

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 435

An Act to amend and reenact §§ 6.2-1603, 6.2-1607, 6.2-1608, and 6.2-1700 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 17 of Title 6.2 a section numbered 6.2-1721; and to repeal § 6.2-1712 of the Code of Virginia, relating to mortgage lenders, mortgage brokers, and mortgage loan originators; fees.

[S 1009]

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1603, 6.2-1607, 6.2-1608, and 6.2-1700 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 17 of Title 6.2 a section numbered 6.2-1721 as follows:

§ 6.2-1603. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall set forth:

1. The name and address of the applicant;

2. If the applicant is a firm or partnership, the name and address of each member of the firm or partnership;

3. If the applicant is a corporation or a limited liability company, the name and address of each officer, director, registered agent and each principal;

4. The address of each ~~location~~ office at which the business to be licensed is to be conducted;

5. Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

6. Such other information concerning the financial responsibility, background, experience and activities of the applicant and its members, officers, directors, and principals as the Commissioner may require.

C. The application shall be accompanied by payment of the following fees:

1. A license application fee of:

a. In the case of an application for a license to act as a mortgage lender or a mortgage broker, ~~an application fee of \$500; or~~

2 b. In the case of an application for a license to act as both mortgage lender and mortgage broker, ~~an application fee of \$1,000; and~~

2. An application fee of \$150 for each office at which the business to be licensed is to be conducted.

D. The application ~~fee fees~~ shall not be refundable in any event. The ~~fee fees~~ shall not be abated by surrender, suspension or revocation of the license.

§ 6.2-1607. Licenses; places of business; changes.

A. Each license shall state the address of each office at which the business is to be conducted and shall state fully the name of the licensee. Each license shall be prominently posted in each office of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Commission.

B. No licensee shall open an additional office ~~or relocate any office~~ without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within 30 days of the date the application is received by the Commission. ~~After approval, the applicant shall give written notice to the Commissioner within 10 days of the commencement of business at the additional or relocated office.~~

C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any approved office and of the name, address and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such lender or broker.

§ 6.2-1608. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any licensee

unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals, or members of the licensee; ~~and~~

3. *Submits and furnishes to the Commissioner information concerning the identity of the directors, senior officers, principals, and members of the applicant, and of any proposed new directors, senior officers, principals, or members of the licensee, including fingerprints for submission to the Federal Bureau of Investigation or any federal or state governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check, as prescribed by the Commission, and pays any fees associated therewith. In the event that the Registry is capable of processing criminal history background checks, this information shall instead be submitted to the Registry; and*

4. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers and principals, and any proposed new directors, members, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with another licensee or a person exempt from this chapter under the provisions of subdivisions 2 through 11 of § 6.2-1602, (ii) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

§ 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 in which the dwelling is or will be 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.

"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 in which the dwelling is or will be 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.

§ 6.2-1721. Cease and desist orders.

A. If the Commission determines that any mortgage loan originator required to be licensed hereunder has violated any provision of this chapter or any regulation adopted pursuant thereto, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the address of record in the Registry for such mortgage loan originator and shall state the grounds for the contemplated action.

B. Within 14 days after the mailing of the notice, the person named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at the hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such penalties as may be prescribed by Commission regulations.

2. That the State Corporation Commission shall not issue any provisional licenses in accordance with § 6.2-1712 of the Code of Virginia on or after July 1, 2011.

3. That § 6.2-1712 of the Code of Virginia is repealed effective July 1, 2012.