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HOUSE BILL NO. 572

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 6.2-1600 and 6.2-1602 of the Code of Virginia, relating to owner financing.

Patron—Marshall, D.W.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 6.2-1600 and 6.2-1602 of the Code of Virginia are amended and reenacted as follows:****§ 6.2-1600. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Entity" means any corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other legal or commercial entity.

"Licensee" means a mortgage lender or mortgage broker licensed by the Commission pursuant to this chapter.

"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) (ii) 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 or entity.

"Principal" means any person who, directly or indirectly, owns or controls a 10 percent or greater interest in any entity.

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

§ 6.2-1602. Persons exempt from chapter.

The following shall be exempt from the licensing and other provisions of this chapter:

1. Lenders making three or fewer mortgage loans in any period of 12 consecutive months;

2. Any person subject to the general supervision of or subject to examination by the Commissioner pursuant to ~~Chapters~~ *Chapter 7* (§ 6.2-700 et seq.), 8 (§ 6.2-800 et seq.), 11 (§ 6.2-1100 et seq.), 13 (§ 6.2-1300 et seq.), or 14 (§ 6.2-1400 et seq.);

3. Any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States or any state, and subsidiaries and affiliates of such entities which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States or any state;

4. Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

5. Agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws

INTRODUCED

HB572

59 of any state or the United States;

60 6. Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the
61 Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

62 7. Any insurance company;

63 8. Persons licensed by the Commonwealth as attorneys, real estate brokers, or real estate salesmen,
64 not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering
65 services as an attorney, real estate broker or real estate salesman; however, a real estate broker or real
66 estate salesman who receives any fee, commission, kickback, rebate or other payment for directly or
67 indirectly negotiating, placing or finding a mortgage loan for others shall not be exempt from the
68 provisions of this chapter;

69 9. Persons acting in a fiduciary capacity conferred by authority of any court;

70 10. Persons licensed as small business investment companies by the Small Business Administration;
71 and

72 11. The Virginia Housing Development Authority and persons who (i) are approved by the Virginia
73 Housing Development Authority pursuant to its rules and regulations to act as field originators with
74 respect to mortgage loans made under its programs and (ii) are not engaged in any other activities for
75 which a license is required to be obtained under this chapter; and

76 12. *Persons who make loans or extend credit for any part of the purchase price of real property*
77 *owned by such person.*