



May 28, 1997

Administrative Letter 1997-5

TO: All Title Insurance Companies, Title Insurance Agencies, and Title Insurance Agents Licensed in Virginia

RE: Senate Bill No. 1104 (The Consumer Real Estate Settlement Protection Act)

The 1997 Session of the Virginia General Assembly passed Senate Bill No. 1104 which requires settlement agents to register with the Virginia State Bar within 90 days of the effective date of the Act. The Act goes into effect on July 1, 1997. A copy of Senate Bill No. 1104 is attached for your review.

All title insurance agents, title insurance agencies, and title insurance companies acting in the capacity of a settlement agent must register with the Virginia State Bar by September 30, 1997. Draft copies of the Virginia State Bar's settlement agent registration forms are attached.

With the exceptions noted in the highlighted area on page 2 of this administrative letter, every title insurance agency and every title insurance agent acting as a settlement agent will be required to file annually with the Bureau of Insurance at the time of registration and each subsequent year thereafter a copy of its errors and omissions or malpractice insurance policy, or evidence of such insurance policy, providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in Virginia. Every title insurance agency and every title insurance agent acting as a settlement agent will also be required to file annually with the Bureau of Insurance at the time of registration and each subsequent year thereafter a copy of its blanket fidelity bond or employee dishonesty policy, or evidence of such bond or insurance policy, providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to do business in Virginia, or file a waiver if the settlement agent has no employees. Every title insurance agency and every title insurance agent acting as a settlement agent will be required to file a surety bond with the Bureau of Insurance when the settlement agent first becomes registered and at any time a replacement bond is issued. A copy of the surety bond form and waiver form are attached.

With the exceptions noted in the highlighted area on page 2 of this administrative letter, every licensed title insurance company, title insurance agency, and title insurance agent that acts as a settlement agent will be required to file annually with the Bureau of Insurance a copy of the audit of its settlement escrow account conducted by an independent certified public accountant. Each settlement agent that is a licensed title insurance agent or agency must also file the audit report with each title insurance company it represents. In lieu of a CPA audit, a title insurance agent or agency shall allow each title insurance company for which it has an appointment to conduct the annual audit of its settlement escrow account. The title insurance company must file a copy of this audit report annually with the Bureau of Insurance. With the consent of the title insurance agent or agency, a title insurance company may share the results of this audit with other title insurance companies that will accept the same in lieu of conducting a separate audit.

Note: The Virginia State Bar is requiring persons authorized to conduct real estate settlement services to designate in what capacity they are conducting those services. If you are an attorney/title insurance agent and you opt to register as an attorney settlement agent, you will come under the jurisdiction of the Virginia State Bar. If you are a real estate broker/title insurance agent and you opt to register as a real estate broker settlement agent, you will come under the jurisdiction of the Virginia Real Estate Board.

The following are answers to frequently asked questions regarding the implementation of Senate Bill No. 1104.

1. May a settlement agent retain microfiche copies of records in lieu of hard copy records?

Yes.

2. Can records be stored off-site?

Off-site storage is allowed as long as the records are made available promptly upon request for examination by the Commission or its employees during normal business hours. Any expenses associated with off-site storage are the responsibility of the settlement agent.

3. How long must records be maintained?

Three years for insurance records and five years for settlement agent records.

4. How long must records be maintained and who has to retain the records after the settlement agent goes out of business?

The law requires that settlement records be maintained by the settlement agent for a period of five years. The law does not provide an exception for those individuals or entities that choose to no longer act as a settlement agent.

5. If a title insurance agency or title insurance company registers as a settlement agent, do their employees have to register individually as well?

No. The employees will come under the title insurance agency's or title insurance company's settlement agent registration.

6. If a title insurance agency registers as a settlement agent, do the employees who are acting as settlement agents have to be licensed as title insurance agents?

No, as long as they are not acting as title insurance agents. However, please refer to Administrative Letter 1997-1 (Insurance Activities Requiring Persons to Be Licensed).

7. If a title insurance agent who is the owner of an agency registers individually as a settlement agent rather than as a corporation, do the other title insurance agents in the same agency who are acting in the capacity of a settlement agent have to register as settlement agents even if they are the owner's employees?

Yes.

8. Who is responsible for ensuring that employees who perform settlement services comply with the Virginia State Bar's Unauthorized Practice of Law Guidelines and the State Corporation Commission's Rules Governing Settlement Agents?

The licensed agent, agency, or company is responsible for ensuring that its employees comply with the Unauthorized Practice of Law Guidelines and the Commission's regulation.

9. Who is responsible for the actions of independent contractors who act as settlement agents?

An independent contractor generally has the ability to control the performance of his own work. If an independent contractor is not covered under the settlement agent's E&O policy, surety bond, and fidelity bond, the independent contractor must maintain his own E&O policy, surety bond, and fidelity bond and must register as a settlement agent. Any person who is under the direct supervision and control of the employer in the day-to-day performance of his work is generally considered an employee and must be covered under the settlement agent's E&O policy, surety bond, and fidelity bond. Temporary employees who are hired to meet specific workload requirements and who are under the direct supervision and control of the employer are generally considered employees and must be covered under their employer's E&O policy, surety bond, and fidelity bond.

10. Does the statute require a certain deductible under the E&O policy?

No.

11. Will there be coordination between Va., Md., & the D.C. requirements?

A separate surety bond will be needed in each jurisdiction because Virginia and Maryland require that they be named as an obligee on the bond, and the limits of the bond are for the separate protection of each state's citizens. E&O coverage and fidelity bond or employee dishonesty coverage can be written to cover the settlement agent's operations in several states.

12. May a settlement agent add an endorsement to a Businessowners Policy to cover employee dishonesty and still be in compliance with the statute?

Yes, as long as the limits are sufficient to meet the requirements of the law.

13. Do settlement escrow accounts have to be kept separate from all other accounts?

Yes. Settlement funds must be maintained in a separate fiduciary trust account and may not be commingled with any insurance funds or any other funds. Furthermore, a settlement agent may not retain any interest received on funds deposited into this account.

14. Does a title insurance company acting in the capacity of a settlement agent have to maintain a separate fiduciary trust account?

Yes.

15. What are the minimum standards for a CPA audit of a settlement agent?

These are set out by the American Institute of Certified Public Accountants, Statement on Auditing Standards, No. 62.

16. If a title insurance company is acting as a settlement agent, does the title insurance company's audit of its settlement escrow account have to be conducted by an independent CPA?

Yes.

17. If a title insurance agent has appointments with several title insurance companies, do all of the companies have to conduct an audit if it is not being conducted by an independent CPA?

No, as long as one company does the audit and will share it with the other companies. The audit must be on the entire escrow account and not just on that one company's business.

18. If a title insurance agent, who is a settlement agent, is audited by a title insurance company, does that company have to use a CPA to perform the audit?

No. However, the Bureau is establishing standards that are both comprehensive and uniform that will be required to be used by title insurance companies conducting these audits.

19. When and on what basis must the settlement agent's annual audit be conducted and when must it be submitted to the Bureau?

The audit must be conducted on a calendar year basis not later than six months after the close of the previous calendar year. The audit report must be filed with the Bureau annually on or before July 1.

20. How long does a settlement agent have to retain his audit reports?

Five years.

21. If several title insurance agencies come under common ownership, can they use the same surety bond?

No. If each title insurance agency is a separate legal entity, they must have their own surety bond.

22. If several title insurance agencies come under common ownership, can they use the same E&O coverage and fidelity bond?

No. If each title insurance agency is a separate legal entity, they must have their own E&O coverage and blanket fidelity bond or employee dishonesty policy.

23. If a settlement agent is licensed as a title insurance agent and is also an attorney or a real estate broker, which licensing authority will have jurisdiction over his conduct as a settlement agent?

This will be determined according to how the person registers with the Virginia State Bar. If the person agent registers as an attorney settlement agent, he will come under the jurisdiction of the Virginia State Bar. If he registers as a real estate broker settlement agent, he will come under the jurisdiction of the Virginia Real Estate Board. If he registers as a title insurance settlement agent, he will come under the jurisdiction of the Bureau of Insurance.

24. Are there any requirements of title insurance agents who are registered as settlement agents which are not required of attorneys who are registered as settlement agents?

Yes. A title insurance agent who is registered as a settlement agent must have an annual audit conducted by a CPA or a title insurance company. Also evidence of E&O coverage and fidelity bond or employee dishonesty coverage will have to be provided to the Bureau of Insurance. This is in addition to the surety bond which will have to be filed. It appears from the Virginia State Bar's draft regulation that attorney settlement agents will not be required to file with the Virginia State Bar evidence of their E&O coverage, fidelity bond or employee dishonesty coverage, or surety bond. However, attorney settlement agents will be required to certify that these coverages are in place. Further, the Virginia State Bar intends to conduct random audits to verify the accuracy of the certification and whether such coverages are, in fact, in place.

25. Will the Bureau send an acknowledgment to settlement agents verifying that the Bureau has received the settlement agent's bond forms and evidence of insurance coverage?

Yes. The Bureau will send the settlement agent an acknowledgment.

Questions concerning this administrative letter may be addressed to the P&C Agents Investigation Section at (804) 371-9465.

Sincerely,

Alfred W. Gross
Commissioner of Insurance

Attachments

**Waiver of Blanket Fidelity Bond or Employee Dishonesty Insurance Policy
for Title Insurance Settlement Agents**

I _____, as a sole proprietor, general partner, officer of the corporation, or manager of the limited liability company do solemnly affirm under the penalties of perjury that I employ no individuals to perform any work in connection with the work I perform as a settlement agent.

I understand that if I employ any individual to perform any work for me in connection with the work I perform as a settlement agent, I must obtain a blanket fidelity bond or employee dishonesty insurance policy providing a minimum of \$100,000 in coverage as required by §6.1-2.21 of the Code of Virginia. I do hereby agree to file a copy of such bond or policy, or evidence thereof, with the State Corporation Commission Bureau of Insurance within 30 days of employing such individual.

I understand that failure to obtain a blanket fidelity bond or employee dishonesty insurance policy as required by §6.1-2.21 may result in penalties against me pursuant to §6.1-2.27 of the Code of Virginia which may include revocation or suspension of my license.

Signature _____

Print Name _____

License No. _____

Business Name _____

Business Address _____

Home Address _____

SETTLEMENT AGENT OFFICIAL REGISTRATION FORM
FOR AN INDIVIDUAL ATTORNEY, BROKER or TITLE AGENT

DRAFT

VIRGINIA STATE BAR
REGISTRATION FEE - \$20.00

Please make check payable to the "Treasurer of Virginia."

Choose the capacity in which you are providing real estate settlement services Licensed Attorney Licensed Real Estate Broker Licensed Title Insurance Agent (Individual only)

Applicable Virginia Licensing/Regulatory Authority _____
Bar Identification or License Number _____

Full Name: Mr. _____
Miss _____
Mrs. _____
Ms. _____ LAST NAME FIRST NAME MIDDLE NAME

(1) Business Address: _____ (firm name)
(required) _____
(street address) _____
(City, State, and Nine-digit zip code) _____

Telephone Number: (____) _____ Facsimile Number: (____) _____

(2) Residence Address _____ (optional) (street address) _____
(City, State, and Nine-digit zip code) _____

Telephone Number: (____) _____

Please indicate address preference for mailing purposes:

(1) Business _____ or (2) Residence _____

Date on which you were licensed in Virginia: ____/____/____

Is your license in Virginia in good standing? Yes _____ No _____

.SSN (optional): _____-_____-_____ Date of Birth: ____/____/____

I certify that the information provided above is true and accurate, that I will keep the Bar advised of any changes in the information provided, and that I understand completion of this official registration form does not complete my public protection requirements as a settlement agent under the Virginia Consumer Real Estate Settlement Protection Act and regulations under the act which may be issued by my licensing or regulatory authority.

Signature: _____

THE INFORMATION SOUGHT IS FOR THE PURPOSE OF MAINTAINING ACCURATE VSB RECORDS NEEDED TO CARRY OUT THE DUTIES SPECIFIED IN TITLE 6. 1, CHAPTER 1.3, CODE OF VIRGINIA. THE INFORMATION PROVIDED WILL BE AVAILABLE FOR INSPECTION BY THE PUBLIC UNDER THE FREEDOM OF INFORMATION ACT.

Please complete and return with your registration fee to: Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, VA 23219-2803.

Questions: Please telephone the Virginia State Bar Membership Department at (804) 775-0530.

4/21/97

SETTLEMENT AGENT OFFICIAL REGISTRATION FORM
FOR AN INDIVIDUAL ATTORNEY, BROKER or TITLE AGENT

DRAFT

VIRGINIA STATE BAR
REGISTRATION FEE - \$20.00

Please make check payable to the "Treasurer of Virginia."

Choose the capacity in which you are providing real estate settlement services Licensed Title Insurance Company Licensed Title Insurance Agent (Corporation or other legal entity only) Financial Institution (or affiliate or subsidiary thereof)

Applicable Virginia Licensing/Regulatory Authority _____

License or other Identification Number: _____

Full Name of Corporation or Other legal entity: _____

Name of Office or Manager of Legal Entity: _____

Business Address: _____
required (street address)

(City, State, and Nine-digit zip code)

Telephone Number: (_____) _____ Facsimile Number: (_____) _____

Date on which entity was licensed or otherwise authorized to do business in Virginia: ____/____/____

Is the entity's license or authorization to do business in Virginia in good standing? yes _____ no _____

Taxpayer ID Number (Optional): _____/_____/_____

I certify that the information provided above is true and accurate, that I **will** keep the Bar advised of any changes in the information provided, and that I understand completion of this official registration form **may not** complete the legal entity's public protection requirements as a settlement agent under the **Virginia Consumer Real Estate Settlement Protection Act** and regulations under the act which may be issued by its licensing or regulatory authority.

Typed Name of Corporation or other Legal Entity

Typed Name of Officer or Manager

Signature of Officer or Manager

THE INFORMATION SOUGHT IS FOR THE PURPOSE OF MAINTAINING ACCURATE VSB RECORDS NEEDED TO CARRY OUT THE DUTIES SPECIFIED IN TITLE 6. 1, CHAPTER 1.3, CODE OF VIRGINIA. THE INFORMATION PROVIDED WILL BE AVAILABLE FOR INSPECTION BY THE PUBLIC UNDER THE FREEDOM OF INFORMATION ACT.

Please complete and return with your registration fee to: Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, VA 23219-2803.

Questions: Please telephone the Virginia State Bar Membership Department at (804) 775-0530.

Bond No. _____

BOND FOR TITLE INSURANCE SETTLEMENT AGENT

(PURSUANT TO SECTION 6.1-2.21 OF THE CODE OF VIRGINIA)

KNOW ALL MEN BY THESE PRESENTS, That _____

_____ of _____,

as Principal, and _____,

a corporation organized and existing under the laws of the State of and authorized to do business in the Commonwealth of Virginia, as Surety, are held and firmly bound unto the COMMONWEALTH OF VIRGINIA, as Oblige, or to any aggrieved person who may be injured by the Principal as hereinafter provided in the penal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for the payment of which, well and truly to be made, we and each of us, bind ourselves, our heirs, successors, and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DATED this _____ day of _____, 19_____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal is required to register with the Virginia State Bar as a settlement agent pursuant to Chapter 1.3 of Title 6.1 of the Code of Virginia and is thereby required to maintain a surety bond.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall be registered with the Virginia State Bar to act as a settlement agent and if the Principal shall act in such capacity in full compliance with the provisions of the laws of the Commonwealth of Virginia and rules, regulations, and orders prescribed by the Virginia State Bar and the State Corporation Commission pertaining to Settlement Agents, then this obligation shall be null and void; otherwise to remain in full force and effect;

CONDITIONED FURTHER, that the Commonwealth of Virginia may maintain an action against this bond for its use and benefit or for the use and benefit of any aggrieved person, or any aggrieved person may maintain an action in its own name against this bond to recover damages as a result of the Principal breaching any of the above-mentioned laws, regulations, or orders; provided, however, that regardless of the number of years this bond remains in effect in no event shall the aggregate liability of the Surety to all claimants for all claims under this bond exceed the penal sum of this bond.

The Surety may be released from liability for future breaches of the condition of this bond upon giving (60) days written notice to the Principal and the Commissioner of

Insurance, State Corporation Commission, Commonwealth of Virginia, of its desire to be released.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal and the said Surety has caused these presents to be signed by its duly authorized officer or Attorney-in-Fact and its corporate seal affixed on the day and year first written above.

(SEAL)

(PRINCIPAL)

By: _____

(SEAL)

(SURETY)

By: _____

VIRGINIA ACTS OF ASSEMBLY – 1997 SESSION

CHAPTER 716

An Act to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 1.3, consisting of sections numbered 6.1-2.19 through 6.1-2.29, relating to the Consumer Real Estate Settlement Protection Act; penalty.

[S 1104]

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 1.3, consisting of sections numbered 6.1-2.19 through 6.1-2.29, as follows:

**CHAPTER 1.3.
CONSUMER REAL ESTATE
SETTLEMENT PROTECTION ACT.**

§ 6.1-2.19. Title, purpose and applicability.

A. This Act shall be known as the Consumer Real Estate Settlement Protection Act.

B. The purpose of this Act is to authorize existing licensing authorities in the Commonwealth of Virginia to require persons performing escrow, closing or settlement services to comply with certain consumer protection safeguards relating to licensing, financial responsibility and the handling of settlement funds.

C. This chapter applies only to transactions involving the purchase or financing of real estate containing not more than four residential dwelling units.

§ 6.1-2.20. Definitions.

"Escrow" means written instruments, money or other items deposited by one party with a settlement agent for delivery to another party upon the performance of a specified condition or the happening of a certain event.

"Escrow, closing or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include, but are not limited to, placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Licensing authority" shall mean the (i) State Corporation Commission acting pursuant to this Act, Title 6.1 or Title 38.2; (ii) the Virginia State Bar acting pursuant to this Act or Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this Act or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Party to the real estate transaction" means a lender, seller, purchaser or borrower with respect to that real estate transaction.

"Person" means a natural person, partnership, association, cooperative, corporation, limited liability company, trust or other legal entity.

"Settlement agent" means a person other than a party to the real estate transaction who provides any escrow, closing or settlement service in connection with a transaction related to real estate in this Commonwealth.

§ 6.1-2.21. Licensing requirements, standards and financial responsibility.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent with respect to real estate settlements in this Commonwealth unless the person is licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, a title insurance company or title insurance agent under Title 38.2, a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or unless the person is a financial institution authorized to do business in this Commonwealth under any of the provisions of Title 6.1 or under federal law, or is a subsidiary or affiliate of such financial institution. Any such person, not acting in the capacity of a settlement agent, shall not be subject to the provisions of this chapter.

B. Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with the requirements of this Act or a party to the real estate transaction may provide escrow, closing or settlement services and receive compensation for such services.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this Act and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits and record retention.

D. A settlement agent other than a financial institution described in subsection A or title insurance company as defined in § 38.2-4601, shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of \$250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than \$100,000.

E. 1. A settlement agent, other than an attorney, shall, at its expense, have an annual audit of its escrow accounts conducted by an independent certified public accountant on a calendar year basis by not later than six months after the close of the previous calendar year. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company which it represents.

2. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an annual audit of its escrow accounts on a calendar year basis by not later than six months after the close of the previous calendar year. The title insurance company shall submit a copy of its audit report to the appropriate licensing authority. With the consent of the title

insurance agent, a title insurance company may share the results of its audit with other title insurance companies that will accept the same in lieu of conducting a separate audit.

3. A title insurance company shall retain a copy of the audit report for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

§ 6.1-2.22. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include in bold face, 10 point type the following language:

Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Escrow, closing and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act.

§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the next business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. A settlement statement in the form prescribed under the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) which has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing; provided, however, that an attorney settlement agent

shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. Nothing in this section is intended to amend, alter or supersede other sections of this Act, or the laws of this Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

§ 6.1-2.24. Record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this Act. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

§ 6.1-2.25. Rules and regulations.

Except as provided in § 6.1-2.26, the appropriate licensing authority may issue rules, regulations and orders, including educational requirements, consistent with and necessary to carry out the provisions of this Act. A title insurance company domiciled in this Commonwealth or acting in the capacity of a settlement agent pursuant to this Act shall account for funds held and income derived from escrow, closing or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the National Association of Insurance Commissioners when filing the annual statements and reports required under Chapter 13 (§ 38.2-1300, et seq.) of Title 38.2.

§ 6.1-2.26. Settlement agent and financial institution compliance with unauthorized practice of law guidelines.

A. Every settlement agent subject to the provisions of this Act shall be registered as such with the Virginia State Bar within 90 days of the effective date of this Act. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses and telephone numbers, (ii) information pertaining to licenses issued them by any licensing authority, and (iii) such other information as may be required by the Virginia State Bar. The Virginia State Bar shall accept in satisfaction of the requirements of this subsection, settlement agents' licensing forms submitted to any licensing authority, as defined in this Act, if such forms contain substantially the same information required hereby. Each such registration (i) shall be accompanied by a fee not to exceed \$100 and (ii) shall be renewed at least biennially thereafter.

B. The Virginia State Bar, in consultation with the Virginia State Corporation Commission and the Virginia Real Estate Board, shall promulgate regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing and settlement services. Such guidelines shall be furnished by the Virginia State Bar to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i)

investigate the same to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction and (ii) refer all other matters or allegations to the appropriate licensing authority.

D. The willful failure of any settlement agent or financial institution to comply with the provisions of this section shall be a violation of this Act, and such agent shall be subject to a penalty of up to \$5,000 for each such failure as the Virginia State Bar may determine.

§ 6.1-2.27. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent or any other person has violated this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the appropriate licensing authority may order:

- 1. A penalty not exceeding \$5,000 for each violation; and*
- 2. Revocation or suspension of the applicable licenses.*

B. Nothing in this section shall affect the right of the appropriate licensing authority to impose any other penalties provided by law or regulation.

§ 6.1-2.28. Severability.

If any provision of this Act, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is invalid, shall not be affected.

§ 6.1-2.29. Compliance.

A settlement agent operating in this Commonwealth prior to the effective date of this Act shall have ninety days after the effective date of this Act to comply with requirements of §§ 6.1-2.21 and 6.1-2.23.