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HOUSE BILL NO. 2744

Offered January 21, 1999

A BILL to amend and reenact § 6.1-330.71 of the Code of Virginia, relating to banking and finance; subordinate mortgage loans; principal amount of loans.

Patrons—Wagner, Abbitt, Barlow, Devolites, Dillard, Hamilton, Ingram, Joannou, Keating, Robinson, Ruff, Stump and Tata; Senators: Hanger, Houck and Potts

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-330.71 of the Code of Virginia is amended and reenacted as follows:

§ 6.1-330.71. Charges on subordinate mortgage loans by certain lenders.

A. 1. Any person, other than lenders enumerated in § 6.1-330.73, may charge add-on interest that results in an annual yield of not more than eighteen percent upon loans secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units. For the purposes of this chapter, a subordinate mortgage or deed of trust is one subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust. An add-on interest loan may be made only under this subsection and shall not exceed a period of five years and one month.

2. The lender may also impose a loan fee not exceeding two percent of the principal amount of the loan provided that such loan fee shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. New money shall be money advanced in excess of the outstanding principal balance at the time such new advance is made. These provisions shall apply whether such loan fee is payable directly to the lender or to a third party in connection with such loan.

B. No charge, other than actual costs documented to the applicant and expended for a credit report and an appraisal of the real estate conducted in connection with the loan application, may be made if the loan is not made. Such charge shall not exceed one percent of the amount of the loan applied for; but in no event shall such charge exceed fifty dollars or one-half of such costs whichever is less. Such charge may be made only if the lender commits to make the loan. Such commitment shall be in writing and signed by the lender or a person the lender has authorized to execute such documents.

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

D. 1. Any loan secured by a subordinate mortgage or deed of trust on such residential real estate where the interest is charged at an annual interest rate on the unpaid balance thereof may be lawfully enforced at the annual interest rate stated in the contract of indebtedness on the principal amount of the loan. Such annual interest rate may vary in accordance with an exterior standard.

2. In addition to the annual interest rate permitted by subdivision 1 of this subsection, the lender may charge the borrower a loan fee not exceeding five percent of the principal amount of the loan. *For purposes of this subdivision, "principal amount of the loan" means that amount on which interest may be charged.* The lender may also charge the borrower with the actual costs of the loan as permitted by § 6.1-330.72.

3. The loan fee permitted by subdivision 2 of this subsection shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. Such loan fee may only be reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to this subsection.

E. The rates, charges and other provisions permitted or required by this section or by § 6.1-330.72 shall apply to all loans secured by a subordinate mortgage, including without limitation single maturity, amortizing and loans secured by a credit line deed of trust as permitted by § 55-58.2.

F. Except for the loan fee permitted in this section, no discount, initial interest, points or charges by any other name may be collected, charged or added to a loan secured by a subordinate mortgage or deed of trust upon such residential real estate.

INTRODUCED

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