

**WEST VIRGINIA LEGISLATURE  
EIGHTY-FIRST LEGISLATURE  
REGULAR SESSION, 2014**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 383**

(SENATORS TUCKER, BARNES, D. HALL AND SNYDER  
*ORIGINAL SPONSORS*)

[PASSED MARCH 7, 2014; TO TAKE EFFECT JULY 1, 2014.]

SB 383

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

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

**That §31-17-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-17A-2 of said code be amended and reenacted, all to read as follows:**

81 # A 81 81 81

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

AMOUNTED 2007  
STATE OF WEST VIRGINIA

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

1 As used in this article:

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

10 (b) "Affiliated" means persons under the same ownership  
11 or management control. As to corporations, limited liability  
12 companies or partnerships, where common owners manage  
13 or control a majority of the stock, membership interests or  
14 general partnership interests of one or more such  
15 corporations, limited liability companies or partnerships,  
16 those persons are considered affiliated. In addition, persons  
17 under the ownership or management control of the members  
18 of an immediate family shall be considered affiliated. For  
19 purposes of this section, "immediate family" means mother,  
20 stepmother, father, stepfather, sister, stepsister, brother,  
21 stepbrother, spouse, child and grandchildren;

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

24 (1) The cash price of the goods, services or interest in  
25 land, less the amount of any down payment, whether made in  
26 cash or in property traded in;

27           (2) The amount actually paid or to be paid by the seller  
28 pursuant to an agreement with the buyer to discharge a  
29 security interest in or a lien on property traded in; and

30           (3) If not included in the cash price:

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

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

35           (C) Additional charges permitted by this article;

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

38           (e) "Broker" means any person acting in the regular  
39 course of business who, for a fee or commission or other  
40 consideration, negotiates or arranges, or who offers to  
41 negotiate or arrange, or originates or assigns a primary or  
42 subordinate mortgage loan between a lender and a borrower.  
43 A person is considered to be acting in the regular course of  
44 business if he or she negotiates or arranges, or offers to  
45 negotiate or arrange, or originates, processes or assigns any  
46 primary or subordinate mortgage loans in any one calendar  
47 year; or if he or she seeks to charge a borrower or receive  
48 from a borrower money or other valuable consideration in  
49 any primary or subordinate mortgage transaction before  
50 completing performance of all broker services that he or she  
51 has agreed to perform for the borrower;

52           (f) "Brokerage fee" means the fee or commission or other  
53 consideration charged by a broker or loan originator for the  
54 services described in subdivision (e) of this section;

55 (g) "Commissioner" means the Commissioner of  
56 Financial Institutions of this state;

57 (h) "Finance charge" means the sum of all interest and  
58 similar charges payable directly or indirectly by the debtor  
59 imposed or collected by the lender incident to the extension  
60 of credit as coextensive with the definition of "loan finance  
61 charge" set forth in section one hundred two, article one,  
62 chapter forty-six-a of this code;

63 (i) "Lender" means any person who makes or offers to  
64 make or accepts or offers to accept or purchases or services  
65 any primary or subordinate mortgage loan in the regular  
66 course of business. A person is considered to be acting in the  
67 regular course of business if he or she makes or accepts, or  
68 offers to make or accept, any primary or subordinate  
69 mortgage loans in any one calendar year.

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

82 (j) "Licensee" means any person duly licensed by the  
83 commissioner under the provisions of this article or article  
84 seventcen-a of this chapter as a lender, broker or mortgage  
85 loan originator;

86           (k) “Nationwide Mortgage Licensing System and  
87 Registry” means a mortgage licensing system developed and  
88 maintained by the Conference of State Bank Supervisors and  
89 the American Association of Residential Mortgage  
90 Regulators for the licensing and registration of licensed  
91 mortgage brokers and lenders licensed under this article and  
92 mortgage loan originators licensed under article seventeen-a  
93 of this chapter;

94           (l) “Person” means an individual, partnership,  
95 association, trust, corporation or any other legal entity, or any  
96 combination thereof;

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

103           (n) “Servicing” or “servicing a residential mortgage loan”  
104 means through any medium or mode of communication the  
105 collection or remittance for, or the right or obligation to  
106 collect or remit for another lender, note owner or noteholder,  
107 payments of principal, interest, including sales finance  
108 charges in a consumer credit sale, and escrow items as  
109 insurance and taxes for property subject to a residential  
110 mortgage loan; and

111           (o) “Subordinate mortgage loan” means any loan  
112 primarily for personal, family or household use that is  
113 secured by a mortgage, deed of trust or other equivalent  
114 consensual security interest on a dwelling as defined in  
115 Section 103(w) of the Truth in Lending Act or residential real  
116 estate upon which is constructed or intended to be  
117 constructed a dwelling and is subject to the lien of one or  
118 more prior recorded mortgages or deeds of trust.

**ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE  
LICENSING ACT.**

**§31-17A-2. Definitions.**

1 As used in this article:

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

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

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

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

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

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

19 (g) "Loan processor or underwriter" means an individual  
20 who performs clerical or support duties as an employee at the  
21 direction of and subject to the supervision and instruction of  
22 a person licensed or exempt from licensing under article  
23 seventeen of this chapter.

24 (1) For purposes of this paragraph, “clerical or support  
25 duties” may include subsequent to the receipt of an  
26 application:

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

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

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

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

50 “Mortgage loan originator” does not include:

51 (1) An individual engaged solely as a loan processor or  
52 underwriter except as otherwise provided in section three of  
53 this article;

54           (2) A person or entity who does not currently have and  
55 has never held a residential mortgage loan originator license  
56 in this or any other state and who acts as a mortgage loan  
57 originator on no more than three residential mortgage loans  
58 to purchasers of any dwelling owned by the person or entity  
59 in any calendar year: *Provided*, That the person or entity is  
60 required to report any such loan within thirty days of the date  
61 of the loan to the Division of Financial Institutions on a form  
62 available from the division upon request. Failure to timely  
63 report as required by this subsection may result in imposition  
64 by the commissioner of a civil administrative penalty of up to  
65 \$250;

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

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

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

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

82           (1) Acting as a real estate salesperson or real estate  
83 broker for a buyer, seller, lessor or lessee of real property;

84           (2) Bringing together parties interested in the sale,  
85 purchase, lease, rental or exchange of real property;

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

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

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

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

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

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

110           (m) "Registered mortgage loan originator" means any  
111 individual who:

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

114 (A) A depository institution;

115 (B) A subsidiary that is:

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

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

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

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

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

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

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

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

  
.....  
Chairman Senate Committee

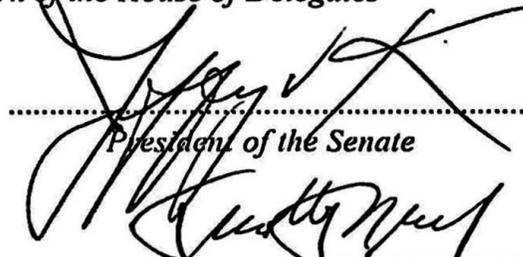
  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2014.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

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

  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 17 2014

Time 1:20 pm