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HOUSE BILL NO. 1229

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 9, 1996)

(Patron Prior to Substitute—Delegate Davies)

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 6.1-2.13:1, relating to the Wet Settlement Act; title insurance.

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 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.

A. No person selling real property, or performing services as a real estate agent, attorney, lender, or settlement agent, 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, as defined under the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., 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, and no settlement agent shall make any such payment.

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) the providing of educational materials and benefits, wherein such benefits are provided to a substantial general group of persons 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.

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

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, as defined under the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., or other payment in connection with pursuant to any agreement or understanding, oral or otherwise, that business incident to the issuance of title insurance for any real property that is a part of such sale or settlement be referred to any person; 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.

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) the providing of educational materials and benefits, wherein such benefits are provided to a substantial general group of persons pursuant to a bona fide marketing or educational effort.

B. Any person violating this section shall be guilty of a misdemeanor and subject to a fine of not

60 more than \$1,000 or imprisonment for not more than six months, or both, in the discretion of the court.

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