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SENATE BILL NO. 118

Offered January 8, 2014
Prefiled December 30, 2013

A BILL to amend and reenact §§ 6.2-1700 and 6.2-1701 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-1702.1, relating to mortgage loan originators; transitional licensing.

Patron—Watkins

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 and that the Code of Virginia is amended by adding a section numbered 6.2-1701.1 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.

"Covered financial institution" has the same meaning as 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.

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

"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 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.

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

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

INTRODUCED

SB118

8/22/22 8:18

clauses (i) through (iv).

"Registered mortgage loan originator" means any 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, (ii) is an employee of a covered financial institution, and (iii) is registered with, and maintains a unique identifier through, the Registry.

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

"Transitional mortgage loan originator" means an individual who is authorized to act as a mortgage loan originator under a transitional mortgage loan originator license.

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

§ 6.2-1701. License requirement.

A. ~~No~~ *Except as otherwise provided in this section, no* individual shall engage in the business of a mortgage loan originator unless such individual has first obtained and maintains annually a license under this chapter.

B. *A transitional mortgage loan originator license may be issued to an individual who reasonably anticipates satisfying all the requirements necessary to obtain a license as a mortgage loan originator under this chapter and who either (i) has an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than Virginia, provided the individual registers, is fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry at the time the individual submits a transitional mortgage loan originator application to the Commission; or (ii) was formerly a registered loan originator and is in the process of satisfying all of the requirements necessary to obtain a license as a mortgage loan originator under this chapter. However, a transitional mortgage loan originator license may be issued under this chapter if, and only to the extent that, the issuance of such a license to such an individual is permitted by a rule, guideline, or interpretive letter issued under § 1503 of the Act or regulations promulgated thereunder.*

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

1. Any individual engaged solely as a loan processor or underwriter. Except as otherwise provided in this subsection, an individual acting as an independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such individual has first obtained and maintains annually a mortgage loan originator license;

2. Any individual who only performs administrative or clerical tasks on behalf of a mortgage loan originator;

3. Any individual who only performs real estate brokerage activities and is licensed or registered in accordance with applicable law, unless the individual is compensated directly or indirectly 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;

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

5. A registered mortgage loan originator;

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

7. Any individual who acts as a loan originator in providing financing for the sale of that individual's own residence;

8. A licensed attorney, provided that the attorney's mortgage loan origination activities are: (i) considered by the Supreme Court of Virginia to be part of the authorized practice of law within the Commonwealth, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;

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

10. Any employee of a bona fide nonprofit organization, as determined by the Commission in accordance with § 6.2-1701.1, who acts as a mortgage loan originator only (i) pursuant to his official duties of employment and (ii) with respect to residential mortgage loans with terms that are favorable to a borrower.

§ 6.2-1702.1. Application for license as a transitional mortgage loan originator.

A. A transitional mortgage loan originator license shall be limited to a term of not more than 120 days and shall not be renewed or extended by the Commission

B. An application for a license as a transitional mortgage loan originator shall be on a form provided by the Commission.

C. Each individual applicant for a license as a transitional mortgage loan originator shall:

1. Be at least 18 years of age;

2. Have an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than Virginia or have been a registered mortgage loan originator within two months of the date of the application;

3. Have a valid unique identifier, registration, and fingerprints on file with the Nationwide Mortgage Licensing System and Registry;

4. Have been employed for a period of no less than two years as a mortgage loan originator; and

5. Have provided certification of employment with a mortgage lender or mortgage broker licensed under Chapter 16 (§ 6.2-1600 et seq.), including an attention by the employer that the applicant is or will be employed by such employer.

D. An application for licensing as a transitional mortgage loan originator shall be subject to the requirements of §§ 6.2-1703 and 6.2-1704 and subdivisions 1 and 2 of § 6.2-1707.

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