

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2111**

By Delegates W. Clark and Hall

[Originating in the Committee on the Judiciary;

Reported on March 18, 2025]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article  
2 designated §31-17B-1; §31-17B-2; §31-17B-3; §31-17B-4; §31-17B-5; §31-17B-6; and  
3 §31-17B-7; relating to establishing the Uniform Mortgage Modification Act; providing an  
4 article citation designation; defining terms; providing the applicability of this article to  
5 certain mortgage modifications and providing exceptions thereto; providing that certain  
6 existing terms and conditions of a mortgage continue to be in effect when other specified  
7 terms are modified without altering the loans secured priority against the property for which  
8 the loan is held; requesting courts to promote uniformity between states when applying  
9 and construing this act; providing that this act does limit and modify certain provisions of  
10 the Global and National Commerce Act and providing an exception thereto; and providing  
11 that the provisions of this act apply only to those mortgage modifications made on or after  
12 the effective date of the act.

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

## **ARTICLE 17B. UNIFORM MORTGAGE MODIFICATION ACT**

### **§31-17B-1. Title.**

1 This article may be cited as the Uniform Mortgage Modification Act.

### **§31-17B-2. Definitions.**

1 In this article:

2 (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
3 optical, electromagnetic, or similar capabilities;

4 (2) "Financial covenant" means an undertaking to demonstrate an obligor's  
5 creditworthiness or the adequacy of security provided by an obligor;

6 (3) "Modification" includes change, amendment, revision, correction, addition,  
7 supplementation, elimination, waiver, and restatement;

8 (4) "Mortgage":

9 (A) Means an agreement that creates a consensual interest in real property to secure

payment or performance of an obligation, regardless of:

(i) How the agreement is denominated, including a mortgage, deed of trust, trust deed, security deed, indenture, and deed to secure debt; and

(ii) Whether the agreement also creates a security interest in personal property; and

(B) Does not include an agreement that creates a consensual interest to secure a liability owed by a unit owner to a condominium association, owners' association, or cooperative housing association for association dues, fees, or assessments;

(5) "Mortgage modification" means modification of:

(A) A mortgage;

(B) An agreement that creates an obligation, including a promissory note, loan agreement, or credit agreement; or

(C) An agreement that creates other security or credit enhancement for an obligation, including an assignment of leases or rents or a guaranty;

(6) "Obligation" means a debt, duty, or other liability, secured by a mortgage;

(7) "Obligor" means a person that:

(A) Owes payment or performance of an obligation;

(B) Signs a mortgage; or

(C) Is otherwise accountable, or whose property serves as collateral, for payment or performance of an obligation;

(8) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity;

(9) "Recognized index" means an index to which changes in the interest rate may be linked that is:

(A) Readily available to, and verifiable by, the obligor; and

(B) Beyond the control of the person to whom the obligation is owed;

(10) "Record", used as a noun, means information:

(A) Inscribed on a tangible medium; or

(B) Stored in an electronic or other medium and retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) Execute or adopt a tangible symbol; or

(B) Attach to or logically associate with the record an electronic symbol, sound, or process.

**§31-17B-3.**

**Scope.**

(a) Except as provided in subsection (c) of this section, this article applies to a mortgage modification.

(b) This article does not affect:

(1) Law governing the required content of a mortgage;

(2) A statute of limitations or other law governing the expiration or termination of a right to enforce an obligation or a mortgage;

(3) A recording statute;

(4) A statute governing the priority of a tax lien or other governmental lien;

(5) A statute of frauds or electronic transactions pursuant to §39A-1-1 *et seq.*; or

(6) Except as provided in §31-17B-4(b)(8) of this code, law governing the priority of a future advance.

(c) This article does not apply to any of the following modifications:

(1) A release of, or addition to, property encumbered by a mortgage;

(2) A release of, addition of, or other change in an obligor; or

(3) An assignment or other transfer of a mortgage or an obligation.

**§31-17B-4.**

**Effect**

**of**

**Mortgage**

**Modification.**

(a) For a mortgage modification described in subsection (b) of this section:

(1) The mortgage continues to secure the obligation as modified;

(2) The priority of the mortgage is not affected by the modification;

(3) The mortgage retains its priority regardless of whether a record of the mortgage

modification is recorded in the county clerk's office pursuant to §39-1-1 *et seq.* of this code; and

(4) The modification is not a novation.

(b) Subsection (a) of this section applies to one or more of the following mortgage modifications:

(1) An extension of the maturity date of an obligation;

(2) A decrease in the interest rate of an obligation;

(3) If the change does not result in an increase in the interest rate of an obligation as calculated on the date the modification becomes effective:

(A) A change to a different index that is a recognized index if the previous index to which changes in the interest rate were linked is no longer available;

(B) A change in the differential between the index and the interest rate;

(C) A change from a floating or adjustable rate to a fixed rate; or

(D) A change from a fixed rate to a floating or adjustable rate based on a recognized index;

(4) A capitalization of unpaid interest or other unpaid monetary obligation;

(5) A forgiveness, forbearance, or other reduction of principal, accrued interest, or other monetary obligation;

(6) A modification of a requirement for maintaining an escrow or reserve account for payment of an obligation, including taxes and insurance premiums;

(7) A modification of a requirement for acquiring or maintaining insurance;

(8) A modification of an existing condition to advance funds;

(9) A modification of a financial covenant; and

(10) A modification of the payment amount or schedule resulting from another modification described in this subsection.

(c) The effect of a mortgage modification not described in subsection (b) of this section is governed by other law.

**§31-17B-5. Uniformity of Application and Construction.**

1        In applying and construing this uniform act, a court shall consider the promotion of  
2        uniformity of the law among jurisdictions that enact it.

**§31-17B-6. Relation to Electronic Signatures in Global and National Commerce Act.**

1        This article modifies, limits, or supersedes the Electronic Signatures in Global and  
2        National Commerce Act, 15 U.S.C. § 7001 *et seq.*, but does not modify, limit, or supersede 15  
3        U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. §  
4        7003(b).

**§31-17B-7. Transitional Provision.**

1        This article applies to a mortgage modification made on or after its effective date  
2        regardless of when the mortgage or the obligation was created.