

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 422

*An Act to amend and reenact §§ 6.1-58.3 and 6.1-409 of the Code of Virginia, relating to dual compensation and prohibited practices by mortgage lenders and brokers; penalties.*

[H 698]

Approved March 31, 2006

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

**1. That §§ 6.1-58.3 and 6.1-409 of the Code of Virginia are amended and reenacted as follows:**

§ 6.1-58.3. Real estate brokerage business of controlled subsidiary.

A. In addition to the types of business authorized in §§ 6.1-58.1 and 6.1-58.2, a controlled subsidiary corporation may be formed and licensed to transact business as a real estate brokerage firm in accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate brokerage business and such services only in accordance with the specific provisions of this section. Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a comparable business.

B. A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm and provide such services only upon the Commission's determination that the state bank making application to do so is in full compliance with applicable law. The investment of any bank in the stock, securities, or other obligations of a controlled subsidiary corporation shall only be approved by the Commission upon a determination by the Commission that: (i) the depositors of the bank are adequately protected from the risk of such ownership; and (ii) the ownership is a safe and sound investment for the bank in accordance with applicable law. Such determination shall include but not be limited to providing written notice to the Virginia Real Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

C. Further, a controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm only in compliance with the following:

1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary corporation that engages in real estate brokerage, shall not:

a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any other arrangement for real estate services with its affiliated real estate brokerage firm;

b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. §§ 2601 et seq.), and regulations promulgated thereunder;

d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage services is that the customer shall make application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. §§ 2601 et seq.), and regulations promulgated thereunder;

e. Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate brokerage firm;

f. Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, affiliates, or service entities;

g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely accepts retail deposits from the general public;

h. Conduct real estate brokerage activities in areas of a building that are identified as areas where banking activities occur;

i. Conduct banking activities in areas of the building that are identified as areas where real estate brokerage activities occur;

j. Make payment to its employees for any referrals of real estate brokerage business;

k. Use confidential credit and other financial information available from the bank for solicitation purposes by a real estate brokerage affiliate, without first having obtained the written consent of the

customer;

1. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information of or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective customer; or

m. Use, directly or indirectly, nonpublic customer information, held or obtained by the bank, for the purpose of soliciting real estate business, without first having obtained the written consent of the customer.

2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and conspicuously disclose in writing, in a separate document, to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to consult with, contract for, or enter into an arrangement for real estate brokerage services with its affiliated real estate brokerage firm.

3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose in writing, in a separate document, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.

4. The requirements of this section are in addition to the requirements of the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. §§ 2601 et seq.), and regulations promulgated thereunder.

5. State banks owning and transacting business as real estate brokerage firms under this section are subject to the provisions of the Wet Settlement Act, Chapter 1.1 (§ 6.1-2.10 et seq.) of this title.

6. A state bank that acts as a mortgage broker, as defined in § 6.1-409, and that transacts business as a real estate brokerage through a controlled subsidiary corporation is subject to subdivision B 5 and subsection C of § 6.1-422; *however, a state bank that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.*

7. In the event of a violation of this section, the Commission may take such action as is authorized in accordance with § 6.1-125, including issuance of an order requiring the state bank to cease and desist the activity that violates this section and imposing penalties.

#### § 6.1-409. Definitions.

As used in this chapter, the following words and terms shall have the following meanings unless the context requires a different meaning:

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions.

"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others. *Any licensed mortgage lender that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.*

"Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any interest in one- to four-family residential owner-occupied property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans or extensions of credit to buyers of real property for any part of the purchase price of such property by persons selling such property owned by them, (ii) loans to persons related to the lender by blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan that is made primarily for a business, commercial, or agricultural purpose.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

- 2. That an emergency exists and this act is in force from its passage.**