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FOR

Senate Bill No. 532

(Senators Minard, Jenkins and Kessler, *original sponsors*)

[Passed April 9, 2009; to take effect July 1, 2009.]

AN ACT to amend and reenact §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and to amend and reenact §46A-4-102 of said code, all relating to the Division of Banking's participation in the Nationwide Mortgage Licensing System and Registry; complying with the SAFE Mortgage Licensing Act; amending and creating definitions; exempting federally insured depository institutions from broker licensing; allowing the Division of Banking to participate in the Nationwide Mortgage Licensing System and Registry; permitting the Nationwide Mortgage Licensing System and Registry to process background and credit checks on behalf of the Commissioner of Banking; creating a tiered bond structure for licensed lenders and brokers; reducing the license processing time for lenders and brokers; requiring a new application for certain changes in control

of mortgage licensees; clarifying the fee for licensee office relocation; synchronizing the mortgage annual report requirement with the Nationwide Mortgage Licensing System and Registry; outlining the purpose of the West Virginia SAFE Mortgage Licensing Act; defining terms associated with the SAFE Mortgage Licensing Act; requiring licensing and registration of mortgage loan originators; creating an application procedure for mortgage loan originators with minimum standards; requiring prelicensure education of mortgage loan originators; implementing a prelicensure testing requirement for mortgage loan originators; explaining standards for mortgage loan originator license renewal; clarifying annual continuing education requirements for mortgage loan originators; granting the commissioner authority to require mortgage loan originator licensing through the Nationwide Mortgage Licensing System and Registry; requiring the commissioner to create a challenge process for the Nationwide Mortgage Licensing System and Registry; creating enforcement authority for mortgage loan originators; defining violations and penalties of the SAFE Mortgage Licensing Act; requiring a surety bond to cover licensed mortgage loan originators that is tied to the amount of mortgage originations by each lender, broker or regulated consumer lender licensee; creating confidentiality provisions; granting investigation and examination authority to the Commissioner of Banking for violations of the SAFE Mortgage Licensing Act; outlining prohibited acts and practices for mortgage loan originators; requiring the Commissioner of Banking to report to the Nationwide Mortgage Licensing System and Registry; clarifying the use of unique identifiers; creating a severability section; defining effective dates; requiring the licensure of mortgage loan originators employed by licensed regulated consumer lenders; and implementing a bond requirement for regulated consumer lenders that originate mortgage loans.

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

That §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and that §46A-4-102 of said code be amended and reenacted, all to read as follows:

## CHAPTER 31. CORPORATIONS.

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

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

As used in this article:

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

(b) "Affiliated" means persons under the same ownership or management control. As to corporations,

limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;

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

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

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

(3) If not included in the cash price:

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

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

(C) Additional charges permitted by this article;

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

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

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

(g) "Commissioner" means the Commissioner of Banking of this state;

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

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

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

(k) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage brokers and lenders licensed under this article and mortgage loan originators licensed under article seventeen-a of this chapter;

(l) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

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

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

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

#### §31-17-2. License required for lender and broker originator; exemptions.

(a) A person may not engage in this state in the business of lender or broker unless and until he or she first obtains a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation may engage in business in this state unless it is registered with the Secretary of State to transact business in this state.

(b) All mortgage loan originators, as that term is defined by section two, article seventeen-a of this chapter, shall obtain a mortgage loan originator license pursuant to said article.

(c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on January 1, 2004.

(d) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state. Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(e) The provisions of this article do not apply to loans brokered by a federally insured depository institution.

(f) A person or entity designated in subsection (d) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(g) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: *Provided*, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

§31-17-3. Supervision by Commissioner of Banking; rules and regulations; personnel; participation in the Nationwide Mortgage Licensing System and Registry.

(a) It shall be the duty of the commissioner to enforce the provisions of this article and, to implement and make effective such provisions, he or she is hereby authorized and empowered to promulgate reasonable rules in accordance with the provisions of article three, chapter twenty-nine-a of this code and to employ such personnel as may be necessary.

(b) The commissioner may participate in the Nationwide Mortgage Licensing System and Registry and permit such system to process applications for mortgage lender and mortgage broker licenses in this state and receive and maintain records related to such licenses that are allowed or required to be maintained by the commissioner. The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees subject to this article. The Nationwide Mortgage Licensing System and Registry shall transfer electronically all fees payable to the Division of Banking directly to the credit of the commissioner's special revenue account with the State Treasurer.

(c) Mortgage lenders and brokers licensed pursuant to this article shall submit renewals for calendar year 2010 on or before October 1, 2009, in accordance with the amendments to this article and on a form prescribed by the commissioner. Beginning January 2, 2010, licensees shall transition to the Nationwide Mortgage Licensing System and Registry according to the terms established by that system.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) In connection with an application for licensing as a mortgage lender or mortgage broker, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or

entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this article, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(c) In order to reduce the points of contact which the commissioner may have to maintain, for purposes of this article, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(d) Application for a lender's or broker's license shall each year be submitted under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Background and credit checks shall be conducted in accordance with this section for any officer, director or owner, directly or indirectly, of ten percent or more of the capital stock of a corporation or any member of a limited liability or partnership with, directly or indirectly, a ten percent or greater ownership interest. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

(e) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least \$250,000;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of \$100,000 for licensees with West Virginia annual loan originations of \$0 to \$3 million, \$150,000 for West Virginia annual loan originations greater than \$3 million and up to \$10 million, and \$250,000 for West Virginia annual loan originations over \$10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: *Provided*, That lender licensees who service West Virginia mortgage loans shall file with the commissioner a bond under the same conditions listed above in the amount of \$200,000;

(4) Pay to the commissioner a license fee of \$1,250 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual

cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(f) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least \$10,000;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of \$50,000 for licensees with West Virginia loan originations of \$0 to \$3 million, \$75,000 for West Virginia loan originations greater than \$3 million and up to \$10 million, and \$100,000 for West Virginia loan originations over \$10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: *Provided*, That the bond must be in the amount of \$150,000 before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of \$350 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(g) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(h) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(i) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for nonprofit corporations whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-established median income for their area of residence.

(j) Every broker and lender licensee shall pay a fee of \$5 for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid annually to the Division of Banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the previous calendar year. If a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

(k) If a claim for a consumer restitution is pending on a bond required pursuant to this section when the commissioner makes a claim for a civil administrative penalty or an unpaid examination invoice, the consumer claim shall be resolved before any payments may be made for an unpaid penalty or examination invoice.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or

her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

- (1) The applicant does not have available the net worth required by the provisions of section four of this article, if applicable;
- (2) The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article; and
- (3) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within sixty days after the applicant therefor has fully complied with the provisions of this article. Under no circumstances whatever may a person or licensee act as a broker and lender in the same transaction. Whenever an application for a lender's or broker's license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain all fees to cover administrative costs of processing the broker or lender application.

§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.

(a) A license may not be transferable or assignable. A licensee may not offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the Division of Banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner and pay a relocation fee of \$100 for each office relocation.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on December 31 of each year and any license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of this article. All applications for the renewal of licenses shall be filed with the Nationwide Mortgage Licensing System and Registry according to the renewal schedule published for the system, but no later than sixty days before the expiration thereof.

(c) Any change in control of a licensee whereby equitable interest of fifty percent or more is transferred to an outside party, a new application must be submitted according to this article.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state, at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be



preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year upon participation in the Nationwide Mortgage Licensing System and Registry and on a date established by the Nationwide Mortgage Licensing System and Registry. For license years 2008 and 2009, all licensees shall submit an annual report to the Division of Banking on or before March 15, 2009, and March 15, 2010, respectively, on a form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the individual reports are not public records and may not be open to public inspection.

(e) The commissioner may enter into cooperative and information-sharing agreements with regulators in other states or with federal authorities to discharge his or her responsibilities under this article.

#### §31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any broker or lender license issued hereunder if he or she finds that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of the licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article;

(2) Has knowingly made any material misstatement in the application for the license;

(3) Does not have available the net worth required by the provisions of section four of this article, if applicable;

(4) Has failed or refused to keep the bond required by this article in full force and effect, if applicable;

(5) In the case of a foreign corporation, does not remain qualified to do business in this state;

(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article.

It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or any ground which would be cause for refusing a license to the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee does not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.

(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding \$1000 upon any lender or broker required to be licensed under this chapter who the commissioner determines has violated any of the provisions of this chapter. For the purposes of this section, each separate violation is subject to the fine or penalty herein prescribed and each day after the date of notification, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a mortgage lender or broker shall constitute a separate violation.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, he shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be. The commissioner shall also submit a copy of any such order for publication by the Nationwide Mortgage Licensing System and Registry.

(b) It shall be the duty of the licensee to comply with any such order: (i) Immediately if the license was suspended either following a hearing or for failure to keep the bond required by the provisions of section four of this article in full force and effect; or otherwise (ii) following expiration of the period provided in section fourteen of this article in which such licensee, if not previously provided the opportunity to a hearing on the matter, may demand a hearing before the commissioner without such demand having been timely made.

§31-17-20. Effective date.

The amendments to this article enacted during the regular session of the Legislature in the year 2009 shall be effective as of July 1, 2009.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-1. Purpose.

The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon West Virginia's consumers, West Virginia's economy, the neighborhoods and communities of West Virginia and the housing and real estate industry.

The Legislature finds that accessibility to mortgage credit is vital to the state's citizens. The Legislature also finds that it is essential for the protection of the citizens of West Virginia and the stability of West Virginia's economy that reasonable standards for licensing and regulation of the business practices of

mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this article is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive and fraudulent practices on the part of mortgage loan originators. §31-17A-2. Definitions. For purposes of this article, the following definitions shall apply:

- (1) "Depository institution" has the same meaning as in section three of the Federal Deposit Insurance Act and includes any federally insured credit union.
- (2) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration and the Federal Deposit Insurance Corporation.
- (3) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships.
- (4) "Individual" means a natural person.
- (5) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under article seventeen of this chapter.
  - (A) For purposes of this subsection, "clerical or support duties" may include subsequent to the receipt of an application: (i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
  - (B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.
- (6) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker or regulated consumer lender licensed by the Division of Banking.
  - (A) "Mortgage loan originator" does not include:
    - (i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section three of this article;
    - (ii) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;
    - (iii) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; and
    - (iv) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the sales transaction.

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

- (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;
- (B) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
- (C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property other than in connection with providing financing with respect to any such transaction;
- (D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (E) Offering to engage in any activity, or act in any capacity, described in subsection (1), (2), (3) or (4) of this section.

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

(9) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage.

(10) "Person" means a natural person, corporation, company, limited liability company, partnership or association.

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

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

(i) A depository institution;

(ii) A subsidiary that is:

(1) Owned and controlled by a depository institution; and

(2) Regulated by a federal banking agency; or

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

(B) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

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

(13) "Residential real estate" means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling.

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

§31-17A-3. License and registration required.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section:

(1) For all individuals other than individuals described in subdivision (2) of this subsection shall be January

31, 2010; and

(2) For all individuals licensed as mortgage loan originators before July 1, 2009, shall be January 1, 2011.

(c) The following are exempt from this article:

(1) Registered Mortgage Loan Originators, when acting for an entity described in subdivision (11), section two of this article;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) To implement an orderly and efficient licensing and transition process, the commissioner may establish interim policies and procedures for licensing and acceptance of applications as follows:

(1) Mortgage loan originators employed by or under exclusive contract to licensed mortgage brokers after the effective date of this article shall submit an application on a form prescribed by the commissioner, including all necessary information, fees and authorizations for investigation as the commissioner may determine necessary, and must meet the standards for licensure set forth in this article. Any license issued under this subdivision and any license current as of the effective date of this article will expire on December 31, 2010: *Provided*, That notwithstanding the licensing requirements under this section, an individual acting exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. In the event this extension of time is denied, such individuals shall apply for a license under this section within ninety days of the denial; and

(2) Mortgage loan originators employed by or under exclusive contract to licensed mortgage lenders and regulated consumer lenders shall comply with this article and submit all applications through the Nationwide Mortgage Licensing System and Registry on or before January 31, 2010.

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of \$50 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry.

(b) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage

Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(d) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(e) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Nonresident mortgage loan originators licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

#### §31-17A-5. Issuance of license.

The commissioner may not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation may not be considered a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court: *Provided*, That any pardon of a conviction may not be a conviction for purposes of this subsection:

(1) During the seven-year period preceding the date of the application for licensing and registration; or

(2) At any time preceding the date of application if the felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.

(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this article.

For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The commissioner shall not use a credit score as the sole basis for license denial. A determination that an individual has not shown financial responsibility may include, but not be limited to:

- (1) Current outstanding judgments, except judgments solely as a result of medical expenses;
  - (2) Current outstanding tax liens or other government liens and filings;
  - (3) Foreclosures within the past three years; and
  - (4) A pattern of seriously delinquent accounts within the past three years.
- (d) The applicant has completed the preclicensing education requirement described in section six of this article.
- (e) The applicant has passed a written test that meets the test requirement described in section seven of this article.
- (f) The applicant has met the surety bond requirement as required pursuant to section thirteen of this article.

#### §31-17A-6. Preclicensing and relicensing education of loan originators.

- (a) To meet the preclicensing education requirement, a person must complete at least twenty hours of education approved in accordance with subsection (b) of this section, which shall include at least:
- (1) Three hours of federal law and regulations;
  - (2) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;
  - (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
  - (4) Two hours of training related to West Virginia mortgage and consumer laws or issues.
- (b) For purposes of subsection (a) of this section, preclicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a preclicensing education course shall include review and approval of the course provider.
- (c) Nothing in this section precludes any preclicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.
- (d) Preclicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (e) The preclicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2), (3) and (4), subsection (a) of this section for any state shall be accepted as credit towards completion of preclicensing education requirements in West Virginia.
- (f) A person previously licensed under this article subsequent to July 1, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

#### §31-17A-7. Testing of loan originators.

- (a) To meet the written test requirement, an individual must pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.
- (b) A written test may not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
- (1) Ethics;
  - (2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination; and

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(c) Nothing in this section prohibits a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual may not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five consecutive years or longer must retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

§31-17A-8. Standards for license renewal.

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under section five of this article;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in section nine of this article; and

(3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

§31-17A-9. Continuing education for mortgage loan originators.

(a) To meet the annual continuing education requirements, a licensed mortgage loan originator must complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) One hour of West Virginia law or regulations.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:



- (1) Except for subsection (b), section eight of this article and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- (f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.
- (g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2) and (3), subsection (a) of this section for any state shall be accepted as credit towards completion of continuing education requirements in West Virginia.
- (h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
- (i) A person meeting the renewal requirements of subsections (a)(1) and (3) of section eight may make up any deficiency in continuing education as established by the commissioner.

#### §31-17A-10. Authority to require license.

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry to carry out this requirement. The commissioner may establish requirements as necessary, including, but not limited to:

- (1) Background checks for:
  - (A) Criminal history through fingerprint or other databases;
  - (B) Civil or administrative records;
  - (C) Credit history; or
  - (D) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (2) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (3) The setting or resetting as necessary of renewal or reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activities the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

#### §31-17A-11. Nationwide Mortgage Licensing System and Registry information challenge process.

The commissioner shall establish a process in accordance with the Administrative Procedures Act, provided in article five, chapter twenty-nine-a of this code, whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

#### §31-17A-12. Enforcement authorities, violations and penalties.

- (a) To ensure the effective supervision and enforcement of this article, the commissioner may:

- (1) Deny, suspend, revoke, condition or decline to renew a license issued under this article for a violation of this article or rules or order or directive entered under this article;
- (2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section five or eight of this article, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this article for violations of this article;
- (4) Impose civil administrative penalties on persons subject to this article pursuant to subsections (b), (c) and (d) of this section; and
- (5) Issue orders or directives under this article as follows:
  - (A) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;
  - (B) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;
  - (C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under section three if the commissioner determines that such license was erroneously issued or the licensee is currently in violation of this article; and
  - (D) Order or direct such other affirmative action as the commissioner deems necessary.
- (b) The commissioner may impose a civil administrative penalty on a mortgage loan originator or person subject to this article if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this article has violated or failed to comply with any requirement of this article or any rule prescribed by the commissioner under this article or order issued under authority of this article.
- (c) The maximum amount of penalty for each act or omission described in subsection (b) of this section shall be \$25,000.
- (d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

§31-17A-13. Surety bond required.

- (a) Each mortgage loan originator must be covered by a surety bond in accordance with this section in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or unpaid examination invoice. If the mortgage loan originator is an employee or exclusive agent of a person subject to this article, article seventeen of this chapter, or article four, chapter forty-six-a of this code, the surety bond of those other such persons may be used in lieu of the mortgage loan originator's individual surety bond requirement.
- (1) The surety bond must provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.
- (2) The surety bond shall be in a form as prescribed by the commissioner.
- (3) The commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this article.
- (b) The penal sum of the surety bond shall be maintained in an amount as required by article seventeen of this chapter for licensed mortgage lenders and brokers or article four, chapter forty-six-a of this code for regulated consumer lenders.
- (c) When an action is commenced on a licensee's bond or any bond covering the activities of a licensee under this article, the commissioner may require the filing of a new bond.

(d) Immediately upon recovery upon any action on a bond covering any licensee under this article, a new bond shall be filed.

#### §31-17A-14. Confidentiality.

(a) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or any provision of this code regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. This information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or any provision of this code.

(b) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) of this section may not be subject to:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, the privilege.

(d) Any provision of this code relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) of this section that is inconsistent with said subsection shall be superseded by the requirements of this section.

(e) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

#### §31-17A-15. Investigation and examination authority.

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(1) Criminal, civil and administrative history information, including nonconviction data;

(2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(b) For the purposes of investigating violations or complaints arising under this article, or for the purposes of examination, the commissioner may review, investigate or examine any licensee, individual or person subject to this article and his or her employer or sponsoring company as often as necessary. The commissioner may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may

be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena or order such person to produce books, accounts, records, files and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, must make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this article. The commissioner shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person subject to this article concerning their business.

(d) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information considered necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this article, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, an individual or person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this section, the commissioner may:

(1) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained under this section;

(3) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(g) The authority of this section shall remain in effect whether a licensee, individual or person subject to this article acts or claims to act under any licensing or registration law of this state or claims to act without that authority.

(h) A licensee, individual or person subject to investigation or examination under this section may not

knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

§31-17A-16. Prohibited acts and practices.

It is a violation of this article for a person or individual subject to this article to:

- (1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.
- (2) Engage in any unfair or deceptive practice toward any person.
- (3) Obtain property by fraud or misrepresentation.
- (4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.
- (5) Solicit, advertise or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting.
- (6) Conduct any business covered by this article without holding a valid license as required under this article, or assist or aide and abet any person in the conduct of business under this article without a valid license as required under this article.
- (7) Fail to make disclosures as required by this article and any other applicable state or federal law including rules and regulations thereunder.
- (8) Fail to comply with this article or rules promulgated under this article, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this article.
- (9) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.
- (10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.
- (11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
- (12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this article.
- (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
- (14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

§31-17A-17. Report to mortgage licensing system and registry.

The commissioner is required to report violations of this act, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions of section fourteen of this article.

§31-17A-18. Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or

websites, and any other documents as established by rule or order of the commissioner.

§31-17A-19. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the remainder of the article or the application of the provision to other persons or circumstances is not affected.

§31-17A-20. Effective date.

The effective date of this article shall be July 1, 2009.

## CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

### ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.

(1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant and the findings required of him or her before he or she may issue a license. At the time of the filing of the application, the sum of \$750 shall be paid to the commissioner as an investigation fee.

(2) A license may not be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state or to one licensed under the provisions of the West Virginia Mortgage Loan Act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. A license will not be granted to any office located outside this state: *Provided*, That the limitation of licensing contained in this subsection does not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. A license may not be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least \$10,000 in capital and has, for each specified location of operation, assets of at least \$2,000.

(3) Upon written request, the applicant is entitled to a hearing on the question of his or her qualifications for a license if: (a) The commissioner has notified the applicant in writing that his or her application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him or her that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location

no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he or she holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

(9) All mortgage loan originators, as defined in article seventeen-a, chapter thirty-one of this code, who are employed by a licensed regulated consumer lender must be licensed and issued a unique identifier by the Nationwide Mortgage Licensing System and Registry pursuant to the requirements provided in article seventeen-a, chapter thirty-one of this code.

(10) All regulated consumer lenders must file with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of \$100,000 for licensees with West Virginia mortgage loan originations of \$0 to \$3 million, \$150,000 for West Virginia mortgage loan originations greater than \$3 million and up to \$10 million, and \$200,000 for West Virginia mortgage loan originations over \$10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state.

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