

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 386

An Act to amend and reenact §§ 6.1-411 and 6.1-422.1 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 6.1-425.1 and 6.1-425.2, relating to mortgage lending; predatory practices.

[S 1103]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-411 and 6.1-422.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 6.1-425.1 and 6.1-425.2 as follows:

§ 6.1-411. Persons exempt from chapter.

The following shall be exempt from the licensing and other provisions of this chapter:

1. Lenders making ~~ten~~ *three* or fewer mortgage loans in any period of ~~twelve~~ *12* consecutive months;

2. Any person subject to the general supervision of or subject to examination by the Commissioner pursuant to Chapter 2 (§ 6.1-3 et seq.), Chapter 3.01 (§ 6.1-194.1 et seq.), Chapter 4.01 (§ 6.1-225.1 et seq.), Chapter 5 (§ 6.1-227 et seq.) or Chapter 13 (§ 6.1-381 et seq.) of this title;

3. Any lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and subsidiaries and affiliates of such entities which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia;

4. Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

5. Agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States;

6. Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

7. Any insurance company;

8. Persons licensed by the Commonwealth as attorneys, real estate brokers, or real estate salesmen, not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering services as an attorney, real estate broker or real estate salesman; however, a real estate broker or real estate salesman who receives any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage loan for others shall not be exempt from the provisions of this chapter;

9. Persons acting in a fiduciary capacity conferred by authority of any court;

10. Persons licensed as small business investment companies by the Small Business Administration; and

11. The Virginia Housing Development Authority and persons who (i) are approved by the Virginia Housing Development Authority pursuant to its rules and regulations to act as field originators with respect to mortgage loans made under its programs and (ii) are not engaged in any other activities for which a license is required to be obtained under this chapter.

§ 6.1-422.1. "Flipping" prohibited.

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

1. The borrower's new monthly payment is lower than the total of all monthly obligations being

financed, taking into account the costs and fees;

- 2. There is a change in the amortization period of the new loan;*
- 3. The borrower receives cash in excess of the costs and fees of refinancing;*
- 4. The borrower's note rate of interest is reduced;*
- 5. There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or*
- 6. The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.*

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

C. The Attorney General, the Commission, or any party to a mortgage loan may enforce the provisions of this section or § 6.1-422.

D. In any suit instituted by a borrower who alleges that the defendant violated this section or § 6.1-422, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that (i) the party charged with the violation has willfully engaged in the act or practice with which he was charged; ~~and there was unwarranted refusal by such party to fully resolve the matter that constitutes the basis of such suit;~~ or (ii) the party instituting the action knew, or should have known, that the action was frivolous and malicious.

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

§ 6.1-425.1. Suspension.

A. The Commission, after providing notice and an opportunity for a hearing, may censure, suspend for a defined period or bar a person from any position of employment, management or control of any licensee or registrant, if the Commission finds that:

- 1. The censure, suspension or bar is in the public interest and that the person has committed or caused a violation of this chapter or any rule, regulation or order of the Commissioner; or*
- 2. The person has been (i) convicted of or pled guilty to or pled nolo contendere to any crime; or (ii) held liable in any civil action by final judgment, or any administrative judgment by any public agency, if the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions or duties of a person engaged in the business in accordance with the provisions of this chapter.*

B. Persons suspended or barred under this section are prohibited from participating in any business activity of a registrant and from engaging in any business activity on the premises where a registrant is conducting its business. This subsection shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a registrant.

C. This section shall apply to any violation, conviction, plea, or judgment after July 1, 2003.

§ 6.1-425.2. Filing of written report with Commissioner; events impacting activities of registrant.

Within 15 days of becoming aware of the occurrence of any of the events listed below, a registrant shall file a written report with the Commissioner describing such event and its expected impact on the activities of the registrant in the Commonwealth:

- 1. The filing for bankruptcy or reorganization by the registrant;*
 - 2. The institution of revocation or suspension proceedings against the registrant by any state or governmental authority;*
 - 3. The denial of the opportunity to engage in business by any state or governmental authority;*
 - 4. Any felony indictment of the registrant or any of its employees, officers, directors or principals;*
 - 5. Any felony conviction of the registrant or any of its employees, officers, directors, or principals;*
- and*
- 6. Such other events as the Commissioner may determine and identify by rule.*