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HOUSE BILL NO. 2243

Offered January 17, 1997

A BILL to amend and reenact §§ 54.1-2108 and 54.1-2113 of the Code of Virginia, relating to the Real Estate Transaction Recovery Fund.

Patrons—Drake, Almand, Croshaw, Diamonstein, Dillard, Dudley, Hamilton, Ingram, Katzen, Moran, Ruff, Scott, Tata, Wardrup, Weatherholtz and Woodrum; Senators: Barry, Benedetti, Ticer and Woods

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2108 and 54.1-2113 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2108. Protection of escrow funds, etc., held by broker.

Where escrow funds or other funds are held by the licensee or his agents and the Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by the licensee; ~~or if.~~ If the court finds him unable to make such payment, ~~the Board shall determine whether~~ the expenses and fees shall be paid from the Virginia Real Estate Transaction Recovery Fund ~~or from funds received by the Board.~~ Such determination shall be made within thirty days of the Board's receipt of the court-approved receiver invoices. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the regulations of the Board, then the receiver's expenses and fees shall be paid by the Board. Such payments shall be paid from funds received by the Board.

§ 54.1-2113. Establishment and maintenance of fund, duty of Director, assessments of regulants.

A. Each initial regulant at the time of licensure; ~~and each inactive regulant who applies to reinstate his license on an active status~~ shall be assessed twenty dollars, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within thirty days.

B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.1-359 et seq.). The deposit of these funds in federally insured banks, savings institutions or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01. The Director shall maintain in his office an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board; ~~which shall assess each regulant, excluding inactive regulants, within thirty days of such determination, a sum sufficient to bring the balance of the fund to an amount of not less than \$400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than twenty dollars during any biennial license period or part thereof, the biennial periods expiring on June 30 of each even-numbered year. At the same time, the Director may recommend that the Board transfer a fixed amount of interest earnings to the fund to bring the balance of the fund to the amount required by this subsection. Such transfer of interest shall be considered by the Board within thirty days of the notification of the Director.~~

D. If available interest earnings are insufficient to bring the balance of the fund to the minimum amount required by this section, or if a transfer of available interest earnings to the fund has not occurred, the Board shall assess each regulant within thirty days of notification by the Director, a sum sufficient to bring the balance of the fund to the required minimum amount. The Board may order an assessment of regulants at any time in addition to any required assessment. No regulant shall be

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60 assessed a total amount of more than \$20 during any biennial license period or part thereof, the
61 biennial period expiring on June 30 of each even-numbered year. Assessments of regulants made
62 pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at
63 the time of license renewal.

64 DE. At the close of each fiscal year, whenever the balance of the fund exceeds \$2,000,000, the
65 amount in excess of \$2,000,000 shall be transferred to the Virginia Housing Partnership Fund.

66 EF. ~~Notice~~ If the Board determines that all regulants will be assessed concurrently, notice to the
67 regulants of such assessments shall be by first-class mail, and payment of such assessments shall be
68 made by first-class mail to the Director within forty-five days after the mailing to regulants of such
69 notice.

70 If the Board determines that all regulants will be assessed in conjunction with license renewal,
71 notice to the regulants may be included with the license renewal notice issued by the Board. The
72 assessment shall be due with the payment of the license renewal fees. No license shall be renewed or
73 reinstated until any outstanding assessments are paid.

74 FG. If any regulant fails to remit the required payment mailed in accordance with subsection E F
75 within forty-five days of the mailing, the Director shall notify the regulant by first-class mail at the
76 latest address of record filed with the Board. If no payment has been received by the Director within
77 thirty days after mailing the second notice, the license shall be automatically suspended. The license
78 shall be restored only upon the actual receipt by the Director of the delinquent assessment.

79 GH. The costs of administering the act shall be paid out of interest earned on deposits constituting
80 the fund. The remainder of the interest, at the discretion of the Board, may be used for providing
81 research and education on subjects of benefit to real estate regulants or may accrue to the fund in
82 accordance with subsection C.