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HOUSE BILL NO. 1888

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 15, 2023)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact §§ 55.1-1006 and 55.1-1007 of the Code of Virginia, relating to real estate settlement agents; fees; informed consent.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1006 and 55.1-1007 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1006. Choice of settlement agent.

A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent to provide escrow, closing, or settlement services in connection with the transaction. The seller in such a transaction may not require the use of a particular settlement agent as a condition of the sale of the property. Nothing in this chapter shall prohibit a seller from retaining an attorney licensed pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 to represent his interests and provide legal advice pertaining to escrow, closing, or settlement services. Such representation may include deed preparation, fee negotiation, and review of applicable documents and advising the seller on any legal matters related to the settlement or closing process. *The settlement agent may not collect any fees from a represented seller payable to the settlement agent or its subsidiaries, affiliates, or subcontractors without first obtaining the written consent of the seller's counsel.*

§ 55.1-1007. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include in at least 10-point boldface type the following language:

"Choice of Settlement Agent: Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party. *No settlement agent may collect any fees from a represented seller payable to the settlement agent or its subsidiaries, affiliates, or subcontractors without first obtaining the written consent of the seller's counsel.*

"Variation by agreement: The provisions of Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

"Escrow, closing, and settlement services guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement, or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia."