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SENATE BILL NO. 145

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Deeds
on February 14, 2006)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 16.1, consisting of sections numbered 6.1-431.1 through 6.1-431.7, relating to mortgage loan servicing practices; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 16.1, consisting of sections numbered 6.1-431.1 through 6.1-431.7, as follows:

CHAPTER 16.1.

MORTGAGE LOAN SERVICING.

§ 6.1-431.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Mortgage loan" has the same meaning ascribed to the term in § 6.1-409.

"Mortgage loan servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage loan.

§ 6.1-431.2. Prohibited activities.

A person engaged in mortgage loan servicing shall not:

1. Fail to apply promptly to the mortgage loan any payments received, provided such payment is made in accordance with the terms of the loan agreement;

2. Take any action, or refrain from taking any action, for the primary purpose of creating a default under the terms of a mortgage loan;

3. Commence or prosecute any activity or proceeding, including non-judicial proceedings, to sell property pursuant to a deed of trust or mortgage or otherwise foreclose upon a security interest or lien securing the mortgage loan, if:

a. The activity or proceeding is not authorized by the terms of the deed of trust, mortgage, or security agreement; or

b. The borrower has cured, or tendered payment to cure, any default or defaults under the terms of the deed of trust, mortgage, or security agreement within any time period during which such cure is permitted under the terms of the deed of trust, mortgage, or security agreement;

4. Fail to reverse any late fee or similar assessment that is charged in error;

5. Fail to correct an error made by such person that causes the borrower's payment history with respect to a mortgage loan to be affected in connection with the transfer coordination between mortgage loan servicers;

6. Fail to give the borrower timely notice of loan payment amount changes due to escrow analysis or other payment adjustments as required under 12 U.S.C. § 2609 of the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);

7. Fail to reverse a late fee or similar assessment imposed as a result of the person's error in notifying the borrower timely of any change in the mortgage loan payment amount due to escrow analysis or other payment adjustments; or

8. Fail to respond to any request or complaint of a borrower as required under 12 U.S.C. § 2605 (e) of the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).

This section shall not apply to any bank or savings institution, or any subsidiary or affiliate of a bank or savings institution.

§ 6.1-431.3. Criminal penalties.

Any person who knowingly and willfully violates any provision of § 6.1-431.2 shall be guilty of a Class 1 misdemeanor. For the purposes of this section, each violation shall constitute a separate offense.

§ 6.1-431.4. Civil actions.

Any person who suffers loss by reason of a violation of any provision of § 6.1-431.2 may recover in a civil action against the person that violated the provision, in addition to reasonable costs and attorneys' fees, the greater of: (i) \$1,000, or (ii) the amount of actual damages, if any, sustained.

§ 6.1-431.5. Cease and desist orders.

If the Commission determines that any person has violated any provision of § 6.1-431.2, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such

60 practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to
61 the principal place of business of such person or other address authorized under § 12.1-19.1 and shall
62 state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or
63 persons named therein may file with the Clerk of the Commission a written request for a hearing. If a
64 hearing is requested, the Commission shall not issue a cease and desist order except based upon
65 findings made at such hearing. Such hearing shall be conducted in accordance with the provisions of
66 Title 12.1. The Commission may enforce compliance with any such order issued under this section by
67 imposition and collection of such fines and penalties as may be prescribed by law.

68 § 6.1-431.6. Authority of Attorney General; referral by Commission to Attorney General.

69 A. If the Commission determines that a person is in violation, or has violated, any provision of this
70 chapter, the Commission may refer the information to the Attorney General and may request that the
71 Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby
72 authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin
73 such violations notwithstanding the existence of an adequate remedy at law.

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

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

81 § 6.1-431.7. Investigations.

82 A. The Commission may, by its designated officers and employees, as often as it deems necessary,
83 investigate the affairs, business, premises and records of any person subject to the provisions of this
84 chapter. In the course of such investigation, the owners, members, officers, directors, partners, trustees,
85 beneficiaries, and employees of the person being investigated shall, upon demand of the person making
86 such investigation, afford full access to all premises, books, records and information that the person
87 making such investigation deems necessary. For the foregoing purposes, the person making such
88 investigation shall have authority to administer oaths and compel the production of documents and
89 objects of all kinds.

90 B. When it becomes necessary to examine or investigate the books and records of a person subject to
91 the provisions of this chapter, such person shall be liable for and shall pay to the Commission within 30
92 days of the presentation of an itemized statement, the actual travel and reasonable living expenses
93 incurred on account of its examination, supervision and regulation, or shall pay at a reasonable per
94 diem rate approved by the Commission.