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HOUSE BILL NO. 2099

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 55-520, 55-525.12, and 55-525.13 of the Code of Virginia, relating to real estate settlements; disclosures.

Patron—Scott, J.M.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-520, 55-525.12, and 55-525.13 of the Code of Virginia are amended and reenacted as follows:

§ 55-520. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall deliver to the purchaser the written disclosure statement required by this chapter prior to the acceptance of a real estate purchase contract or otherwise be subject to the provisions of subsection B of this section. For the purposes of this chapter, "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

B. If the disclosure statement required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner ~~either by hand~~ *by one of the following methods:*

1. *Hand delivery or by;*

2. *United States mail, postage prepaid, and properly addressed to the owner provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;*

3. *Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or*

4. *Overnight delivery using a commercial service or the United States Postal Service.*

If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

C. Notwithstanding the provisions of subsection B of § 55-524, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by § 55-519.1.

§ 55-525.12. 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, lay settlement agent 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 or otherwise, that business incident to services required to complete a settlement be referred to any person.

B. Nothing in this section shall be construed to prohibit:

1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);

INTRODUCED

HB2099

59 2. The provision of educational materials or classes, if such materials or classes are provided to a
60 group of persons or entities pursuant to a bona fide marketing or educational effort;

61 3. The payment to any person of a bona fide salary or compensation or other payment for services
62 actually performed for the business of the settlement service provider; or

63 4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance
64 business. An employer's payment to its own employees for the referral of insurance business shall be
65 subject to the requirements of subdivision B 8 of § 38.2-1821.1.

66 C. No person shall be in violation of this section solely by reason of ownership in a settlement
67 service provider, where such person receives returns on investments arising from the ownership interest,
68 *provided that such person discloses in writing to the consumer an ownership interest in those settlement*
69 *services, including their ownership percentage in the settlement service provider pursuant to the*
70 *requirements of § 55-525.13.*

71 D. Any person who knowingly and willfully violates this section is guilty of a Class 3 misdemeanor.
72 Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14
73 (§ 19.2-216 et seq.) of Title 19.2.

74 § 55-525.13. Disclosure of affiliated business by settlement service providers.

75 Any person making a referral to an affiliated settlement service provider shall disclose the affiliation
76 in accordance with the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.). Such
77 disclosure shall be provided regardless of the amount of the person's actual ownership interest in the
78 affiliated provider. However, if the person's ownership interest is one percent or less of the capital stock
79 of a corporation or entity with a class of securities registered under the Securities Exchange Act of 1934
80 (15 U.S.C. § 78a et seq.), the disclosure shall not be required. *If the person's ownership interest is*
81 *greater than one percent, then the disclosure shall include the percentage of ownership, or, if the person*
82 *making the referral owns more than 50 percent of the affiliated business, the disclosure must state that*
83 *the settlement service provider is a subsidiary of the person making the referral.*