

16104516D

SENATE BILL NO. 204

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 1, 2016)

(Patron Prior to Substitute—Senator Stuart)

A *BILL to amend and reenact §§ 38.2-1825, 55-525.14, 55-525.16, 55-525.17, 55-525.24, 55-525.25, 55-525.26, and 55-525.30 of the Code of Virginia, relating to real estate settlement agents.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1825, 55-525.14, 55-525.16, 55-525.17, 55-525.24, 55-525.25, 55-525.26, and 55-525.30 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1825. Duration and termination of licenses and appointments.

A. A license issued to:

1. An individual agent shall authorize him to act as an agent until the license is otherwise terminated, suspended or revoked.

2. A business entity shall authorize such business entity to act as an agent until the license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation of law, shall automatically terminate all licenses issued to such partnership. The Bureau shall automatically terminate all insurance licenses within ninety calendar days of receiving notification from the clerk of the Commission that the certificate of organization or charter of a domestic limited liability company or corporation, respectively, whether by intent or by operation of law, has been terminated or that the certificate of registration or certificate of authority of a foreign limited liability company or corporation, respectively, has been revoked.

B. The license issued to a resident variable contract agent pursuant to this chapter shall terminate immediately upon the termination of the licensee's life and annuities insurance agent license, and may not be applied for again until the person has been issued a new life and annuities insurance agent license.

C. The license issued to a resident surplus lines broker pursuant to this title shall terminate immediately upon the termination of the licensee's property and casualty insurance agent license, and may not be applied for again until the person has been issued a new property and casualty insurance agent license.

D. Immediately upon termination of a settlement agent's last appointment under his title insurance agent license, the Bureau shall ~~notify the Virginia State Bar to~~ terminate the settlement agent's registration and the person shall not be permitted to act as a settlement agent under his title insurance agent's license until a new appointment has taken effect.

E. An appointment issued to an agent by an insurer, unless terminated, suspended or revoked, shall authorize the appointee to act as an agent for that insurer and to be compensated therefor notwithstanding the provisions of §§ 38.2-1812 and 38.2-1823.

§ 55-525.14. Disclosure of charges for appraisal or valuation using automated or other valuation mechanism.

Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing not more than four residential dwelling units shall disclose on the settlement statement *or closing disclosure*, as ~~that term~~ *as those terms are* defined in § 55-525.16, any fee charged to the borrower for an appraisal, as that term is defined in § 54.1-2009, and any fee charged to the borrower for a valuation or opinion of value of the property prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

§ 55-525.16. Definitions.

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

"Association" means the National Association of Insurance Commissioners.

"Closing disclosure" means the combined mortgage loan disclosure statement of final loan terms and closing costs prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.) and Consumer Financial Protection Bureau Regulation X (12 C.F.R. Part 1024) and Regulation Z (12 C.F.R. Part 1026).

"Commission" means the State Corporation Commission.

"Escrow" means written instruments, money, or other items deposited by a party with a settlement agent for delivery to other persons upon the performance of specified conditions or the happening of a certain event.

"Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and

60 payoffs, ordering surveys and inspections, preparing settlement statements *or closing disclosures*,
61 determining that all closing documents conform to the parties' contract requirements, setting the closing
62 appointment, following up with the parties to ensure that the transaction progresses to closing,
63 ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which
64 the documents are executed, receiving and disbursing funds, completing form documents and instruments
65 selected by and in accordance with instructions of the parties to the transaction, handling or arranging
66 for the recording of documents, sending recorded documents to the lender, sending the recorded deed
67 and the title policy to the buyer, and reporting federal income tax information for the real estate sale to
68 the Internal Revenue Service.

69 "Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under
70 Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, (ii) is not a party to the real estate transaction, (iii)
71 provides escrow, closing, or settlement services in connection with a transaction related to any real
72 estate in the Commonwealth, and (iv) is listed as the settlement agent on the settlement statement *or*
73 *closing disclosure* for such transaction.

74 "Licensing authority" shall mean the (i) Commission acting pursuant to this chapter, Title 6.2, Title
75 12.1, or Title 38.2; (ii) the Virginia State Bar acting pursuant to this chapter or Chapter 39 (§ 54.1-3900
76 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this chapter or Chapter
77 21 (§ 54.1-2100 et seq.) of Title 54.1.

78 "Party to the real estate transaction" means with respect to that real estate transaction, a lender, seller,
79 purchaser or borrower, and with respect to a corporate purchaser, any entity that is a subsidiary of or
80 under common ownership with that corporate purchaser.

81 "Settlement agent" means a person, other than a party to the real estate transaction, who provides
82 escrow, closing, or settlement services in connection with a transaction related to real estate in the
83 Commonwealth and who is listed as the settlement agent on the settlement statement *or closing*
84 *disclosure* for such transaction. Any person, other than a party to the transaction, who conducts the
85 settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the
86 applicable requirements of this chapter.

87 "Settlement statement" means the statement of receipts and disbursements for a transaction related to
88 real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974
89 (RESPA) (12 U.S.C. § 2601 et seq.), as amended, and the regulations thereunder.

90 **§ 55-525.17. Limitation on applicability of chapter.**

91 Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21
92 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from
93 performing escrow, closing, or settlement services to facilitate the settlement of a transaction in which
94 the licensee is involved without complying with the provisions of this chapter, so long as the licensee,
95 the licensee's employees, or independent contractors are not named as the settlement agent on the
96 settlement statement *or closing disclosure* and the licensee is otherwise not prohibited from performing
97 such services by law or regulation.

98 **§ 55-525.24. Conditions for providing escrow, closing, or settlement services and for maintaining**
99 **escrow accounts.**

100 A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing
101 shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate
102 fiduciary trust account or accounts in a financial institution ~~licensed~~ *authorized* to do business in the
103 Commonwealth no later than the close of the second business day, in accordance with the following
104 requirements:

105 1. The funds shall be the property of the person or persons entitled to them under the provisions of
106 the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow,
107 settlement, or closing in the records of the settlement agent in a manner that permits the funds to be
108 identified on an individual basis; and

109 2. The funds shall be applied only in accordance with the terms of the individual instructions or
110 agreements under which the funds were accepted.

111 B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or
112 agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other
113 than the settlement agent shall be disbursed in accordance with § 55-525.11, except:

114 1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents.
115 Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement
116 agent's settlement escrow account, identified and itemized by file name or file number, as a file with a
117 balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the
118 title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred
119 within two business days into a separate title insurance premium escrow account, which account shall be
120 identified as such and be separate from the business or personal funds of the settlement agent. These
121 transferred title insurance premium funds shall be itemized and identified within the separate title

insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement *or closing disclosure* that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing. An attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements *or closing disclosures* for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

§ 55-525.25. Falsifying settlement statements prohibited.

No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement *or closing disclosure*. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement *or closing disclosure*, shall not be deemed to be a violation of this section.

§ 55-525.26. Separate charge for reporting transactions limited.

No settlement agent shall charge any party to a real estate transaction, as a separate item on a settlement statement *or closing disclosure*, a sum exceeding \$10 for complying with any requirement imposed on the settlement agent by § 58.1-316 or 58.1-317.

§ 55-525.30. Settlement agent registration requirements and compliance with unauthorized practice of law guidelines.

A. Every settlement agent subject to the provisions of this chapter shall be registered as such with the appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses, and telephone numbers and (ii) such other information as may be required. Each such registration (a) shall be accompanied by a *nonrefundable* fee not to exceed \$100, and (b) shall be renewed at least biennially thereafter. When the registration of a settlement agent is renewed, the appropriate authority shall notify the registrant of the provisions of § 17.1-223.

B. The Virginia State Bar, in consultation with the Commission and the Virginia Real Estate Board, shall adopt regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing, and settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing, or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate the same to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction, and (ii) refer all other matters or allegations to the appropriate licensing authority. The willful failure of any settlement agent to comply with the guidelines shall be considered a violation of this chapter, and such agent shall be subject to a penalty of up to \$5,000 for each such failure as the Virginia State Bar may determine.