

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 651

BY SENATOR AZINGER

[Passed March 4, 2020; in effect 90 days from passage]

1 AN ACT to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended,
2 relating to amending the definition of “mortgage loan originator”; and clarifying the
3 definition of “mortgage loan originator” with respect to retailers of manufactured or modular
4 homes and their employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of Financial Institutions of this state;

3 (b) “Depository institution” has the same meaning as in Section three of the Federal
4 Deposit Insurance Act and includes any federally insured credit union;

5 (c) “Division” means the West Virginia Division of Financial Institutions;

6 (d) “Federal banking agencies” means the Board of Governors of the Federal Reserve
7 System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the
8 National Credit Union Administration, and the Federal Deposit Insurance Corporation;

9 (e) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or
10 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

11 (f) “Individual” means a natural person;

12 (g) “Loan processor or underwriter” means an individual who performs clerical or support
13 duties as an employee at the direction of and subject to the supervision and instruction of a person
14 licensed or exempt from licensing under §31-17-1 *et seq.* of this code.

15 (1) For purposes of this paragraph, “clerical or support duties” may include subsequent to
16 the receipt of an application:

17 (A) The receipt, collection, distribution, and analysis of information common for the
18 processing or underwriting of a residential mortgage loan; and

19 (B) Communicating with a consumer to obtain the information necessary for the
20 processing or underwriting of a loan, to the extent that such communication does not include
21 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
22 loan rates or terms; or

23 (2) An individual engaging solely in loan processor or underwriter activities shall not
24 represent to the public, through advertising or other means of communicating or providing
25 information, including the use of business cards, stationery, brochures, signs, rate lists, or other
26 promotional items, that such individual can or will perform any of the activities of a mortgage loan
27 originator;

28 (h) "Mortgage loan originator" means an individual who for compensation or gain or in the
29 expectation of compensation or gain takes a residential mortgage loan application or offers or
30 negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker,
31 or regulated consumer lender licensed by the Division of Financial Institutions. "Mortgage loan
32 originator" does not include:

33 (1) An individual engaged solely as a loan processor or underwriter except as otherwise
34 provided in §31-17A-3 of this code;

35 (2) A person or entity who does not currently have and has never held a residential
36 mortgage loan originator license in this or any other state and who acts as a mortgage loan
37 originator on no more than three residential mortgage loans to purchasers of any dwelling owned
38 by the person or entity in any calendar year: *Provided*, That the person or entity is required to
39 report any such loan within 30 days of the date of the loan to the Division of Financial Institutions
40 on a form available from the division upon request. Failure to timely report as required by this
41 subdivision may result in imposition by the commissioner of a civil administrative penalty of up to
42 \$250;

43 (3) A person or entity that only performs real estate brokerage activities and is licensed or
44 registered in accordance with West Virginia law, unless the person or entity is compensated by a

45 lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender,
46 mortgage broker, or other mortgage loan originator;

47 (4) A person or entity solely involved in extensions of credit relating to timeshare plans, as
48 that term is defined in Section 101(53D) of Title 11, United States Code; or

49 (5) A retailer of manufactured or modular homes or an employee of the retailer if the
50 retailer or employee, as applicable:

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

54 (B) Discloses to the consumer:

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

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

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

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

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

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

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

70 (3) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
71 purchase, lease, rental, or exchange of real property other than in connection with providing
72 financing with respect to any such transaction;

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

75 (5) Offering to engage in any activity, or act in any capacity, described in paragraph (1),
76 (2), (3), or (4) of this subdivision;

77 (j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
78 system developed and maintained by the Conference of State Bank Supervisors and the
79 American Association of Residential Mortgage Regulators for the licensing and registration of
80 mortgage brokers and lenders licensed pursuant to §31-17-1 *et seq.* of this code and mortgage
81 loan originators licensed pursuant to this article;

82 (k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate
83 mortgage;

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

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

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

88 (A) A depository institution;

89 (B) A subsidiary that is:

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

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

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

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

95 (n) “Residential mortgage loan” means any loan primarily for personal, family, or
96 household use that is secured by a mortgage, deed of trust, or other equivalent consensual
97 security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or
98 residential real estate upon which is constructed or intended to be constructed a dwelling;

99 (o) “Residential real estate” means any real property located in West Virginia, upon which
100 is constructed or intended to be constructed a dwelling; and

101 (p) “Unique identifier” means a number or other identifier assigned by protocols
102 established by the Nationwide Mortgage Licensing System and Registry.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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

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Governor