

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 89

An Act to amend and reenact §§ 6.1-330.72 and 6.1-330.85 of the Code of Virginia, relating to subordinate mortgage lending and insurance.

[H 700]

Approved March 13, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-330.72 and 6.1-330.85 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-330.72. Loans secured by subordinate mortgage; charges allowed; requirements relating to insurance.

A. Any lender making a loan secured by a subordinate mortgage or deed of trust may require the borrower to pay, in addition to the loan fee and interest permitted by § 6.1-330.71, the actual cost of a credit report, title examination, title insurance, mortgage guaranty insurance, recording fees, surveys, attorney's fees, ~~and~~ appraisal fees, *and a fee to determine if the property securing the loan is located in a special flood hazard area.* No other charges of any kind shall be imposed on or be payable by the borrower either to the lender or any other party in connection with such loan; provided, late charges in the amount specified in § 6.1-330.80 *and a prepayment penalty permitted under § 6.1-330.85* may be ~~made contracted for~~ and, upon default, the borrower may be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as otherwise permitted by law. Broker's or finder's fees may be paid by the lender from the loan fee or interest permitted under § 6.1-330.71. A broker's fee, finder's fee or commission may be paid by the borrower not to exceed five percent of the principal amount of the loan if the total of the loan fee permitted under § 6.1-330.71 and broker's fees, finder's fees or commissions does not exceed five percent of the principal amount of the loan.

B. Evidence of *flood insurance if the security property is located in a special flood hazard area* and fire and extended coverage insurance may be required by the lender of the borrower and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a period not exceeding the term of the loan, may also be required by the lender of the borrower and the premium shall not be considered as a charge. At the option of the borrower, accident and health insurance and involuntary unemployment insurance may be provided by the lender, and the premium therefor shall not be considered a charge. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to the borrower within ten days from the date the loan is closed.

C. No charge may be imposed or collected, except as permitted by § 6.1-330.71, if the loan is not made.

D. This section shall not apply to any loan made by any lender enumerated in § 6.1-330.73.

§ 6.1-330.85. Prepayment of loan described in § 6.1-330.71; rebates for unearned interest.

A. Any borrower under any loan described in § 6.1-330.71 shall have the right to anticipate payment of his debt in whole or in part at any time ~~without penalty~~. *As agreed to by the borrower, a lender may contract for a penalty for prepayment of the full amount of the loan, but such prepayment penalty shall not exceed two percent of the principal amount prepaid. However, such prepayment penalty may not be imposed if (i) the loan is refinanced or consolidated with the same lender or a subsequent noteholder or (ii) the loan is accelerated due to default. No penalty shall be charged in the event of partial prepayment or in the case of an open-end credit plan where there is a payment of the outstanding balance without a demand to release the subordinate deed of trust or mortgage.* In cases where interest has been added to the face amount of a note payable in installments, the borrower shall have the right to a rebate of any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86 on loans (i) with an initial maturity and corresponding amortization period of sixty-one months or less and (ii) payable in equal periodic installments. On loans with an initial maturity of more than sixty-one months, the borrower shall receive a rebate computed under a method at least as favorable to the borrower as the actuarial method.

B. The provisions of this section shall not apply to any loan made by any lender enumerated in § 6.1-330.73.