

# The West Virginia Consumer Credit Protection Law

Presented by Stern & Eisenberg

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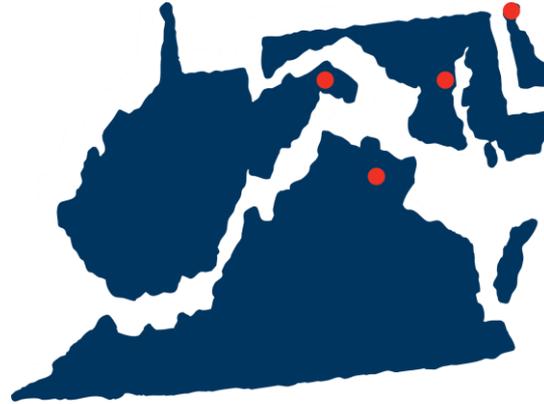
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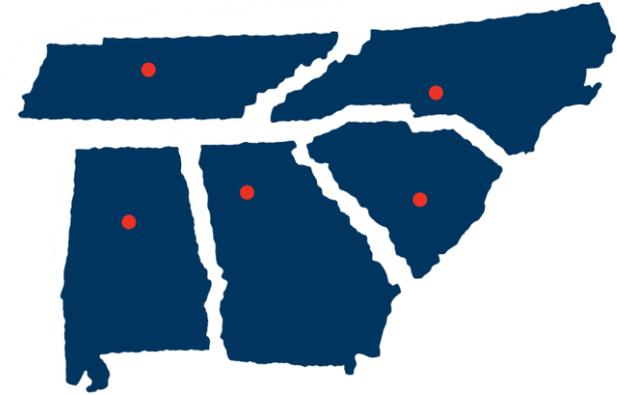
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# Topics



## The West Virginia Consumer Credit Protection law

- Introduction
- The WV Consumer Credit Protection Act
- Origin and Application
- Application II - Application III
- Restriction on Fees - Restriction on Fees Pre-Default
- Declaration of Default
- Cure Period
- Post – Default Fee Restrictions
- Restrictions on Fees Post-Default II and III
- Penalties
- Other Potential Violations
- Hot Button Issues

# Introduction



West Virginia became a state on June 20, 1863, by executive order of Abraham Lincoln.



West Virginia has rugged terrain and prefers local small interests rather than large out-of-state interests.



West Virginia has no intermediate appellate Court therefore trials are important

# The WV Consumer Credit Protection Act

- Origin and Application of the WVCCPA
- Restrictions on Pre-Default Fees
- Declaration of Default-NOI/Demand
- Restrictions on Post-Default Fees
- Penalties
- Other Potential Violations
- Hot Button Issues

# Origin and Application

- Originally, the WVCCPA was passed in 1974.
- WV Code 46A-1-103 states that the statute applies to all creditors, except lessors and those excluded, making consumer credit sales and consumer loans, and sales and loans made subject to the provisions of this chapter by agreement.

## Application II

WV Code 46A-1-104 further states the chapter applies if a consumer, who is a resident of this state, is induced to enter into a consumer credit sale made pursuant to a revolving charge account, to enter into a revolving charge account, to enter into a consumer loan made pursuant to a revolving loan account, or to enter into a consumer lease, by personal or mail solicitation, and the goods, services or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state

# Application III

Therefore the statute applies to a loan if:

- The borrower was a resident of this state when the loan was applied for, or originated.
- The property secured is located in the state.
- The borrower becomes a resident of the state after the loan is originated.
- Property or assets the Lender wishes to attach to a judgment lien are located in the state.
- If you're in WV on a loan, the WVCCPA probably applies

# Restrictions on Fees

- Generally “a creditor may not collect in an action brought in this state a sales finance charge or loan finance charge in excess of that permitted by this chapter.”
- WV Code 46A-2-128(d) collecting a fee or charge that is not authorized by the loan obligation AND by statute, is considered unconscionable.
- This means that the entire statute is exclusionary. If a statute does not expressly authorize the fee, it cannot be collected.
- Fees can generally be split into pre-default or post default categories.

# Restrictions on Fees Pre-default

Pre Default, a Lender may collect:

- Late charges, limited to the greater of \$30.00 or 5% of the installment that is late. [WV Code 46A-3-12 and 13](#)
- Real Estate Taxes. [WV Code 46A-3-109](#)
- Collateral insurance. [WV Code 46A-3-109 and 109A](#)
- Deferral agreement. [WV Code 46A-3-114](#)
- Loan Modification, limited to the greater of \$250.00 or 1% of the outstanding balance, [WV Code 46A-3-114](#)

# Declaration of Default

To declare default, a Lender must comply with WV Code 46A-2-106 in demanding the loan

- The Demand/NOI must be sent to the borrowers at their last known address
- Must be in writing and state the name, address, and phone number of the Lender.
- Must provide a brief description of the transaction, the consumer's right to cure, and the amount and other performance necessary to cure the default.
- *The information contained must be certified and such certification notarized.*
- Must be retained by the Lender – used later

# Cure Period

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For the ten days following declaration of default, the Borrower may pay all payments and allowable pre-default fees without the addition of Post default fees. This is called a cure.

After this ten day period, the Lender may incur and pass on to the borrower, allowable default costs.

A Borrower has a right to reinstate, paying all missed payments, pre and post default allowable costs up to the date and time of sale.

# Post-Default Fee Restrictions

- Controlled by WV Code 46A-2-115.
- In order to collect any amount, a loan must be either originated by a bank or savings and loan (not solicited by an unaffiliated broker), held by a federal home loan bank, Freddie Mac, Fannie Mae, Ginny Mae, or the WV Housing Development Fund, or insured or guaranteed by the FHA, VA, or HUD.

## Restrictions on Fees Post-Default II

Only the following fees are chargeable:

- Costs of publication
- Appraisal
- Title examination
- Notice
- Certified mailing fees
- Expenses incurred by the Trustee incident to the pending trustee's sale

## Restrictions on Fees Post-Default III

Finally, these charges can only be charged to a borrower if:

- Each charge is reasonable;
- Actually incurred by or on behalf of the Lender;
- Actually incurred after the last day to cure under WV Code 46A-2-106;
- The Lender has agreed to cancel any scheduled foreclosure sale;
- In the case of an appraisal fee, no other appraisal fee has been charged to the debtor in the previous six months.

# Penalties

WV 46A-5-101 provides damages and attorney's fees:

- Refund of the actual illegal charge or other actual damages
- \$1000.00 per violation, adjusted for inflation from September 1, 2015, forward.
- Violations may be found *for each time* a charge is asserted.
- Award of Borrower's attorney fees, WV Code 46A-5-104.

# Other Potential Violations

- WV Code 46A-2-123, practice of law by Debt Collectors
- WV Code 46A-2-124, Threats or Coercion
- WV Code 46A-2-125, Oppression and Abuse
- WV Code 46A-2-126, Unreasonable Publication
- WV Code 46A-2-127, Fraudulent, Deceptive or Misleading Representations
- WV Code 46A-2-128, Unfair or Unconscionable means
- WV Code 46A-2-129, violating the US Postal Code
- WV Code 46A-2-129A, Deceptive or Oppressive Phone calls.

# Hot Button Issues

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- Foreclosure attorney's fees are never collectible, WV Code 46A-2-128(c)
- Municipal or local utility fees. They are NOT taxes and are personal to occupants.
- Property preservation, inspection, NSF, or satisfaction fees are not mentioned in the WVCCPA – and therefore are not permitted
- Contacting a Borrower after the Borrower informs the Lender, in writing, that the Borrower is represented by counsel - violation

# Q&A

With your session presenter and other Stern & Eisenberg team members present. Contact [SEValue@SternEisenberg.com](mailto:SEValue@SternEisenberg.com) for future trainings online and in person.

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