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## HOUSE BILL NO. 1229

Offered January 22, 1996

A *BILL 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 38.2-4614.1, relating to the Wet Settlement Act; title insurance.*

Patrons—Davies, Barlow, Cranwell, Hargrove and Jones, J.C.; Senator: Benedetti

Referred to Committee on Corporations, Insurance and Banking

**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 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 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.

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

A. 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 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. 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.

B. Any person violating 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.

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.

D. "Kickbacks," for purposes of this section, shall be deemed to include, but are not limited to, the following:

1. Payment of any sums or thing of value, to any person selling real property, or performing services as a real estate broker, agent, attorney, loan officer or lender, from settlement proceeds of a transaction subject to the Wet Settlement Act (§ 6.1-2.10 et seq.), on any day earlier than specified in the Wet Settlement Act for permissible disbursement of settlement proceeds.

2. Payment of any sum, or thing of value, or advance, to any person selling real property, or performing services as a real estate agent, attorney, loan officer or lender, made by, or from funds made available by, an entity in a controlled business arrangement with a provider of title insurance, as defined in 12 U.S.C. § 2602 (7) of the Real Estate Settlement Procedures Act, where such sum, advance or thing of value is made to such person on a regular basis and wherein such person regularly refers clients to a provider of title insurance.

3. Payments, credits or things of value, made to a person selling real property, or performing services as a real estate agent, attorney, loan officer or lender, or to others on behalf of such person, which defer or replace obligations or expenses otherwise payable by that person in the ordinary course of that person's business, and where such payments or things of value are made by the maker of such payments, or the entity employing or affiliated with the maker of such payments, on a regular basis, to similar persons.

4. The withholding of payments, services, benefits or other things of value from a person selling real property, or performing services as a real estate agent, attorney, loan officer or lender, or withholding from others on behalf of such person, which payments or benefits would otherwise be remunerated to such person, in retaliation for failure of such person to refer title insurance business to a "controlled

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60 *business" entity as defined in 12 U.S.C. § 1202 (7) of the Real Estate Settlement Procedures Act.*

61 *Nothing herein shall be construed to prohibit payments or sums spent for bona fide advertising and*  
62 *marketing promotions, or the providing of educational materials and lectures, where either (i) the value*  
63 *of such marketing promotion does not exceed twenty dollars to any individual person in a six-month*  
64 *period, or (ii) the advertising or marketing promotion does not defer or replace, in whole or part,*  
65 *advertising or marketing expenses of the person selling real property, or performing services as a real*  
66 *estate agent, attorney, loan officer or lender.*

67 *E. A "thing of value" as used in this section shall be construed as defined in 12 U.S.C. § 2602 (2) of*  
68 *the Real Estate Settlement Procedures Act and the regulations implementing such statute.*