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## SENATE BILL NO. 991

Offered January 14, 2009

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*A BILL to amend and reenact §§ 6.1-409, and 6.1-431 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-2.8:1 and 6.1-422.2 through 6.1-422.5, relating to mortgage lending and brokering practices, including subprime loans, negative amortization, special loans, and residential mortgage fraud; penalty.*

Patron—Deeds

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.1-409, and 6.1-431 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.1-2.8:1 and 6.1-422.2 through 6.1-422.5 as follows:**

*§ 6.1-2.8:1. Escrow accounts required for certain mortgage loans.*

*A. As used in this section, "subprime loan" has the same meaning ascribed thereto in § 6.1-409.*

*B. No lender (i) 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.); (ii) 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; or (iii) subject to the provisions of Chapter 16 (§ 6.1-408 et seq.) shall make a subprime loan to a borrower unless the terms of the loan require an escrow account to be established whereby the borrower is obligated to make periodic payments into the account for real estate taxes and insurance premiums with respect to the real property that secures repayment of the loan.*

*C. Any lender maintaining escrow accounts for the payment of real estate taxes and insurance pursuant to subsection B shall be subject to the requirements of § 6.1-2.8.*

*§ 6.1-409. Definitions.*

*As used in this chapter, the following words and terms shall have the following meanings unless the context requires a different meaning:*

*"Commissioner" means the Commissioner of the Bureau of Financial Institutions.*

*"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage lender that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.*

*"Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.*

*"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any interest in one- to four-family residential property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans or extensions of credit to buyers of real property for any part of the purchase price of such property by persons selling such property owned by them, (ii) loans to persons related to the lender by blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more than four-family residential property or property used for a commercial or agricultural purpose.*

*"Negative amortization" occurs when the borrower's compliance with any repayment option offered pursuant to the terms of a mortgage loan is insufficient to satisfy the interest accruing on the loan, resulting in an increase in the loan balance. Negative amortization does not occur when a residential mortgage loan is originated, subsidized, or guaranteed by or through an agency of the Commonwealth, a locality, or nonprofit organization, and bears one or more of the following nonstandard payment terms that substantially benefit the borrower: payments vary with income; payments of principal and interest are deferred until the maturity date of the loan or the sale of the residence; principal or interest*

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59 *is forgivable under specified conditions; or where no interest or an annual interest rate of two percent*  
60 *or less is charged in connection with the loan.*

61 "Person" means any individual, firm, corporation, partnership, association, trust, or legal or  
62 commercial entity or group of individuals however organized.

63 "Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of  
64 the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock  
65 corporation or a limited liability company.

66 "Residential property" means improved real property used or occupied, or intended to be used or  
67 occupied, for residential purposes.

68 "Subprime loan" means:

69 1. *In an adjustable rate loan secured by a first lien on residential property that can increase in*  
70 *interest rate but not decrease in interest rate below the fully indexed rate at the time of origination, a*  
71 *loan for which the annual percentage rate (APR) is greater than two percentage points above the yield*  
72 *on United States Treasury securities having comparable periods of maturity, as of the 15th day of the*  
73 *preceding month if the rate is set between the first and the 14th day of the month and as of the 15th*  
74 *day of the current month if the rate is set on or after the 15th day;*

75 2. *In the case of any other loan secured by a first lien on residential property, a loan for which the*  
76 *APR is greater than three percentage points above the yield on United States Treasury securities having*  
77 *comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the*  
78 *first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or*  
79 *after the 15th day; and*

80 3. *In the case of any loan secured by a subordinate lien on a residential property, a loan for which*  
81 *the APR is greater than five percentage points above the yield on United States Treasury securities*  
82 *having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set*  
83 *between the first and the 14th day of the month and as of the 15th day of the current month if the rate*  
84 *is set on or after the 15th day.*

85 *For purposes of this definition, the annual percentage rate has the meaning given in 12 C.F.R. Part*  
86 *226.*

87 § 6.1-422.2. *Loans to pay off special mortgages prohibited; exception.*

88 A. *As used in this section:*

89 "Authorized independent loan counselor" means a nonprofit, third-party individual or organization  
90 providing homebuyer education programs, foreclosure prevention services, mortgage loan counseling, or  
91 credit counseling certified by the United States Department of Housing and Urban Development or an  
92 agency of the Commonwealth.

93 "Special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or  
94 through an agency of the Commonwealth, a locality, or a nonprofit organization, that bears one or  
95 more of the following nonstandard payment terms that substantially benefit the borrower: (i) payments  
96 vary with income; (ii) payments of principal or interest are not required or can be deferred under  
97 specified conditions; (iii) principal or interest is forgivable under specified conditions; or (iv) where no  
98 interest or an annual interest rate of two percent or less is charged in connection with the loan.

99 B. *A mortgage broker shall not provide or arrange for a residential mortgage loan, all or a portion*  
100 *of the proceeds of which are used to fully or partially pay off a special mortgage, unless the borrower*  
101 *has obtained a written certification from an authorized independent loan counselor that the borrower*  
102 *has received counseling on the advisability of the loan transaction.*

103 § 6.1-422.3. *Prepayment penalties on subprime loans prohibited; exception.*

104 Notwithstanding any provision of Article 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 to the contrary, a  
105 mortgage broker shall not provide or arrange for a subprime loan that contains a provision requiring  
106 or permitting the imposition of a penalty, fee, premium, or other charge in the event the loan is prepaid  
107 in whole or in part. This prohibition shall not apply to any loan with a principal amount that exceeds  
108 the conforming loan size limit for a single-family dwelling as established from time to time by the  
109 Federal National Mortgage Association or its successor, or, in the case of an open-end credit plan, that  
110 has an initial maximum credit limit that exceeds such conforming loan size limit.

111 § 6.1-422.4. *Negative amortization loans.*

112 A mortgage broker shall not provide or arrange for a residential mortgage loan, other than a  
113 reverse mortgage pursuant to chapter 41 of title 15 of the United States Code, if the borrower's  
114 compliance with any repayment option offered pursuant to the terms of the loan will result in negative  
115 amortization during any six-month period.

116 § 6.1-422.5. *Unlawful acts by mortgage brokers during mortgage lending process; penalty.*

117 A. *As used in this section, "mortgage lending process" means the process through which an*  
118 *individual seeks or obtains a mortgage loan including, but not limited to, solicitation, application, or*  
119 *origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and*  
120 *funding of the loan. Documents involved in the mortgage lending process include, but are not limited to,*

uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.

B. It shall be unlawful for any mortgage broker to:

1. Knowingly make or cause to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

2. Knowingly use or facilitate the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or

3. Conspire to violate subdivision 1 or 2.

C. A conviction under this section shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process.

D. Violations of this section shall be punishable as a Class 1 misdemeanor.

E. Upon conviction, in addition to any other punishment, a person found guilty of violating this section shall be ordered by the court to make restitution as the court deems appropriate to any person injured or suffering damages as the proximate result of such violation.

§ 6.1-431. Private action maintainable.

A. A borrower injured by a violation of the standards, duties, prohibitions, or requirements of §§ 6.1-422 through 6.1-422.5 may bring an action to recover damages sustained, statutory damages equal to the amount of all lender fees included in the amount of the principal of the mortgage loan, and punitive damages if appropriate, together with costs and reasonable attorneys' fees.

B. 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.

C. The remedies provided in this section are cumulative and do not restrict any other right or remedy otherwise available to the borrower.