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SENATE BILL NO. 157

Offered January 9, 2008

Prefiled January 7, 2008

A BILL amend and reenact § 6.1-411 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-423.1, relating to the Mortgage Lender and Broker Act; duties of mortgage brokers and mortgage lenders.

Patron—McEachin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-411 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-423.1 as follows:

§ 6.1-411. Persons exempt from chapter.

The following shall be exempt from the licensing and, *except for the provisions of § 6.1-423.1, the other provisions of this chapter:*

1. Lenders making three or fewer mortgage loans in any period of 12 consecutive months;
 2. Any person subject to the general supervision of or subject to examination by the Commissioner pursuant to Chapter 2 (§ 6.1-3 et seq.), Chapter 3.01 (§ 6.1-194.1 et seq.), Chapter 4.01 (§ 6.1-225.1 et seq.), Chapter 5 (§ 6.1-227 et seq.) or Chapter 13 (§ 6.1-381 et seq.) of this title;
 3. Any lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and subsidiaries and affiliates of such entities which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia;
 4. Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;
 5. Agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States;
 6. Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;
 7. Any insurance company;
 8. Persons licensed by the Commonwealth as attorneys, real estate brokers, or real estate salesmen, not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering services as an attorney, real estate broker or real estate salesman; however, a real estate broker or real estate salesman who receives any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage loan for others shall not be exempt from the provisions of this chapter;
 9. Persons acting in a fiduciary capacity conferred by authority of any court;
 10. Persons licensed as small business investment companies by the Small Business Administration;
- and
11. The Virginia Housing Development Authority and persons who (i) are approved by the Virginia Housing Development Authority pursuant to its rules and regulations to act as field originators with respect to mortgage loans made under its programs and (ii) are not engaged in any other activities for which a license is required to be obtained under this chapter.
- § 6.1-423.1. *Duties of mortgage brokers and mortgage lenders to borrowers.*
- A. A mortgage broker, in addition to any other duties imposed by statutory or common law, shall be considered a fiduciary of the borrower in all cases and shall:*
1. *Act in the borrower's best interest and in the utmost good faith toward the borrower, and shall not compromise a borrower's right or interest in favor of another person's right or interest, including a right or interest of the mortgage broker;*
 2. *Safeguard and account for any money handled for the borrower;*
 3. *Follow reasonable and lawful instructions from the borrower;*
 4. *Use reasonable skill, care, and diligence;*
 5. *Clearly disclose to the borrower, in a timely fashion, all material information that might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the mortgage loan, including the total compensation that the mortgage broker would receive from*

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59 *any of the loan options presented by the broker to the borrower; and*

60 *6. Make reasonable efforts to secure or obtain a mortgage loan that is in the best interest of the*
61 *borrower considering all of the circumstances, including the product type, rates, charges, and repayment*
62 *terms of the mortgage loan.*

63 *As used in this subsection, "borrower" includes an individual for whom a mortgage broker*
64 *negotiates, places, or finds a mortgage loan, or offers to negotiate, place, or find a mortgage loan,*
65 *without regard to whether a mortgage loan is made to the individual.*

66 *B. A mortgage lender shall:*

67 *1. Act in good faith and deal fairly in any transaction, practice, or course of business in connection*
68 *with the advertisement, solicitation, making, servicing, purchasing, or sale of any mortgage loan;*

69 *2. Safeguard and account for any money handled for a borrower;*

70 *3. Follow reasonable and lawful instructions from the borrower;*

71 *4. Use reasonable skill, care, and diligence;*

72 *5. Provide timely and accurate disclosures required under state and federal law; and*

73 *6. Make reasonable efforts to make a mortgage loan that is reasonably advantageous to the*
74 *borrower considering all of the circumstances, including the product type, rates, charges, and repayment*
75 *terms of the mortgage loan options offered by the mortgage lender or an affiliate thereof, for which the*
76 *borrower qualifies.*

77 *As used in this subsection, "borrower" includes an individual who applies for a mortgage loan from*
78 *a mortgage lender, without regard to whether a mortgage loan is made by the mortgage lender to the*
79 *individual.*

80 *C. The duties and standards of care established by this section may not be waived or modified.*