

22 (c) A mortgage servicer, mortgagee, trustee, beneficiary or
23 authorized agent is not liable for any violation that it has
24 corrected and remedied prior to the recordation of the trustee's

1 deed upon sale, or that has been corrected and remedied by third
2 parties working on its behalf prior to the recordation of the
3 trustee's deed upon sale.

4 (d) A violation of section four, five, nine, thirteen,
5 fourteen or nineteen of this article by a person licensed by the
6 Commissioner of Banking, the West Virginia Real Estate Commission
7 or subject to the jurisdiction of the West Virginia Business
8 Corporation Act is a violation of that person's licensing
9 requirements or other statutory requirements.

10 (e) A violation of this article does not affect the validity
11 of a sale in favor of a bona fide purchaser and any of its
12 encumbrancers for value without notice.

13 (f) A third-party encumbrancer is not relieved of liability
14 resulting from violations of section four, five, nine, thirteen,
15 fourteen or nineteen of this article committed by that third-party
16 encumbrancer, that occurred prior to the sale of the subject
17 property to the bona fide purchaser.

18 (g) The rights, remedies, and procedures provided by this
19 section are in addition to and independent of any other rights,
20 remedies, or procedures under any other law. Nothing in this
21 section alters, limits or negates any other rights, remedies or
22 procedures provided by law.

23 (h) A court may award a prevailing borrower reasonable
24 attorney's fees and costs in an action brought pursuant to this

1 section. A borrower has prevailed for purposes of this subsection
2 if the borrower obtained injunctive relief or was awarded damages
3 pursuant to this section.

4 (i) This section becomes operative on January 1, 2018.

5 **§31-17B-17. First lien mortgages and deeds of trust; termination**
6 **date.**

7 (a) Unless otherwise provided, subdivision (5), subsection (a)
8 section ten and sections four, five, six, seven, eight, nine,
9 eleven, twelve, thirteen, fourteen and twenty of this article apply
10 only to first lien mortgages or deeds of trust that are secured by
11 owner-occupied residential real property containing no more than
12 four dwelling units. For these purposes, "owner-occupied" means
13 that the property is the principal residence of the borrower and is
14 security for a loan made for personal, family or household
15 purposes.

16 (b) This section remains in effect only until January 1, 2018,
17 and as of that date is repealed, unless a later enacted statute,
18 that is enacted before January 1, 2018, deletes or extends that
19 date.

20 **§31-17B-18. Owner-occupied residential real property; effective**
21 **date.**

22 (a) Unless otherwise provided, sections four, five, nine
23 thirteen and fourteen apply only to first lien mortgages or deeds

1 of trust that are secured by owner-occupied residential real
2 property containing no more than four dwelling units. For these
3 purposes, "owner-occupied" means that the property is the principal
4 residence of the borrower and is security for a loan made for
5 personal, family or household purposes.

6 (b) This section becomes operative on January 1, 2018.

7 **§31-17B-19. Notice of default; notice of sale; assignment of a**
8 **deed of trust; civil penalty; termination date.**

9 (a) A declaration recorded pursuant to section four or five of
10 this article or, until January 1, 2018, pursuant to section six of
11 this article, a notice of default, notice of sale, assignment of a
12 deed of trust or substitution of trustee recorded by or on behalf
13 of a mortgage servicer in connection with a foreclosure subject to
14 section ten of this article, or a declaration or affidavit filed in
15 any court relative to a foreclosure proceeding shall be accurate
16 and complete and supported by competent and reliable evidence.

17 (b) Before recording or filing any of the documents described
18 in subsection (a) of this section, a mortgage servicer shall ensure
19 that it has reviewed competent and reliable evidence to
20 substantiate the borrower's default and the right to foreclose,
21 including the borrower's loan status and loan information.

22 (c) Until January 1, 2018, any mortgage servicer that engages
23 in multiple and repeated uncorrected violations of subsection (b)
24 of this section in recording documents or filing documents in any

1 court relative to a foreclosure proceeding is liable for a civil
2 penalty of up to \$7,500 per mortgage or deed of trust in an action
3 brought by a government entity or in an administrative proceeding
4 brought against a respective licensee, in addition to any other
5 remedies available to these entities. This subsection becomes
6 inoperative on January 1, 2018.

7 **§31-17B-20. First lien loan modification; foreclosure prevention**
8 **alternative; applicability; exceptions;**
9 **requirements; termination date.**

10 (a) (1) If a borrower submits a complete application for a
11 first lien loan modification offered by, or through, the borrower's
12 mortgage servicer, a mortgage servicer, trustee, mortgagee,
13 beneficiary or authorized agent may not record a notice of default,
14 notice of sale or conduct a trustee's sale while the complete first
15 lien loan modification application is pending, and until the
16 borrower has been provided with a written determination by the
17 mortgage servicer regarding that borrower's eligibility for the
18 requested loan modification.

19 (2) If a foreclosure prevention alternative has been approved
20 in writing prior to the recordation of a notice of default, a
21 mortgage servicer, mortgagee, trustee, beneficiary or authorized
22 agent may not record a notice of default under either of the
23 following circumstances:

24 (A) The borrower is in compliance with the terms of a written

1 trial or permanent loan modification, forbearance or repayment
2 plan; or

3 (B) A foreclosure prevention alternative has been approved in
4 writing by all parties, including, for example, the first lien
5 investor, junior lienholder and mortgage insurer, as applicable,
6 and proof of funds or financing has been provided to the servicers.

7 (3) If a foreclosure prevention alternative is approved in
8 writing after the recordation of a notice of default, a mortgage
9 servicer, mortgagee, trustee, beneficiary or authorized agent may
10 not record a notice of sale or conduct a trustee's sale under
11 either of the following circumstances:

12 (A) The borrower is in compliance with the terms of a written
13 trial or permanent loan modification, forbearance or repayment
14 plan; or

15 (B) A foreclosure prevention alternative has been approved in
16 writing by all parties, including, for example, the first lien
17 investor, junior lienholder and mortgage insurer, as applicable,
18 and proof of funds or financing has been provided to the servicers.

19 (b) This section applies only to a depository institution
20 chartered under state or federal law, that, during its immediately
21 preceding annual reporting period, as established with its primary
22 regulator, foreclosed on one hundred seventy-five or fewer
23 residential real properties, containing no more than four dwelling
24 units, that are located in West Virginia.

1 (c) Within three months after the close of any calendar year
2 or annual reporting period as established with its primary
3 regulator during which an entity or person described in subsection
4 (b) exceeds the threshold of one hundred seventy-five specified in
5 subsection (b) of this section, that entity shall notify its
6 primary regulator, in a manner acceptable to its primary regulator,
7 and any mortgagor or trustor who is delinquent on a residential
8 mortgage loan serviced by that entity of the date on which that
9 entity will be subject to sections six, seven, eight, nine, eleven,
10 twelve, thirteen, fourteen, fifteen and sixteen, which date is the
11 first day of the first month that is six months after the close of
12 the calendar year or annual reporting period during which that
13 entity exceeded the threshold.

14 (d) For purposes of this section, an application is complete
15 when a borrower has supplied the mortgage servicers with all
16 documents required by the mortgage servicers within the reasonable
17 time frames specified by the mortgage servicers.

18 (e) If a borrower has been approved in writing for a first
19 lien loan modification or other foreclosure prevention alternative,
20 and the servicing of the borrower's loan is transferred or sold to
21 another mortgage servicer, the subsequent mortgage servicer shall
22 continue to honor any previously approved first lien loan
23 modification or other foreclosure prevention alternative, in
24 accordance with this article.

1 (f) This section applies only to mortgages or deeds of trust
2 described in sections seventeen and eighteen of this article.

3 (g) This section remains in effect only until January 1, 2018,
4 and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, 2018, deletes or extends that
6 date.

7 **§31-17B-21. Trustee's deed; recording; violations; injunctive**
8 **relief; damages; attorney's fees; applicability;**
9 **exception; termination date.**

10 (a) (1) If a trustee's deed upon sale has not been recorded,
11 a borrower may bring an action for injunctive relief to enjoin a
12 material violation of section four, five, nineteen or twenty of
13 this article.

14 (2) Any injunction will remain in place and any trustee's sale
15 shall be enjoined until the court determines that the mortgage
16 servicer, mortgagee, beneficiary, or authorized agent has corrected
17 and remedied the violation or violations giving rise to the action
18 for injunctive relief. An enjoined entity may move to dissolve an
19 injunction based on a showing that the material violation has been
20 corrected and remedied.

21 (b) After a trustee's deed upon sale has been recorded, a
22 mortgage servicer, mortgagee, beneficiary or authorized agent is
23 liable to a borrower for actual economic damages resulting from a
24 material violation of section four, five, nineteen or twenty of

1 this article by that mortgage servicer, mortgagee, beneficiary or
2 authorized agent where the violation was not corrected and remedied
3 prior to the recordation of the trustee's deed upon sale. If the
4 court finds that the material violation was intentional or reckless
5 or resulted from willful misconduct by a mortgage servicer,
6 mortgagee, beneficiary or authorized agent, the court may award the
7 borrower the greater of treble actual damages or statutory damages
8 of \$50,000.

9 (c) A mortgage servicer, mortgagee, beneficiary, or authorized
10 agent is not liable for any violation that it has corrected and
11 remedied prior to the recordation of the trustee's deed upon sale,
12 or that has been corrected and remedied by third parties working on
13 its behalf prior to the recordation of the trustee's deed upon
14 sale.

15 (d) A violation of section four, five, nineteen or twenty of
16 this article by a person licensed by the Commissioner of Banking,
17 the West Virginia Real Estate Commission or subject to the
18 jurisdiction of the West Virginia Business Corporation Act is a
19 violation of that person's licensing requirements or other
20 statutory requirements.

21 (e) A violation of this article does not affect the validity
22 of a sale in favor of a bona fide purchaser and any of its
23 encumbrancers for value without notice.

24 (f) A third-party encumbrancer is not relieved of liability

1 resulting from violations of section four, five, nineteen or twenty
2 of this article committed by that third-party encumbrancer, that
3 occurred prior to the sale of the subject property to the bona fide
4 purchaser.

5 (g) The rights, remedies and procedures provided by this
6 section are in addition to and independent of any other rights,
7 remedies, or procedures under any other law. Nothing in this
8 section may be construed to alter, limit, or negate any other
9 rights, remedies, or procedures provided by law.

10 (h) A court may award a prevailing borrower reasonable
11 attorney's fees and costs in an action brought pursuant to this
12 section. A borrower has prevailed for purposes of this subsection
13 if the borrower obtained injunctive relief or damages pursuant to
14 this section.

15 (i) This section applies only to entities described in
16 subsection (b), section twenty of this article.

17 (j) This section remains in effect only until January 1, 2018,
18 and as of that date is repealed, unless a later enacted statute,
19 that is enacted before January 1, 2018, deletes or extends that
20 date.

NOTE: The purpose of this bill is to create The West Virginia Homeowner Bill of Rights. The bill states legislative findings and its purpose in relation to foreclosures in the state generally. The bill requires mortgage servicers to contact the borrower prior to filing a notice of default. The bill requires mortgage servicers to

explore options for the borrower to avoid foreclosure. The bill requires the borrower to be provided with specified information in writing prior to recordation of a notice of default. The bill establishes additional procedures to be followed regarding a first lien loan modification application and the denial of an application. The bill provides for a borrower's right to appeal a denial. The bill requires a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time. The bill prohibits the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered. The bill authorizes the greater of treble actual damages or \$50,000 in statutory damages if a violation is found to be intentional or reckless or resulted from willful misconduct. The bill provides that violations by licensees of certain state agencies are also violations of those respective licensing laws. The bill requires a mortgage servicer who conducts more than one hundred seventy-five foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill requires that, before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. The bill authorizes administrative enforcement against licensees by certain state agencies. The bill defines terms. The bill sets forth requirements. The bill establishes effective and termination dates. The bill authorizes rule-making.

This article is new; therefore, strike-throughs and underscoring have been omitted.