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SENATE BILL NO. 938

Offered January 14, 2009

Prefiled January 7, 2009

A *BILL to amend and reenact §§ 6.1-2.26 and 6.1-2.27 of the Code of Virginia, relating to the Consumer Real Estate Settlement Protection Act.*

Patron—Watkins

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-2.26 and 6.1-2.27 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-2.26. Settlement agent registration requirements and compliance with unauthorized practice of law guidelines.

A. Every settlement agent subject to the provisions of this chapter shall be registered as such with the Virginia State Bar within ninety days of July 1, 1997 appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses and telephone numbers; and (ii) information pertaining to licenses issued them by any licensing authority; and (iii) such other information as may be required by the Virginia State Bar. The Virginia State Bar shall accept in satisfaction of the requirements of this subsection, settlement agents' licensing forms submitted to any licensing authority, as defined in this chapter, if such forms contain substantially the same information required hereby. Each such registration (i) shall be accompanied by a fee not to exceed \$100, and (ii) shall be renewed at least biennially thereafter.

B. The Virginia State Bar, in consultation with the Virginia State Corporation Commission and the Virginia Real Estate Board, shall promulgate regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing and settlement services. Such guidelines shall be furnished by the Virginia State Bar appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate the same to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction, and (ii) refer all other matters or allegations to the appropriate licensing authority. ~~D. The willful failure of any settlement agent or financial institution to comply with the provisions of this section~~ guidelines shall be considered a violation of this chapter, and such agent shall be subject to a penalty of up to \$5,000 for each such failure as the Virginia State Bar may determine.

§ 6.1-2.27. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent licensed by it or any of its other licensees has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the appropriate licensing authority may order one or more of the following:

1. A penalty not exceeding \$5,000 for each violation;
2. Revocation or suspension of the applicable licenses, or restraining order requiring such person to cease and desist from engaging in such act or practice; and
3. Restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.

B. *The appropriate licensing authority may terminate administratively the registration of any settlement agent if the settlement agent (i) no longer holds a license, (ii) fails to renew its registration, or (iii) fails to comply with the financial responsibility requirements set forth in § 6.1-2.21.*

C. In addition to the authority given in subsection A, and pursuant to § 12.1-13, the Commission, after determining that any person who does not hold a license from the appropriate licensing authority has violated this chapter or any regulation or order promulgated thereunder, may order one or more of the following:

1. A penalty not exceeding \$5,000 for each violation;
2. A temporary or permanent injunction, or restraining order requiring such person to cease and desist from engaging in such act or practice;

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59 3. Restitution to be made by the person violating this chapter in the amount of any actual, direct
60 financial loss.

61 *€ D.* Nothing in this section shall affect the right of the appropriate licensing authority to impose
62 any other penalties provided by law or regulation. Notwithstanding any provision contained in this
63 section to the contrary, as to that portion of any complaint by a party to the real estate transaction
64 arising under this chapter or any regulation or order promulgated thereunder relating to the unauthorized
65 practice of law, the Virginia State Bar, after complying with applicable law and regulation relating to
66 unauthorized practice of law complaints and concluding the activity was not authorized by statute or
67 regulation, may refer that portion of such complaint to the Attorney General of Virginia or a
68 Commonwealth's Attorney who shall have the power, in addition to any other powers conferred on him
69 by law, to seek the issuance of a temporary or permanent injunction or restraining order against any
70 person so violating this chapter or any regulation or order promulgated thereunder.

71 *Ð E.* A final order of the licensing authority imposing a penalty or ordering restitution may be
72 recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order
73 by the licensing authority.