

15103434D

HOUSE BILL NO. 1965

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact § 54.1-2114 of the Code of Virginia, relating to the Virginia Real Estate Transaction Recovery Fund.

Patrons—Rust, LeMunyon, Fariss and Minchew

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 54.1-2114 of the Code of Virginia is amended and reenacted as follows:****§ 54.1-2114. Recovery from fund generally.**

A. Whenever any person is awarded a final judgment in any court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct as defined in the act, and the improper or dishonest conduct occurred during a period when the individual or entity was a regulant and occurred in connection with a transaction involving the sale, lease, or management of real property by the regulant acting in the capacity of a real estate broker or real estate salesperson and not in the capacity of a principal, or on his own account, the person to whom such judgment was awarded may file a verified claim with the Director for a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. For judgments entered on or after July 1, 1996, the verified claim shall be filed with the Director no later than twelve months after the judgment becomes final.

4. The claimant shall not himself be (i) a regulant, (ii) the personal representative of a regulant, (iii) the spouse or child of the regulant against whom the judgment was awarded, nor the personal representative of such spouse or child, or (iv) any lending or financial institution nor anyone whose business involves the construction or development of real property.

5. The claimant shall have made an investigation to determine whether or not the judgment debtor is possessed of real or personal property or other assets which are available to be sold or otherwise applied in satisfaction of the judgment and shall file an affidavit that an investigation has been made. Satisfactory evidence of the results of subdivision 6 below shall be submitted with this affidavit.

6. The investigation shall include but shall not be limited to (i) the conducting of debtor interrogatories and (ii) the investigation of any listings held by the regulant and any commissions due thereby.

7. The investigation shall not have disclosed such real or personal property or other assets available to be so sold or applied, or the investigation shall have disclosed certain of such assets, which shall be described in detail, and the claimant shall have taken all legally available actions and proceedings for such sale or application, and the amount so realized shall have been insufficient to satisfy the judgment, which amount shall be stated together with the balance remaining due on the judgment after the sale or application.

8. If the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523 (a) and obtain an order determining dischargeability of the debt.

B. The Department shall promptly consider the application, affidavit, and investigation of the claim. If it appears that a prima facie case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000, et seq.). Such notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a recommendation to pay the verified claim.

C. *The Department's and Board's consideration of the claim shall be based solely on the contents of the verified claim. Neither an informal fact-finding conference pursuant to § 2.2-4019 nor a formal*

INTRODUCED

HB1965

59 hearing pursuant to § 2.2-4020 shall be required, but an informal fact-finding conference may be held
60 at the discretion of the Department if requested by the claimant within 15 days of the claimant's receipt
61 of the Department's recommendation to the Board.

62 D. A claimant shall not be denied recovery from the Fund due to the fact that order for judgment
63 filed with the verified claim does not contain a specific finding of improper or dishonest conduct. Any
64 language in the order that supports the conclusion that the court found that the conduct of the regulant
65 meets the definition of "improper or dishonest conduct" in § 54.1-2112 shall be used by the Board to
66 determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the
67 court's findings on the conduct of the regulant, the Board may determine whether the conduct of the
68 regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified
69 claim.

70 E. If the Board finds that there has been compliance with the statutory conditions to which reference
71 is made in this section, the Board shall issue a directive ordering payment to the claimant from the fund
72 the amount unpaid on the judgment, subject to the limitations set forth in § 54.1-2116. The claimant
73 shall be notified in writing of the findings of the Board. The Board's findings shall be considered a
74 "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the
75 Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board
76 shall have the right to appeal a decision of any court which is contrary to any distribution recommended
77 or authorized by it.