

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding sections numbered 55.1-1009.1 and 55.1-1015.1 and to*
3 *repeal § 55.1-904 of the Code of Virginia, relating to real estate settlements and settlement agents;*
4 *prohibited conduct; penalties.*

5 [H 819]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That the Code of Virginia is amended by adding sections numbered 55.1-1009.1 and 55.1-1015.1**
9 **as follows:**10 **§ 55.1-1009.1. Prohibition against payment or receipt of settlement services kickbacks, rebates,**
11 **commissions, and other payments.**12 *A. No person selling real property, or performing services as a settlement agent, lay real estate*
13 *settlement agent, real estate agent, attorney, or lender incident to any real estate settlement or sale,*
14 *shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other*
15 *payment pursuant to any agreement or understanding, oral or otherwise, that business incident to*
16 *services required to complete a settlement be referred to any person.*17 *B. Nothing in this section shall be construed to prohibit:*18 *1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the*
19 *provisions of the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);*20 *2. The provision of educational materials or classes, if such materials or classes are provided to a*
21 *group of persons or entities pursuant to a bona fide marketing or educational effort;*22 *3. The payment to any person of a bona fide salary or compensation or other payment for services*
23 *actually performed for the business of the settlement service provider; or*24 *4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance*
25 *business. An employer's payment to its own employees for the referral of insurance business shall be*
26 *subject to the requirements of subdivision B 8 of § 38.2-1821.1.*27 *C. No person shall be in violation of this section solely by reason of ownership in a settlement*
28 *service provider, where such person receives returns on investments arising from the ownership interest,*
29 *provided that such person discloses in writing to the consumer an ownership interest in those settlement*
30 *services, including its ownership percentage in the settlement service provider pursuant to the*
31 *requirements of § 55.1-905.*32 **§ 55.1-1015.1. Civil penalties; attorney fees.**33 *A. In addition to the penalties and liabilities set forth in §§ 55.1-1009.1 and 55.1-1015, in any action*
34 *brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in*
35 *violation of this chapter, the Attorney General may recover for the Literary Fund, upon petition to the*
36 *court, a civil penalty of not more than \$5,000 per violation. For purposes of this section, prima facie*
37 *evidence of a willful violation may be shown when the Attorney General notifies the alleged violator by*
38 *certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt*
39 *of the notice, continues to engage in the act or practice.*40 *B. The Attorney General recovering a civil penalty under subsection A, or the appropriate licensing*
41 *authority or the Commission instituting an enforcement action under § 55.1-1015, may recover costs and*
42 *reasonable expenses incurred by it in investigating and preparing the case and attorney fees.*43 **2. That § 55.1-904 of the Code of Virginia is repealed.**