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HOUSE BILL NO. 1579

Offered January 13, 1999

Prefiled January 13, 1999

A BILL to amend and reenact §§ 6.1-2.10 and 6.1-2.13:1 of the Code of Virginia, relating to banking; settlement agents; kickbacks.

Patron—Davies

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That §§ 6.1-2.10 and 6.1-2.13:1 of the Code of Virginia are amended and reenacted as follows:****§ 6.1-2.10. Definitions.**

The following terms as used in this chapter shall have the following meanings:

"Loan closing" means that time agreed upon by the borrower and lender, when the execution of the loan documents by the borrower occurs;

"Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents, and other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that prerecordation conditions of such contracts have been satisfied. "Parties" as used in this subsection means the seller, purchaser, borrower, lender and the settlement agent;

"Settlement agent" means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of loan proceeds;

"Settlement service provider" means any person providing settlement services, as that term is defined under the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).

"Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at loan closing;

"Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in one or more of the following forms:

1. Cash;

2. Wired funds;

3. Certified check;

4. Checks issued by the Commonwealth or a political subdivision of the Commonwealth;

5. Cashier's check, or teller's check with equivalent funds availability in conformity with the federal Expedited Funds Availability Act, 12 U.S.C. § 4001, et seq.;

6. Checks issued by a financial institution, the accounts of which are insured by an agency of the federal or state government, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal or state government;

6a. Drafts issued by a state chartered or federally chartered credit union, which drafts are drawn on the United States Central Credit Union;

7. Checks issued by an insurance company licensed and regulated by the State Corporation Commission, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal government; or

8. Checks issued by a state or federal savings and loan association or savings bank operating in the Commonwealth, which checks are drawn on the Federal Home Loan Bank of Atlanta;

"Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto;

"Lender" means any person regularly engaged in making loans secured by mortgages or deeds of trust on real estate;

"Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction.

§ 6.1-2.13:1. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions and other payments; penalty.

A. No person selling real property, or performing services as a real estate agent, attorney or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral

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60 or otherwise, that business incident to services required to complete a settlement be referred to any
61 person. No settlement ~~agent~~ *service provider* shall give any such kickback, rebate, commission, thing of
62 value or other payment pursuant to any such agreement or understanding. For purposes of this section,
63 "thing of value" means any payment, advance, funds, loan, service or other consideration.

64 B. Nothing in this section shall be construed to prohibit (i) payments or sums spent for bona fide
65 advertising and marketing promotions otherwise permissible under the provisions of the Real Estate
66 Settlement Procedures Act, 12 U.S.C. § 2601 et seq. or (ii) providing educational materials or classes,
67 wherein such materials or classes are provided to a group of persons or entities pursuant to a bona fide
68 marketing or educational effort.

69 C. No person shall be in violation of this section solely by reason of ownership in a settlement ~~agent~~
70 *service provider* as defined in this chapter, wherein such person receives returns on investments arising
71 from the ownership interest. In addition, this section shall not prohibit the payment to any person of a
72 bona fide salary or compensation or other payment for services actually performed for the business of
73 the settlement ~~agent~~ *service provider*, or any ~~lender's~~ *employer's* payment to its own employees for
74 referrals of ~~mortgage loan business~~.

75 D. Any person who knowingly and willfully violates this section shall be guilty of a misdemeanor
76 and subject to a fine of not more than \$1,000 for each violation. Any criminal charge brought under this
77 section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.