

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 301

An Act to amend and reenact § 6.2-1700 of the Code of Virginia, relating to the definition of mortgage loan originator for residential mortgage loan.

[S 786]

Approved March 20, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-1700 of the Code of Virginia is amended and reenacted as follows:

§ 6.2-1700. Definitions.

As used in this chapter:

"Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act, Title V (§ 1501 et seq.) of the Housing and Economic Recovery Act of 2008, P.L. 110-289.

"Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan in the mortgage industry and communication with the consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

"Depository institution" has the same meaning as in § 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.), and includes any credit union.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Individual loan servicer" means any person who, on behalf of the note holder, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the note holder pursuant to a residential mortgage loan, or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the note holder with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

"Licensee" means an individual licensed under this chapter.

"Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or a person exempt from licensing under this chapter. For the purposes of this definition, clerical or support duties may include (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

"Mortgage loan originator" means an individual who takes an application for or offers or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, that is secured by real property located in the Commonwealth. "Mortgage loan originator" does not include (i) any individual who only performs administrative or clerical tasks on behalf of a person licensed or exempt pursuant to Chapter 16 (§ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant to this chapter; (ii) any individual who only performs real estate brokerage activities and is licensed or registered in accordance with applicable law, unless the individual is compensated by the lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; (iii) any individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D); (iv) a registered mortgage loan originator; (v) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; (vi) any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; (vii) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; ~~or~~ (viii) any individual acting as an individual loan servicer; *or (ix) any individual who is employed by a housing counseling organization certified or approved by the U.S. Department of Housing and Urban Development, assists borrowers who are in default or in foreseeable likelihood of default on a residential mortgage loan by offering or negotiating the terms of such loan, and does not otherwise engage in any activities for which a license is required by this chapter.*

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

"Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

"Real estate brokerage activities" means any activity governed by Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Registered mortgage loan originator" means any individual who (i) takes an application for or offers or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, that is secured by real property located in the Commonwealth and is an employee of (a) a depository institution, (b) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or (c) an institution regulated by the Farm Credit Administration, and (ii) is registered with, and maintains a unique identifier through, the Registry.

"Unique identifier" means a number or other identifier assigned by protocols established by the Registry.