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SENATE BILL NO. 620

Senate Amendments in [] — February 9, 2000

A BILL to amend and reenact §§ 6.1-2.21, 6.1-2.27 and 38.2-1810 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 6.1-2.23:1, relating to the Consumer Real Estate Settlement Protection Act; licensing requirements, standards and financial responsibility.

Patrons—Barry; Delegates: Cantor and Plum

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-2.21, 6.1-2.27 and 38.2-1810 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-2.23:1 as follows:

§ 6.1-2.21. Licensing requirements, standards and financial responsibility.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent with respect to real estate settlements in this Commonwealth unless the person is licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, a title insurance company or title insurance agent under Title 38.2, a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or unless the person is a financial institution authorized to do business in this Commonwealth under any of the provisions of Title 6.1 or under federal law, or is a subsidiary or affiliate of such financial institution. *Any title insurance agent acting in the capacity of a settlement agent shall be appointed by a title insurance company licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2.* Any such person, not acting in the capacity of a settlement agent, shall not be subject to the provisions of this chapter.

B. Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with the requirements of this chapter or a party to the real estate transaction may provide escrow, closing or settlement services and receive compensation for such services.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.

D. A settlement agent other than a financial institution described in subsection A or title insurance company as defined in § 38.2-4601, shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of \$250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than \$100,000.

E. 1. A settlement agent, other than an attorney, shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive twelve-month period. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority no later than sixty days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company which it represents.

2. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations promulgated by the State Corporation Commission or guidelines issued by the Bureau of Insurance of the State Corporation Commission, as appropriate, at least once each consecutive twelve-month period and each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority no later than sixty days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis.

3. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for

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each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

§ 6.1-2.23:1. Falsifying settlement statements prohibited.

No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement, shall not be deemed to be a violation of this section.

§ 6.1-2.27. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent *licensed by it* or any of its other ~~person~~*licensees* has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the appropriate licensing authority may order *one or more of the following*:

1. A penalty not exceeding \$5,000 for each violation; ~~and~~
2. Revocation or suspension of the applicable licenses; *and*
3. *Restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.*

B. *In addition to the authority given in subsection A, and pursuant to § 12.1-13, the Commission, after determining that any person who does not hold a license from the appropriate licensing authority has violated this chapter or any regulation or order promulgated thereunder, may [take order] one or more of the following [actions] :*

1. *[Impose and collect from such person a fine A penalty] not exceeding \$5,000 for each violation;*
2. *[Order a A] temporary or permanent injunction, or restraining order requiring such person to cease and desist from engaging such act or practice;*
3. *[Order restitution Restitution] to be made by the person violating this chapter in the amount of any actual, direct financial loss.*

C. Nothing in this section shall affect the right of the appropriate licensing authority to impose any other penalties provided by law or regulation. *Notwithstanding any provision contained in this section to the contrary, as to that portion of any complaint by a party to the real estate transaction arising under this chapter or any regulation or order promulgated thereunder relating to the unauthorized practice of law, the Virginia State Bar, after complying with applicable law and regulation relating to unauthorized practice of law complaints and concluding the activity was not authorized by statute or regulation, may refer that portion of such complaint to the Attorney General of Virginia or a Commonwealth's Attorney who shall have the power, in addition to any other powers conferred on him by law, to seek the issuance of a temporary or permanent injunction or restraining order against any person so violating this chapter or any regulation or order promulgated thereunder.*

§ 38.2-1810. Report of acts deemed larceny under § 18.2-111; privileged communications; attorney for the Commonwealth to be informed.

A. Whenever any insurer licensed to transact the business of insurance in this Commonwealth knows or has reasonable cause to believe that any insurance agent or surplus lines broker has committed any act of larceny as prescribed in § 18.2-111 with respect to any money, bill, note, check, order, draft or other property either belonging to the insurer or received by the agent or surplus lines broker on behalf of the insurer, it shall be the duty of the insurer within sixty days after acquiring the knowledge to file with the Commission a complete statement of the relevant facts and circumstances. Each statement shall be a privileged communication, and when made and filed shall not subject the insurer, or any individual representative of it that is making or filing the statement, to any liability whatsoever.

B. *Whenever any insurer licensed to transact the business of title insurance in this Commonwealth knows or has reasonable cause to believe that any title insurance agent appointed by such insurer has committed any act of larceny as prescribed in § 18.2-111 with respect to any money, bill, note, check, order, draft or other property either belonging to the insured or prospective insured or received by the agent on behalf of the insured or prospective insured related to that agent's provision of escrow, closing or settlement services as defined in § 6.1-2.20, it shall be the duty of the insurer within sixty days after acquiring such knowledge to file with the Commission a complete statement of the relevant facts and circumstances. Each statement shall be a privileged communication, and when made and filed shall not subject the insurer, or any individual representative of it that is making or filing the statement, to any liability whatsoever.*

C. The Commission shall inform the attorney for the Commonwealth of the appropriate county or city of each statement filed pursuant to subsections A or B of this section.