

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2969

BY DELEGATE WESTFALL, NELSON AND PORTERFIELD

[Introduced February 11, 2019; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as emended, relating
2 to amending the definition of “mortgage loan originator”; clarifying the definition.

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 article seventeen of this chapter.

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 or an employee of the retailer if the retailer or employee, as applicable:

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

56 (B) Discloses to the consumer:

57 (i) In writing any corporate affiliation with any mortgage lender; and

58 (ii) If the retailer has a corporate affiliation with any mortgage lender, at least one
59 unaffiliated mortgage lender;

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

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

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

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

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

72 (3) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
73 purchase, lease, rental or exchange of real property other than in connection with providing

74 financing with respect to any such transaction;

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

77 (5) Offering to engage in any activity, or act in any capacity, described in subsection (1),
78 (2), (3) or (4) of this section;

79 (j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
80 system developed and maintained by the Conference of State Bank Supervisors and the
81 American Association of Residential Mortgage Regulators for the licensing and registration of
82 mortgage brokers and lenders licensed pursuant to article seventeen of this chapter and mortgage
83 loan originators licensed pursuant to this article;

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

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

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

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

90 (A) A depository institution;

91 (B) A subsidiary that is:

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

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

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

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

97 (n) "Residential mortgage loan" means any loan primarily for personal, family or household
98 use that is secured by a mortgage, deed of trust or other equivalent consensual security interest
99 on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate

100 upon which is constructed or intended to be constructed a dwelling;

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

103 (p) "Unique identifier" means a number or other identifier assigned by protocols
104 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.