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SENATE BILL NO. 291

Offered January 8, 2020

Prefiled January 3, 2020

A BILL to amend and reenact § 6.2-1616 of the Code of Virginia, relating to mortgage brokers; prohibited conduct.

Patron—Deeds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-1616 of the Code of Virginia is amended and reenacted as follows:

§ 6.2-1616. Other prohibitions applicable to mortgage brokers.

A. As used in For purposes of this section, "person affiliated," when used with reference to another person, means (i) any person who is a subsidiary, stockholder, partner, trustee, director, officer or employee of the other person or (ii) any corporation 10 percent or more of the capital stock of which is owned by the other person or by any person who is a subsidiary, stockholder, partner, trustee, director, officer, or employee of the other a person is considered an affiliate of a mortgage broker under the following circumstances:

1. The mortgage broker owns, directly or indirectly, a 10 percent or greater interest in the person;
2. The person owns, directly or indirectly, a 10 percent or greater interest in the mortgage broker;
3. The person is a partner, trustee, director, officer, or employee of the mortgage broker;
4. A third party owns, directly or indirectly, a 10 percent or greater interest in both the person and the mortgage broker; or

5. A partner, trustee, director, officer, or employee of the mortgage broker owns, directly or indirectly, a 10 percent or greater interest in the person.

B. No mortgage broker required to be licensed under this chapter shall:

1. Except for documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer, or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, or officer of the lender;

4. Receive compensation from a borrower other than that specified in a written agreement signed by the borrower;

5. ~~Receive compensation for negotiating, placing or finding~~ *Negotiate, place, or find* a mortgage loan ~~where that will be used, either in whole or in part, to finance the purchase of residential property if such mortgage broker; or any person affiliated with the an affiliate of such mortgage broker; has otherwise acted is or will be~~ (i) acting as a real estate broker, agent or, salesman, or firm in connection with the sale of the real estate which secures residential property that will secure the mortgage loan and such mortgage broker or person affiliated with the mortgage broker has received or will receive any other compensation or thing of value from the lender, borrower, seller or any other person, unless the borrower is given (ii) charging, collecting, or receiving a commission, fee, or other thing of value for its real estate sales services.

This prohibition shall not apply to a mortgage broker who (a) was licensed by the Commission as of February 25, 1989, and (b) gives the following notice in writing to the borrower at the time the mortgage broker services are first offered to the borrower:

NOTICE

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE OF % OF THE LOAN AMOUNT.

WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

IF YOU ARE A MEMBER OF A CREDIT UNION YOU SHOULD COMPARE OUR INTEREST RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT UNION.

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59 BORROWER'S SIGNATURE

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61 The foregoing notice shall be in at least 10-point type and the prospective borrower shall
62 acknowledge receipt of the written notice; or

63 6. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is
64 hereby created, to make reasonable efforts to secure a mortgage loan that is in the best interests of the
65 applicant, considering the applicant's circumstances and loan characteristics, including but not limited to
66 the product type, rates, charges, and repayment terms of the loan.

67 C. Notwithstanding the provisions of subdivision B 5, no person shall act as a mortgage broker in
68 connection with any real estate sales transaction in which such person, or any person affiliated with such
69 person, has acted as a real estate broker, agent, or salesman and has received or will receive
70 compensation in connection with such transaction, unless such person was regularly engaged in acting as
71 a mortgage broker in the Commonwealth *Except as otherwise provided therein for mortgage brokers*
72 *who were licensed by the Commission as of February 25, 1989, every mortgage broker required to be*
73 *licensed under this chapter shall comply with the prohibition in subdivision B 5.*