

THE COMPLIANCE CONNECTION

REGULATORY NEWS FOR VIRGINIA MORTGAGE AND CONSUMER FINANCE COMPANIES
STATE CORPORATION COMMISSION - BUREAU OF FINANCIAL INSTITUTIONS

FALL 2006



The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance and industrial loan association licensees, and other interested parties. It is the licensee's responsibility to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, VA 23218-0640 or via email at bfquestions@scc.virginia.gov.

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Are You Ready???

It's Monday morning and you have just poured your second cup of coffee when a stranger walks into your office and says, "Good Morning. I am an examiner with the Bureau of Financial Institutions and I am here to conduct an examination of your Virginia records." So now what?

The law requires that the Commission conduct examinations of mortgage and consumer finance licensees at least once in every three year period, *or as often as deemed necessary*. Examinations are not required to be scheduled with a licensee in advance, although appointments may be made in some circumstances (generally examinations that are conducted out of state or at a licensee's home).

Licensees should develop internal procedures concerning state examinations and make sure all staff members are aware of what must be done to facilitate the examination process. Virginia law also requires that licensees afford full access to all premises, books, records and information that the examiner deems necessary. Attempts to prevent the examiner from conducting the examination may lead to a monetary fine, license suspension or revocation. Licensees must complete a questionnaire which will be provided by the examiner upon arrival, or if notified in advance of the examination, prior to the date of the examination. It is imperative that the questionnaire be completed while the examiner is in the office and that all referenced attachments are included. In the case of mortgage licensees, failure to respond to inquiries by Bureau staff within the time frame requested can also lead to regulatory action (see Virginia Regulation 10 VAC 5-160-50).

Examiner's schedules are often set months in advance of an examination and are typically scheduled to coincide with another examination in the same general location. It is unlikely that the examiner will be able to reschedule the examination to accommodate a licensee's schedule. Examiners have reported situations where they are told that the examination cannot be done because the owner or manager is not available. This is why it is important to make sure there is more than one person who can work with an examiner to complete this examination process.

(continued on page 4)

Underwriting Fees Charged by Brokers

The Bureau has found instances where mortgage brokers are collecting and retaining underwriting fees from borrowers. It is the Bureau's understanding that mortgage brokers rarely, if ever, underwrite mortgage loans. Accordingly, unless a mortgage broker can satisfactorily demonstrate that it is actually underwriting mortgage loans pursuant to delegated underwriting authority from a lender, it is the Bureau's view that the mortgage broker is retaining fees that are imposed for services performed by a third party in violation of Virginia Regulation 10 VAC 5-160-20 (2). If a mortgage broker collects an underwriting fee on behalf of a lender and can document that the entire fee was forwarded to the lender, the Bureau will not cite a violation.

Please note: Underwriting fees shall not be charged to borrowers by any party in connection with a subordinate loan unless the lender is an entity described in §6.1-330.73 of the Code of Virginia.

Advertising Rules Governing Mortgage Lenders and Brokers

Since the amended rules governing mortgage lenders and mortgage brokers went into effect September 1, 2006, the Bureau has reviewed numerous advertisements for compliance, many of which (particularly direct mail solicitations) contain violations of the new advertising rules (Virginia Regulation 10 VAC 5-160-60). Common violations include the licensee's failure to clearly and conspicuously disclose on their advertisements the licensee's name (as shown on the license), the license number and the statement that the mortgage lender or broker is licensed by the "Virginia State Corporation Commission." In addition, many advertisements continue to be in violation of the Truth in Lending Act (TILA) and Regulation Z. One of the most common violations we see with respect to advertisements is the failure to disclose (or conspicuously disclose) the annual percentage rate (APR) on an advertisement that states an annual interest rate. Under TILA, the disclosure of an interest rate in an advertisement triggers the requirement to also disclose the corresponding APR.

Other advertisements recently reviewed contained misleading or deceptive information. An example of this came from a consumer complaint in which the direct mailing received by the consumer had the message "official business" on the envelope and a return address on Pennsylvania Avenue, Washington DC. In addition to violating 10 VAC 5-160-60 B relating to the making of misleading statements or

misrepresentations, it is the Bureau's opinion that the use of this message, particularly in conjunction with a return address on Pennsylvania Avenue, conveys the false impression that the mailing is an official communication from a governmental entity, in violation of 10 VAC 5-160-60 E.

Some direct mail solicitations reviewed included a statement that a consumer may be eligible for an interest rate *and payment* reduction but did not contain the disclosure statement specified in 10 VAC 5-160-60 F that as a result of such refinancing, the consumer's total finance charges may be higher over the life of the loan. It is the Bureau's position that such statement must be disclosed unless the licensee knows for certain that the total finance charges will not be higher over the life of the loan.

The State Corporation Commission took a number of measures (including a seminar held in July 2006) to make sure licensees were aware of the revised regulations. While many mortgage licensees are in compliance, we are dismayed to see that many companies have not taken the necessary steps to comply with the amended rules. It is important that mortgage licensees review these new regulations and implement policies and procedures to ensure compliance with the amended rules or risk being the subject of regulatory action (e.g., fine, license suspension, license revocation) pursuant to §§ 6.1-425 and 6.1-428 of the Code of Virginia.



§6.1-422 B(5) & C Still in Effect

We frequently receive inquiries regarding § 6.1-422 C of the Code of Virginia. This section prohibits a mortgage broker from receiving compensation for negotiating, placing or finding a mortgage loan where the mortgage broker, or any person affiliated with the mortgage broker, has or will receive compensation for acting as a real estate broker, agent or salesman in connection with the sale of real estate that secures the loan, *unless* the mortgage broker was licensed by the Commission prior to February 25, 1989. If the mortgage broker was licensed prior to this date, the prohibition does not apply as long as the proper disclosure is given in writing to the borrower at the time the mortgage broker's services are first offered to the borrower (see "Notice" under §6.1-422 B (5)).

For purposes of this section, an "affiliated person of a mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a mortgage broker, and any corporation ten percent or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a mortgage broker.

License Update

The following is a list of companies that have surrendered their license, had their license revoked, had an application denied, or been fined by the Commission since August 15, 2006. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of November 15, 2006. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at www.scc.virginia.gov/division/banking/vamortgagelist.

Mortgage Licenses Surrendered

- | | |
|--|--|
| MLB - 387 Fed Funding Mortgage Corporation - 8/15/06 | MB - 1928 1 st Atlas Mortgage Corporation - 10/4/06 |
| MB - 2104 Capetown Mortgage Corp - 8/19/06 | MB - 2976 Easthampton Mortgage Company, Inc. - 10/11/06 |
| MLB - 694 Genisys Financial Corp - 8/21/06 | MB - 2389 Everest Financial, LLC - 10/16/06 |
| MLB - 637 Premier Mortgage Company, LLC - 8/28/06 | MLB - 1182 Contractor Loan Center LLC - SURRENDERED ITS LENDER AUTHORITY ONLY 10/19/06 - NOW LICENSED AS MB - 3724 |
| MLB - 756 Molton, Allen & Williams Mortgage Company, L.L.C. - 9/1/06 | MB - 1672 Advantage Mortgage Services, Inc. - 10/23/06 |
| MLB - 855 UBS Mortgage LLC - 9/1/06 | MLB - 737 Arisen Mortgage Corporation - 10/24/06 |
| MLB - 841 Prosperity Mortgage Company - 9/1/06 | MB - 2106 Optimal Funding, Inc. - 10/26/06 |
| MLB - 231 Home Security Mortgage Corp. d/b/a Loan-Whiz.Com - 9/5/06 | MB - 2769 Diversified Marketing Solutions, Inc. d/b/a All Credit Funding - 10/31/06 |
| MB - 1493 Chesapeake Mortgage Services, Inc. - 9/14/06 | MLB-961 Optimum Mortgage Group, LLC - 11/1/06 |
| MB - 2852 HPC Funding, Inc. d/b/a Home Professional Comprehensive Funding - 9/20/06 | ML - 462 Residential Mortgage Corp. - 11/2/06 |
| MLB - 850 BMIC Mortgage, Inc. - SURRENDERED ITS LENDER AUTHORITY ONLY 9/25/06 - NOW LICENSED AS MB-3662 | MB - 1150 Robert H. Turley t/a Turbo Financial Services - 11/2/06 |
| MLB - 426 Aames Funding Corporation d/b/a Aames Home Loan - 10/1/06 | MB - 2977 Home Funding Solutions, Inc. - 11/6/06 |
| MLB - 874 Service 1 Mortgage Corporation - SURRENDERED ITS LENDER AUTHORITY ONLY 10/6/06 - NOW LICENSED AS MB - 3674 | ML - 500 JLM Direct Funding Limited Partnership (Used in VA by: JLM Direct Funding, Ltd.) - 11/13/06 |

Mortgage Licenses Denied

- | | |
|---|---|
| MLB - 1327 Zero Down Mortgage Solutions, Inc. - 8/23/06 | MB - 3238 Hammer Specialty Foods, Inc. - 10/13/06 |
|---|---|

Mortgage Licenses Revoked

- MB - 3021 Arrow Service Corporation - revoked 9/18/06 for failure to maintain a surety bond in violation of §6.1-413 of the Code of Virginia
- MB - 2214 Elend Mortgage, LLC - revoked 9/18/06 for failure to maintain a surety bond in violation of §6.1-413 of the Code of Virginia

Fines Paid by Mortgage Licensees

- MB - 2030 Global Mortgage, Inc. - entered into a settlement on 11/3/06 and paid \$2,500 for failing to respond to a consumer complaint despite numerous requests by the Bureau
- MLB - 1063 Network Funding, L.P. - entered into a settlement on 11/14/06 and paid \$500 for relocating an office without applying for and obtaining prior Commission approval

(Continued on next page)

Fines Paid by Mortgage Licensees (continued from page 3)

The following licensees entered into settlements on November 14, 2006 for failing to file the annual report by March 1, 2006, as required by § 6.1-418 of the Code of Virginia:

MB – 2891 1 st City Lending Inc d/b/a First City Mortgage - \$500	MB – 2094 Montgomery Capital Mortgage Corporation (Used in VA by: Montgomery Capital Corporation) - \$500
MB – 3015 American Mortgage Group Inc., A Corporation of North Carolina (Used in VA by: American Mortgage Group, Inc.) - \$800	MB – 2824 Mutual Funding MY, Inc. (Used in VA by: Mutual Funding, Inc.) - \$800
MB – 3340 Berwyn Mortgage, Inc. - \$800	MB – 2792 Nations Lending Corporation of Ohio (Used in VA by: Nations Lending Corporation) - \$500
MB – 2512 Brooks Financial Group, LLC - \$800	MLB – 1098 North Atlantic Mortgage Corporation - \$500
MB – 1698 Capital Financial Associates, Inc. d/b/a CFA Mortgage - \$800	MB – 2444 OneStop Shopping Financial, Inc. - \$500
ML – 682 Classic Home Lending, Inc. - \$500	MB – 2695 Reliance Funding Services, Inc. - \$500
MLB – 901 Commonwealth Home Loans, LLC - \$800	MB – 2285 Resicom Funding, Inc. - \$800
MB – 2718 E-Star Lending, Inc. - \$800	MLB – 591 Residential Lending Corporation - \$500
ML – 523 Flick Mortgage Investors, Inc. - \$500	MLB – 886 T&B Mortgage Corporation - \$500
MLB – 1141 Granger Mortgage Corporation - \$500	MB – 2325 United Freedom Funding Corp. - \$500
MLB – 1219 Guaranteed Rate, Inc. - \$800	MB – 2637 United Mutual Funding Corp. - \$500
MB – 2913 HomeSouth Mortgage Services, Inc. - \$500	MLB – 1083 USA Home Loans, Inc. - \$800
MB – 3059 Investors Capital LLC of Virginia (Used in VA by: Investors Capital LLC) - \$800	ML – 542 UVEST Mortgage Services, LLC - \$800
MB – 1563 Loans and Mortgages, LLC - \$500	MB – 2092 Virginia Mutual Mortgage Corporation - \$500
MB - 2677 The Mortgage Equities Group, LLC d/b/a My-Loan1st - \$800	MB – 2360 Your Mortgage Company, LLC - \$800

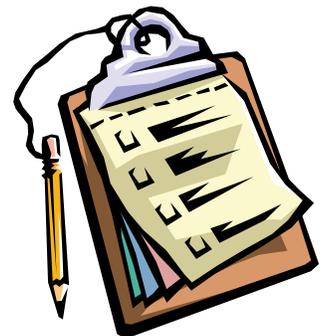
Other Fines Paid

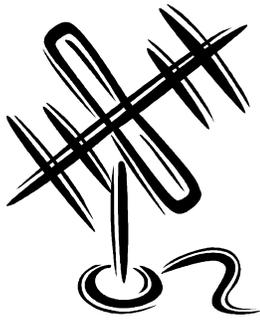
Bahman Ardalan – entered into a settlement on 9/14/06 and paid \$1,000 for failing to obtain Commission approval prior to obtaining 50% of the stock of Aring Corporation d/b/a Allstate Home Mortgage (MB - 1998), in violation of §6.1-416.1 of the Code of Virginia

Are You Ready??? (continued from page 1)

The following items should be included in a licensee's examination procedure:

- Provide the examiner with adequate work space, access to a telephone and copy machine;
- Introduce examiner to key personnel in the office who can assist and who will be available to answer questions that may arise;
- Show examiner where loan files (in process, closed, paid, withdrawn, denied) are stored;
- Provide the examiner with a copy of the previous Virginia examination report and licensee's response to the report (if applicable);
- Provide the examiner with blank copies of licensee's forms (e.g., "Virginia" disclosure, contract for compensation, lock-in and/or commitment agreement, prequalification disclosure and sample copies of advertisements, etc.);
- Complete the Bureau's questionnaire before the examiner leaves the office and include all attachments referenced in licensee's responses.





Wire Fees

Examiners report instances of mortgage licensees “upcharging” bank wire fees. Please note that Virginia Regulation 10 VAC 5-160-20 (2) prohibits licensees from retaining any portion of any fee or charge imposed upon consumers for goods or services provided by third parties. Licensees are not allowed to collect any amount above the actual cost of such third-party fee. The regulation also requires the retention of adequate documentation of the services for which such fees were paid (i.e.: copy of bill, invoice).

Note: Section 6.1-330.72 of the Code of Virginia prohibits the collection of wire fees from borrowers in connection with subordinate mortgage loans (unless the lender is exempt under § 6.1-330.73).

Mortgage and Consumer Finance Licensees: Annual Reports

Mortgage lenders and/or brokers and consumer finance companies licensed by the State Corporation Commission are each required to file an annual report with the Bureau. These reports pertain to the licensed business conducted and should not be confused with the corporate annual report (filed with the Office of the Clerk) required of corporations. The Bureau’s annual report forms are being mailed to licensees in December 2006; however, copies of each type of annual report form are also available on the Bureau’s Web site at: www.scc.virginia.gov/division/banking/vareport.

The due dates for the annual reports are as follows: Mortgage Annual Report - due by March 1, 2007; Consumer Finance Annual Report - due by April 1, 2007.

Common tips for filing annual reports:

- 1) Strictly follow the instructions for each report. If you need assistance, call the individuals listed below;
- 2) File the report in duplicate;
- 3) Make sure the report is complete, signed by a senior officer of the licensee, and notarized;
- 4) Do not send money with the report. Assessments will be mailed to mortgage licensees by April 25, 2007 and to consumer finance licensees by May 1, 2007, with payment due within 30 days thereafter.
- 5) Do not report business that is not conducted pursuant to the license granted, unless specifically requested. (For example, mortgage licensees should only report loans made to individuals who will use the proceeds primarily for personal, family or household purposes and which loans are secured by a deed of trust on any interest in one to four family, residential, owner-occupied property located in the Commonwealth);
- 6) Attach a financial report (audited, if available) for the licensee, including a balance sheet and income statement. (Each consumer finance licensee should also include a financial report, audited if available, for its parent company.) If audited reports are not available by the deadline, indicate with the submission of the annual report the date that the audited financial statement is expected to be filed;



Submit the report to the Bureau by the deadline. The statutes governing the filing of the reports do not provide for extensions of time. Failure to file the annual report by the due date may result in regulatory action (fines or revocation of license).

Annual reports are processed by the Bureau’s Corporate Structure and Research Section. For questions regarding annual reports filed by mortgage companies, contact Robert Mednikov at (804) 371-9692. For questions regarding annual reports filed by consumer finance companies, contact Karen Heede at (804) 371-9372. General questions may also be directed to (804) 371-9690.

IMPORTANT COMMISSION TELEPHONE NUMBERS



Licensing (annual reports, applications, name changes, relocations).....(804) 371-9690

Consumer Finance and Mortgage Examinations(804) 371-9701

Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk’s Office.....(804) 371-9733



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IMPORTANT REGULATORY INFORMATION ENCLOSED!