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HOUSE BILL NO. 1246

Offered January 22, 1996

A BILL to amend and reenact §§ 6.1-330.71 and 6.1-330.72 of the Code of Virginia, relating to banking and finance; subordinate mortgage loans.

Patrons—Robinson, Barlow, Bennett, Callahan, Clement, Cooper, Hamilton, Hargrove, Keating, Mims, Parrish and Watkins; Senators: Barry, Chichester, Houck, Lambert, Miller, K.G., Potts and Waddell

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-330.71 and 6.1-330.72 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-330.71. Charges on subordinate mortgage loans by certain lenders.

A. 1. Any person, other than lenders enumerated in § 6.1-330.73, may charge add-on interest that results in an annual yield of not more than eighteen percent upon loans secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units. For the purposes of this chapter, a subordinate mortgage or deed of trust is one subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust. An add-on interest loan may be made only under this subsection and shall not exceed a period of five years and one month.

2. The lender may also impose a loan fee not exceeding two percent of the principal amount of the loan provided that such loan fee shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. New money shall be money advanced in excess of the outstanding principal balance at the time such new advance is made. These provisions shall apply whether such loan fee is payable directly to the lender or to a third party in connection with such loan.

B. No charge, other than actual costs documented to the applicant and expended for a credit report and an appraisal of the real estate conducted in connection with the loan application, may be made if the loan is not made. Such charge shall not exceed one percent of the amount of the loan applied for; but in no event shall such charge exceed fifty dollars or one-half of such costs whichever is less. Such charge may be made only if the lender commits to make the loan. Such commitment shall be in writing and signed by the lender or a person the lender has authorized to execute such documents.

C. The provisions of this section shall not apply to any loan by any lender enumerated in § 6.1-330.73.

D. 1. Any loan secured by a subordinate mortgage or deed of trust on such residential real estate where the interest is charged at an annual interest rate on the unpaid balance thereof may be lawfully enforced at the annual interest rate stated in the contract of indebtedness on the principal amount of the loan. Such annual interest rate may vary in accordance with an exterior standard.

2. In addition to the annual interest rate permitted by subdivision 1 of this subsection, the lender may charge the borrower a loan fee, *a discount, initial interest, points or charges by any other name collected, charged or added to the instrument of indebtedness* not ~~exceeding two~~ *to exceed five* percent of the principal amount of the loan. The lender may also charge the borrower with the actual costs of the loan as permitted by § 6.1-330.72.

3. In addition to the interest and loan fee permitted under subdivision 1 of this subsection and subdivision 2 of this subsection, no more than a three percent total charge for discount, initial interest, points or charges by any other name may be collected, charged or added to the instrument of indebtedness.

4. The loan fee permitted by subdivision 2 of this subsection and the additional charge permitted by subdivision 3 of this subsection shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. Such loan fee and charge may only be reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to this subsection.

E. The rates, charges and other provisions permitted or required by this section or by § 6.1-330.72 shall apply to all loans secured by a subordinate mortgage, including without limitation single maturity, amortizing and loans secured by a credit line deed of trust as permitted by § 55-58.2.

F. Except as allowed in subsections D and E of this section, no discount, initial interest, points or charges by any other name may be collected, charged or added to a loan secured by a subordinate mortgage or deed of trust upon such residential real estate.

60 § 6.1-330.72. Loans secured by subordinate mortgage; charges allowed; requirements relating to
61 insurance.

62 A. Any lender making a loan secured by a subordinate mortgage or deed of trust may require the
63 borrower to pay, in addition to the loan fee charge and interest permitted by § 6.1-330.71, the actual
64 cost of a credit report, title examination, title insurance, mortgage guaranty insurance, recording fees,
65 surveys, attorney's fees, and appraisal fees. No other charges of any kind shall be imposed on or be
66 payable by the borrower either to the lender or any other party in connection with such loan; provided,
67 late charges in the amount specified in § 6.1-330.80 may be made and, upon default, the borrower may
68 be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as
69 otherwise permitted by law. Broker's or finder's fees may be paid by the lender from the loan fee or
70 interest permitted under § 6.1-330.71. A broker's fee, finder's fee or commission may be paid by the
71 borrower not to exceed ~~two~~ five percent of the ~~principal amount of the~~ loan amount if the total of the
72 loan fee, charge, and broker's fees, finder's fees or commissions *or charges by any other named referred*
73 *to in § 6.1-330.71 or this section* does not exceed five percent of the ~~principal amount of the~~ loan
74 amount.

75 B. Evidence of fire and extended coverage insurance may be required by the lender of the borrower
76 and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not
77 exceeding the amount of the loan and for a period not exceeding the term of the loan, may also be
78 required by the lender of the borrower and the premium shall not be considered as a charge. At the
79 option of the borrower, accident and health insurance and involuntary unemployment insurance may be
80 provided by the lender, and the premium therefor shall not be considered a charge. Proof of all
81 insurance issued in connection with loans subject to this chapter shall be furnished to the borrower
82 within ten days from the date the loan is closed.

83 C. No charge may be imposed or collected, except as permitted by § 6.1-330.71, if the loan is not
84 made.

85 D. This section shall not apply to any loan made by any lender enumerated in § 6.1-330.73.