

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 883

An Act to amend and reenact §§ 6.1-2.13 and 38.2-4614 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-2.13:1, relating to the Wet Settlement Act; title insurance; penalties.

[H 1229]

Approved April 10, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-2.13 and 38.2-4614 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-2.13:1 as follows:

§ 6.1-2.13. Duty of settlement agent.

The settlement agent shall cause recordation of the deed, the deed of trust, or mortgage, or other documents required to be recorded and shall cause disbursement of settlement proceeds within two business days of settlement. A settlement agent may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument, except (i) funds received which are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds which the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real property, the settlement agent shall provide notification to the purchaser of the availability of owner's title insurance as required under § 38.2-4616.

§ 6.1-2.13:1. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions and other payments; penalty.

A. No person selling real property, or performing services as a real estate agent, attorney or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person. No settlement agent shall give any such kickback, rebate, commission, thing of value or other payment pursuant to any such agreement or understanding. For purposes of this section, "thing of value" means any payment, advance, funds, loan, service or other consideration.

B. Nothing in this section shall be construed to prohibit (i) payments or sums spent for bona fide advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. or (ii) providing educational materials or classes, wherein such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort.

C. No person shall be in violation of this section solely by reason of ownership in a settlement agent as defined in this chapter, wherein such person receives returns on investments arising from the ownership interest. In addition, this section shall not prohibit the payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement agent, or any lender's payment to its own employees for referrals of mortgage loan business.

D. Any person who knowingly and willfully violates this section shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 for each violation. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

§ 38.2-4614. Prohibition against payment or receipt of title insurance kickbacks, rebates, commissions and other payments; penalty.

A. 1. No person selling real property, or performing services as a real estate agent, attorney, or lender, which services are incident to or a part of any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value or other payment in connection with the issuance of title insurance for any real property that is a part of such sale or settlement; and no title insurance company, title insurance agency or agent shall make any such payment pursuant to any agreement or understanding, oral or otherwise, that business incident to the issuance of any title insurance be referred to any title insurance company, title insurance agency or agent. No title insurance company, title insurance agency or agent shall give any such kickback, rebate, commission, thing of value or other payment pursuant to any such agreement or understanding. For purposes of this section, "thing of value" means any payment, advance, funds, loan, service or other consideration. This section shall not prevent any federally insured lenders, holding companies to which they belong, or subsidiaries of such lenders or holding companies from being licensed by the Commission as title insurance agents or agencies and receiving commissions from the sale of the title insurance policies in their capacities as title insurance agents or agencies.

2. Nothing in this section shall be construed to prohibit (i) payments of sums spent for bona fide

advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. or (ii) providing educational materials or classes, wherein such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort.

B. Any person ~~violating~~ who knowingly and willfully violates this section shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 ~~or imprisonment for not more than six months, or both, in the discretion of the court~~ for each violation. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

C. No person shall be in violation of this section solely by reason of ownership in a title insurance company, title insurance agency or agent as defined in this chapter, *wherein such person receives returns on investments arising from the ownership interest. In addition, this section shall not prohibit the payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the title insurance company, title insurance agency or agent.*