

Bureau of Financial Institutions

Virginia Mortgage Law and Regulation Overview

Compliance Basics

- Laws of Virginia Related to Non-Depository Financial Services – Title 6.2 Financial Institutions and Services
- Virginia Administrative Code – also known as Regulations
- Administrative Letters

Laws

- Enacted by the Virginia General Assembly.
- Virginia Financial Institutions and Services statutes are found in Title 6.2 of the Code of Virginia

Virginia Administrative Code

- Regulations are administrative rules. Chapter 16 of Title 6.2 titled Mortgage Lenders and Mortgage Brokers (“MLB Act”) gives the Commission authority to promulgate rules and regulations to help it carry out its statutory responsibilities.
- Proposed Regulations are sent to licensees and other interested parties providing an opportunity for comments to be filed on the proposed Regulation and for a hearing to be requested

Administrative Letters (“AL”)

- Method by which the Commissioner of Financial Institutions formally communicates with entities regulated by the Bureau of Financial Institutions (“BFI”) to provide helpful direction, guidance, instructions, interpretations, or general information
- AL are not regulations or laws, but are positions taken by the BFI on issues affecting financial institutions

Code of Virginia

- Title 55 Property and Conveyances
 - Chapter 27.2 Real Estate Settlements
- Title 6.2 Financial Institutions and Services
 - Chapter 3 Interest and Usury
 - Chapter 4 Certain Lending Practices
 - Chapter 16 Mortgage Lenders and Mortgage Brokers
 - Chapter 17 Mortgage Loan Originators

Title 55 Property and Conveyances

Chapter 27.2 Real Estate Settlements

- § 55-525.8 Definitions
 - Disbursement of loan funds – delivery of loan funds by lender to settlement agent
 - Disbursement of settlement proceeds – payment of all proceeds of transaction by settlement agent to persons entitled thereto
 - Loan closing – time agreed upon when execution of loan documents occur

Title 55 Property and Conveyances

Chapter 27.2 Real Estate Settlements

- Definitions (continued)
 - Settlement – when settlement agent receives the executed deed, loan funds, loan documents and other documents and funds required to carry out the terms of the contract between the parties and pre-recording conditions have been met

Title 55 Property and Conveyances

Chapter 27.2 Real Estate Settlements

- § 55-525.9 Applicability; effect of noncompliance
 - Applies to all first mortgage transactions secured by real estate containing not more than four residential dwelling units – purchase and refinance
 - Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

Title 55 Property and Conveyances

Chapter 27.2 Real Estate Settlements

- § 55-525.10 Duty of Lender
 - At or before loan closing, lender must disburse loan funds to settlement agent, unless right of rescission applies
 - Lender cannot receive interest on the loan until disbursement of the loan funds and loan closing has occurred

Title 55 Property and Conveyances

Chapter 27.2 Real Estate Settlements

- § 55-525.11 Duty of Settlement Agent
 - Must cause recordation of loan documents and disburse settlement proceeds within two business days of settlement

Title 6.2

Chapter 3 Interest and Usury

- § 6.2-326 Fees and charges in connection with loans by real estate lenders...
 - Applies to first mortgage loans and allows lenders to charge a loan fee as agreed to by the borrower
 - Allows the lender to require the borrower to pay the reasonable and necessary charges in connection with *making* the loan (refer to Administrative Letter 1606 regarding assignment fees)

Title 6.2

Chapter 3 Interest and Usury

- Administrative Letter 1606
 - States “assignment fee” is not a fee incurred “in connection with making the loan” and cannot be passed on to the borrower
 - Collection of this fee will be cited as a violation and reimbursement will be required

Title 6.2

Chapter 3 Interest and Usury

- § 6.2-327 Certain loans secured by a subordinate deed of trust or mortgage.
 - Paragraph D (2) limits the loan fee to not more than 5% of the principal amount of the loan. Refer to Administrative Letter 0702 and the April 1988 issue of the Compliance Connection

Title 6.2

Chapter 3 Interest and Usury

- § 6.2.327 D (2)
 - Loan fee permitted cannot be imposed more often than once each 18 months, except to extent that “new money” is advanced by a renewal or additional loan by the same lender

Administrative Letter 0702

- “loan fee” also known as “points”
- Points charged on subordinate loans must not exceed 5% of the *principal amount of the loan* (meaning a loan amount that does not include points)
- Refer to April 1998 issue of the Compliance Connection for further information and examples

Title 6.2

Chapter 3 Interest and Usury

- § 6.2-328 Charges allowed on loan secured by subordinate mortgage
 - Specifically lists the 3rd party fees that borrowers may be required to pay. If a fee is not listed in this section, it cannot be charged to the borrower
 - allows for the actual cost of a credit report, title examination, title insurance, mortgage guaranty insurance, recording fees, surveys, attorney fees, appraisal fees and a fee to determine if property is located in flood hazard area

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-400 Amount of late charge; when charge can be made
 - Lender can impose late charge for failure to make “timely payment”
 - Late charge cannot exceed 5%
 - “timely payment” is defined as one made by the date fixed for payment or within 7 calendar days of the due date

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-406 Disclosure of terms of mortgage application
 - Written disclosure required to be given to first mortgage applicants at the time of application
 - Must be initialed or signed by applicants and broker/lender

Title 6.2

Chapter 4 Certain Lending Practices

- §6.2-406 (continued)
- Disclosure must include:
 - Statement describing when, if ever, the interest, points and fees will be locked in;
 - Statement that any terms not legally locked in are subject to change until settlement; and
 - A good faith estimate of the processing time required for the loan, taking into account time needed for inspections & and other functions necessary to close the loan.

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-407 Lenders to furnish borrower with copy of appraisal
 - Lender must provide borrower with copy of written appraisal within 10 business days of borrower's request, if borrower is required to pay for appraisal in connection with his loan application
 - If no written appraisal exists, provide a statement of appraised value
 - NOTE: Also see Regulation B § 202.14 Rules on Providing Appraisal Reports

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-410 Borrowers not to be required to employ particular professionals
 - Prohibits the lender from requiring the borrower to use the services of a particular attorney, surveyor or insurer
 - Lender has right to approve any attorney, surveyor or insurer selected by borrower as long as approval is not unreasonably withheld

Title 6.2

Chapter 4 Certain Lending Practices

- §6.2-412 Fire insurance coverage under certain loans not to exceed replacement value of improvements
- §6.2-407 Lenders to furnish borrower with copy of appraisal (also refer to Federal Regulation B § 202.14)

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-414 Obligation of lender to pay taxes, insurance; penalties
 - Banks or lenders maintaining escrow accounts for payment of taxes and insurance who fail to make timely payments and incur a penalty or late charge shall be liable for the penalty/late charge assessed
 - Bank or lender must send written notice to obligor of the payment of any penalty/late charge within 5 days after such payment is made

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-418 Property owner entitled to written statement of payoff amount.
 - Borrower entitled to written payoff statement within 10 business days of receipt of written request from the property owner/designee
 - First payoff request in a 12 month period must be at no charge. For each additional request, fee cannot exceed \$15
 - A fax is considered a written request

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-421 Certain contracts to permit prepayment; amount of prepayment penalty
 - *Except for loans secured by deed of trust on home occupied (or to be occupied) in whole or in part by a borrower, loans secured by first deeds of trust on real estate, where the principal amount of the loan is less than \$75,000, prepayment may be made at any time and maximum penalty is 1% of the unpaid balance*
 - Applicable to non-owner occupied residential loans

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-422 Prepayment penalty for loan secured by home occupied by borrower
 - Applies to first mortgages, owner occupied residential properties in VA
 - Penalty cannot exceed 2% of the amount of the prepayment
 - Includes “alternative mortgage transactions” made after 7/1/03 (refer to Administrative Letter 1610)

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-423 Prepayment of loans secured by certain subordinate mortgages or deeds of trust
 - Applies to subordinate mortgages
 - Borrowers can prepay loan in whole or in part at any time
 - Lender can contract for a prepayment penalty but fee cannot exceed 2% of the principal amount prepaid
 - Includes “alternative mortgage transactions” made after 7/1/03 (refer to Administrative Letter 1610)

Title 6.2

Chapter 4 Certain Lending Practices

- § 6.2-423 (continued)
 - Penalty cannot be imposed if:
 - Loan is refinanced or consolidated with the same lender or subsequent note holder;
 - If loan is accelerated due to default, or
 - If a partial prepayment is made or in the case of an open end credit line where there is a payment of the balance without a demand to release the deed of trust

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1600 Definitions
 - Mortgage broker – any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find loans for others.
 - Includes loan modification companies and intermediate mortgage activities such as loan processing, telemarketing and lead generation companies – they “indirectly negotiate, place or find mortgage loans for others”

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1600 Definitions (continued)
 - Mortgage broker
 - If loan processor or telemarketer is a bona fide employee of a licensed mortgage company, then no separate license is necessary

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1600 Definitions (continued)
 - Mortgage lender – any person who directly or indirectly makes mortgage loans
 - Administrative Letter 1601 states the Bureau's position that the payee named in the mortgage loan note is presumed to be the mortgage lender

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1600 Definitions (continued)
 - Mortgage loan – loan made to individual, proceeds of which are to be used primarily for personal, family or household purposes, secured by a mortgage or deed of trust upon any interest in 1 to 4 family residential property located in VA
 - Includes renewals or refinances
 - Excludes loans made by sellers of property; loans to persons related by blood or marriage; loans to bona fide employees of the lender
 - Does not include loans on commercial or agricultural property
 - NOTE: effective 7/1/08 definition includes owner and non-owner occupied 1- 4 residential property

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1602 Persons Exempt
 - Include but are not limited to:
 - Lenders who make 3 or fewer mortgage loans in period of 12 consecutive months
 - Banks, savings institutions, credit unions, industrial loan associations, financial institution holding companies
 - Subsidiaries and affiliates (as defined in VAC 5-160-10) of banks, savings institutions, credit unions

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1604 and Administrative Letter 1609
 - Bonds must be *continuously* maintained
 - Minimum Bond Amounts:
 - Mortgage brokers -- \$25,000 bond
 - Mortgage lenders and lender/brokers-- \$50,000 bond
 - Bond amounts can *increase* based on loan origination volume (see schedule in 10 VAC 5-161-50)

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1604 Bond Requirement and Administrative Letter 1609
 - Surety company is required to provide SCC with 90 days notice of cancellation
 - Bureau sends notice to licensee before bond coverage lapses, with warning that failure to maintain bond will result in revocation of license

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1606 & Administrative Letter 1604
 - Lenders must continuously maintain a minimum of \$200,000 for the operation of the business
 - Must be in the form of cash or line of credit with depository institution (bank, savings institution, credit union) or combination of cash on deposit and line of credit

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1606 and AL 1604 (continued)
 - Acceptable evidence of compliance
 - Copy of bank statements since last examination (or date of licensure)
 - Copy of current *executed* line of credit agreement – must be in the name of the licensee and not expired

FAILURE TO PROVIDE ACCEPTABLE EVIDENCE CAN
LEAD TO REVOCATION OF THE MORTGAGE
LENDER LICENSE

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1609 Retention of books, accounts and records
 - Books, accounts and records must be kept separate and apart from any other business and in a *licensed* location
 - Three year retention requirement
 - Records may be electronically maintained but they must be readily available for examination (except for mortgage broker agreements which must be maintained in their original form)

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1609 Record Retention (continued)
 - Brokers must retain
 - the original contract for compensation (broker agreement)
 - HUD-1 Settlement Statement
 - Accounting of fees received in connection with the loan
 - other papers as required

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1609 Record Retention (continued)
 - Lenders must retain:
 - Copy of note
 - HUD-1 Settlement Statement
 - Final Truth in Lending Disclosure
 - Other papers as required

NOTE: Federal Regulation B § 202.12 requires retention of canceled and denied files for 25 months

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1611 Investigations; examinations
 - Commission may conduct exams as often as it deems necessary
 - Bureau examines each mortgage licensee at least once in every three year period
 - Advance notice of examination is not required – can show up unannounced

What to Expect when Examiner Arrives

- Provide adequate work space, access to phone, internet, copy and fax machine
- Introduce to key personnel
- Direct them to where files are maintained
- Provide copy of previous exam and response (if applicable)
- Provide blank copy of standard forms

Examination Questionnaire

- Available on disk, via e-mail or hard copy
- Complete while examiners are in your office or prior to their arrival
- Include all attachments (forms, advertising, broker/lender lists, financial statements (audited, if available))
- Examiners are not attorneys and cannot give legal advice, but they will try to assist with compliance questions you may have

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1612 Annual Fees
 - Defray the costs of regulated industries examination, supervision, and regulation
 - Schedule of annual fees set by the Commission
 - Assessed on or before April 25 each year
 - Assessments due on or before May 25 each year
 - See 10 VAC 5-160-40 for details

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1612 Annual Fees (continued)
 - If examination or investigation is conducted outside the Commonwealth, mortgage licensee is liable for and must pay actual travel and living expenses
 - Itemized statement will be provided and payment is due within 30 days of the date of the invoice

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs
 - Mortgage Lenders and Brokers are prohibited from, among other things:
 - Obtaining borrower's signatures on agreements that contain blanks
 - Taking an interest in collateral other than the real estate or residential property securing a mortgage loan
 - Obtaining exclusive dealing/agency agreement from any borrower
 - Delaying a mortgage loan closing for the purpose of increasing interest, costs, fees or borrower paid charges

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - MLs and MBs are prohibited from, among other things:
 - Obtaining any agreement executed by borrower containing an acceleration clause permitting unpaid balance of mortgage loan to be declared due for any reason other than:
 - Failure to make timely payment
 - Submitting false information on the application
 - Breaching any representation or covenant made in the agreement or instrument
 - Failing to perform any other obligations undertaken in the agreement of instrument

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - MLs and MBs are prohibited from, among other things:
 - Recommending or encouraging a person to default on an existing loan if the default adversely affects the person's creditworthiness, in connection with soliciting a mortgage loan that refinances all or any portion of the existing loan

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - “Flipping” prohibited
 - A flipped loan is one in which the new loan does not result in a benefit to the borrower considering the terms of both the new and refinanced loan, cost of the new loan, and the borrower’s circumstances
 - “flipping” a mortgage loan means refinancing a mortgage loan within 12 months following the date the refinanced loan was originated, unless the refinancing is in the borrower’s best interest

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - Flipping prohibited
 - Factors to be considered in determining whether flipping occurred would include, but not be limited to:
 - the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;
 - There is a change in the amortization period of the new loan;
 - The borrower receives cash in excess of the costs and fees of the refinancing;

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - Flipping prohibited
 - Factors (continued):
 - The borrower's note rate is reduced;
 - There is a change from an adjustable to a fixed rate loan, taking into account costs and fees, and
 - The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1614 Prohibitions applicable to MLs and MBs (continued)
 - Flipping prohibited
 - No mortgage lender or broker shall knowingly or intentionally engage in the act or practice of “flipping” a mortgage loan

Chapter 16

Mortgage Lender and Broker Act

- §6.2-1614 Prohibitions applicable to MLs and MBs

- Advertising

- Advertisements shall not:

- Contain false, misleading or deceptive statements or representations
- Identify the lender or broker by any name other than the name set forth on the license

SEE ADDITIONAL RULES IN 10 VAC 5-160-60

NOTE: Refer to Federal Regulation Z Truth in Lending Act § 226.24 for additional advertising provisions

Title 6.2 Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1615 Prohibitions applicable to MLs
 - No mortgage lender required to be licensed shall fail to require the person closing the mortgage loan to provide the borrower (prior to closing) a settlement statement and the truth in lending disclosure

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1616 Other prohibitions applicable to MBs
 - Brokers are prohibited from:
 - Receiving compensation , other than actual cost of credit report and appraisal, prior to borrower receiving a written commitment from the lender
 - Receiving compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer or employee
 - Receiving compensation from borrower in connection with any mortgage loan transaction in which he is the lender or principal, partner, trustee, director or officer of the lender

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1616 Other prohibitions applicable to MBs
 - Receiving compensation that is not specified in a written agreement signed by the borrower(s).
 - Cannot use terms such as “not to exceed” or “not more than” when stating the fee in the contract for compensation (see also Administrative Letter 1607)
 - Violations of this statute will result in overcharges which will require reimbursement to affected borrowers

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1616 Other prohibitions applicable to MBs
 - Brokers are also prohibited from receiving compensation as a mortgage broker in a transaction where they or anyone affiliated with the mortgage broker (defined in next slide) acted as a real estate broker, agent or salesman in connection with the property securing the loan and has or will receive compensation for the sale of the property. “Dual compensation” is prohibited unless mortgage broker was licensed on or before February 25, 1989

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1616 Other prohibitions applicable to MBs (con't)
 - “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 10% 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.

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1616 Other prohibitions applicable to MBs (con't)
 - For mortgage brokers licensed prior to February 25, 1989 where they have acted as a mortgage broker on the same transaction where they were involved in the real estate transaction, mortgage broker fees may be received as long as the “Notice” is provided to the borrower when the mortgage broker services were first offered. “Notice” is found in § 6.2-1616 B (5)

Chapter 16

Mortgage Lenders and Mortgage Brokers

- § 6.2-1617 Application to certain real estate brokers
 - Does not prohibit a real estate broker, who is either an owner of an interest in a real estate firm or acts as a real estate broker in a sole proprietorship, from having an ownership interest in a mortgage broker or lender or from receiving returns on their investment or from receiving compensation for services performed, excluding mortgage broker activities.

Virginia Regulation

10 VAC 5-160

- Section 10 Definitions
 - This section provides definitions of many terms found in the regulations
 - Be sure staff is aware of these definitions as they pertain to the Virginia regulations

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (1) Operating Rules
 - Licensee shall not misrepresent qualification requirements or any material loan terms or make false or misleading statements to induce an applicant to apply or enter into a commitment or lock-in agreement or pay a commitment fee

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (2) Operating Rules
 - No licensee shall retain any portion of any fees or charges imposed upon consumers for goods or services provided by third parties
 - 3rd party fees received from an applicant (fees for appraisal, courier, credit report, etc.) must be supported by adequate documentation (bill/invoice)
 - 3rd party fees must be deposited in escrow account in bank, savings institution, credit union, segregated from the licensee's other funds

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (3) Operating Rules
 - Mortgagor who obtains the loan is entitled to continue to make payments to the transferor of the servicing rights under a mortgage loan until the mortgagor receives written notice of the transfer of servicing rights
 - Notice must specify name and address to which future payments should be made and mailed or delivered at least 10 calendar days before the first payment affected by the notice

NOTE: See also Regulation X § 3500.21

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (4) Operating Rules
 - If a person is or was engaged in business of mortgage lending or brokering, surety bond (required by § 6.2-1604) shall be retained by the Commissioner in spite of the occurrence of the following events:
 - Person's application for a license is withdrawn or denied
 - Person's license is surrendered, suspended or revoked
 - Person ceases engaging in business as mortgage lender or broker

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (5) Operating Rules
 - Within 15 days of becoming aware of any of the following events, licensee must file a written report with the Commissioner describing the event and any expected impact on the licensee's activities in VA:
 - Licensee files for bankruptcy or reorganization
 - Any government authority institutes revocation, suspension proceedings against the licensee, or revokes or suspends a mortgage-related license held or formally held by licensee

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (5) Operating Rules
 - Written Reports must be filed (continued)
 - any governmental authority takes
 - (i) formal regulatory or enforcement action against a licensee relating to its mortgage business
 - (ii) any other action against the licensee relating to its mortgage business where the total amount of restitution or other payment from the licensee exceeds \$20,000

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (5) Operating Rules
 - Written Reports must be filed (continued)
 - Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed mortgage business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with a governmental authority

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (5) Operating Rules
 - Written Reports must be filed (continued)
 - Licensee surrenders its license to engage in any mortgage-related business in another state in lieu of threatened or pending license revocation, license suspension or other regulatory or enforcement action
 - Licensee is denied a license to engage in any mortgage-related business in another state

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (5) Operating Rules
 - Written Reports must be filed (continued)
 - Licensee or any of its employees, officers, directors or principals is indicted for a felony
 - Licensee or any of its employees, officers, directors or principals is convicted of a felony

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (6) Operating Rules
 - No licensee shall inform consumer that such consumer has been or will be “preapproved” or “pre-approved” for a mortgage loan unless the licensee at the same time provides consumer with a separate written disclosure (in at least 10-point type)

Virginia Regulation

10 VAC 5-160

- 10 VAC 5-160-20 (6) Operating Rules
 - Disclosure must:
 - Explain what preapproved means
 - Inform consumer that the loan application has not yet been approved
 - State a written commitment to make a mortgage loan has not yet been issued
 - Advise consumer what needs to occur before the loan application can be approved

Virginia Regulation 10 VAC 5-160

- Section 30 Commitment agreements and lock-in agreements
 - If utilized, commitment and lock-in agreements must contain certain information as outlined in the regulation

Virginia Regulation

10 VAC 5-160

- Section 30 Commitment agreements and lock-in agreements
 - Commitment agreements must include:
 - Identity of property
 - Principal amount and term of the loan
 - Interest rate & points if the agreement is also used as a lock-in agreement or statement that rate & points will be made at lender's prevailing rate
 - Amount of any commitment fee and time in which fee must be paid

Virginia Regulation

10 VAC 5-160

- Section 30 Commitment agreements and lock-in agreements
 - Commitment agreements must include:
 - Whether or not funds will be escrowed and for what purpose
 - Whether or not PMI is required
 - Length of commitment period
 - Statement that if the loan is not closed within the commitment period, lender is no longer obligated by the agreement
 - Any other terms of the commitment required by the lender

Virginia Regulation

10 VAC 5-160

- Section 30 Lock-in agreements
 - Lock-in agreements must be signed by a representative of the lender or broker and must contain:
 - Interest rate & points, and if ARM loan, the initial rate and brief description of the method to determine rate
 - Amount of any lock-in fee
 - Length of lock-in period
 - Statement that if the loan is not closed within the lock-in period, lender is no longer obligated by the agreement

Virginia Regulation 10 VAC 5-160

- Section 30 Lock-in agreements
 - Lock-in agreements must contain:
 - A statement that any terms not locked-in by the agreement are subject to change until the loan is closed at settlement
 - Any other terms and conditions required by the lender

Virginia Regulation

10 VAC 5-160

- Section 40 Schedule prescribing annual fees for the examination, supervision & regulation of mortgage lenders and brokers
 - Sets schedule for annual fees (base amount plus per loan fee)
 - \$400 MB; \$800 ML; \$1,200 MLB; plus \$6.60 per loan made or brokered
 - Sets dates for assessment (April 25th) and payment due date (May 25th)

Virginia Regulation

10 VAC 5-160

- Section 50 Responding to requests from Bureau of Financial Institutions
 - Requires response to Bureau requests within the time period specified and clarifies that failure to do so could result in a fine, suspension, and/or revocation of license
 - If no time period is specified, requested information must be provided no later than 30 days from the date of the request

Virginia Regulation

10 VAC 5-160

- Section 10 defines “advertisement” as
 - a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

Virginia Regulation

10 VAC 5-160

- Section 60 (A) Advertising
 - Every advertisement used by or published on behalf of a licensed mortgage lender and/or mortgage broker shall clearly and conspicuously disclose the following:
 - Name of mortgage company as set forth on the license
 - Statement that the company is licensed by the “Virginia State Corporation Commission”
 - License number assigned by the SCC (i.e.: MC – XXX)

Virginia Regulation

10 VAC 5-160

- Section 60 (A) Advertising
 - If an ad contains an interest rate, a statement that stated rate may change or not be available at the time of loan commitment or lock-in
 - If an ad contains specific information about a consumer's existing mortgage loan and the information was not obtained from the consumer, a statement identifying the source of the information (i.e.: public records, credit reporting agency)

Virginia Regulation

10 VAC 5-160

- Section 60 (B) Advertising
 - No mortgage licensee shall deceptively advertise a mortgage loan, make false or misleading statements or representation, or misrepresent the terms, conditions, or charges incident to obtaining a mortgage loan

Virginia Regulation

10 VAC 5-160

- Section 60 (C) Advertising
 - No mortgage licensee shall use or cause to be published an ad that states or implies:
 - The mortgage licensee is affiliated with, or an agent or division of, a governmental agency, depository institution, or other entity with which no such relationship exists
 - A consumer has been or will be “pre-approved” for a mortgage loan, unless the ad
 - Discloses on the face of the ad in at least 14-point, bold type that “THIS IS NOT A LOAN APPROVAL”
 - Clearly and conspicuously discloses the conditions and qualifications associated with the pre-approval

Virginia Regulation

10 VAC 5-160

- Section 60 (D) Advertising
 - Mortgage licensee shall not use or cause to be published any ad that gives a consumer the false impression that the ad is being sent by the consumer's current note holder
 - If ad contains name of consumer's current note holder or lien holder, it shall not be more conspicuous than the name of the licensee publishing the ad

Virginia Regulation

10 VAC 5-160

- Section 60 (E) Advertising
 - Mortgage licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity

Virginia Regulation

10 VAC 5-160

- Section 60 (F) Advertising
 - If ad states or implies that consumer can reduce his monthly payment by refinancing current loan, but as a result of the refinancing, the consumer's total finance charges may be higher over the life of the loan, a mortgage licensee shall clearly and conspicuously disclose to the consumer that by refinancing, the consumer's total finance charges may be higher over the life of the loan

Virginia Regulation 10 VAC 5-160

- Section 60 (G) Advertising
 - Every ad used by, or published on behalf of, a licensed mortgage company shall comply with the disclosure requirements of Regulation Z and the Truth in Lending Act

Virginia Regulation

10 VAC 5-160

- Section 60 (H) Advertising
 - “Clearly and conspicuously” means that a required disclosure is reasonably understandable, prominently located, and readily noticeable by a potential borrower of ordinary intelligence

Virginia Regulation

10 VAC 5-160

- Section 60 (I) Advertising
 - An example of every ad used (including solicitation letters, commercial scripts, and recordings of radio and television broadcasts but excluding copies of internet web pages) must be retained for at least 3 years after it is last published, delivered, transmitted, or made available

Surety Bond Claims

- Bureau can file claim against the licensee's surety bond for damages resulting from noncompliance (by a licensed MC) of any condition of the bond
 - Since mid 1998, bond claims totaling \$438,398 have been filed against mortgage licensees and paid by their surety companies for consumer overcharges, billed and unpaid travel expenses; unpaid annual assessments (this does not include claims made by 3rd parties)

Examination Timeline

- Examiner conducts examination of records
- Examiner completes Report of Examination
- Report of Examination is reviewed by review examiners
- Report of Examination is sent to licensee for response
- Response is reviewed and licensee is contacted if any additional information is needed

Tips for Preparing Response

- Include documentation to support corrective action taken and compliance procedures implemented (revised forms/disclosures, copy of canceled refund checks, copy of 3rd party fee invoices, revisions to compliance procedures)
- Thoroughly read cover letter and respond to all issues addressed in Report and cover letter
- Respond within time frame given

Regulatory Action

- Imposition of civil penalty per § 6.2-1624 of the Code of Virginia
 - Up to \$2,500 for each violation of Chapter 16, Title 6.2 (Mortgage Lenders and Mortgage Brokers) and any applicable law or regulation pertaining to the mortgage business

Regulatory Action

- Suspension or revocation of license pursuant to § 6.2-1619 of the Code of Virginia
 - Grounds for suspension or revocation
 - Any ground for denial of a license under Chapter 16 (Mortgage Lenders and Mortgage Brokers)
 - Any violation of any law or regulations applicable to the conduct of the licensee's business
 - Course of conduct of failing to perform written agreements with borrowers
 - Failure to account for fees received or disbursed to the satisfaction of the person supplying or receiving funds

Regulatory Action

- Suspension or revocation of license pursuant to § 6.2-1619 of the Code of Virginia
 - Grounds for suspension or revocation
 - Failure to pay when due, reasonable fees to a licensed appraiser for appraisal services 1) requested from appraiser in writing by licensee or employee of licensee, 2) performed, in accordance with terms of contract with appraiser and all regulatory requirements related to the appraiser and appraisal, by the appraiser in connection with the origination or closing

Regulatory Action

- Suspension or revocation of license pursuant to § 6.2-1619 of the Code of Virginia
 - Grounds for suspension or revocation
 - Failure to disburse funds in accordance with any agreement connected with, and promptly upon closing of a mortgage loan, taking into account any applicable right of rescission
 - Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit
 - Entry of judgment against lender or broker involving fraud, misrepresentation or deceit

Regulatory Action

- Suspension or revocation of license pursuant to § 6.2-1619 of the Code of Virginia
 - Grounds for suspension or revocation
 - Entry of federal or state administrative order against licensee for violation of any law or any regulation applicable to the conduct of the licensed business
 - Refusal to permit an investigation or examination by the Commission
 - Failure to pay any fee or assessment imposed by SCC
 - Failure to comply with any order of the Commission

Regulatory Action

- Suspension or revocation of license pursuant to § 6.2-1619 of the Code of Virginia
 - Grounds for suspension or revocation
 - Acts of any officer, director, member, partner or principal shall be deemed acts of the mortgage licensee

Regulatory Action

- § 6.2-1620 (A) Censuring, suspending or barring person
 - Provides the Commission authority (after providing notice and an opportunity for a hearing) to censure, suspend (for a defined period of time) or bar a person from any position of employment, management or control of any licensee if it is found that:

Regulatory Action

- § 6.2-1620 (A) Censuring, suspending or barring persons
 - The censure, suspension or bar is in the public interest and that the person has committed or caused a violation of the Mortgage Lender and Broker Act or any rule, regulation, or order of the Commission; or
 - The person, after July 1, 2003 has either been (i) convicted of, or pled nolo contendere to, any crime, or (ii) held liable in any civil action by final judgment or administrative judgment by any public agency, and the criminal, civil or administrative judgment involves an offense reasonably related to the qualifications, functions or duties of a person engaged in the mortgage lender or broker business

Regulatory Action

- § 6.2-1620 (B) Censuring, suspending or barring persons
 - Prohibits persons suspended or barred from participating in any business activity of a licensee and from engaging in any activity at the location where a licensee conducts its business

Regulatory Action

- § 6.2-1622 A Cease and desist orders
 - If Commission determines that any mortgage licensee required to be licensed has violated any provision of Chapter 16 of Title 6.2 (Mortgage Lenders and Mortgage Brokers) or any regulation, Commission may order person to cease and desist from such practices and comply with the law
 - Commission must give 21 day notice in writing
 - Send notice via certified mail to principal place of business
 - State grounds for the contemplated action

Regulatory Action

- § 6.2-1622 B Cease and desist orders
 - Person(s) may, within 14 days of date of notice, file a written request for a hearing with the Clerk of the Commission

Regulatory Action

- § 6.2-1624 Civil Penalties
 - In addition authority to revoke and file cease and desist order, the Commission can impose a penalty or fine not exceeding \$2,500 for each violation of Chapter 16 of Title 6.2 (Mortgage Lenders and Mortgage Brokers) or any other law or regulation applicable to the conduct of the mortgage company's business
 - Each separate violation shall be subject to the civil penalty

New Legislation and Regulation Mortgage Loan Originators

- Chapter 17 Mortgage Loan Originators
 - Effective July 1, 2009
- Virginia Regulation 10 VAC 5-161
 - Effective August 17, 2009

Chapter 17

Mortgage Loan Originators

- § 6.2-1700 Definitions
 - MLO defined as an individual who takes an application or offers or negotiates the terms of a *residential mortgage loan*, as defined in the SAFE Act, that is secured by real property located in VA.
 - MLOs employed by a bank, credit union, savings institution or a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency have to be registered in the NMLS but do not have to be licensed.

Chapter 17

Mortgage Loan Originators

- § 6.2-1700 Definitions
 - Also defines terms such as:
 - Administrative or clerical tasks
 - Loan processor or underwriter
 - Nationwide Mortgage Licensing System and Registry
 - Registered mortgage loan originator
 - Unique identifier

Chapter 17

Mortgage Loan Originators

- § 6.2-1701 License Requirement
 - Requires mortgage loan originators (MLOs) to be registered in the Nationwide Mortgage Licensing System and Registry (“NMLS”) and licensed by the SCC by July 1, 2010

Chapter 17

Mortgage Loan Originators

- § 6.2-1702 Application for license; form; content; fee
 - Fee is \$180 (VA application fee of \$150 and NMLS processing fee of \$30)
 - Application must include
 - Name and residential address of the applicant
 - Address of employer or address where applicant will act as MLO
 - Other information concerning financial responsibility, background, experience and activities of applicant

Chapter 17

Mortgage Loan Originators

- § 6.2-1707 Other conditions for mortgage loan originators licensing:
 - Applicant has not been convicted of, or pled guilty or nolo-contendere to a felony in the 7 years preceding the application for licensing or at any time preceding the application date if the felony involved fraud, dishonesty, breach of trust or money laundering (as evidenced by a criminal background check)

Chapter 17

Mortgage Loan Originators

- § 6.2-1707 Other conditions for mortgage loan originators licensing: (continued)
 - Applicant has never had a MLO license revoked by any governmental authority
 - Applicant has completed pre-licensing education requirements
 - Applicant has passed written national and state test
 - Applicant has registered and received unique identifier from NMLS

Chapter 17

Mortgage Loan Originators

- § 6.2-1708 Pre-licensing education of MLOs:
 - Applicant has completed 20 hours of pre-licensing education to include:
 - 3 hours of federal law and regulations
 - 3 hours of ethics, including instruction about fraud, consumer protection and fair lending
 - 2 hours related to nontraditional lending products
 - Courses can be classroom, online, or other means as long as they are approved by NMLS
 - Successful completion of approved courses taken for other states will be accepted in VA

Chapter 17

Mortgage Loan Originators

- § 6.2-1709 Testing of MLO applicants
 - National and state component
 - Developed by Registry
 - Administered by test provider approved by Registry
 - Minimum passing score: 75

Chapter 17

Mortgage Loan Originators

- § 6.2-1710 Continuing education for MLOs
 - 8 hours yearly including
 - 3 hours on federal laws and regulations
 - 2 hours on ethics
 - 2 hours related to lending standards for nontraditional mortgage products, is required
 - Courses can be classroom, online, or other means as long as they are approved by NMLS
 - Successful completion of approved courses taken for other states will be accepted in VA
 - Courses will count for credit in the calendar year taken

Chapter 17

Mortgage Loan Originators

- § 6.2-1711 Licenses; places of business; changes
 - Each MLO license will state the full name and address of record of licensee
 - Licensee must display proof of licensing upon request
 - Must prominently display telephone number and internet addresses for the Registry and Commission
 - Licenses are not transferable or assignable

Chapter 17

Mortgage Loan Originators

- § 6.2-1711 Licenses; places of business; changes (continued)
 - Must use name as set forth on the license
 - MLOs must notify Commissioner within 10 days and in writing of any change of residential or business address
 - MLO licenses expire at the end of each calendar year

Chapter 17

Mortgage Loan Originators

- § 6.2-1713 Investigations; examinations
 - Commission can investigate and examine business activities, premises, and records of any individual required to be licensed as a MLO
 - Individual must afford full access to all persons, premises, books, records and information as examiner deems necessary

Chapter 17

Mortgage Loan Originators

- § 6.2-1714 Annual fees
 - Cost of renewal for VA MLO licensees is \$130
 - \$100 renewal fee
 - \$30 processing fee to NMLS
 - If necessary to conduct examination of MLO located outside VA, MLO is liable for costs incurred by Bureau

Chapter 17

Mortgage Loan Originators

- § 6.2-1715 Advertising
 - MLOs may not use or cause publication of any advertisement that
 - Contains false, misleading or deceptive statements or representations
 - Identifies a MLO by any name other than the name set forth on the license issued by the Commission.

Chapter 17

Mortgage Loan Originators

- Regulatory Action
 - § 6.2-1716 Suspension or revocation of license
 - Sets forth basis for pursuing these actions
 - § 6.2-1718 Notice of proposed suspension or revocation
 - Must give notice and opportunity for a hearing
 - § 6.2-1719 Civil penalties
 - Maximum civil penalty \$2,500 per violation of Chapter 17

Chapter 17

Mortgage Loan Originators

- Annual Renewal (Ref. 10 VAC 5-161-40)
 - MLO licenses expire at the end of each calendar year
 - MLO licenses are subject to annual renewal unless granted 90 days before calendar year end
 - Licenses will be renewed through NMLS beginning November 1, 2010

Chapter 17

Mortgage Loan Originators

- General Information
 - Virginia Bureau of Financial Institutions began accepting applications through the NMLS August 3, 2009
 - If MLO answers “yes” to any question on the MU4 questionnaire (MLO application), a complete detailed written explanation must be provided and a copy of any pertinent documentation

Chapter 17

Mortgage Loan Originators

- General Information
 - Important to review the MU4 form and the jurisdiction specific requirements for Virginia in the NMLS Resource Center prior to submission
 - Pursuant to VA law, each day after July 1, 2010 that an unlicensed individual acts as or holds himself out to the general public as a MLO shall constitute a separate violation of law and each violation is subject to a \$2500 civil penalty

Chapter 17

Mortgage Loan Originators

- Specific VA Forms:
 - Virginia Jurisdiction – Specific Document Checklist
 - Surety Bond Form CCB-8813 or CCB-8814 (if not previously submitted by employer)
 - Employment Verification Form CCB-8815
 - Mortgage Business Certification Form CCB-8816 (if not previously submitted)

Chapter 17

Mortgage Loan Originators

- Surety Bond Form CCB-8813
 - Covers MLOs that are employees or exclusive agents of mortgage lenders/companies licensed or exempt from licensing pursuant to Chapter 16 of Title 6.2 (Mortgage Lenders and Mortgage Brokers)
 - Must be submitted by employer at the time its first MLO applies for a Virginia license
 - Will replace our current surety bond form CCB-8802 for licensed mortgage lenders/brokers

Chapter 17

Mortgage Loan Originators

- Surety Bond Amounts (Ref. 10 VAC 5-160-50)

<u>Loan Volume</u> (previous year)	<u>Bond Amount</u>
\$0 - \$5 million	\$25,000
\$5,000,001 - \$20 million	\$50,000
\$20,000,001 - \$50 million	\$75,000
\$50,000,001 - \$100 million	\$100,000
Over \$100 million	\$150,000

Note: the minimum bond amount for entities required to be licensed as mortgage lenders and mortgage lender/brokers is still \$50,000

Chapter 17

Mortgage Loan Originators

- Employment Verification Form CCB-8815
 - Must be completed by each employer for which the MLO originates Virginia loans and submitted to BFI by the MLO applicant
 - Used by BFI to verify the MLO is eligible to be covered by employer's surety bond
 - At least one employment verification form must be submitted by all individuals applying for a Virginia MLO license

Chapter 17

Mortgage Loan Originators

- Mortgage Business Certification Form CCB-8816
 - Only required when a new bond on CCB-8813 or CCB-8814 is being submitted with the MLO application (should only be submitted one time for each entity filing the bond)
 - Must be completed by the entity filing the bond (usually the MLO's employer)
 - Used to determine the required amount of bond coverage

Chapter 17

Mortgage Loan Originators

- Questions regarding VA MLO Licensing?
 - Visit our website at www.scc.virginia.gov/bfi
 - Contact our Licensing Section at 804-371-0484 or via email at mlo@scc.virginia.gov/bfi
 - Visit NMLS website at:
<http://mortgage.nationwidelicensingsystem.org>

BFI Web site

- www.scc.virginia.gov/bfi
 - Link to NMLS
 - VA laws, regulations, letters
 - List of regulatory action taken – fines, revocations, denials
 - Past issues of the Compliance Connection
 - List of licensed mortgage lenders and brokers
 - Application forms
 - How to file a complaint

HUD - RESPA

- www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm
 - Statutes, Rules & Regulations, Statements of Policy, FAQ's, Settlement Agreements
- Office of RESPA (202) 708-0502

Federal Trade Commission

- <http://business.ftc.gov/>
 - Topics include Advertising; Credit; Identity Theft, Privacy and Security
 - Site provides
 - Rules and Acts
 - Business Alerts

Federal Reserve Bank

- For printed copies of federal regulations contact the closest Federal Reserve Bank, Publications Office
- Ask for the Regulation *and* the Commentary (Commentary provides more explanations than the regulation does)

Bureau of Financial Institutions

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