

---

---

# The Compliance Connection

---

State Corporation Commission - Bureau of Financial Institutions  
Regulatory News for Virginia Mortgage and Consumer Finance Licensees

SEPTEMBER 1996

---



## INSIDE THIS ISSUE:

A Note from the Deputy Commissioner .....	1
Compensation of Unlicensed Brokers.....	1
New Law Books.....	2
Examination Rating System.....	2-3
License Update.....	3-5
Consumer Finance Licensees.....	5
Mortgage Licensees.....	5

## Mailing Address:

1300 East Main Street  
P. O. Box 640  
Richmond, VA 23218

## A Note From The Deputy

### Commissioner E. J. Face, Jr.

Many people have called and inquired whether this newsletter may be copied and distributed to others. For the record, this newsletter *may* be copied or reprinted. Our goal is to distribute the information contained in this newsletter to as many interested parties as possible. We do ask that information be copied or reprinted in whole and not taken out of context. If you have further questions, please call.

## Compensation of Unlicensed Mortgage Brokers

### Administrative Ruling 1605

When the Virginia Mortgage Lender and Broker Act was passed by the Virginia General Assembly in 1987, it was designed to curb well documented and rampant fraudulent abuses against Virginia consumers. Under the Act, mortgage lenders and brokers became accountable for their actions or inactions. Accountability was and remains the central theme of the Act.

It seems two methods of classifying loan officer employment are generally used by the industry (employee vs. independent contractor). In turn, the Bureau needed some method of determining accountability for these two different types of employment. After much research, the Bureau elected to follow well-established rules set forth by the Internal Revenue Service (IRS) for distinguishing "employee" and "independent contractor" accountability.

Under these rules, it is quite clear that employers control and are directly accountable for the actions of employees while employers do not control and are not accountable for the actions of independent contractors. Accordingly, the Bureau has taken the position that "employees" are not required to be separately licensed under the Virginia Mortgage Lender and Broker Act while "independent contractors" must be separately licensed under the Act.

The IRS uses some 20 factors in determining employment, including training, hiring, supervision, work hours, job location, reports, payment, expenses, tools and materials, etc. These factors clearly indicate that bona fide employment is not totally at the pleasure and satisfaction of the parties to that relationship, but

(continued on Page 3)

## New Law Books Are On The Way!!!



All licensees should be on the look out for the 1996 Edition of The Laws of Virginia related to Non-Depository Financial Services. We expect to receive them from the publisher and mail them to licensees by the end of September. The 1996 Edition will incorporate the 1995 changes (previously found in the 1995 Supplement) and the July 1, 1996 changes (from the "STOP - GAP"). Keep in mind that only one copy will be sent to each licensee. Additional copies can be obtained by contacting the publisher,

The Michie Company at 1-800-542-0957. The product number for the law book is #3549811 and the cost is approximately \$10.00 per booklet. The 1996 Edition will also be available on Word Perfect disk, however, Michie could not provide a date of availability or cost for the software. The product code for the disk is #35497. Contact The Michie Company for more information.

Check the mailing address you provided to the Bureau and if changes are needed, notify the Bureau in writing of the change. If post office boxes were previously used and need to be removed from the Bureau's mailing list, please notify us in writing. Please send change of address/post office box letters to Joanne White, Bureau of Financial Institutions, Record Center, P. O. Box 640, Richmond, Virginia 23218-0640.

## Examination Evaluation Rating System:

The Consumer Finance and Mortgage Section of the Virginia Bureau of Financial Institutions is responsible for examining and supervising over 900 non-depository licensees. The Bureau would prefer to examine each licensee annually; however, this is not practical given the growing number of licensees vs. the number of examiners on staff. Moreover, many of our licensees do not warrant examination once a year.. A recommendation has been made to the Commissioner of Financial Institutions that the Bureau implement a "rating" system to aid in the scheduling of examinations.

The primary purpose of this evaluation rating system is to identify those licensees which merit special regulatory attention and require a higher than normal degree of regulatory concern and scrutiny. Simply put, this system will help determine the frequency of examination for each licensee, i.e.: "problem" licensees will be examined more frequently while other licensees will be examined less frequently (but within the scope and requirements of law). The Bureau will be better able to focus its time and resources where it is most needed.

Briefly, examination evaluation ratings will be prepared by the examiner-in-charge and submitted to the commissioner of Financial Institutions as part of the Report of Examination. Ratings will consist of two parts: individual performance ratings on specific examination criteria (Compliance: compliance with all applicable laws and regulations; Operations: financial responsibility and efficiency; Management: capability to operate efficiently, fairly and in the public interest), and an overall composite rating of the licensee's operations.

Each licensee will be assigned a composite rating based on an evaluation of pertinent standards, criteria and principles. This overall rating will be expressed through a numerical scale of "1" through "5" in ascending order of regulatory concern; "1" indicates the highest rating and least degree of concern while "5" is the lowest rating and the highest degree of supervisory concern.

Once individual performance factors have been rated, the examiner-in-charge will develop a "composite" or "overall" rating of the licensee. This composite rating will enable Bureau staff to properly monitor non-depository licensees, including determining the frequency of examinations.

It is the Bureau's view that disclosure of the composite rating to the licensee's management is appropriate. Therefore, the examiner will state at the end of the "Comments and Conclusions" section of the examination report the composite rating assigned. To enable the licensee's management to better understand and appreciate the significance of this rating, the definitions of all composite ratings will be printed on the back of the front cover of the examination report.

## Rating System(continued):

It is important to note that the composite rating and not the individual performance ratings, is to be indicated in the Report. Moreover, the examiner may or may not disclose their recommended rating to the licensee at the time of examination, since senior Bureau staff must concur with the recommended rating and may, in some instances, change it before the final examination report is sent to the licensee for response.

Ordinarily, the examiner's written comments in the "Comments and Conclusions" section of the report which precede the disclosed composite rating will be sufficient to support the assigned composite rating. However, for licensees rated a "3", "4", or "5", the examiner's comments will appropriately elaborate on the particular deficiencies or problems found. The rating is part of the confidential Report of Examination and is subject to the same confidential restrictions as the examination report.

## Compensation of Unlicensed Mortgage Brokers...

(continued from Page 1) rather is based on an array of standards established by the IRS. Bureau staff has found these IRS criteria to be quite helpful in determining accountability for violations of laws and consumer complaints.

Mortgage companies who fail to properly classify individuals as employees or independent contractors have been subject to aggressive spot audits by the IRS (and perhaps even the state tax department) and mortgage firms have been required to pay heavy assessments and fines for mis-classifying their employees. The IRS typically examines independent contractor arrangements in business audits, even where the audit is an income tax audit.

The Bureau has and will continue to make every effort possible to determine that mortgage businesses are operated efficiently and fairly, in the public interest and in accordance with law. The Bureau will hold companies or individuals responsible for illegal actions, accountable for those actions.

## License Update

Here is a list of companies who have surrendered their license, had their license revoked, application denied or been fined by the Commission since June 1, 1996. We hope this will be helpful in keeping track of companies with whom you do business. Please remember that these lists are accurate as of September 1, 1996, so call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. **NOTE: Doing business with an unlicensed mortgage company is a violation of § 6.1-410 and Administrative Ruling 1603 which can result in regulatory action.**

### MORTGAGE LICENSES SURRENDERED SINCE JUNE 1, 1996

MB - 848 INTERNATIONAL MORTGAGE FUNDING GROUP, INC. - 6/3/96	MB - 803 AMERITRUST MORTGAGE CORPORATION - 7/1/96
MB - 710 HOME MORTGAGE LOAN COMPANY, INC. - 6/3/96	MB - 542 LARRY E. WILLIAMS T/A PARAMOUNT MORTGAGE 7/1/96
MLB - 128 THE PRUDENTIAL HOME MORTGAGE COMPANY INC. - 6/4/96	MLB - 176 GREENBRIER FINANCE COMPANY T/A GREENBRIER MORTGAGE CORPORATION - 7/3/96
MB- 180 HOME EQUITY GROUP, INC. - 6/11/96	MB - 726 COWEST MORTGAGE CORPORATION - 8/1/96
MLB - 326 HAMILTON FINANCIAL CORPORATION - 6/24/96	MB - 204 JAMES R. ARNOLD - 8/12/96
MB - 393 HOMESTEAD CORPORATION - 6/24/96	MB - 455 DAVID W. THOMPSON - 8/20/96
MB - 159 DEVELOPERS FINANCIAL CORPORATION - 6/28/96	MB - 769 SANDRA F. BYNUM - 8/22/96

**MORTGAGE APPLICATIONS DENIED SINCE MARCH 1, 1996**

MB - 537 AMERICAN FINANCE & INVESTMENT, INC. - MB - 978 MILAN R. BROWN, JR. - 7/8/96  
APPLIED FOR ADDITIONAL AUTHORITY AS LENDER - MB - 993 STRATEGIC ALLIANCE FUNDING, INC. - 8/7/96  
6/7/96 (BROKER AUTHORITY STILL VALID)

ML - 244 E - MORTGAGE L.L.C. - 7/8/96

**MORTGAGE LICENSE REVOCATIONS SINCE JUNE 1, 1996**

MB - 812 GARY W. BROWNING T/A MAXIMUM FUNDING - 6/17/96 - FAILURE TO MAINTAIN SURETY BOND

**PENALTIES PAID BY MORTGAGE LICENSEES SINCE JUNE 1, 1996**

MB - 675 COASTAL MORTGAGE CORPORATION OF MARYLAND - 6/11/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 522 COLONIAL MORTGAGE CORPORATION - 6/10/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 620 COMFORT MORTGAGE, INCORPORATED - 6/11/96 - PAID \$200 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 582 CORNERSTONE MORTGAGE, INC. - 6/1/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 716 EXECUTIVE MORTGAGE SERVICES, INC. - 6/1/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MLB - 40 FIRST DOMINION MORTGAGE CORPORATION - 6/10/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MLB - 342 GPT CORPORATION T/A GPT MORTGAGE CORPORATION - 6/13/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MLB - 326 HAMILTON FINANCIAL CORPORATION - 6/13/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

ML - 146 IMPERIAL CREDIT INDUSTRIES, INC. - 6/21/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

ML - 167 HOME MORTGAGEE CORPORATION - 6/3/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 488 MORTGAGE ACCEPTANCE CORPORATION - 6/13/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 780 MORTGAGE NETWORK, INC. - 6/10/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MLB - 142 RELIASTAR MORTGAGE CORPORATION - 6/28/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 579 FIRST CHESAPEAKE MORTGAGE CORPORATION, FORMERLY KNOWN AS THE FOUNTAINHEAD MORTGAGE CORPORATION - 7/10/96 - PAID \$200 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

ML - 163 TREASURE COAST MORTGAGE CORPORATION - 6/10/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MB - 419 UNISOURCE FINANCIAL CORPORATION - 6/27/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

MLB - 311 AMERICAN HOME FINANCE - 8/5/96 - PAID \$300 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

## The Compliance Connection

MB - 164 HOMESTAR MORTGAGE, INC. - 8/12/96 - PAID \$400 PENALTY FOR FAILURE TO FILE ANNUAL REPORT IN A TIMELY MANNER

### PENALTIES PAID BY MORTGAGE LICENSEES (CONTINUED)

ML - 7 AVCO MORTGAGE AND ACCEPTANCE - 6/26/96 - PAID \$50,000 PENALTY FOR VIOLATIONS OF CERTAIN LAWS APPLICABLE TO THE CONDUCT OF ITS LICENSED BUSINESS IN ROANOKE

## Consumer Finance Licensees:

### **NSF CHARGES:**

The Bureau has received numerous calls concerning the amendment to Section 8.01-27.1 which increased the amount of an NSF check charge from \$20 to \$25. **THIS DOES NOT APPLY TO CONSUMER FINANCE LICENSEES!!!** Section 6.1-278 of the Consumer Finance Act still limits licensee's under the Act to an NSF check charge of \$15. Please make sure loan agreements do not disclose fees in excess of the \$15 limit and of course, review customer account records to determine if the higher charge has been assessed. If any violations exist, corrections should be made immediately.

### **EXEMPT HOUSEHOLD GOODS:**

Recently the Bureau has noticed an increase in violations where exempt household goods are used as security on loans. Licensees should review Section 34 - 26 of the Virginia Code with staff members to ensure compliance. The acceptable corrective action for violations of this type is for the licensee to strike through exempt items on the security listing and mark these items as "deleted". A letter must be sent to affected borrowers notifying them that these items were removed as security on the loan. If personal property insurance was charged and computed on a security amount that included exempt goods, an overcharge would exist and reimbursement of the excess premium, plus interest (from the date of the loan to the date of the refund), will be required.

## Mortgage Licensees:

### **\$200,000 LENDER REQUIREMENT**

Lender licensees must provide Examiners with proof they have continuously maintained deposits and/or a line of credit with a depository institution for the \$200,000 required by Virginia Code Section 6.1-415 and Administrative Ruling 1604. Licensees using cash on deposit must provide monthly statements for the exam period being examined. If using a line of credit, an executed copy of the entire agreement is required. Commitment letters are not acceptable as evidence of an established line of credit. Be sure a copy of these items are available for the Examiner's review during their visit in your offices.

### **POINTS ON SUBORDINATE LOANS**

Believe it or not, the change to Section 6.1-330.72 which was supposed to simplify understanding of how many points a broker can collect on a subordinate loan, has lead to additional confusion. The revision eliminated the 2% maximum broker fee that brokers could receive. Now, the 5% maximum fee allowed to be charged on subordinate loans can be divided between the broker and lender without restriction. The change **DOES NOT** allow both the broker and the lender to each collect 5 points!

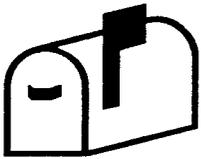


### SCHEDULED COMMISSION HOLIDAYS:

OCTOBER 14	COLUMBUS DAY
NOVEMBER 11	VETERANS DAY
NOVEMBER 28 - 29	THANKSGIVING
DECEMBER 25	CHRISTMAS

**Important Commission telephone numbers:**

Consumer Finance and Mortgage Section (examinations).....	(804).....371-9701
Corporate Structure and Research Section (licensing).....	(804).....371-9690
Consumer Complaints .....	(804) ...371-9705
Bureau of Financial Institutions FAX NUMBER.....	(804).....371-9416
SCC Office of the Clerk.(corporate information).....	(804).....371-9733
Bureau of Insurance.....	(804).....371-9741
Bank and Thrift Supervision Section.....	(804) 371-9704



**THE NEXT ISSUE OF THE COMPLIANCE CONNECTION ARRIVES IN DECEMBER!!!!**

Bureau of Financial Institutions  
 State Corporation Commission  
 P.O. Box 640  
 Richmond, Virginia 23218-0640