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HOUSE BILL NO. 1803

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 6.2-1700 and 6.2-1701 of the Code of Virginia, relating to mortgage loan originators; licensing.

Patron—Marshall, D.W.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1700 and 6.2-1701 of the Code of Virginia are 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 Covered financial~~ institution" has the same meaning as in § 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1814 et seq.), and includes any credit union that term is defined in 12 C.F.R. § 1007.102.

"Dwelling" means a residential structure or mobile home that contains one to four family housing units, or individual units of condominiums or cooperatives.

"Employee" means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

"Federal banking agencies agency" 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, with respect to the origination of a residential mortgage loan, 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 registered mortgage loan originator. For the purposes of this definition, clerical or support duties 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 (i) takes an application for or offers or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the Commonwealth or (ii) represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities described in clause (i).

"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.

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HB1803

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

61 "Real estate brokerage activities" means any activity that involves offering or providing real estate
62 brokerage services to the public, including (i) acting as a real estate broker, real estate agent, or real
63 estate salesperson for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties
64 interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating any portion
65 of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in
66 connection with providing financing with respect to any such transaction; (iv) engaging in any activity
67 for which a person is required to be licensed or registered as a real estate broker, real estate agent, or
68 real estate salesperson; and (v) offering to engage in any activity or act in any capacity described in
69 clauses (i) through (iv).

70 "Registered mortgage loan originator" means any individual who (i) takes an application for or offers
71 or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the
72 Commonwealth and, (ii) is an employee of ~~(a) a depository covered financial institution, (b) a subsidiary~~
73 ~~that is owned and controlled by a depository institution and regulated by a federal banking agency, or~~
74 ~~(c) an institution regulated by the Farm Credit Administration, and (ii) (iii) is registered with, and~~
75 maintains a unique identifier through, the Registry.

76 "Residential mortgage loan" means any loan primarily for personal, family, or household use that is
77 secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or
78 residential real estate upon which is constructed or intended to be constructed a dwelling.

79 "Unique identifier" means a number or other identifier assigned by protocols established by the
80 Registry that permanently identifies a mortgage loan originator.

81 **§ 6.2-1701. License requirement.**

82 A. No individual shall engage in the business of a mortgage loan originator unless such individual
83 has first obtained and maintains annually a license under this chapter.

84 B. The following shall be exempt from licensing and other provisions of this chapter:

85 1. Any individual engaged solely as a loan processor or underwriter ~~who does not represent to the~~
86 ~~public, through advertising or other means of communicating or providing information including the use~~
87 ~~of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual~~
88 ~~can or will perform any of the activities of a mortgage loan originator. An . Except as otherwise~~
89 ~~provided in this subsection, an individual acting as an independent contractor may not engage in~~
90 residential mortgage loan origination activities as a loan processor or underwriter unless such individual
91 ~~obtains has first maintained and maintains annually a mortgage loan originator license;~~

92 2. Any individual who only performs administrative or clerical tasks on behalf of a ~~person licensed~~
93 ~~or exempt pursuant to Chapter 16 (§ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant~~
94 ~~to this chapter mortgage loan originator;~~

95 3. Any individual who only performs real estate brokerage activities and is licensed or registered in
96 accordance with applicable law, unless the individual is compensated *directly or indirectly* by the lender,
97 a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker,
98 or other mortgage loan originator;

99 4. Any individual solely involved in extensions of credit relating to timeshare plans, as that term is
100 defined in 11 U.S.C. § 101(53D);

101 5. A registered mortgage loan originator;

102 6. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of
103 an immediate family member of the individual;

104 7. Any individual who offers or negotiates terms of a residential mortgage loan secured by a
105 ~~dwelling that serves acts as a loan originator in providing financing for the sale of that individual's own~~
106 residence;

107 8. A licensed attorney ~~who negotiates the terms of a residential mortgage loan on behalf of a client~~
108 ~~as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by~~
109 ~~a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage~~
110 ~~broker, or other mortgage loan originator, provided that the attorney's mortgage loan origination~~
111 ~~activities are: (i) considered by the Supreme Court of Virginia to be part of the authorized practice of~~
112 ~~law within the Commonwealth, (ii) carried out within an attorney-client relationship, and (iii)~~
113 ~~accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;~~

114 9. ~~Any individual acting as an individual loan servicer;~~

115 ~~10. Any employee of federal, state, or local government, or a housing finance agency, who acts as a~~
116 ~~mortgage loan originator only pursuant to his official duties of employment. For the purposes of this~~
117 ~~subdivision, "local government" means any county, city, or town or other local or regional political~~
118 ~~subdivision; and~~

119 ~~11. 10. Any employee of a bona fide nonprofit organization, as determined by the Commission in~~
120 accordance with § 6.2-1701.1, who acts as a mortgage loan originator only (i) pursuant to his official

121 duties of employment and (ii) with respect to residential mortgage loans with terms that are favorable to
122 a borrower.