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HOUSE BILL NO. 408

Offered January 9, 2008

Prefiled January 4, 2008

A BILL to amend the Code of Virginia by adding in Chapter 4 of Title 55 an article numbered 2.2, consisting of sections numbered 55-66.15 through 55-66.17, relating to the marketing and performance of foreclosure rescues; penalties.

Patrons—Oder and Iaquinto; Senator: Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 4 of Title 55 an article numbered 2.2, consisting of sections numbered 55-66.15 through 55-66.17, as follows:

*Article 2.2.**Foreclosure Rescue.**§ 55-66.15. Definitions.*

"Foreclosure Rescue Transaction" means a transaction (i) by which residential property is conveyed where the homeowner maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and (ii) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.

"Foreclosure-Related Services" means any goods or services related to, or promising assistance in connection with: (i) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (ii) curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation. "Foreclosure-Related Services" shall include the offer, arrangement, or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered, or promoted in the context described in clauses (i) and (ii).

§ 55-66.16. Prohibition on foreclosure rescue transactions and advance fees for foreclosure-related services.

A. It shall be a Class 5 felony for any person to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a foreclosure rescue transaction concerning residential property in the Commonwealth. Nothing in this subsection shall be interpreted to prohibit foreclosure rescue transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including such transactions engaged in between or among family members or arranged by a nonprofit community or nonprofit housing organization.

B. It shall be a Class 5 felony for any person to solicit, arrange, or accept an advance fee in connection with offering, arranging, or providing foreclosure-related services; provided, however, that this subsection shall not prohibit a licensed attorney from soliciting, arranging, or accepting an advance fee or retainer for legal services in connection with (i) the preparation and filing of a bankruptcy petition, or (ii) court proceedings to avoid a foreclosure. For purposes of this subsection, an advance fee is any money or consideration paid in advance of actually receiving services. If the foreclosure-related services at issue concern the offer, arrangement, or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, then this subsection shall not prohibit the solicitation, payment, or acceptance of a loan application fee provided that the fee conforms with all applicable laws and regulations.

§ 55-66.17. Marketing of foreclosure-related services; civil cause of action.

A. It shall be a class 5 felony for any person (i) to advertise, offer, or promote the availability of foreclosure rescue transactions or services related to foreclosure rescue transactions; (ii) to advertise, offer, or promote foreclosure-related services if the person so promoting intends to provide foreclosure-related services by offering, engaging in, arranging, promoting, promising, or soliciting participation in a foreclosure rescue transaction; (iii) to advertise, offer or promote foreclosure-related services without disclosing, clearly and conspicuously, (a) the precise goods and services offered and to be provided by the promoter of foreclosure-related services, and (b) a precise description of how the promoter will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation; or (vi) who is licensed mortgage broker or licensed mortgage lender to advertise, offer or promote foreclosure-related services, where the goods or services promoted concern the offer, arrangement, or placement of a residential mortgage loan

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59 *without complying with all laws and regulations that apply to the marketing of mortgage loans.*

60 *B. Any person who is victimized by a person who violates any provision of this article shall have*
61 *civil cause of action and may pursue any actor for civil judgment for damages sustained.*

62 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
63 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
64 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
65 **periods of commitment to the custody of the Department of Juvenile Justice.**