

Commonwealth of Virginia

State Corporation Commission

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SCC NEWS RELEASE

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MORTGAGE RATE LOCK-INS NOT ALWAYS "LOCKED" CAUTIONS SCC'S BUREAU OF FINANCIAL INSTITUTIONS

RICHMOND – Many Virginians have taken advantage of recent record low interest rates to refinance their mortgage loans. However, with home mortgage rates fluctuating in recent months, some consumers are finding that their promised rates are not locked in after all.

Whether consumers refinance their mortgages to lower monthly payments, decrease the term of the loan, or take out some of their equity in the form of cash, many of them are learning late in the process that their interest rate or points are going to be higher than they were originally told.

The State Corporation Commission's (SCC's) Bureau of Financial Institutions has received a number of consumer complaints regarding this issue against companies licensed under the Mortgage Lender and Broker Act. Some of these complaints stem from a mortgage lender's or broker's refusal to honor a lock-in promise, which causes the consumer's interest rate or points to be higher at loan closing than what the consumer was told at the time he thought that he had "locked in."

The SCC has defined a lock-in agreement as "a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement." This time period is referred to as the lock-in period. Lock-in periods average 30-45 days, but may be shorter or longer. Sometimes consumers must pay a lock-in fee in order to lock in the rate and points. The SCC's regulation applicable to licensed mortgage lenders and brokers requires that if a lock-in agreement is issued in connection with a Virginia mortgage loan, it must be signed by a representative of the mortgage lender or mortgage broker and include certain information, such as the interest rate and points, the amount of any lock-in fee and the terms under which it would be refunded, the length of the lock-in period, and a statement that if the loan is not closed within the lock-in period, the mortgage lender is no longer obligated by the lock-in agreement.

Virginians need to be aware of some pitfalls related to lock-ins. The most common one occurs at the time of application when a mortgage broker or lender verbally promises to lock in the consumer's rate and points. Although Virginia law does not require mortgage lenders or brokers to issue lock-in

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agreements, the Bureau of Financial Institutions encourage consumers to always obtain a lock-in agreement. The terms of a written lock-in agreement are typically easier to prove and enforce than the terms of an oral agreement.

Some consumers have indicated that they learned from their mortgage lender that the mortgage broker, while having represented to them that their loan terms were locked in, never locked in the promised rate with the mortgage lender. Under the SCC's regulations, a mortgage broker is prohibited from issuing a lock-in agreement to a consumer unless the mortgage broker has actually locked in a mortgage loan, including the applicable interest rate, points, and other terms, with a mortgage lender.

Another common pitfall is that a consumer's lock-in period expires prior to the closing of the loan. Any lock-in period should be long enough to allow for settlement, as well as the handling of any other factors that might arise that would delay settlement. Consumers should verify with their mortgage lender or broker the average time it is currently taking to process and close a mortgage loan. When demand for mortgage loans is high, processing times increase and a longer lock-in period may be appropriate.

While the actions or inactions of a mortgage lender or broker may cause a lock-in period to expire prior to loan closing, delays are occasionally caused by borrowers who fail to furnish required documents to the mortgage lender or broker in a timely manner. After a lock-in period expires, mortgage lenders may be unable to offer the same lock-in terms because they can no longer profitably sell the loan to investors based on such terms. Lenders who keep their own loans have more flexibility with rates after the lock-in period expires.

In some cases, consumers may need to consult with an attorney to help determine contractual rights under a lock-in agreement. Of course, consumers may also contact the appropriate state or federal regulatory agency that regulates the mortgage broker or lender. If there is a lock-in agreement and a lock-in fee was paid, the borrower may be entitled to a full or partial refund of the fee. This will depend in large part on the language of the agreement. Always read the fine print in any agreement.

In summary:

- Always obtain a written lock-in agreement.
- Carefully read the lock-in agreement prior to signing it.
- Be sure the lock-in period is adequate for current market conditions. Keep in mind that a very active market increases the time it takes to process a loan.
- Submit all information requested as expeditiously as possible.

For additional information, contact the SCC's Bureau of Financial Institutions by calling toll-free within Virginia at 1-800-552-7945 or in Richmond at (804) 371-9657 or visit its website at <http://www.scc.virginia.gov/bfi/index.aspx>.