

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 6.1-430 of the Code of Virginia and to amend the Code of Virginia by*
3 *adding a section numbered 6.1-422.1, relating to mortgage lending practices.*

4 [H 2708]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 6.1-430 of the Code of Virginia is amended and reenacted and that the Code of Virginia**
8 **is amended by adding a section numbered 6.1-422.1 as follows:**

9 § 6.1-422.1. "Flipping" prohibited.

10 A. As used in this section, "flipping" a mortgage loan means refinancing a mortgage loan within
11 twelve months following the date the refinanced mortgage loan was originated, when the new loan does
12 not result in any benefit to the borrower considering all of the circumstances, including the terms of
13 both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. A
14 benefit to the borrower occurs in situations including, but not limited to, where (i) the borrower's
15 monthly payment to pay the new consolidated debt will be lower than the total of all monthly
16 obligations being financed, taking into account costs and fees; (ii) there is a change in the duration of
17 the loan; (iii) the borrower receives cash in excess of the costs and fees as part of the refinancing; or
18 (iv) there is a change from an adjustable to a fixed-rate loan, taking into account costs and fees.
19 "Flipping" does not include any mortgage loan made after a borrower has initiated communications
20 with a mortgage lender or broker for the purpose of obtaining a mortgage loan and the mortgage
21 lender or broker has not communicated with or solicited such borrower, other than through a general
22 medium, such as television, radio, newspaper or magazine, that does not target a specific borrower,
23 before the time the borrower initiates such communication.

24 B. No mortgage lender shall knowingly or intentionally engage in the act or practice of "flipping" a
25 mortgage loan. This provision shall apply regardless of whether the interest rate, points, fees, and
26 charges paid or payable by the borrower in connection with the refinancing exceed any limitation
27 established pursuant to Article 9 (§ 6.1-330.69 et seq.) of Chapter 7.3 of this title.

28 C. The Attorney General, the Commission, or any party to a mortgage loan may enforce the
29 provisions of this section.

30 D. In any suit instituted by a borrower who alleges that the defendant violated this section, the
31 presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney
32 representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and
33 payable by the losing party, upon a finding by the presiding judge that (i) the party charged with the
34 violation has willfully engaged in the act or practice with which he was charged, and there was
35 unwarranted refusal by such party to fully resolve the matter that constitutes the basis of such suit; or
36 (ii) the party instituting the action knew, or should have known, that the action was frivolous and
37 malicious.

38 E. The provisions of this section shall be in addition to, and shall not impair, the rights of and
39 remedies available to borrowers in mortgage loans otherwise provided by law.

40 § 6.1-430. Authority of Attorney General; referral by Commission to Attorney General.

41 If the Commission determines that a mortgage lender or broker licensed under this chapter is in
42 violation, or has violated, any provision of Articles 3 (§ 6.1-330.53 et seq.) through 12 (§ 6.1-330.80 et
43 seq.) of Chapter 7.3 of this title or § 6.1-422.1, the Commission may refer the information to the
44 Attorney General and may request that the Attorney General investigate such violations. In the case of
45 such referral, the Attorney General is hereby authorized to seek to enjoin violations of ~~Articles 3~~
46 ~~through 12 such laws~~. The circuit court having jurisdiction may enjoin such violations notwithstanding
47 the existence of an adequate remedy at law.

48 Upon such referral of the Commission, the Attorney General may also seek, and the circuit court
49 may order or decree damages and such other relief allowed by law, including restitution to the extent
50 available to borrowers under applicable law. Persons entitled to any relief as authorized by this section
51 shall be identified by order of the court within 180 days from the date of the order permanently
52 enjoining the unlawful act or practice.

53 In any action brought by the Attorney General by virtue of the authority granted in this provision,
54 the Attorney General shall be entitled to seek attorney's fees and costs.