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SENATE BILL NO. 1020

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 2, 2009)

(Patron Prior to Substitute—Senator McEachin)

A BILL to amend and reenact §§ 6.1-422 and 6.1-431 of the Code of Virginia, relating to the Mortgage Lender and Broker Act; duties and liabilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-422 and 6.1-431 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-422. Prohibited predatory practices.

A. No lender or broker required to be licensed under this chapter shall:

1. Obtain any agreement or instrument in which blanks are left to be filled in after execution;
2. Take an interest in collateral other than the real estate or residential property securing a mortgage loan, including any fixtures and appliances thereon and any mobile or manufactured home placed on such real estate even if such mobile or manufactured home is not permanently affixed thereto;

3. Obtain any exclusive dealing or exclusive agency agreement from any borrower;

4. Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

5. Obtain any agreement or instrument executed by a borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than failure to make timely payments of interest and principal, submitting false information in connection with an application for the mortgage loan, breaching any representation or covenant made in the agreement or instrument, or failing to perform any other obligations undertaken in the agreement or instrument;

6. If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide to the borrower prior to closing of the mortgage loan, a (i) settlement statement and (ii) disclosure which conforms to that required by the provisions of 15 U.S.C. (§ 1601 et seq.) and Regulation Z, 12 CFR Part 226; or

7. Recommend or encourage a person to default on an existing loan or other debt, if such default adversely affects such person's creditworthiness, in connection with the solicitation or making of a mortgage loan that refinances all or any portion of such existing loan or debt.

B. No mortgage broker required to be licensed under this chapter shall:

1. Except for documented costs of credit report and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director or officer of the lender;

4. Receive compensation from the borrower other than that specified in a written agreement signed by the borrower; or

5. Receive compensation for negotiating, placing or finding a mortgage loan where such mortgage broker, or any person affiliated with such mortgage broker, has otherwise acted as a real estate broker, agent or salesman in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker services are first offered to the borrower:

NOTICE

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE OF % OF THE LOAN AMOUNT.

WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

IF YOU ARE A MEMBER OF A CREDIT UNION YOU SHOULD COMPARE OUR INTEREST RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT UNION.

.....
BORROWER'S SIGNATURE
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BORROWER'S SIGNATURE

The foregoing notice shall be in at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice.

As used in this subdivision, the term "affiliated person of a mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a mortgage broker, and any corporation ten percent or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a mortgage broker; or

6. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is hereby created, to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics, including but not limited to the product type, rates, charges, and repayment terms of the loan.

C. Notwithstanding the provisions of subdivision 5 of subsection B, no person shall act as a mortgage broker in connection with any real estate sales transaction in which such person, or any person affiliated with such person (as defined in subdivision 5 of subsection B), has acted as a real estate broker, agent or salesman and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in the Commonwealth as of February 25, 1989. However, the provisions of this chapter shall not be construed to prohibit a real estate broker, as defined in § 54.1-2100, who is either an owner of an interest in a real estate firm or acts as a real estate broker in a sole proprietorship from having an ownership interest in a mortgage broker or mortgage lender, as defined in this chapter, or from receiving returns on investment arising from such ownership interest or payment of compensation for services actually performed for such mortgage broker or lender.

§ 6.1-431. Private action still maintainable.

A. Nothing in this article shall be construed to preclude any individual or entity who suffers loss as a result of a violation of Articles 3 (§ 6.1-330.53 et seq.) through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title from maintaining an action to recover damages or restitution and, as provided by statute, attorney's fees. However, in any matter in which the Attorney General has exercised his authority pursuant to § 6.1-430, an individual action shall not be maintainable if the individual has received damages or restitution pursuant to § 6.1-430.

B. A borrower who suffers a loss as a result of a broker's breach of duty as set forth in subdivision B 6 of § 6.1-422 may bring an action against such broker to recover actual damages. In addition to any damages awarded, such borrower also may be awarded attorney fees and court costs.