

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 716

An Act to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 1.3, consisting of sections numbered 6.1-2.19 through 6.1-2.29, relating to the Consumer Real Estate Settlement Protection Act; penalty.

[S 1104]

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 1.3, consisting of sections numbered 6.1-2.19 through 6.1-2.29, as follows:

CHAPTER 1.3.

CONSUMER REAL ESTATE SETTLEMENT PROTECTION ACT.

§ 6.1-2.19. Title, purpose and applicability.

A. This Act shall be known as the Consumer Real Estate Settlement Protection Act.

B. The purpose of this Act is to authorize existing licensing authorities in the Commonwealth of Virginia to require persons performing escrow, closing or settlement services to comply with certain consumer protection safeguards relating to licensing, financial responsibility and the handling of settlement funds.

C. This chapter applies only to transactions involving the purchase or financing of real estate containing not more than four residential dwelling units.

§ 6.1-2.20. Definitions.

"Escrow" means written instruments, money or other items deposited by one party with a settlement agent for delivery to another party upon the performance of a specified condition or the happening of a certain event.

"Escrow, closing or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include, but are not limited to, placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Licensing authority" shall mean the (i) State Corporation Commission acting pursuant to this Act, Title 6.1 or Title 38.2; (ii) the Virginia State Bar acting pursuant to this Act or Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this Act or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Party to the real estate transaction" means a lender, seller, purchaser or borrower with respect to that real estate transaction.

"Person" means a natural person, partnership, association, cooperative, corporation, limited liability company, trust or other legal entity.

"Settlement agent" means a person other than a party to the real estate transaction who provides any escrow, closing or settlement service in connection with a transaction related to real estate in this Commonwealth.

§ 6.1-2.21. Licensing requirements, standards and financial responsibility.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent with respect to real estate settlements in this Commonwealth unless the person is licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, a title insurance company or title insurance agent under Title 38.2, a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or unless the person is a financial institution authorized to do business in this Commonwealth under any of the provisions of Title 6.1 or under federal law, or is a subsidiary or affiliate of such financial institution. Any such person, not acting in the capacity of a settlement agent, shall not be subject to the provisions of this chapter.

B. Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with

the requirements of this Act or a party to the real estate transaction may provide escrow, closing or settlement services and receive compensation for such services.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this Act and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits and record retention.

D. A settlement agent other than a financial institution described in subsection A or title insurance company as defined in § 38.2-4601, shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of \$250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than \$100,000.

E. 1. A settlement agent, other than an attorney, shall, at its expense, have an annual audit of its escrow accounts conducted by an independent certified public accountant on a calendar year basis by not later than six months after the close of the previous calendar year. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company which it represents.

2. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an annual audit of its escrow accounts on a calendar year basis by not later than six months after the close of the previous calendar year. The title insurance company shall submit a copy of its audit report to the appropriate licensing authority. With the consent of the title insurance agent, a title insurance company may share the results of its audit with other title insurance companies that will accept the same in lieu of conducting a separate audit.

3. A title insurance company shall retain a copy of the audit report for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

§ 6.1-2.22. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include in bold face, 10 point type the following language:

Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Escrow, closing and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act.

§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the next business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. A settlement statement in the form prescribed under the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) which has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing; provided, however, that an attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. Nothing in this section is intended to amend, alter or supersede other sections of this Act, or the laws of this Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

§ 6.1-2.24. Record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this Act. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

§ 6.1-2.25. Rules and regulations.

Except as provided in § 6.1-2.26, the appropriate licensing authority may issue rules, regulations and orders, including educational requirements, consistent with and necessary to carry out the provisions of this Act. A title insurance company domiciled in this Commonwealth or acting in the capacity of a settlement agent pursuant to this Act shall account for funds held and income derived from escrow, closing or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the National Association of Insurance Commissioners when filing the annual statements and reports required under Chapter 13 (§ 38.2-1300, et seq.) of Title 38.2.

§ 6.1-2.26. Settlement agent and financial institution compliance with unauthorized practice of law guidelines.

A. Every settlement agent subject to the provisions of this Act shall be registered as such with the Virginia State Bar within 90 days of the effective date of this Act. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses and telephone numbers, (ii) information pertaining to licenses issued them by any licensing authority, and (iii) such other information as may be required by the Virginia State Bar. The Virginia State Bar shall accept in satisfaction of the requirements of this subsection, settlement agents' licensing forms submitted to any licensing authority, as defined in this Act, if such forms contain substantially the same information required hereby. Each such registration (i) shall be accompanied by a fee not to exceed \$100 and (ii) shall be renewed at least biennially thereafter.

B. The Virginia State Bar, in consultation with the Virginia State Corporation Commission and the Virginia Real Estate Board, shall promulgate regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing and settlement services. Such guidelines shall be furnished by the Virginia State Bar to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate the same to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction and (ii) refer all other matters or allegations to the appropriate licensing authority.

D. The willful failure of any settlement agent or financial institution to comply with the provisions of this section shall be a violation of this Act, and such agent shall be subject to a penalty of up to \$5,000 for each such failure as the Virginia State Bar may determine.

§ 6.1-2.27. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent or any other person has violated this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the appropriate licensing authority may order:

- 1. A penalty not exceeding \$5,000 for each violation; and*
- 2. Revocation or suspension of the applicable licenses.*

B. Nothing in this section shall affect the right of the appropriate licensing authority to impose any

other penalties provided by law or regulation.

§ 6.1-2.28. Severability.

If any provision of this Act, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is invalid, shall not be affected.

§ 6.1-2.29. Compliance.

A settlement agent operating in this Commonwealth prior to the effective date of this Act shall have ninety days after the effective date of this Act to comply with requirements of §§ 6.1-2.21 and 6.1-2.23.