

THE COMPLIANCE CONNECTION

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

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The Compliance Connection is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage 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@sc.virginia.gov.

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Timely Response to Information Requests Required

The Mortgage Section of the Bureau of Financial Institutions (Bureau) is authorized by § 6.2-1611 of the Code of Virginia ("Code") to conduct examinations of licensed mortgage brokers and lenders. Licensees are required to comply with applicable laws and regulations and to respond to Bureau requests for information needed to conduct these examinations. Section 6.2-1611 of the Code states in relevant part that "[i]n the course of such investigations or examinations, the owners, members, officers, directors, partners, and employees of such mortgage lender or mortgage broker being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records and information which the person making such investigation or examination deems necessary."

In addition, 10 VAC 5-160-50 B of the Commission's Rules Governing Mortgage Lenders and Brokers provides that when information is requested in connection with an examination or investigation, the licensee must deliver a written response, as well as any requested information and documentation, within the time frame given, or within 30 days from the date of the request if no due date is specified. The Bureau will take into consideration the volume and complexity of the requested documents and other factors that may be relevant under the circumstances when determining the specified time period for responding to the Bureau.

Examiners have reported difficulties in being provided the requested examination records, documents and information needed to conduct some examinations. Typically, requests for examination information are sent to licensees at least 30 days prior to the scheduled examination date. A delay in receiving the necessary documents from a licensee to conduct an examination causes timing problems with other scheduled examinations. Thus, we remind licensees to be cognizant of the deadlines given by the Bureau and provide the documents requested by the due dates listed in our information request.

Requests from licensees to postpone examinations are difficult to accommodate. It is imperative that licensees notify the examiner of any scheduling conflicts as soon as possible so adjustments to other examinations can be attempted without a large disruption in the examination process.

The examination schedule is completed quarterly and examiners plan for such schedule months in advance. A delay or failure of a licensee to timely respond to the request for information to conduct an examination can lead to regulatory action, pursuant to §§ 6.2-1619 and 6.2-1624 of the Code. Delays also affect other scheduled examinations, so please keep this in mind and respond promptly.



Borrower Paid Broker Fees – Compliance Reminder

If you are a broker and have instances where the borrower pays, or will pay, the broker fee, do you have the original contract for compensation in the loan file? Does the contract for compensation specify the amount of the fee that the borrower paid or will pay? Is it signed by the borrower(s)?

When closing disclosures show a broker fee is paid to the mortgage broker by the borrower, examiners look for compliance with § 6.2-1616 B 4 of the Code. Licensees must have a contract for compensation (such as a broker agreement) that is signed by the borrower(s) and specifies the amount of the broker fee as proof of compliance.

Section 6.2-1616 B 4 of the Code provides that no mortgage broker required to be licensed under this chapter shall receive compensation from a borrower other than that specified in a written agreement signed by the borrower. This requires mortgage brokers to contract with the borrower for the broker fee that will be collected. The contract for compensation must state the dollar amount of the fee or list the fee as a percentage of the loan amount. Listing a range of the amount of the fee (whether as a dollar amount or percentage of the loan amount) is not acceptable, since a range doesn't provide the specificity required by the statute. The agreement must also be executed prior to closing to comply – obtaining a borrower's signature on this agreement after the date of closing will not be acceptable as proof of compliance. Broker fees collected from borrowers without a completed and executed contract for compensation/broker agreement will result in a violation of the above-referenced statute and will be cited as an overcharge.



The section of the Code that addresses record retention (§ 6.2-1609 of the Code) requires mortgage brokers to retain the *original* contract for compensation. Pursuant to 10 VAC 5-160-25 B of the Commission's Rules Governing Mortgage Lenders and Brokers ("Rules") licensees may maintain records electronically, provided the records are readily available to the Bureau for an examination and that the licensee complies with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code) and the Electronic Signatures in Global and National Commerce Act (15 USC § 7001 et seq.). The above referenced section of the Rules, 10 VAC 5-160-25 B, provides however, that the written agreement specified in § 6.2-1616 B 4 of the Code "shall be maintained in the form in which it was originally provided and executed."

Electronic Examinations

Due to the pandemic and the Commission's Temporary Telework Policy, the Bureau continues to conduct all examinations of mortgage licensees electronically, through the use of Box. Box is a secure portal that allows licensees to provide requested information to Bureau staff. We ask all licensees to please ensure their NMLS Company Information (including the Primary Company Contact and Primary Consumer Complaint Contact) is up to date so we will be able to contact and send the information to the appropriate person about the examination. Once the examination is complete and reviewed by the Bureau, the Report of Examination is sent to the licensee from the email address VAMortgageExam@scc.virginia.gov using encrypted email. Whoever is listed as the "primary company contact" in NMLS will receive the emails concerning the completed Report of Examination. Please ask your contact person to enter this new email address into their address list, so emails will go directly to the receiver's inbox rather than a junk or spam email folder. Licensees will receive two emails – the first will announce that the Report of Examination will be sent within 72 hours, via encrypted email and the second will be the encrypted email that contains the Report of Examination. This email address should also be used by licensees to submit their written response to the Report of Examination to the Bureau.



License Update

The following is a list of companies and individuals that have had an application denied, consented to the entry of a settlement order, or been the subject of regulatory action (e.g., been barred, had their license revoked, or paid a fine or civil penalty, etc.) since November 18, 2020. This list should be helpful to keep track of companies and individuals with which you do business. This list is accurate as of May 11, 2021. Call the Bureau if you have a question concerning a recent denial, settlement order or regulatory action taken by the Commission. To view specific Commission orders, go to the following link: scc.virginia.gov/pages/Case-Information, and click on “Docket Search” then click on “Search for Case Information,” and enter the case number.

Case Number Action	License No. License Name	Date of Order	Reason
BFI-2020-00110 Settlement (multi-state)	MC-2075 Nationstar Mortgage LLC	12/7/2020	Paid a nationwide settlement as a result of a coordinated effort between the Consumer Financial Protection Bureau (“CFPB”), a multi-state group of state attorneys general and state bank regulators. Settlement amount includes payment for consumer remediation; payments to states involved in the multi-state settlement; payments under the Attorney General Consent Judgement for attorney’s fees, investigative costs and fees; and civil monetary penalty under the CFPB Consent Judgment. Examination issues found include deficiencies in the overall financial condition of the company; inadequate policies and procedures; and insufficient internal controls over the mortgage loan origination operations of the company.
BFI-2020-00068 Settlement	MC-6656 Caliver Beach Mortgage, LLC	1/7/2021	Paid \$5,000 for allegedly violating 10 VAC 5-160-60 of the Commission’s Rules Governing Mortgage Lenders and Brokers, related to advertising.
BFI-2020-00045 Settlement	N/A Donovan J. Jappaya	1/12/2021	Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the voting shares of J & D Funding, Inc. d/b/a Rapid Mortgage Funding in violation of § 6.2-1608 of the Code.
BFI-2020-00115 Settlement	MC-3882 Cornerstone Home Mortgage, LLC	2/25/2021	Paid \$5,000 for allegedly violating 10 VAC 5-160-20 (1) of the Commission’s Rules Governing Mortgage Lenders and Brokers, by providing information to a prospective borrower that is false, misleading or deceptive.
BFI-2020-00117 Settlement	N/A Mortgage Assets Management, LLC	2/25/2021	Paid \$5,000 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the voting shares of Reverse Mortgage Solutions, Inc. d/b/a Security 1 Lending, in violation of § 6.2-1608 of the Code.
BFI-2021-00006 Settlement	N/A Martin Stephen Medve	4/28/2021	Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Trident Home Loans, LLC d/b/a Trident Home Loans in violation of § 6.2-1608 of the Code.



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