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SENATE BILL NO. 303

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 6.2-888, 6.2-1616, and 6.2-1627 of the Code of Virginia, relating to mortgage brokers; dual compensation.*

Patron—Deeds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-888, 6.2-1616, and 6.2-1627 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-888. Real estate brokerage business of controlled subsidiary.

A. In addition to the types of business authorized in §§ 6.2-885 and 6.2-887, a controlled subsidiary corporation may be formed and licensed to transact business as a real estate brokerage firm in accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate brokerage business and such services only in accordance with the specific provisions of this section. Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a comparable business.

B. A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm and provide the services of a real estate brokerage firm, only upon the Commission's determination that the state bank making application to do so is in full compliance with applicable law. The investment of any bank in the stock, securities, or other obligations of a controlled subsidiary corporation shall be approved by the Commission only upon a determination by the Commission that (i) the depositors of the bank are adequately protected from the risk of such ownership and (ii) the ownership is a safe and sound investment for the bank in accordance with applicable law. Such determination shall include but not be limited to providing written notice to the Virginia Real Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

C. A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm only in compliance with the following:

1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary corporation, that engages in real estate brokerage, shall not:

a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any other arrangement for real estate services with its affiliated real estate brokerage firm;

b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the *federal* Real Estate Settlement Procedures Act of 1974, (12 U.S.C. § 2601 et seq.); and regulations adopted thereunder;

d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage services is that the customer shall make application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the *federal* Real Estate Settlement Procedures Act of 1974, (12 U.S.C. § 2601 et seq.); and regulations adopted thereunder;

e. Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate brokerage firm;

f. Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, affiliates, or service entities;

g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely accepts retail deposits from the general public;

h. Conduct real estate brokerage activities in areas of a building that are identified as areas where banking activities occur;

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59 i. Conduct banking activities in areas of the building that are identified as areas where real estate
60 brokerage activities occur;

61 j. Make payment to its employees for any referrals of real estate brokerage business;

62 k. Use confidential credit and other financial information available from the bank for solicitation
63 purposes by a real estate brokerage affiliate, without first having obtained the written consent of the
64 customer;

65 l. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information of
66 or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective
67 customer; or

68 m. Use, directly or indirectly, nonpublic customer information that is held or obtained by the bank
69 for the purpose of soliciting real estate business, without first having obtained the written consent of the
70 customer;

71 2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and
72 conspicuously disclose in writing, in a separate document, to any person who applies for credit related
73 to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate
74 transaction, that the person is not required to consult with, contract for, or enter into an arrangement for
75 real estate brokerage services with its affiliated real estate brokerage firm; and

76 3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose
77 in writing, in a separate document, before the time an agency agreement for real estate brokerage
78 services is executed, that the person is not required to apply, contract for, or enter into any other
79 arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.

80 D. The requirements of this section are in addition to the requirements of the *federal* Real Estate
81 Settlement Procedures Act of 1974; (12 U.S.C. § 2601 et seq.); and regulations adopted thereunder.

82 E. State banks owning and transacting business as real estate brokerage firms under this section are
83 subject to the provisions of Chapter 9 (§ 55.1-900 et seq.) of Title 55.1.

84 F. A state bank that acts as a mortgage broker, as defined in § 6.2-1600, and that transacts business
85 as a real estate brokerage through a controlled subsidiary corporation, is subject to ~~subdivision B 5 and~~
86 subsection C of § 6.2-1616; however, a state bank that, pursuant to an executed originating agreement
87 with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the
88 Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be
89 acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a
90 mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing
91 Development Authority is or would be the payee on the note evidencing such mortgage loan and that
92 the Virginia Housing Development Authority provides or would provide the funding of such mortgage
93 loan prior to or at the settlement thereof.

94 G. In the event of a violation of this section, the Commission may take such action as is authorized
95 in accordance with § 6.2-946, including issuance of an order requiring the state bank to cease and desist
96 the activity that violates this section and imposing penalties.

97 **§ 6.2-1616. Other prohibitions applicable to mortgage brokers.**

98 A. As used in this section, "person affiliated," when used with reference to another person, means (i)
99 any person who is a subsidiary, stockholder, partner, trustee, director, officer or employee of the other
100 person or (ii) any corporation 10 percent or more of the capital stock of which is owned by the other
101 person or by any person who is a subsidiary, stockholder, partner, trustee, director, officer, or employee
102 of the other person.:

103 *"Real estate broker" has the same meaning provided in § 54.1-2100.*

104 *"Real estate salesperson" has the same meaning provided in § 54.1-2101.*

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

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

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

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

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

115 5. Receive compensation for negotiating, placing or finding a mortgage loan where such mortgage
116 broker, or any person affiliated with the mortgage broker, has otherwise acted as a real estate broker,
117 agent or salesman in connection with the sale of the real estate which secures the mortgage loan and
118 such mortgage broker or person affiliated with the mortgage broker has received or will receive any
119 other compensation or thing of value from the lender, borrower, seller or any other person, unless the
120 borrower is given the following notice in writing 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.

BORROWER'S SIGNATURE

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

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

C. Notwithstanding the provisions of subdivision B 5, no person shall act as a *If a mortgage broker negotiates, places, or finds a mortgage loan and acts as a real estate broker or real estate salesperson in connection with any the sale of the real estate sales transaction in which such person, or any person affiliated with such person, has acted as a real estate broker, agent, or salesman and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a that secures such loan, the mortgage broker in the Commonwealth as of February 25, 1989 shall conspicuously provide to the borrower the following written disclosure at the time the mortgage broker services are first offered to the borrower:*

YOU ARE HEREBY NOTIFIED THAT YOU ARE NOT REQUIRED TO ENTER INTO ANY ARRANGEMENT FOR REAL ESTATE BROKER OR REAL ESTATE SALESPERSON SERVICES WITH A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON TO WHOM WE HAVE REFERRED YOU.

YOU ARE HEREBY NOTIFIED THAT [NAME OF MORTGAGE BROKER] WILL BE RECEIVING COMPENSATION FOR PROVIDING BOTH MORTGAGE BROKER SERVICES AND REAL ESTATE BROKER OR REAL ESTATE SALESPERSON SERVICES IN CONNECTION WITH THE SALE OF THE REAL ESTATE THAT SECURES THIS MORTGAGE LOAN.

YOU ARE HEREBY NOTIFIED THAT 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.

D. The requirements of this section are in addition to the requirements of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.) and regulations adopted thereunder.

§ 6.2-1627. Private actions.

A. Nothing in this chapter shall be construed to preclude any person who suffers loss as a result of a violation of Chapter 3 (§ 6.2-300 et seq.) or Chapter 4 (§ 6.2-400 et seq.) from maintaining an action to recover damages or restitution and, as provided by statute, attorney fees. However, in any matter in which the Attorney General has exercised his authority pursuant to § 6.2-1626, an individual action shall not be maintainable if the individual has received damages or restitution pursuant to § 6.2-1626.

B. A borrower who suffers a loss as a result of a mortgage broker's breach of duty as set forth in subdivision B 6 5 of § 6.2-1616 may bring an action against such broker to recover actual damages. In addition to any damages awarded, such borrower also may be awarded attorney fees and court costs.