

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 79

By Senator Oliverio

[Introduced February 12, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding 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:

- 36 (A) Inscribed on a tangible medium; or
- 37 (B) Stored in an electronic or other medium and retrievable in perceivable form.
- 38 (11) "Sign" means, with present intent to authenticate or adopt a record:
- 39 (A) Execute or adopt a tangible symbol; or
- 40 (B) Attach to or logically associate with the record an electronic symbol, sound, or process.

§31-17B-3. Scope.

- 1 (a) Except as provided in §31-17B-3 (c), this article applies to a mortgage modification.
- 2 (b) This article does not affect:
- 3 (1) Law governing the required content of a mortgage;
- 4 (2) A statute of limitations or other law governing the expiration or termination of a right to
- 5 enforce an obligation or a mortgage;
- 6 (3) A recording statute;
- 7 (4) A statute governing the priority of a tax lien or other governmental lien;
- 8 (5) A statute of frauds or electronic transactions pursuant to §39A-1-1 *et seq.*; or
- 9 (6) Except as provided in §31-1B-4 4(b)(8), law governing the priority of a future advance.
- 10 (c) This article does not apply to any of the following modifications:
- 11 (1) A release of, or addition to, property encumbered by a mortgage;
- 12 (2) A release of, addition of, or other change in an obligor; or
- 13 (3) An assignment or other transfer of a mortgage or an obligation.

§31-17B-4. Effect of Mortgage Modification.

- 1 (a) For a mortgage modification described in §31-17B-4 (b):
- 2 (1) The mortgage continues to secure the obligation as modified;
- 3 (2) The priority of the mortgage is not affected by the modification;
- 4 (3) The mortgage retains its priority regardless of whether a record of the mortgage
- 5 modification is recorded in the county clerk's office pursuant to §7-1-3; and
- 6 (4) The modification is not a novation.

(b) Subsection (a) 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) is governed by other law.

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

In applying and construing this uniform act, a court shall consider the promotion of 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
3 15 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 the effective date of this act
2 regardless of when the mortgage or the obligation was created.

NOTE: The purpose of this bill is to enact the Uniform Mortgage Modification Act, which allows certain modifications in existing mortgage agreements to be made without altering the priority of the mortgage as a lien against the secured property and was recommended for passage by the Commission on Interstate Cooperation.

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