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SENATE BILL NO. 240

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 6.1-409 and 6.1-410 of the Code of Virginia, relating to Nationwide Mortgage Licensing System and Registry.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-409 and 6.1-410 of the Code of Virginia are amended and reenacted as follows:

§ 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.

"Nationwide Mortgage Licensing System and Registry" or "Registry" means the mortgage licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

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

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

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

§ 6.1-410. License requirement.

A. No person shall engage in business as a mortgage lender or a mortgage broker, or hold himself out to the general public to be a mortgage lender or a mortgage broker unless such person has first obtained a license under this chapter. However, subject to such conditions as the Commission may prescribe, an individual who is a bona fide employee or exclusive agent of a person licensed under this chapter may negotiate, place or find mortgage loans without being licensed as a mortgage broker.

B. Every mortgage lender and mortgage broker required to be licensed under this chapter shall register with the Registry and be subject to such registration and renewal requirements as may be established by the Registry, in addition to any requirements of this chapter. In adopting rules and regulations pursuant to § 6.1-421, the Commission shall include any terms, conditions or requirements applicable to such registration and renewal. Any fees required by the Registry shall be separate and apart from any fees imposed by this chapter. The Commission, at its discretion, may collect any registration and renewal fees on behalf of the Registry and remit such fees to the Registry or permit the Registry to collect any fees imposed by this chapter and remit such fees to the Commission.

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C. In connection with its implementation and administration of this chapter, the Commission may establish agreements or contracts with the Registry or other entities designated by the Registry to collect, distribute, and maintain information and records, and process fees related to mortgage lenders and mortgage brokers required to be licensed under this chapter. In establishing such agreements or contracts, the Commission shall not be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).