

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 654**

SENATOR AZINGER, *original sponsor*

[Originating in the Committee on Banking and  
Insurance; Reported on February 21, 2019]



1 A BILL to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended, relating  
2 to amending an exception under the definition of “mortgage loan originator” related to  
3 retailers of manufactured or modular homes.

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

**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 Financial Institutions of this state;

3 (b) “Depository institution” has the same meaning as in Section three of the Federal  
4 Deposit Insurance Act and includes any federally insured credit union; ~~and~~

5 (c) “Division” means the West Virginia Division of Financial Institutions;

6 (d) “Federal banking agencies” means the Board of Governors of the Federal Reserve  
7 System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the  
8 National Credit Union Administration, and the Federal Deposit Insurance Corporation;

9 (e) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or  
10 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

11 (f) “Individual” means a natural person; ~~and~~

12 (g) “Loan processor or underwriter” means an individual who performs clerical or support  
13 duties as an employee at the direction of and subject to the supervision and instruction of a person  
14 licensed or exempt from licensing under §31-17-1 *et seq.* of this code;

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

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

19 (B) Communicating with a consumer to obtain the information necessary for the  
20 processing or underwriting of a loan, to the extent that such communication does not include

21 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage  
22 loan rates or terms; or

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

28 (h) "Mortgage loan originator" means an individual who for compensation or gain or in the  
29 expectation of compensation or gain takes a residential mortgage loan application or offers or  
30 negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker,  
31 or regulated consumer lender licensed by the Division of Financial Institutions. "Mortgage loan  
32 originator" does not include:

33 (1) An individual engaged solely as a loan processor or underwriter except as otherwise  
34 provided in §31-17A-3 of this code;

35 (2) A person or entity who does not currently have and has never held a residential  
36 mortgage loan originator license in this or any other state and who acts as a mortgage loan  
37 originator on no more than three residential mortgage loans to purchasers of any dwelling owned  
38 by the person or entity in any calendar year: *Provided*, That the person or entity is required to  
39 report any such loan within 30 days of the date of the loan to the Division of Financial Institutions  
40 on a form available from the division upon request. Failure to timely report as required by this  
41 subsection may result in imposition by the commissioner of a civil administrative penalty of up to  
42 \$250;

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

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

49 (5) ~~A manufactured or modular home retailer employee who performs purely~~  
50 ~~administrative or clerical tasks and who receives only the customary salary or commission from~~  
51 ~~the employer in connection with the sales transaction~~ A retailer of manufactured or modular  
52 homes and any employee of such retailer, if the retailer or employee, as applicable:

53 (A) Does not receive compensation or gain for engaging in activities described in this  
54 subsection that is in excess of any compensation or gain received in a comparable cash  
55 transaction;

56 (B) When informing a consumer about one or more mortgage lenders, discloses to the  
57 consumer in writing, signed by the consumer, any corporate affiliation with any mortgage lender:  
58 Provided, That if the retailer or employee has a corporate affiliation with any mortgage lender, at  
59 least one unaffiliated mortgage lender must be identified to the consumer in writing, signed by the  
60 consumer;

61 (C) Does not directly negotiate with the consumer or mortgage lender on loan terms,  
62 including rates, fees, and other costs; and

63 (D) Does not represent to the public, through advertising or other means of communicating  
64 or providing information, including the use of business cards, stationery, brochures, signs, rate  
65 lists, social media, or other promotional items, that the retailer or employee can or will perform  
66 the activities described in this subsection;

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

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

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

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

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

78 (5) Offering to engage in any activity, or act in any capacity, described in §31-17A-2(i)(1)  
79 through §31-17A-2(i)(4) of this code;

80 (j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing  
81 system developed and maintained by the Conference of State Bank Supervisors and the  
82 American Association of Residential Mortgage Regulators for the licensing and registration of  
83 mortgage brokers and lenders licensed pursuant to §31-17-1 *et seq.* of this code and mortgage  
84 loan originators licensed pursuant to this article;

85 (k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate  
86 mortgage;

87 (l) "Person" means a natural person, corporation, company, limited liability company,  
88 partnership, or association;

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

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

91 (A) A depository institution;

92 (B) A subsidiary that is:

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

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

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

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

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

102           (o) “Residential real estate” means any real property located in West Virginia upon which  
103 a dwelling is constructed or intended to be constructed ~~a dwelling~~; and

104           (p) “Unique identifier” means a number or other identifier assigned by protocols  
105 established by the Nationwide Mortgage Licensing System and Registry.

NOTE: The purpose of this bill is to amend and clarify the definition of loan originator.

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