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SENATE BILL NO. 745

Offered January 10, 2007

Prefiled November 15, 2006

A BILL to amend and reenact § 6.1-2.21 of the Code of Virginia, relating to settlement agents under the Consumer Real Estate Settlement Protection Act.

Patron—Williams

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-2.21 of the Code of Virginia is amended and reenacted 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 (i) *has not been convicted of a felony* and (ii) is licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, *is licensed as* a title insurance company or title insurance agent under Title 38.2, *is licensed as* 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 or a title insurance company if such company's financial statements are audited annually by an independent certified public accountant, 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.

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59 3. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for
60 each title insurance agent it has appointed and such reports and other records of the insurance company's
61 activities as a settlement agent shall be made available to the appropriate licensing authority when
62 examinations are conducted pursuant to provisions in Title 38.2.

63 *F. A person who has been convicted of a felony shall not assist a settlement agent in the*
64 *performance of escrow, closing or settlement services involving, and a settlement agent shall not employ*
65 *a person who has been convicted of a felony in an administrative or clerical capacity that involves, the*
66 *receipt or disbursement of funds from real estate settlements in the Commonwealth.*