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HOUSE JOINT RESOLUTION NO. 210
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Rules
on February 6, 1996)

(Patron Prior to Substitute—Delegate Barlow)

Establishing a joint subcommittee to study the practices of escrow and settlement companies and lay persons or entities generally in real estate transactions and their relationship to issues involving the unauthorized practice of law.

WHEREAS, there exists in the Commonwealth an increasing number of escrow companies, settlement companies and other lay persons or entities that handle real estate transactions, including settlements and the disbursement of funds in connection therewith; and

WHEREAS, attorneys who handle funds in a similar capacity are subject to regulation and oversight regarding the handling and escrowing of such funds, but escrow and settlement companies are not subject to such regulation and oversight; and

WHEREAS, attorneys have an attorney-client, and therefore fiduciary, relationship with the buyer or borrower in real estate transactions, but escrow and settlement companies or other lay persons or entities do not have the same fiduciary obligation to the buyer or borrower in real estate transactions; and

WHEREAS, in the absence of regulation or oversight, there exists the potential for escrow and settlement companies to provide legal advice without being licensed as attorneys, to pay kickbacks, rebates, commissions and other payments or things of value for the referral of business and to mishandle or misappropriate funds in connection with real estate transactions, without insurance coverage or a client recovery fund, leaving home buyers or mortgage borrowers without sufficient recourse; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the practices of escrow and settlement companies and lay persons or entities generally in real estate transactions and their relationship to issues involving the unauthorized practice of law. The joint subcommittee shall be composed of seven members to be appointed as follows: four members of the House of Delegates, to be appointed by the Speaker of the House and three members of the Senate, to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall (i) examine the conduct of the real estate settlement process; (ii) identify and recommend protections for the public regarding the unauthorized practice of law, the handling, escrowing, charging and earning interest on and disbursement of settlement proceeds or other funds, and the payment of kickbacks, rebates, commissions and other payments or things of value in exchange for the referral of business to such lay persons or entities engaging in the real estate settlement process; and (iii) identify and propose regulations to prohibit or control such business enterprises.

The direct costs of this study shall not exceed \$5,250.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.