

SB55 SUB1

OTHER VERSIONS - [Introduced Version](#) |

## COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 55**

(By Senators Sypolt, McCabe and Carmichael)

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[Originating in the Committee on Government Organization;  
reported February 21, 2013.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9o, relating generally to consumers sales and service tax liability of homeowners' associations and their members; and exempting from consumers sales and service tax liability the dues, fees and assessments paid by members to homeowners' associations which are to be used by the homeowners' association acting in its representative capacity for all members to purchase for the members, rather than sell to the members, such goods and services.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-15-9o, to read as follows:

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.****§11-15-9o. Exemption for dues, fees and assessments paid to a homeowners' association by a member; and exemption for certain contracts to purchase third party goods or services by homeowner's association.**

(a) Membership dues, fees and assessments paid to a homeowners' association by a member thereof are exempt from the tax imposed by this article if the dues, fees and assessments are for the purpose of permitting or funding the homeowner's association to contract for purchase of third-party goods or services when acting in its representative capacity for all members, and only as a conduit for funds from the members, and not when the homeowner's association is selling taxable goods and services, without profit to its members: *Provided*, That purchases of taxable goods and services by the homeowners' association, when acting in its representative capacity for all members, are not exempt from consumer sales and services tax or use tax.

(b) For purposes of this article:

(1) "Homeowners' association" means a homeowners' association as defined in Section 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association" also includes any unit owners association organized under section one hundred one, article three, chapter thirty-six-b of this code.

(2) "Member" means a person having membership rights in a homeowners' association, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization ordinarily conferred on members of the homeowners' association, such as the right to vote, the right to elect officers and directors and the right to hold office within the organization. The term "member" also includes a "unit owner" as that term is defined in section one hundred three, article one, chapter thirty-six-b of this code.

Introduced Version

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**Senate Bill No. 150**

(By Senator Yost)

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[Introduced February 14, 2013; referred to the Committee on Labor; and then to the Committee on the  
Judiciary .]  
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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-11-21; and to amend said code by adding thereto a new section, designated §31-17-21, all relating to requiring residential construction projects to be bonded; setting forth a contractor's responsibilities; and requiring a lender making a loan for residential construction services to be financially responsible for payment to the contractor and any subcontractors who provide those services and to suppliers of materials used in the construction.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §21-11-21; and that said code be amended by adding thereto a new section, designated §31-17-21, all to read as follows:

**CHAPTER 21. LABOR.****ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.****§21-11-21. Residential construction; contractor's responsibilities.**

Contractors who erect, build, construct, alter, remove or repair any residential building or other residential structure, or other improvement appurtenant to that building or other structure, shall obtain for length of the project a surety bond for the total value of the project. The contractor shall, before beginning a project, provide a copy of that bond to the property owner, potential subcontractors, potential suppliers, any lender who has made a loan on the project and the commissioner. After work has begun on the project the contractor shall provide monthly reports to the property owner, subcontractors, suppliers, lenders and the commissioner on who, and in what amounts, were paid during that month on the project.

**CHAPTER 31. CORPORATIONS.****ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.****§31-17-21. Residential construction loans; lender responsibility.**

A lender who makes a loan to erect, build, construct, alter, remove or repair any building or other structure, or other improvement appurtenant to that building or other structure, or who alters or improves the real property where the structure stands, or from which it may have been removed, or who provides services for any of the foregoing, shall be responsible for the timely payment to the contractor and any subcontractors who perform the construction or removal services and to any suppliers of materials or other goods used in the performance of those services.

NOTE: The purpose of this bill is to require residential construction projects to be bonded. The bill sets forth a contractor's responsibilities. The bill requires a lender making a loan for residential construction services to be financially responsible for payment to the contractor and any subcontractors who provide those services and to suppliers of materials used in the construction.

These sections are new; therefore, strike-throughs and underscoring have been omitted.

Introduced Version

**Senate Bill No. 346**

(By Senators Snyder, Miller, Green, Sypolt, D. Hall and Williams)

[Introduced February 22, 2013; referred to the Committee on Government Organization .]

A BILL to amend and reenact §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15 and §30-38A-16, all relating to requiring appraisal management companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board; updating the duties, powers and rule-making authority of the board; unlawful acts; applicable law; definitions; requirements for registration, including written applications, verifications and background checks; requiring surety bonds; duties of appraisal management companies; prohibited acts; disciplinary action; hearing and notice procedures; and civil penalties.

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

That §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15 and §30-38A-16, all to read as follows:

**ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.****§30-38-7. General powers and duties.**

The board shall:

(a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

(b) Establish examination specifications as prescribed herein and provide for appropriate examinations;

(c) Establish registration requirements and procedure for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

~~(c)~~ (d) Approve or disapprove applications for certification and licensure;

(e) Approve or disapprove applications for registration under the provisions of article thirty-eight-a of this chapter;

~~(d)~~ (f) Define by rule continuing education requirements for the renewal of certifications and licenses;

~~(e)~~ (g) Censure, suspend or revoke licenses and certification as provided in this article;

(h) Suspend or revoke registrations under the provisions of article thirty-eight-a of this chapter;

~~(f)~~ (i) Hold meetings, hearings and examinations;

~~(g)~~ (j) Establish procedures for submitting, approving and disapproving applications;

~~(h)~~ (k) Maintain an accurate registry of the names, ~~and~~ addresses and contact information of all persons certified or issued a license to practice under this article;

(l) Maintain an accurate registry of the names, addresses and contact information of all persons and firms registered under the provisions of article thirty-eight-a of this chapter;

~~(i)~~ (m) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(n) Maintain accurate records on registrants under the provisions of article thirty-eight-a of this chapter;

~~(j)~~ (o) Issue to each licensed or certified real estate appraiser a pocket card with the appraiser's name and license or certification number. Pocket cards are the property of the State of West Virginia and, upon suspension or revocation of the license to practice pursuant to this article, will be returned immediately to the board;

(p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of this chapter;

~~(k)~~ (q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account may not exceed the moneys credited to it;

(r) Keep records and make reports as required by article one of this chapter; and

~~(m)~~ (s) Perform any other functions and duties necessary to carry out the provisions of this article and article thirty-eight-a of this chapter.

**§30-38-9. Rulemaking.**

(a) The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to provide for:

(1) Licensure and certification requirements, including requirements for applications, examinations, reciprocity, temporary permits, apprentice permits and reinstatement;

(2) Registration requirements, including delinquent and expired registrations, for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(2) (3) Fees for licenses, renewals of licenses and other services provided by the board;

(4) A fee schedule for registrations for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(5) Surety bond requirements for registrations for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(6) Requirements and procedures for appraisal management companies to maintain records under the provisions of article thirty-eight-a of this chapter;

(3) (7) Experience, education and continuing education requirements and approval of courses; and

(4) (8) Any other purpose to carry out the requirements of this article and article thirty-eight-a of this chapter.

(b) The rule governing appraiser qualifications must include requirements which meet or exceed the education, experience and examination requirements issued or endorsed by the appraisal qualifications board of the appraisal foundation.

(c) Any rules in effect as of the passage of this article on January 1, 2013, will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this act are interpreted to mean provisions of this article.

## **ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.**

### **§30-38A-1. Unlawful acts.**

(a) Commencing January 1, 2014, it is unlawful for any person or firm to perform or offer to perform appraisal management services, or act as an appraisal management company within this state without a registration issued by the West Virginia Real Estate Appraiser Licensing and Certification Board under the provisions of this article.

(b) Commencing January 1, 2014, it is unlawful for any person or firm not registered under the provisions of this article to advertise or use a title or description conveying the impression that the person or firm is registered to perform appraisal management services or registered to act as an appraisal management company within this state.

### **§30-38A-2. Applicable law.**

Appraisal management companies and appraisal management services covered under the provisions of this article are subject to the requirements set forth in this article and the rules promulgated hereunder, and the provisions of article one and article thirty-eight of this chapter.

### **§30-38A-3. Definitions.**

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Applicant" means a person or firm making an application for registration under the provisions of this article.

(b) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment or a review assignment.

(c) "Appraisal Management Company" means a person or firm that performs or provides appraisal management services, directly or indirectly, through any means of communication.

(d) "Appraisal management services" means the business of managing the process of having an appraisal performed for compensation or pecuniary gain, including:

(1) Conducting business directly or indirectly by telephone, electronically, mail or in person;

(2) Providing related administrative and clerical duties;

(3) Recruiting, selecting or retaining appraisers;

(4) Verifying qualifications of appraisers;

(5) Establishing and administering an appraiser panel;

(6) Negotiating fees with appraisers;

(7) Receiving appraisal orders from clients;

(8) Contracting with appraisers to perform appraisal services;

(9) Receiving appraisals from the appraiser;

(10) Reviewing or verifying the appraisal received from the appraiser;

(11) Tracking and determining the status of orders for appraisals;

(12) Conducting quality control of a completed appraisal;

(13) Submitting to the client a completed appraisal received from an appraiser;

(14) Collecting fees from the clients;

(15) Reimbursing appraisers for appraisal services rendered; and

(16) Providing software products that are used to select appraisers, order appraisals or perform any other appraisal management services.

(e) "Appraisal review" means the act of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraiser assignment. The review does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not make a substantive valuation change.

(f) "Appraisal services" means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards.

(g) "Appraiser" means a person licensed or certified, under the provisions of article thirty-eight of this chapter, to perform an appraisal.

(h) "Appraiser panel" means a group of appraisers that perform appraisals for an appraisal management company as

independent contractors.

(i) "Automated valuation model (AVM)" means a mathematically based computer software program that produces an estimate of market value based on market analysis of location, market conditions, and real estate characteristics from information that was previously and separately collected. The distinguishing feature of an AVM is that it is an estimate of market value produced through mathematical modeling. Credibility of an AVM is dependent on the data used and the skills of the modeler producing the AVM.

(j) "Board" means the West Virginia Real Estate Appraiser Licensing and Certification Board established under the provisions of article thirty-eight of this chapter.

(k) "Client" means a person or firm that contracts or enters into an agreement with an appraisal management company for the performance of an appraisal.

(l) "Controlling person" or "Managing principal" means a person authorized by an appraisal management company to contract or enter into agreements with clients and independent appraisers for the performance of appraisal services and has the power to manage the appraisal management company.

(m) "Firm" means a corporation, limited liability company, partnership, sole proprietorship or any other business entity.

(n) "Registrant" means a person or firm holding a registration issued by the board under the provisions of this article.

(o) "Registration" means a registration issued by the board under the provisions of this article.

(p) "State" means the State of West Virginia.

(q) "USPAP" means the Uniform Standards of Professional Appraisal Practice.

#### **§30-38A-4. Registration requirements.**

(a) A person or firm performing or offering to perform appraisal management services or acting as an appraisal management company within this state shall be registered with the board by January 1, 2014.

(b) A person or firm applying for a registration may not be owned, in whole or in part, directly or indirectly by:

(1) A person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction; or

(2) A firm that is owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction.

(c) The board may issue a registration to perform appraisal management services or act as an appraisal management company to a person or firm that:

(1) Makes written application to the board as set out in section five of this article;

(2) Submits verifications as set out in section six of this article;

(3) Submits national and state criminal background checks as set out in section seven of this article;

(4) Posts a surety bond as set out in section eight of this article;

(5) Pays the applicable fees as set out in section nine of this article;

(6) Has a designated controlling person or managing principal as set out in section ten of this article; and

(7) Meets any other requirement set by the board.

(d) The registrations issued under the provisions of this article shall be renewed annually on January 1.

(e) Registrations not renewed in a timely manner are delinquent. To reinstate a delinquent registration, the registrant must pay a monthly penalty, as set by the board.

(f) A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

(g) The board shall issue a registration number to each appraisal management company registered in this state.

(h) The board shall keep a list of appraisal management company registered in this state and publish the list on its website.

#### **§30-38A-5. Written application requirements.**

(a) The written application shall be submitted on a form prescribed by the board and shall include:

(1) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of the person or firm seeking registration;

(2) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of each owner seeking registration;

(3) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of the controlling person or managing principal of the firm seeking registration; and

(4) (A) If the applicant is a domestic firm, the designation of an agent for service of process; or

(B) If the applicant is a foreign firm, documentation that the foreign firm is authorized to do business in West Virginia and that an agent for service of process has been designated and the following has been submitted:

(i) A copy of the filing with the Secretary of State's Office appointing an agent for service of process; and

(ii) A certificate of authority issued by the Secretary of State.

(b) The board shall maintain a list of all applicants for registration that includes the information in the written application.

#### **§30-38A-6. Verification requirements.**

(a) The verification for registration shall be in writing, on a form prescribed by the board and signed by the applicant. The verification shall include statements that the applicant:

(1) Has a process in place to verify that any person used as an appraiser or added to the appraiser panel of the applicant is a licensed or certified appraiser in good standing in West Virginia;

(2) Has set requirements to ensure that appraisers are geographically competent and can perform the appraisals assigned;

(3) Has set procedures for an appraiser licensed or certified in West Virginia to review the work of the appraisers performing appraisals for the applicant to ensure that the appraisals are being conducted in accordance with the minimum

USPAP standards;

- (4) Will require appraisals to be conducted independently;
- (5) Will pay reasonable and customary fees to the appraisers;
- (6) Maintains a detailed record of each request for appraisal it receives from a client and the appraiser that performs the appraisal; and

(7) Has submitted any other information required by the board.

(b) The applicant and any controlling partner or managing principal or person directly or indirectly controlling the applicant shall submit a written verification, on a form prescribed by the board, that includes statements that:

- (1) The written application and verification for registration contain no false or misleading statements;
- (2) The applicant has complied with the requirements of this article;

(3) The applicant, each owner and the controlling person or managing principal of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of a felony;

(4) Within the past ten years, the applicant, each owner and the controlling person or managing principal of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of:

(A) A misdemeanor involving mortgage lending or real estate appraisals; or

(B) An offense involving breach of trust or fraudulent or dishonest dealing;

(5) The applicant, each owner and the controlling person or managing principal of the firm seeking registration are of good character and reputation and that none of them has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction;

(6) The applicant, each owner and the controlling person or managing principal of the firm seeking registration are not permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisals, appraisal management services or operating an appraisal management company;

(7) The applicant, each owner and the controlling person or managing principal of the firm seeking registration are not the subject of an order of the board, any state agency that regulates appraisal management companies or any other jurisdiction that denied, suspended or revoked the applicant's or firm's privilege to operate as an appraisal management company;

(8) The applicant, each owner and the controlling person or managing principal of the firm seeking registration have not acted as an appraisal management company while not being properly registered by the board; and

(9) Set forth any other requirements of the board.

**§30-38A-7. Background check requirements.**

(a) The applicant, each owner and the controlling person or managing principal of the firm seeking registration shall obtain national and state criminal background checks.

(b) The applicant, each owner and the controlling person or managing principal of the firm seeking registration shall obtain a state criminal background check first and then provide their fingerprints to the West Virginia State Police or a designated vendor for submission to the Federal Bureau of Investigation.

(c) The results of the national and state criminal background checks shall be sent to the board.

(d) The fees for the national and state criminal background checks cannot exceed the actual costs of processing the request and conducting the checks and are to be paid by the applicant, each owner and the controlling person or managing principal of the firm seeking registration.

**§30-38A-8. Surety bond requirements and claims.**

(a) Each applicant shall post and maintain a surety bond with the board. The aggregate liability of the surety bond may not exceed the principal sum of the surety bond.

(b) The surety bond shall:

(1) Be established by the board through rules;

(2) Not exceed \$500,000;

(3) Be in the form prescribed by the board; and

(4) Accrue to the state for the benefit of any claimant against the registrant to secure the faithful performance of the registrant's obligations.

(c) A party having a claim against the registrant may bring suit directly against the surety bond or the board may bring suit on behalf of the party having a claim against the registrant.

(d) Consumer claims shall be given priority in recovering from the surety bond.

(e) If a claim reduces the face amount of the surety bond, then the surety bond amount shall be restored upon renewal of the registrant's annual registration.

**§30-38A-9. Fee requirements.**

The fees assessed by the board, as established by legislative rule, shall include the annual fee for appraisal management companies to be included in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**§30-38A-10. Controlling person or managing principal requirements.**

(a) An appraisal management company shall have a designated controlling person or managing principal who will ensure compliance with this article and will be the main contact for all communication between the board and the appraisal management company.

(b) The controlling person or managing principal shall:

(1) Be of good character and reputation;

(2) Submit to national and state criminal background checks as set out in section seven of this article;

(3) Never have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction;

(4) Never have been a part of a firm that was permanently or temporarily enjoined by a court of competent jurisdiction

from engaging in or continuing any conduct or practice involving appraisals, appraisal management services or operating an appraisal management company; and

(5) Never have been the subject of an order of the board, any state agency that regulates appraisal management companies or any other jurisdiction that denied, suspended or revoked the applicant's or firm's privilege to operate as an appraisal management company.

**§30-38A-11. Requirements for removal from an appraiser panel.**

(a) An appraisal management company may only remove an appraiser from an appraiser panel or refuse to assign appraisals to an appraiser after providing the appraiser thirty days prior written notice stating the reasons for the removal or refusal and providing an opportunity for the appraiser to be heard.

(b) An appraiser may only be removed from an appraiser panel or refused appraisal assignments for the following reasons:

- (1) Illegal conduct;
- (2) Violating the minimum USPAP standards;
- (3) Violating applicable statutes or rules that result in a suspension or revocation of an appraiser's license or certification;
- (4) Substandard or improper performance as determined by the board by rule; or
- (5) Violating the contract between the appraiser and the appraisal management company.

(c) An appraiser that is removed from an appraiser panel or refused appraisal assignments may file a complaint with the board for a review of the appraisal management company's decision.

(d) The board shall hold a hearing on the complaint within a reasonable time, not exceeding one year after the complaint was filed.

(e) If the board determines after the hearing that an appraisal management company acted improperly then the board shall order the appraisal management company to restore the appraiser to the appraiser panel or assign appraisals to the appraiser.

(f) After the board's order, an appraisal management company may not:

- (1) Reduce the number of appraisals given to the appraiser; or
- (2) Penalize the appraiser in any other manner.

**§30-38A-12. Duties of appraisal management companies.**

(a) Each appraisal management company shall:

(1) Verify that an appraiser receiving work or being placed on an appraiser panel is:

- (A) Professionally and geographically competent;
- (B) Licensed or certified under the provisions of article thirty-eight of this chapter; and
- (C) In good standing in this state;

(2) Designate a controlling person or managing principal responsible for ensuring compliance with this article,

including filing with the board the following:

- (A) The name of the controlling person or managing principal;
  - (B) The contact information for the controlling person or managing principal;
  - (C) A verified acceptance of responsibility from the controlling person or managing principal; and
  - (D) A new form when there is a change of the controlling person or managing principal;
- (3) Maintain complete detailed records of requests for appraisals from clients, including:

- (A) The type of appraisal requested;
- (B) The name and license or certification number of the appraiser to whom the appraisal was referred;
- (C) The fees received from the client; and
- (D) The fees paid to the appraiser or any third party for services performed;

(4) Ensure that appraisal services are provided in an independent manner, free from inappropriate influence and coercion;

(5) Pay an appraiser reasonable and customary fees;

(6) Except in cases of breach of contract or substandard performance, pay an appraiser for the completion of an appraisal within sixty days after the appraiser provides the completed appraisal to the appraisal management company;

(7) Disclose its registration number on all its instruments and electronic transmissions;

(8) Disclose on all contracts, agreements, invoices, purchase orders or other documents, including any amendments, establishing work to be performed for or compensation due from its clients:

- (A) The name of the appraiser or third party performing the services;
- (B) A description of the services performed;
- (C) An itemization of the actual fees paid to an appraiser or third party for services performed; and
- (D) An itemization of the actual fees charged by the appraisal management company to the client for services;

(9) Inform the board, when it has a reasonable basis to believe, that an appraiser has:

- (A) Failed to comply with USPAP;
- (B) Violated applicable laws or rules; or
- (C) Engaged in unethical or unprofessional conduct;

(10) Keep accounts, correspondence, memoranda, papers and books, either by paper or electronically, in accordance with administrative procedures established by the board by legislative rule, for a minimum of five years or as long as the board determines by legislative rule; and

(11) Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State.

(b) The board may inspect the records of appraisal management companies at any time without prior notice.

(c) A sole proprietor of an appraisal management company is considered the controlling person or managing principal.

(d) If a disclosure becomes inaccurate for any reason, then a revised or amended disclosure shall be provided by the end of the next business day after the change. The revised or amended disclosure shall be clearly marked as revised or amended and contain sufficient information for the client to identify the original disclosure referenced.

(e) The provisions of this section do not exempt a registrant from any other reporting requirements contained in any federal or state law.

**§30-38A-13. Unprofessional conduct.**

An appraisal management company commits unprofessional conduct if it:

- (1) Requires an appraiser to modify an aspect of an appraisal which modification is not related to substandard performance or noncompliance with the terms of a contract or agreement;
- (2) Requires an appraiser to prepare an appraisal when the appraiser believes, in his or her own professional judgment and notifies the appraisal management company, that the appraiser does not have the necessary expertise for the specific geographic area;
- (3) Requires an appraiser to prepare an appraisal under a certain time frame that the appraiser believes, in his or her own professional judgment and notifies the appraisal management company, that the appraiser does not have the necessary time to meet all the necessary and relevant legal and professional obligations;
- (4) Prohibits or inhibits communication between an appraiser and any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;
- (5) Requires an appraiser to do anything that does not comply with:
  - (A) The USPAP; or
  - (B) The requests of the client; or
- (6) Makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including:
  - (A) A loan closing; or
  - (B) An appraisal for a specific dollar amount.

**§30-38A-14. Prohibited acts.**

(a) An appraisal management company or any person acting for an appraisal management company as an owner, director, officer, agent, employee or independent contractor may not:

- (1) Improperly influence or attempt to improperly influence the development, reporting, result or review of an appraisal;
- (2) Use intimidation, inducement, coercion, extortion, collusion, bribery, compensation, blackmail, threat of nonpayment, threat of exclusion from future appraisal work or any other means that unduly influences or pressures the appraiser;
- (3) Withhold payment to an appraiser for appraisal services;
- (4) Provide payment to an appraiser that is less than what is reasonable and customary;
- (5) Withhold business from an appraiser without cause;
- (6) Demote or terminate an appraiser without cause;
- (7) Expressly or impliedly promise future business, promotions or increased compensation to an appraiser;
- (8) Knowingly employ a person to a position of responsibility who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction;
- (9) Knowingly enter into a contract with a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction;
- (10) Knowingly enter into a contract, agreement or other business relationship for the purpose of obtaining real estate appraisal services with a firm that employs or contracts with a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, suspended or surrendered in this state or any other jurisdiction;
- (11) Knowingly fail to separate and disclose any fees charged to a client by the appraisal management company for an appraisal by an appraiser from fees charged to a client by the appraisal management company for appraisal management services;
- (12) Prohibit an appraiser from stating, in a submitted appraisal, the fee paid by the appraisal management company to the appraiser for the appraisal;
- (13) Request, allow or require an appraiser to collect any portion of the fee, including the appraisal fee, charged by the appraisal management company to the client;
- (14) Require an appraiser to provide the registrant with the appraiser's signature or seal in any form;
- (15) Alter, amend or change an appraisal submitted by an appraiser;
- (16) Remove an appraiser's signature or seal from an appraisal;
- (17) Add information to or remove information from an appraisal with the intent to change the conclusion of the appraisal;
- (18) Remove an appraiser from an appraiser panel without thirty days prior written notice to the appraiser and an opportunity for the appraiser to be heard;
- (19) Enter into an agreement or contract for the performance of appraisal services with an appraiser who is not in good standing with the board;
- (20) Request or require an appraiser to provide an estimated, predetermined or desired valuation in an appraisal;
- (21) Request or require an appraiser to provide estimated values or comparable sales at any time prior to the appraiser completing an appraisal;
- (22) Condition a request for an appraisal or the payment of an appraisal fee on:
  - (A) An opinion, conclusion or valuation reached; or
  - (B) A preliminary estimate or opinion requested from an appraiser;
- (23) Provide to an appraiser an anticipated, estimated, encouraged or desired value for an appraisal or a proposed or



targeted amount to be loaned or borrowed, except that a copy of the sales contract for the purchase transaction may be provided;

(24) Require an appraiser to indemnify or hold harmless an appraisal management company for any liability, damage, losses or claims arising out of the services provided by the appraisal management company;

(25) Have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal;

(26) Provide to an appraiser or a person related to the appraiser stock or other financial or nonfinancial benefits;

(27) Obtain, use or pay for a second or subsequent appraisal or order an automated valuation model, unless:

(A) There is a reasonable basis to believe that the initial appraisal was flawed and the basis is clearly and appropriately noted in the file;

(B) The second or subsequent appraisal, or automated valuation model is done under a bona fide prefunding or post-funding appraisal review or quality control process;

(C) The second appraisal is required by law; or

(D) The second or subsequent appraisal or automated valuation model is ordered by a client; or

(28) Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(b) This section does not prohibit an appraisal management company from requesting that an appraiser:

(1) Provide additional information about the basis for a valuation;

(2) Correct objective factual errors in an appraisal;

(3) Provide further detail, substantiation or explanation for the appraiser's conclusion; or

(4) Consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

#### **§30-38A-15. Disciplinary action.**

The board may deny, suspend, revoke or refuse to issue or renew the registration of an appraisal management company or may restrict or limit the activities of an appraisal management company or of a person or firm that owns an interest in or participates in the business of an appraisal management company for the following reasons:

(1) A person or firm acted as an appraisal management company or performed appraisal management services without being properly registered with the board;

(2) A person or firm did not perform the duties set out in this article;

(3) A person or firm engaged in unprofessional conduct as set out in this article;

(4) A person or firm engaged in a prohibited act set out in this article;

(5) The application for registration contained false or misleading information;

(6) A person or firm fraudulently or deceptively obtains or attempts to obtain a registration;

(7) A person or firm fraudulently or deceptively used a registration;

(8) A person or firm violated the provisions of this article, this code, or the board's rules;

(9) A person or firm was found guilty of a felony or pleaded guilty or nolo contendere to a felony;

(10) Within the past ten years, a person or firm was found guilty of or pleaded guilty or nolo contendere to a misdemeanor involving:

(A) Mortgage lending;

(B) Appraisals;

(C) Breach of trust; or

(D) Fraudulent or dishonest dealing;

(11) A person or firm is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;

(12) A person or firm is the subject of an order of the board or any other jurisdiction's appraisal management company regulatory agency that denied, suspended, revoked or restricted a person's or firm's privilege to operate as an appraisal management company;

(13) A person or firm failed to pay the applicable fees; or

(14) For any other finding by the board.

#### **§30-38A-16. Notice and hearing procedures.**

(a) The board, on its own motion or upon receipt of a written complaint, may investigate an appraisal management company, a person or firm associated therewith and a person or firm performing appraisal management services.

(b) If the board determines after the investigation there are grounds for disciplinary action, the board may hold a hearing after giving thirty days' prior notice.

(c) The board has the same powers set out in article thirty- eight of this chapter.

(d) After notice and a hearing, the board may:

(1) Suspend, revoke, deny, reprimand, cancel or restrict the registration of a registrant;

(2) Impose a fine not to exceed \$25,000 for each violation; or

(3) Take other disciplinary action as established by the board by rule.

(e) The board may obtain injunctive relief in Kanawha County Circuit Court to prevent a person or firm from violating the provisions of this article or the rules promulgated hereunder. The circuit court may grant a temporary or permanent injunction.

NOTE: The purpose of this bill is to require Appraisal Management Companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board. The bill updates the duties, powers and rule-making authority of the board and the general and specific regulation of Appraisal Management Companies.

Article 38A is new; therefore, strike-throughs and underscoring have been omitted.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on Government Organization.

Introduced Version

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**Senate Bill No. 361**

(By Senators Unger and Nohe)

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 [Introduced February 25, 2013; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.]  
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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-17B-1, §31-17B-2, §31-17B-3, §31-17B-4, §31-17B-5, §31-17B-6, §31-17B-7, §31-17B-8, §31-17B-9, §31-17B-10, §31-17B-11, §31-17B-12, §31-17B-13, §31-17B-14, §31-17B-15, §31-17B-16, §31-17B-17, §31-17B-18, §31-17B-19, §31-17B-20 and §31-17B-21, all relating to creating the West Virginia Homeowner Bill of Rights; stating legislative findings and purpose in relation to foreclosures in the state generally; requiring mortgage servicers to contact the borrower prior to filing a notice of default; requiring mortgage servicers to explore options for the borrower to avoid foreclosure; requiring the borrower to be provided with specified information in writing prior to recordation of a notice of default; establishing additional procedures to be followed regarding a first lien loan modification application and the denial of an application; providing for a borrower's right to appeal a denial; authorizing a borrower to seek an injunction and damages for violations; authorizing the greater of treble actual damages or \$50,000 in statutory damages if a violation is found to be intentional or reckless or resulted from willful misconduct; providing that violations by licensees of certain state agencies are also violations of those respective licensing laws; requiring a mortgage servicer who conducts more than one hundred seventy-five foreclosure sales per year or annual reporting period to establish a single point of contact with the borrower; requiring that, before recording or filing any of certain documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information; authorizing administrative enforcement against licensees by certain state agencies; defining terms; setting forth requirements; establishing effective and termination dates; and authorizing rulemaking.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §31-17B-1, §31-17B-2, §31-17B-3, §31-17B-4, §31-17B-5, §31-17B-6, §31-17B-7, §31-17B-8, §31-17B-9, §31-17B-10, §31-17B-11, §31-17B-12, §31-17B-13, §31-17B-14, §31-17B-15, §31-17B-16, §31-17B-17, §31-17B-18, §31-17B-19, §31-17B-20 and §31-17B-21, all to read as follows:

**ARTICLE 17B. THE WEST VIRGINIA HOMEOWNER BILL OF RIGHTS.**

§31-17B-1. Legislative findings.

The Legislature finds the following:

(1) The country is still reeling from the economic impacts of a wave of residential property foreclosures that began in 2007. All of this foreclosure activity has adversely affected property values and resulted in less money for schools, public safety, and other public services.

(2) It is essential to the economic health of this state to mitigate the negative effects on the state and local economies and the housing market that are the result of continued foreclosures by modifying the foreclosure process to ensure that borrowers who may qualify for a foreclosure alternative are considered for, and have a meaningful opportunity to obtain, available loss mitigation options. These changes to the state's foreclosure process are essential to ensure that the current crisis is not worsened by unnecessarily adding foreclosed properties to the market when an alternative to foreclosure may be available. Avoiding foreclosure, where possible, will help stabilize the state's housing market and avoid the substantial, corresponding negative effects of foreclosures on families, communities and the state and local economy.

(3) This article is necessary to provide stability to West Virginia's statewide and regional economies and housing market by facilitating opportunities for borrowers to pursue loss mitigation options.

**§31-17B-2. Definitions.**

For purposes of this article:

"Borrower" means, unless otherwise provided and for purposes of sections three, four, five, six, eight, nine, eleven, twelve, thirteen, fourteen, twenty and twenty-one of this article, any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state or proprietary foreclosure prevention alternative program offered by, or through, his or her mortgage servicer. "Borrower" does not include: An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary or authorized agent; an individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid

their contractual obligations to mortgagees or beneficiaries; or an individual who has filed a case under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure. "First lien" means the most senior mortgage or deed of trust on the property that is the subject of the notice of default or notice of sale.

"Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option.

"Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent. "Mortgage servicer" also means a subservicing agent to a master servicer by contract. "Mortgage servicer" does not include a trustee, or a trustee's authorized agent, acting under a power of sale pursuant to a deed of trust.

**§31-17B-3. Purpose.**

(a) The purpose of this article is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. This article does not require a particular result of that process.

(b) Nothing in this article obviates or supersedes the obligations of the signatories to the consent judgment entered on April 4, 2012 in *United States of America, et al. v. Bank of America Corporation, et al.*, filed in the *United States District Court for the District of Columbia*, Case Number 1:12-cv-00361 RMC.

**§31-17B-4. Notice of default; recording; contact with borrower; conditions; due diligence; termination date.**

(a) (1) A mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of default pursuant to section ten of this article until:

(A) Either thirty days after initial contact is made as required by subdivision (2) of this subsection or thirty days after satisfying the due diligence requirements of subsection (e) of this section; and

(B) The mortgage servicer complies with subdivision (1), subsection (a), section twenty of this article, if the borrower has provided a complete application as defined in subsection (d) of that section.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within fourteen days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the Department of Housing and Urban Development to find a Department of Housing and Urban Development-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to section ten of this article shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to section two of this article.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a Housing and Urban Development-certified housing counseling agency, attorney or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower satisfies the contact requirements of subdivision (2), subsection (a) of this section. Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to section ten of this article when a mortgage servicer has not contacted a borrower as required by subdivision (2), subsection (a) of this section: *Provided*, That the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" requires and means all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by Housing and Urban Development to find a Department of Housing and Urban Development-certified housing counseling agency;

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file;

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers if, when the telephone call is answered, the call is connected to a live representative of the mortgage servicer;

(C) A mortgage servicer satisfies the telephone contact requirements of this subdivision if it determines, after attempting contact pursuant to this subdivision, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected;

(3) If the borrower does not respond within two weeks after the telephone call requirements of subdivision (2) of this subsection have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested;

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours; and

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when

discussing options for avoiding foreclosure;

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer; and

(D) The toll-free telephone number made available by Department of Housing and Urban Development to find a Department of Housing and Urban Development-certified housing counseling agency.

(f) This section applies only to mortgages or deeds of trust described in sections sixteen and seventeen of this article.

(g) This section applies only to entities described in subsection (b), section twenty of this article.

(h) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-5. Notice of default; recording; contact with borrower; conditions; due diligence; applicability; effective date.**

(a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to section ten of this article until:

(A) Either thirty days after initial contact is made as required by subdivision (2) of this subsection or thirty days after satisfying the due diligence requirements as described in subsection (e) of this section; and

(B) The mortgage servicer complies with subsection (a), section thirteen of this article, if the borrower has provided a complete application as defined in subsection (f), section fourteen of this article; and

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within fourteen days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the Department of Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to section ten of this article shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to section two of this article.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a Housing and Urban Development-certified housing counseling agency, attorney or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of subdivision (2), subsection (a) of this section. Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to section ten of this article when a mortgage servicer has not contacted a borrower as required by subdivision (2), subsection (a) of this section: *Provided*, That the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" requires and means all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency;

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file;

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers if, when the telephone call is answered, the call is connected to a live representative of the mortgage servicer; and

(C) A mortgage servicer satisfies the telephone contact requirements of this subdivision if it determines, after attempting contact pursuant to this subdivision, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected;

(3) If the borrower does not respond within two weeks after the telephone call requirements of subdivision (2) of this subsection have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested;

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours; and

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure;

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer; and

(D) The toll-free telephone number made available by Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency.

(f) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(g) This section becomes operative on January 1, 2018.

**§31-17B-6. Notice of default; recording; conditions; contact with borrower; due diligence; applicability; termination date.**

(a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to section ten of this article until all of the following have been completed:

- (1) The mortgage servicer has satisfied the requirements of subdivision (1), subsection (b) of this section;
- (2) Either thirty days after initial contact is made as required by subdivision (2), subsection (b) of this section or thirty days after satisfying the due diligence requirements as described in subsection (f) of this section;
- (3) The mortgage servicer complies with subsection (c) of this section and subsection (c), section seven of this article, if the borrower has provided a complete application.

(b) (1) A mortgage servicer shall send the following information in writing to the borrower:

(A) A statement that if the borrower is a service member or a dependent of a service member, he or she may be entitled to certain protections under the federal Service Members Civil Relief Act, 50 U.S.C. §501 et seq., regarding the service member's interest rate and the risk of foreclosure, and counseling for covered Service members that is available at agencies such as Military One Source and Armed Forces Legal Assistance; and

(B) A statement that the borrower may request the following:

(i) A copy of the borrower's promissory note or other evidence of indebtedness;

(ii) A copy of the borrower's deed of trust or mortgage;

(iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose; and

(iv) A copy of the borrower's payment history since the borrower was last less than sixty days past due; and

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within fourteen days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to section ten of this article shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to section two of this article.

(d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) A borrower may designate, with consent given in writing, a Housing and Urban Development-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of subdivision (2), subsection (b) of this section. Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(f) A notice of default may be recorded pursuant to section ten when a mortgage servicer has not contacted a borrower as required by this article, provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" requires and means all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by Department of Housing and Urban Development to find a Department of Housing and Urban Development-certified housing counseling agency;

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers if, when the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this subdivision if it determines, after attempting contact pursuant to this subdivision, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected;

(3) If the borrower does not respond within two weeks after the telephone call requirements of subdivision (2) of this subsection have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency;

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours; and

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure;

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer; and

(D) The toll-free telephone number made available by Housing and Urban Development to find a Housing and Urban Development-certified housing counseling agency.

(g) This section does not apply to entities described in subsection (b), section twenty of this article.

(h) This section applies only to mortgages or deeds of trust described in seventeen and eighteen of this article.

(i) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute,

that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-7. Legislative declaration; loan modification; notice; applicability; exceptions; requirements; termination date.**

(a) The Legislature finds:

(1) That any duty that mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement; and (2) That a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(A) The loan is in payment default, or payment default is reasonably foreseeable; and

(B) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if the modification or plan is consistent with its contractual or other authority.

(c) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default or notice of sale, or conduct a trustee's sale, while the complete first lien loan modification application is pending. A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default or notice of sale or conduct a trustee's sale until any of the following occurs:

(1) The mortgage servicer makes a written determination that the borrower is not eligible for a first lien loan modification, and any appeal period pursuant to subsection (d) of this section has expired;

(2) The borrower does not accept an offered first lien loan modification within fourteen days of the offer; or

(3) The borrower accepts a written first lien loan modification, but defaults on, or otherwise breaches the borrower's obligations under, the first lien loan modification.

(d) If the borrower's application for a first lien loan modification is denied, the borrower has at least thirty days from the date of the written denial to appeal the denial and to provide evidence that the mortgage servicer's determination was in error.

(e) If the borrower's application for a first lien loan modification is denied, the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default or, if a notice of default has already been recorded, record a notice of sale or conduct a trustee's sale until the later of:

(1) Thirty-one days after the borrower is notified in writing of the denial; or

(2) If the borrower appeals the denial pursuant to subsection (d) of this section, the later of fifteen days after the denial of the appeal or fourteen days after a first lien loan modification is offered after appeal but declined by the borrower, or, if a first lien loan modification is offered and accepted after appeal, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

(f) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying the reasons for denial, including the following:

(1) The amount of time from the date of the denial letter in which the borrower may request an appeal of the denial of the first lien loan modification and instructions regarding how to appeal the denial;

(2) If the denial was based on investor disallowance, the specific reasons for the investor disallowance;

(3) If the denial is the result of a net present value calculation, the monthly gross income and property value used to calculate the net present value and a statement that the borrower may obtain all of the inputs used in the net present value calculation upon written request to the mortgage servicer;

(4) If applicable, a finding that the borrower was previously offered a first lien loan modification and failed to successfully make payments under the terms of the modified loan; and

(5) If applicable, a description of other foreclosure prevention alternatives for which the borrower may be eligible, and a list of the steps the borrower shall take in order to be considered for those options. If the mortgage servicer has already approved the borrower for another foreclosure prevention alternative, information necessary to complete the foreclosure prevention alternative.

(g) In order to minimize the risk of borrowers submitting multiple applications for first lien loan modifications for the purpose of delay, the mortgage servicer is not obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be evaluated for a first lien loan modification prior to January 1, 2013, or who have been evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of this section, unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and that change is documented by the borrower and submitted to the mortgage servicer.

(h) For purposes of this section, an application is complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable time frames specified by the mortgage servicer.

(i) Subsections (c) through (h) of this section, inclusive, do not apply to entities described in subsection (b), section twenty of this article.

(j) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(k) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-8. Legislative declaration; intent; applicability; loan modification; effective date.**

(a) The Legislature finds:

(1) That any duty mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement; and

(2) That a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(A) The loan is in payment default, or payment default is reasonably foreseeable; and

(B) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if the modification or plan is consistent with its contractual or other authority.

(c) This section becomes operative on January 1, 2018.

**§31-17B-9. Foreclosure prevention; single point of contact; requirements; limitation of liability applicability; defaults; exceptions.**

(a) Upon request from a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact.

(b) The single point of contact is responsible for doing all of the following:

(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options;

(2) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application;

(3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative;

(4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any; and

(5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary.

(c) The single point of contact remains assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current.

(d) The mortgage servicer shall ensure that a single point of contact refers and transfers a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor.

(e) For purposes of this section, "single point of contact" means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subsections (b) through (d) of this section, inclusive. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the alternatives to foreclosure process.

(f) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(g) (1) This section does not apply to a depository institution chartered under state or federal law that foreclosed on one hundred seventy-five or fewer residential real properties, containing no more than four dwelling units, that are located in West Virginia.

(2) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in subdivision (1) of this subsection exceeds the threshold of one hundred seventy-five specified in that subdivision, that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to this section, which date is the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

**§31-17B-10. Property interest transfer; recording; requirements; termination date; privileged communication.**

(a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power may not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents first files for record, in the office of the county clerk of each county where the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property;

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust in security has occurred; and

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default;

(2) Not less than three months must elapse from the filing of the notice of default;

(3) After the lapse of the three months described in subdivision (2) of this subsection, the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place of the sale;

(4) Notwithstanding subdivision (3) of this subsection, the mortgagee, trustee, or other person authorized to take sale may record a notice of sale up to five days before the lapse of the three-month period described in subdivision (2) of this subsection: *Provided*, That the date of sale is no earlier than three months and twenty days after the recording of the notice



of default;

(5) Until January 1, 2018, whenever a sale is postponed for a period of at least ten business days a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within five business days following the postponement. Failure to comply with this subdivision does not invalidate any sale that would otherwise be valid. This subdivision becomes inoperative on January 1, 2018; and

(6) No entity may record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

(b) In performing acts required by this article, the trustee does not incur any liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy is prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following are privileged communications:

- (1) The mailing, publication, and delivery of notices as required by this section; and
- (2) Performance of the procedures set forth in this article.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default does not invalidate the notice of sale and the beneficiary is not precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

**§31-17B-11. Foreclosure prevention alternative; applicability; termination date.**

(a) Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in section seven or eight of this article, a mortgage servicer that offers one or more foreclosure prevention alternatives shall, within five business days after recording a notice of default pursuant to section ten of this article, send a written communication to the borrower that includes all of the following information:

- (1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives;
- (2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative; and
- (3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

(b) This section does not apply to entities described in subsection (b), section twenty of this article.

(c) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(d) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-12. First lien modification; requirements; applicability; termination date.**

(a) When a borrower submits a complete first lien modification application or any document in connection with a first lien modification application, the mortgage servicer shall provide written acknowledgment of the receipt of the documentation within five business days of receipt. In its initial acknowledgment of receipt of the loan modification application, the mortgage servicer shall include the following information:

- (1) A description of the loan modification process, including an estimate of when a decision on the loan modification will be made after a complete application has been submitted by the borrower and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative;
- (2) Any deadlines, including deadlines to submit missing documentation, that would affect the processing of a first lien loan modification application;
- (3) Any expiration dates for submitted documents; and
- (4) Any deficiency in the borrower's first lien loan modification application.

(b) For purposes of this section, a borrower's first lien loan modification application is complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable time frames specified by the mortgage servicer.

(c) This section does not apply to entities described in subsection (b), section twenty of this article.

(d) This section applies only to mortgages or deeds of trust described in seventeen and eighteen of this article.

(e) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-13. Notice of default; requirements; foreclosure prevention; applicability; termination date.**

(a) If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default under either of the following circumstances:

- (1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or
- (2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the

servicer.

(b) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(c) When a borrower accepts an offered first lien loan modification or other foreclosure prevention alternative, the mortgage servicer shall provide the borrower with a copy of the fully executed loan modification agreement or agreement evidencing the foreclosure prevention alternative following receipt of the executed copy from the borrower.

(d) A mortgagee, beneficiary, or authorized agent shall record a rescission of a notice of default or cancel a pending trustee's sale, if applicable, upon the borrower executing a permanent foreclosure prevention alternative. In the case of a short sale, the rescission or cancellation of the pending trustee's sale shall occur when the short sale has been approved by all parties and proof of funds or financing has been provided to the mortgagee, beneficiary, or authorized agent.

(e) The mortgage servicer may not charge any application, processing, or other fee for a first lien loan modification or other foreclosure prevention alternative.

(f) The mortgage servicer may not collect any late fees for periods during which a complete first lien loan modification application is under consideration or a denial is being appealed, the borrower is making timely modification payments, or a foreclosure prevention alternative is being evaluated or exercised.

(g) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, in accordance with the provisions of this article.

(h) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(i) This section does not apply to entities described in subsection (b), section twenty of this article.

(j) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-14. Foreclosure prevention alternative; requirements; effective date.**

(a) If a borrower submits a complete application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary or authorized agent may not record a notice of sale or conduct a trustee's sale while the complete foreclosure prevention alternative application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested foreclosure prevention alternative.

(b) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying with specificity the reasons for the denial and shall include a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the mortgage servicer.

(c) If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of default under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(d) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(e) This section applies only to mortgages or deeds of trust as described in sections seventeen and eighteen of this article

(f) For purposes of this section, an application is complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable time frames specified by the mortgage servicer.

(g) This section becomes operative on January 1, 2018.

**§31-17B-15. Trustee's deed; recording; injunctions; violations; exceptions; damages; attorney's fees; termination date.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of section six, seven, eight, nine, eleven, twelve, thirteen, fourteen or nineteen of this article.

(2) Any injunction remains in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary or authorized

agent is liable to a borrower for actual economic damages, resulting from a material violation of section six, seven, eight, nine, eleven, twelve, thirteen, fourteen or nineteen of this article by that mortgage servicer, mortgagee, trustee, beneficiary or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of \$50,000.

(c) A mortgage servicer, mortgagee, trustee, beneficiary or authorized agent is not liable for any violation that it has corrected and remedied prior to the recordation of a trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of a trustee's deed upon sale.

(d) A violation of section six, seven, eight, nine, eleven, twelve, thirteen, fourteen or nineteen of this article by a person licensed by the Commissioner of Banking, the West Virginia Real Estate Commission or subject to the jurisdiction of the West Virginia Business Corporation Act is a violation of that person's licensing requirements or other statutory requirements.

(e) A violation of this article does not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer is not relieved of liability resulting from violations of section six, seven, eight, nine, eleven, twelve, thirteen, fourteen or nineteen of this article committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) A signatory to a consent judgment entered on April 4, 2012 in *United States of America, et al. v. Bank of America Corporation, et al.*, filed in the *United States District Court for the District of Columbia*, Case Number 1:12-cv-00361 RMC., that is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action pursuant to this section while the consent judgment is in effect has no liability for a violation of section six, seven, eight, nine, eleven, twelve, thirteen, fourteen or nineteen of this article.

(h) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies or procedures under any other law. Nothing in this section alters, limits or negates any other rights, remedies or procedures provided by law.

(i) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower has prevailed for purposes of this subsection if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(j) This section does not apply to entities described in subsection (b), section twenty of this article.

(k) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-16. Trustee's deed; recording; injunctive relief; liability; violations; exception; damages; attorney's fees; effective date.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of section four, five, nine, thirteen, fourteen or nineteen of this article.

(2) Any injunction remains in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent is liable to a borrower for actual economic damages resulting from a material violation of section four, five, nine, thirteen, fourteen or nineteen of this article by that mortgage servicer, mortgagee, trustee, beneficiary or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of \$50,000.

(c) A mortgage servicer, mortgagee, trustee, beneficiary or authorized agent is not liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of section four, five, nine, thirteen, fourteen or nineteen of this article by a person licensed by the Commissioner of Banking, the West Virginia Real Estate Commission or subject to the jurisdiction of the West Virginia Business Corporation Act is a violation of that person's licensing requirements or other statutory requirements.

(e) A violation of this article does not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer is not relieved of liability resulting from violations of section four, five, nine, thirteen, fourteen or nineteen of this article committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section alters, limits or negates any other rights, remedies or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower has prevailed for purposes of this subsection if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(i) This section becomes operative on January 1, 2018.

**§31-17B-17. First lien mortgages and deeds of trust; termination date.**

(a) Unless otherwise provided, subdivision (5), subsection (a) section ten and sections four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen and twenty of this article apply only to first lien mortgages or deeds of trust that are

secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family or household purposes.

(b) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-18. Owner-occupied residential real property; effective date.**

(a) Unless otherwise provided, sections four, five, nine thirteen and fourteen apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family or household purposes.

(b) This section becomes operative on January 1, 2018.

**§31-17B-19. Notice of default; notice of sale; assignment of a deed of trust; civil penalty; termination date.**

(a) A declaration recorded pursuant to section four or five of this article or, until January 1, 2018, pursuant to section six of this article, a notice of default, notice of sale, assignment of a deed of trust or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure subject to section ten of this article, or a declaration or affidavit filed in any court relative to a foreclosure proceeding shall be accurate and complete and supported by competent and reliable evidence.

(b) Before recording or filing any of the documents described in subsection (a) of this section, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

(c) Until January 1, 2018, any mortgage servicer that engages in multiple and repeated uncorrected violations of subsection (b) of this section in recording documents or filing documents in any court relative to a foreclosure proceeding is liable for a civil penalty of up to \$7,500 per mortgage or deed of trust in an action brought by a government entity or in an administrative proceeding brought against a respective licensee, in addition to any other remedies available to these entities. This subsection becomes inoperative on January 1, 2018.

**§31-17B-20. First lien loan modification; foreclosure prevention alternative; applicability; exceptions; requirements; termination date.**

(a) (1) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary or authorized agent may not record a notice of default, notice of sale or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested loan modification.

(2) If a foreclosure prevention alternative has been approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of default under either of the following circumstances:

(A) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or

(B) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicers.

(3) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary or authorized agent may not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(A) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or

(B) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicers.

(b) This section applies only to a depository institution chartered under state or federal law, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on one hundred seventy-five or fewer residential real properties, containing no more than four dwelling units, that are located in West Virginia.

(c) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in subsection (b) exceeds the threshold of one hundred seventy-five specified in subsection (b) of this section, that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to sections six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen and sixteen, which date is the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

(d) For purposes of this section, an application is complete when a borrower has supplied the mortgage servicers with all documents required by the mortgage servicers within the reasonable time frames specified by the mortgage servicers.

(e) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of the borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, in accordance with this article.

(f) This section applies only to mortgages or deeds of trust described in sections seventeen and eighteen of this article.

(g) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

**§31-17B-21. Trustee's deed; recording; violations; injunctive relief; damages; attorney's fees; applicability; exception; termination date.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of section four, five, nineteen or twenty of this article.

(2) Any injunction will remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary or authorized agent is liable to a borrower for actual economic damages resulting from a material violation of section four, five, nineteen or twenty of this article by that mortgage servicer, mortgagee, beneficiary or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of \$50,000.

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent is not liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of section four, five, nineteen or twenty of this article by a person licensed by the Commissioner of Banking, the West Virginia Real Estate Commission or subject to the jurisdiction of the West Virginia Business Corporation Act is a violation of that person's licensing requirements or other statutory requirements.

(e) A violation of this article does not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer is not relieved of liability resulting from violations of section four, five, nineteen or twenty of this article committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section may be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower has prevailed for purposes of this subsection if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section applies only to entities described in subsection (b), section twenty of this article.

(j) This section remains in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

NOTE: The purpose of this bill is to create The West Virginia Homeowner Bill of Rights. The bill states legislative findings and its purpose in relation to foreclosures in the state generally. The bill requires mortgage servicers to contact the borrower prior to filing a notice of default. The bill requires mortgage servicers to explore options for the borrower to avoid foreclosure. The bill requires the borrower to be provided with specified information in writing prior to recordation of a notice of default. The bill establishes additional procedures to be followed regarding a first lien loan modification application and the denial of an application. The bill provides for a borrower's right to appeal a denial. The bill requires a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time. The bill prohibits the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered. The bill authorizes the greater of treble actual damages or \$50,000 in statutory damages if a violation is found to be intentional or reckless or resulted from willful misconduct. The bill provides that violations by licensees of certain state agencies are also violations of those respective licensing laws. The bill requires a mortgage servicer who conducts more than one hundred seventy-five foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill requires that, before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. The bill authorizes administrative enforcement against licensees by certain state agencies. The bill defines terms. The bill sets forth requirements. The bill establishes effective and termination dates. The bill authorizes rule-making.

This article is new; therefore, strike-throughs and underscoring have been omitted.