

# 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](mailto:bfquestions@sc.virginia.gov).

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## HB 1153/SB 303 Approved – Amends § 6.2-1616 of the Code of VA

House Bill 1153 and Senate Bill 303 were passed by the General Assembly and approved by the Governor on April 11, 2022. These bills remove the prohibition on a person acting as a mortgage broker in connection with any real estate sales transaction in which such person or any person affiliated with such person has acted as a real estate broker, agent, or salesman and has received or will receive compensation in connection with such transaction. The bills provide that if a mortgage broker negotiates, places or finds a mortgage loan and acts as a real estate broker or real estate salesperson in connection with the sale of the real estate that secures such loan, the mortgage broker is required to conspicuously provide to the borrower a written disclosure at the time the mortgage broker services are first offered to the borrower. The required content of the disclosure is set forth in the bills. The bills also made some technical changes to § 6.2-888 (Real estate brokerage business of controlled subsidiary) and § 6.2-1627 (Private actions) of the Code of Virginia.

The bills became effective on July 1, 2022. To see the full text of the legislation, go to: <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0400>

## Advertising

The Bureau continues to see violations of law and regulations involving advertisements, websites and social media sites utilized by mortgage companies. Consumers are also filing complaints with the Bureau when they find instances where false, misleading, or deceptive statements appear on solicitations. Section 6.2-1614 (8) of the Code of Virginia (Code) and 10 VAC 5-160-60 govern licensees' advertisements – what must and must not be included in ads and when additional disclosure statements are required. Licensees must also comply with federal laws and regulations that address advertising and unfair, deceptive, or abusive acts or practices -- including Regulation Z / Truth in Lending Act and Regulation N (Mortgage Acts and Practices Advertising Rule).

Many licensees use third parties for their marketing campaigns (such as direct marketing companies) and the solicitations they prepare may contain violations of state and federal laws and regulations. Licensees are responsible for advertisements utilized by their company, whether produced by a third party or internally, so licensees should have a thorough review program and experienced staff in place to ensure compliance in this area. Since this is such an important area, many compliance companies and law firms provide compliance reviews of advertising and marketing programs; policy development; and compliance training.

Pursuant to § 6.2-1624 of the Code, violations of law or regulation may be subject to a civil penalty of up to \$2,500 for *each* violation. The Bureau has pursued numerous settlements with licensees for advertising violations. Advertising violations can also serve as grounds for license revocation or suspension or the entry of a cease and desist order.

## Violations of SAFE Act Education Requirements Lead to Multi-State Settlements with MLOs

(The following is based on a press release issued by the Conference of State Bank Supervisors (CSBS) on January 18, 2022)

A multi-state investigation was conducted to identify mortgage loan originators (MLOs) who deceptively claimed to have completed annual continuing education required by state and federal law. The California Department of Financial Protection and Innovation led a group of forty-four state financial agencies in this investigation. The results of the investigation revealed more than 400 MLOs who violated the education standards.

The terms of the settlements required the MLOs to 1) surrender their MLO licenses for a period of three months, 2) pay a fine of \$1,000 for each state in which the MLO holds a license, and 3) take continuing education courses beyond state and federal SAFE Act requirements.

The irregular education activity was discovered through a gesture-driven authentication tool called BioSig-ID. CSBS uses the tool to monitor all online courses it approves under its SAFE Act mandate.

To view the entire press release, please visit: [csbs.org](https://csbs.org) and select Newsroom, then Press Releases. Below is a list of the Virginia MLOs that agreed to the multi-state settlements:

| Case Number    | NMLS ID | Licensee           | Case Number    | NMLS ID | Licensee          |
|----------------|---------|--------------------|----------------|---------|-------------------|
| BFI-2021-00112 | 396399  | Jonathan Cave      | BFI-2022-00005 | 395719  | Kevin Heckemeyer  |
| BFI-2021-00113 | 1570245 | Anthony Corkill    | BFI-2022-00006 | 869345  | Vance Hivoral     |
| BFI-2021-00114 | 1572986 | Danyelle Drenk     | BFI-2022-00007 | 1437691 | Gregory Kaczmarek |
| BFI-2021-00115 | 8697    | Timothy Matthews   | BFI-2022-00008 | 329466  | Xuan Duy Nguyen   |
| BFI-2021-00116 | 1882937 | Kimberly Rojas     | BFI-2022-00009 | 779577  | Casey Peek        |
| BFI-2021-00117 | 1748918 | Britney Velasquez  | BFI-2022-00010 | 327837  | Larry Resnick     |
| BFI-2021-00118 | 361624  | Timothy Williams   | BFI-2022-00011 | 392773  | Brian Santos      |
| BFI-2021-00119 | 236593  | Erik Board         | BFI-2022-00012 | 291637  | Kelly Shaar       |
| BFI-2021-00120 | 279394  | Peter DiFerdinand  | BFI-2022-00013 | 2393535 | Joseph Shalaby    |
| BFI-2021-00121 | 241324  | Robert Drenk       | BFI-2022-00014 | 350280  | Montee Skorich    |
| BFI-2021-00122 | 335871  | James Kott         | BFI-2022-00015 | 373687  | Jason Soldati     |
| BFI-2021-00123 | 361551  | Samuel Stamper     | BFI-2022-00016 | 325477  | Michael Barrios   |
| BFI-2022-00001 | 272011  | Rodrigo Ballon     | BFI-2022-00018 | 381769  | Robert Hostetler  |
| BFI-2022-00002 | 1084139 | Ali Borazjani      | BFI-2022-00019 | 294599  | Nathan Kowarsky   |
| BFI-2022-00003 | 1508637 | Christoffer Groves | BFI-2022-00022 | 329451  | Chad Baker        |
| BFI-2022-00004 | 354151  | Michael Hamalak    |                |         |                   |

## 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 December 1, 2020. This list should be helpful to keep track of companies and individuals with which you may conduct business. This list is accurate as of May 11, 2022. 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](http://scc.virginia.gov/pages/Case-Information), and click on “Docket Search” then click on “SEARCH BY CASE INFORMATION,” and enter the case number.

| Case Number and Action                     | License No. and Name  | Date of Order | Description   |
|--|---|---------------|---|
| BFI-2021-00008<br>Settlement Order         | N/A<br>Scott L. Dostal  | 12/7/2021     | Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Atlantic Prime Mortgage, LLC (MC-7002), in violation of § 6.2-1608 of the Code of Virginia.   |
| BFI-2021-00039<br>Order Revoking a License | MLO-14139<br>NMLS ID #1049418<br>Cristobal Lara<br>Garcia     | 12/9/2021     | Licensee made a material misrepresentation or omission in his initial application for a MLO license by failing to disclose that the Financial Industry Regulatory Authority issued a decision against him in 2009. Since then, and based on the licensee's violations of laws and regulations applicable to the conduct of his licensed activities, five states entered administrative orders against Mr. Garcia and revoked his licenses to engage in business as a MLO. |
| BFI-2021-00108<br>Settlement Order         | MC-6747<br>Home Mortgage<br>Alliance<br>Corporation           | 3/10/2022     | Paid \$15,000 for alleged violations of §§ 6.2-1607, 6.2-406 A 2, and 6.2-1611 of the Code of Virginia; and alleged violations of 10 VAC 5-160-60 A 1, A 2, F and H, 10 VAC 5-160-50 B, and 10 VAC 5-160-90 B of the Commission's Rules Governing Mortgage Lenders and Brokers.   |
| BFI-2021-00102<br>Settlement Order         | N/A<br>LemonBrew<br>Technologies Corp.                        | 4/5/2022      | Paid \$5,000 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of LemonBrew Lending Corp. d/b/a SD Capital Funding (MC-6641), in violation of § 6.2-1608 of the Code of Virginia.   |
| BFI-2022-00021<br>Settlement Order         | N/A<br>Chirag Rachhadia                                       | 4/5/2022      | Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Vema Mortgage LLC (MC-7094), in violation of § 6.2-1608 of the Code of Virginia.  |
| BFI-2022-00020<br>Settlement Order         | N/A<br>Vipul Hapani   | 4/5/2022      | Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Vema Mortgage LLC (MC-7094), in violation of § 6.2-1608 of the Code of Virginia.  |
| BFI-2021-00109<br>Settlement Order         | MC-6794<br>Titan Mutual Lending Inc. d/b/a<br>Entrust Funding | 4/29/2022     | Paid \$22,500 for alleged violations of § 6.2-1614 (8)(a) of the Code of Virginia and 10 VAC 5-160-60 A 1, A 2, A 3, A 4, C 1, D, F, and G of the Commission's Rules Governing Mortgage Lenders and Brokers.  |
| BFI-2022-00029<br>Settlement Order         | N/A<br>Effortless Holdings,<br>Inc.                           | 5/10/2022     | Paid \$5,000 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Princeton Mortgage Corporation (MC-6831), in violation of § 6.2-1608 of the Code of Virginia.   |
| BFI-2021-00103<br>Settlement Order         | N/A<br>German Florez  | 5/11/2022     | Paid \$2,500 for allegedly failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Cardinal Financial Company, Limited Partnership, d/b/a Sebonic Financial, and d/b/a Peoples Home Equity (MC-1825), in violation of § 6.2-1608 of the Code of Virginia.  |

## **Prohibited: MERS® Fee**

(Below is an updated article that was originally published in the Fall 2005 issue of this newsletter. We are reprinting it, with edits, to remind licensed mortgage companies of the Bureau's position on this issue.)

Section 6.2-326 of the Code of Virginia, which pertains to first mortgage loans, allows mortgage lenders to collect the "reasonable and necessary charges in connection with *making* the loan" (emphasis added). It is the Bureau's position that a MERS® (Mortgage Electronic Registration System) fee is not incident to the relationship between the lender and borrower, but rather arises out of the subsequent transfer of a loan from the lender to a third-party purchaser. Section 6.2-328 of the Code of Virginia also prohibits the collection of this fee on subordinate loans.

Thus, the collection of a MERS® fee will be cited as an overcharge violation during examinations of licensees. Please adjust your company policies as needed to ensure compliance in future transactions.

## **Application Dates on Loan Transaction Journal**

Virginia Regulation 10 VAC 5-160-25 C requires mortgage company licensees to maintain a mortgage loan transaction journal that contains specific loan application information, including but not limited to, applicant's name, application date, property address, loan amount, etc. In many instances, the information, especially the loan application date, is inaccurate. The Bureau relies on this information to ascertain compliance with applicable laws and regulations. In many cases, the application date on the journal does not match up with the application date on the early mortgage loan disclosures required by Regulation Z. These discrepancies create additional work for both the licensees and the examiners to determine the accurate application date.

The above referenced Regulation can be viewed at: <https://law.lis.virginia.gov/admincode/title10/agency5/chapter160/section25/>



## **Information Security & the FTC's Safeguards Rule**

Most mortgage lender and broker licensees must comply with the Federal Trade Commission's (FTC) Safeguards Rule, which was mandated by Congress under the 1999 Gramm-Leach-Bliley Act and requires that financial institutions under the FTC's jurisdiction have measures in place to keep customer information secure. In October 2021, the FTC announced an updated Safeguards Rule that includes more specific details regarding what must be included in information security programs. The updated standards are effective on December 9, 2022. To see the amended text of the Standards For Safeguarding Customer Information, go to: <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-314>.

In addition, pursuant to Virginia Regulation 10 VAC 5-160-25 D, if a licensee disposes of records containing a consumer's personal or financial information following the expiration of any applicable record retention periods, such records must be disposed of in a secure manner (e.g., shredded).

Please be aware that examiners will begin asking for information about steps mortgage lender and broker licensees have taken to protect information and avoid data breaches and cyberattacks.



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