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HOUSE BILL NO. 2389

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 20, 2023)

(Patron Prior to Substitute—Delegate Wiley)

A BILL to amend and reenact §§ 6.2-1600 and 6.2-1607 of the Code of Virginia, relating to remote location requirements for mortgage lending and brokerage entities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1600 and 6.2-1607 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-1600. Definitions.

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

"Entity" means any corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other legal or commercial entity.

"Licensee" means a mortgage lender or mortgage broker licensed by the Commission pursuant to this chapter.

"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage lender that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.

"Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any interest in one- to four-family residential property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans to persons related to the lender by blood or marriage and (ii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more than four-family residential property or property used for a commercial or agricultural purpose.

"Nationwide Mortgage Licensing System and Registry" or "Registry" means the mortgage licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

"Office" means a location other than a licensee's principal place of business where (i) the licensee negotiates, places, finds, or makes Virginia mortgage loans; (ii) the licensee's name, advertising or promotional materials, or signage indicates that the licensee negotiates, places, finds, or makes Virginia mortgage loans from the location; or (iii) the licensee maintains books, accounts, or records of Virginia mortgage loans. A remote location is not an office if the requirements set forth in subsection F of § 6.2-1607 are met.

"Person" means any individual or entity.

"Principal" means any person who, directly or indirectly, owns or controls a 10 percent or greater interest in any entity.

"Remote location" means a location, other than a licensee's principal place of business or office, at which the employees or exclusive agents of a licensee may conduct business if the requirements set forth in subsection F of § 6.2-1607 are met.

"Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

§ 6.2-1607. Licenses; places of business; changes.

A. Each license shall state the address of each office at which the business is to be conducted and shall state fully the name of the licensee. Each licensee shall (i) display proof of licensing upon request and (ii) prominently display at any location office where the licensee conducts business in person with a borrower or prospective borrower the telephone number and website address for the Commission where borrowers and prospective borrowers may confirm the status of the license. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Commission.

B. No licensee shall open an additional office without prior approval of the Commission.

60 Applications for such approval shall be made in writing on a form provided by the Commissioner and
61 shall be accompanied by payment of a \$150 nonrefundable application fee. The application shall be
62 approved unless the Commission finds that the applicant has not conducted business under this chapter
63 efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed
64 approved if notice to the contrary has not been mailed by the Commission to the applicant within 30
65 days of the date the application is received by the Commission.

66 C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any
67 approved office and of the name, address and position of each new senior officer, member, partner, or
68 director and provide such other information with respect to any such change as the Commissioner may
69 reasonably require.

70 D. Every license shall remain in force until it expires or has been surrendered, revoked, or
71 suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any
72 preexisting legal right or obligation of such lender or broker.

73 E. Notwithstanding any other provision of this chapter, a mortgage lender or mortgage broker license
74 shall expire at the end of each calendar year unless it is renewed by a licensee prior to the expiration
75 date. A licensee may renew its license by (i) requesting renewal through the Registry and (ii) complying
76 with any requirements associated with such renewal request that are imposed by the Registry. If a
77 mortgage lender or mortgage broker license has expired, the Commission may by regulation permit the
78 former licensee to seek license reinstatement after the license expiration date by renewing its license in
79 accordance with this subsection and paying a reinstatement fee as prescribed by the Commission.

80 F. Licensees may allow employees or exclusive agents to work from a remote location if:

81 1. The licensee has written policies and procedures for the supervision of employees or exclusive
82 agents working from a remote location. Such written policies and procedures shall include all the
83 requirements of this subsection;

84 2. Access to the licensee's platforms and customer information is in accordance with the licensee's
85 comprehensive written information security plan;

86 3. The licensee employs appropriate risk-based monitoring and oversight processes, and any
87 employee or exclusive agent who will work from a remote location agrees to comply with the licensee's
88 established practice;

89 4. No in-person customer interaction occurs at an employee's or exclusive agent's residence, unless
90 such residence is an approved office;

91 5. Physical records are not maintained at a remote location;

92 6. Customer interactions and conversations about consumers comply with federal and state
93 information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act
94 and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 C.F.R. Part 314,
95 as such requirements may be amended from time to time;

96 7. Employees or exclusive agents working at a remote location access the licensee's secure systems
97 directly from an out-of-office device, including a laptop, phone, desktop computer, or tablet, via a
98 virtual private network (VPN) or comparable system that ensures secure connectivity and requires a
99 password or other forms of authentication to access;

100 8. The licensee ensures that appropriate security updates, patches, or other alterations to the security
101 of all devices used at remote locations are installed and maintained;

102 9. The licensee has the ability to remotely lock or erase company-related contents of any device or
103 otherwise remotely limit access to a licensee's secure systems; and

104 10. The Nationwide Mortgage Licensing System and Registry record of a mortgage loan originator
105 working from a remote location designates the principal place of business as the mortgage loan
106 originator's registered location, unless such mortgage loan originator elects an office as a registered
107 location.