

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4411

BY DELEGATES NELSON, CRISS, WESTFALL, AZINGER,
ESTEP-BURTON, LOVEJOY, ESPINOSA, BATES, BARRETT,
WAXMAN AND CAPITO

[Passed February 27, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating
2 to the West Virginia Residential Mortgage Lender, Broker and Servicer Act; and adjusting
3 the allowable final installment payment on mortgage loans.

Be it enacted by the Legislature of West Virginia:

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

**§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum
points, fees and charges; overriding of federal limitations; limitations on lien
documents; prohibitions on primary and subordinate mortgage loans; civil remedy.**

1 (a) The maximum rate of finance charges on or in connection with any subordinate
2 mortgage loan may not exceed 18 percent per year on the unpaid balance of the amount financed.

3 (b) A borrower has the right to prepay his or her debt, in whole or in part, at any time and
4 shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees
5 and loan origination fees, which rebate shall be computed under the actuarial method.

6 (c) Except as provided by §46A-3-109 of this code and by subsection (g) of this section,
7 no additional charges may be made, nor may any charge permitted by this section be assessed
8 unless the loan is made: *Provided*, That if the loan is not made, the licensee is not required to
9 refund an appraisal fee that is collected from a loan applicant by the licensee and paid to an
10 unrelated third-party appraiser unless the fee is required to be refunded pursuant to federal law.

11 (d) Where loan origination fees, investigation fees or points have been charged by the
12 licensee, the charges may not be imposed again in any refinancing of that loan or any additional
13 loan on that property made within 24 months thereof, unless the new loan has a reasonable,
14 tangible net benefit to the borrower considering all of the circumstances, including the terms of
15 both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances.
16 The licensee shall document this benefit in writing on a form prescribed by the commissioner and

17 maintain the documentation in the loan file. To the extent this subdivision overrides the
18 preemption on limiting points and other charges on first lien residential mortgage loans contained
19 in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.
20 S. C. §1735f-7a, the state law limitations contained in this section apply.

21 (e) Notwithstanding other provisions of this section, a delinquent charge or late charge
22 may be charged on any installment made 10 or more days after the regularly scheduled due date
23 in accordance with §46A-3-112 or §46A-3-113 of this code, whichever is applicable. The charge
24 may be made only once on any one installment during the term of the primary or subordinate
25 mortgage loan.

26 (f) Hazard insurance may be required by the lender. The charges for any insurance may
27 not exceed the standard rate approved by the Insurance Commissioner for the insurance. Proof
28 of all insurance in connection with primary and subordinate mortgage loans subject to this article
29 shall be furnished to the borrower within 30 days from and after the date of application therefor
30 by the borrower.

31 (g) Except for fees for services provided by unrelated third parties for appraisals,
32 inspections, title searches and credit reports, no application fee is allowed whether or not the
33 mortgage loan is consummated; however, the borrower may be required to reimburse the licensee
34 for actual expenses incurred by the licensee in a purchase money transaction after acceptance
35 and approval of a mortgage loan proposal made in accordance with the provisions of this article
36 which is not consummated because of:

37 (1) The borrower's willful failure to close the loan; or

38 (2) The borrower's false or fraudulent representation of a material fact which prevents
39 closing of the loan as proposed.

40 (h) A licensee may not make, offer to make, accept or offer to accept any primary or
41 subordinate mortgage loan except on the terms and conditions authorized in this article.

42 (i) A licensee may not induce or permit any borrower to become obligated to the licensee
43 under this article, directly or contingently, or both, under more than one subordinate mortgage
44 loan at the same time for the purpose or with the result of obtaining greater charges than would
45 otherwise be permitted under the provisions of this article.

46 (j) An instrument evidencing or securing a primary or subordinate mortgage loan may not
47 contain:

48 (1) A power of attorney to confess judgment;

49 (2) A provision whereby the borrower waives any rights accruing to him or her under the
50 provisions of this article;

51 (3) A requirement that more than one installment be payable in any one installment period,
52 or that the amount of any installment be greater or less than that of any other installment, except
53 for the final installment which may be in a lesser amount or no more than \$5 greater than any
54 previous payment installment, or unless the loan is structured as a revolving line of credit having
55 no set final payment date: *Provided*, That this prohibition does not apply to any mortgage
56 modification or refinancing loan made in participation with and in compliance with the federal
57 Making Homes Affordable program, or any other mortgage modification or refinancing loan
58 eligible under any government sponsored enterprise requirements or funded through any federal
59 or state program or litigation settlement;

60 (4) An assignment of or order for the payment of any salary, wages, commissions or other
61 compensation for services, or any part thereof, earned or to be earned;

62 (5) A requirement for compulsory arbitration which does not comply with federal law; or

63 (6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be
64 given a copy of every signed document executed by the borrower at the time of closing.

65 (k) A licensee may not charge a borrower or receive from a borrower money or other
66 valuable consideration as compensation before completing performance of all services the
67 licensee has agreed to perform for the borrower unless the licensee also registers and complies

68 with all requirements set forth for credit service organizations in §46A-6C-1 *et seq.* of this code,
69 including all additional bonding requirements as may be established therein.

70 (l) A licensee may not make or broker revolving loans secured by a primary or subordinate
71 mortgage lien for the retail purchase of consumer goods and services by use of a lender credit
72 card.

73 (m) In making any primary or subordinate mortgage loan, a licensee may not, and a
74 primary or subordinate mortgage lending transaction may not, contain terms which:

75 (1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess
76 of the fee that has been or will be remitted to the attorney; collect a fee for a product or service
77 where the product or service is not actually provided; misrepresent the amount charged by or paid
78 to a third party for a product or service; or collect duplicate fee or points to act as both broker and
79 lender for the same mortgage loan, however, fees and points may be divided between the broker
80 and the lender as they agree, but may not exceed the total charges otherwise permitted under
81 this article: *Provided*, That the fact of any fee, point or compensation is disclosed to the borrower
82 consistent with the solicitation representation made to the borrower;

83 (2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the
84 purpose of influencing the independent judgment of the appraiser with respect to the value of real
85 estate that is to be covered by a deed of trust or is being offered as security according to an
86 application for a primary or subordinate mortgage loan;

87 (3) Make or assist in making any primary or subordinate mortgage loan with the intent that
88 the loan will not be repaid and that the lender will obtain title to the property through foreclosure:
89 *Provided*, That this subdivision may not apply to reverse mortgages obtained under §47-24-1 *et*
90 *seq.* of this code;

91 (4) Require the borrower to pay, in addition to any periodic interest, combined fees,
92 compensation or points of any kind to the lender and broker to arrange, originate, evaluate,
93 maintain or service a loan secured by any encumbrance on residential property that exceed, in

94 the aggregate, six percent of the loan amount financed, including any yield spread premium paid
95 by the lender to the broker: *Provided*, That reasonable closing costs, as defined in §46A-1-102 of
96 this code, payable to unrelated third parties may not be included within this limitation: *Provided*,
97 *however*, That no yield spread premium is permitted for any loan for which the annual percentage
98 rate exceeds 18 percent per year on the unpaid balance of the amount financed: *Provided further*,
99 That if no yield spread premium is charged, the aggregate of fees, compensation or points can
100 be no greater than five percent of the loan amount financed. The financing of the fees and points
101 are permissible and, where included as part of the finance charge, does not constitute charging
102 interest on interest. To the extent that this section overrides the preemption on limiting points and
103 other charges on first lien residential mortgage loans contained in the United States Depository
104 Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law
105 limitations contained in this section apply;

106 (5) Secure a primary or subordinate mortgage loan by any security interest in personal
107 property unless the personal property is affixed to the residential dwelling or real estate;

108 (6) Allow or require a primary or subordinate mortgage loan to be accelerated because of
109 a decrease in the market value of the residential dwelling that is securing the loan;

110 (7) Require terms of repayment which do not result in continuous monthly reduction of the
111 original principal amount of the loan: *Provided*, That the provisions of this subdivision do not apply
112 to reverse mortgage loans obtained under §47-24-1 *et seq.* of this code, home equity, open-end
113 lines of credit, bridge loans used in connection with the purchase or construction of a new
114 residential dwelling or commercial loans for multiple residential purchases;

115 (8) Secure a primary or subordinate mortgage loan in a principal amount that, when added
116 to the aggregate total of the outstanding principal balances of all other primary or subordinate
117 mortgage loans secured by the same property, exceeds the fair market value of the property on
118 the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender
119 may rely upon a bona fide written appraisal of the property made by an independent third-party

120 appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and
121 Certification Board and prepared in compliance with the uniform standards of professional
122 appraisal practice: *Provided*, That this prohibition does not apply to any mortgage modification
123 or refinancing loan made in participation with and in compliance with the federal Making Homes
124 Affordable program, or any other mortgage modification or refinancing loan eligible under any
125 government sponsored enterprise requirements or funded through any federal or state program
126 or litigation settlement;

127 (9) Advise or recommend that the consumer not make timely payments on an existing loan
128 preceding loan closure of a refinancing transaction; or

129 (10) Knowingly violate any provision of any other applicable state or federal law regulating
130 primary or subordinate mortgage loans, including, without limitation, §46A-1-1 *et seq.* of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor