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SENATE BILL NO. 145

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL* to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 16.1, consisting of sections numbered 6.1-431.1 through 6.1-431.7, relating to mortgage loan servicing practices; penalties.

 Patron—Deeds

Referred to Committee on Commerce and Labor

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 16.1, consisting of sections numbered 6.1-431.1 through 6.1-431.7, as follows:

CHAPTER 16.1.**MORTGAGE LOAN SERVICING.****§ 6.1-431.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of the Bureau of Financial Institutions.

"Mortgage loan" has the same meaning ascribed to the term in § 6.1-409.

"Mortgage loan servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage loan.

§ 6.1-431.2. Prohibited activities.

A person engaged in mortgage loan servicing shall not:

1. Fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or other standard servicer's duties;

2. Fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant information about the owner assignee of the loan;

3. Fail to apply promptly to the mortgage loan all payments received;

4. Take any action, or refrain from taking any action, for the primary purpose of creating a default under the terms of a mortgage loan;

5. Commence or prosecute any activity or proceeding, including non-judicial proceedings, to sell property pursuant to a deed of trust or mortgage or otherwise foreclose upon a security interest or lien securing the mortgage loan, if:

a. The activity or proceeding is not authorized by the terms of the deed of trust, mortgage, or security agreement; or

b. The borrower has cured, or tendered payment to cure, any default or defaults under the terms of the deed of trust, mortgage, or security agreement within any time period during which such cure is permitted under the terms of the deed of trust, mortgage, or security agreement;

6. Hold, or return to the borrower, any payment received on the mortgage loan without applying the payment to the mortgage loan;

7. Fail to reverse any late fee or similar assessment that is charged in error;

8. Fail to ensure that the borrower's payment history with respect to a mortgage loan is not affected because of the transfer coordination between mortgage loan servicers;

9. Fail to give the borrower timely notice of loan payment amount changes due to escrow analysis or other payment adjustments;

10. Charge a late fee or similar assessment as a result of the person's error in notifying the borrower timely of any change in the mortgage loan payment amount due to escrow analysis or other payment adjustments;

11. Fail to attempt in a timely manner to resolve disputes regarding the receipt or application of payments or information in the borrower's mortgage loan account; or

12. Fail to respond promptly to a borrower's inquiry regarding, and fulfill any request for, information regarding the mortgage loan in a timely manner.

§ 6.1-431.3. Criminal penalties.

Any person violating any provision of § 6.1-431.2 shall be guilty of a Class 1 misdemeanor. For the purposes of this section, each violation shall constitute a separate offense.

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59 § 6.1-431.4. Civil penalties.

60 The Commission may impose a civil penalty not exceeding \$1,000 upon any person that it
61 determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the
62 Commission, has violated any of the provisions of § 6.1-431.2. For the purposes of this section, each
63 separate violation shall be subject to the civil penalty herein prescribed. Civil penalties paid pursuant to
64 this chapter shall be deposited to the credit of the Literary Fund.

65 § 6.1-431.5. Civil actions.

66 Any person who suffers loss by reason of a violation of any provision of § 6.1-431.2 may recover in
67 a civil action against the person that violated the provision, in addition to reasonable costs and
68 attorneys' fees, the greater of: (i) \$1,000, or (ii) the amount of actual damages, if any, sustained.

69 § 6.1-431.6. Cease and desist orders.

70 If the Commissioner determines that any person has violated any provision of § 6.1-431.2, he may,
71 upon 21 days' notice in writing, order such person to cease and desist from such practices and to
72 comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal
73 place of business of such person or other address authorized under § 12.1-19.1 and shall state the
74 grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named
75 therein may file with the Clerk of the Commission a written request for a hearing. If a hearing is
76 requested, the Commissioner shall not issue a cease and desist order except based upon findings made
77 at such hearing. Such hearing shall be conducted in accordance with the provisions of Title 12.1. The
78 Commission may enforce compliance with any such order issued under this section by imposition and
79 collection of such fines and penalties as may be prescribed by law.

80 § 6.1-431.7. Authority of Attorney General; referral by Commission to Attorney General.

81 A. If the Commission determines that a person is in violation, or has violated, any provision of this
82 chapter, the Commission may refer the information to the Attorney General and may request that the
83 Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby
84 authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin
85 such violations notwithstanding the existence of an adequate remedy at law.

86 B. Upon such referral of the Commission, the Attorney General may also seek, and the circuit court
87 may order or decree, damages and such other relief allowed by law, including restitution to the extent
88 available to borrowers under applicable law. Persons entitled to any relief as authorized by this section
89 shall be identified by order of the court within 180 days from the date of the order permanently
90 enjoining the unlawful act or practice.

91 C. In any action brought by the Attorney General by virtue of the authority granted in this provision,
92 the Attorney General shall be entitled to seek reasonable attorney's fees and costs.