
The Compliance Connection

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

JUNE 1996



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A Note From The Deputy

Commissioner E. J. Face, Jr.

The positive response to our first newsletter was overwhelming. We hoped the newsletter would be well received, but we did not anticipate the volume of positive comments and suggestions. Thank you and please continue to offer your suggestions.

The purpose of the newsletter is to provide a forum whereby the Bureau can keep you, the industry, informed of our activities, procedures and policies. We hope that this newsletter will help you in your efforts toward compliance with laws and regulations.

July 1 Law Update:

The Stop Gap containing the laws enacted during the 1996 Session of the General Assembly relating to Banking and Finance has recently been sent to all licensees. In the absence of an emergency clause or specified date, the legislation will become effective July 1, 1996. The Stop Gap should be helpful until the 1996 law book is received from the publishers. Law books are usually mailed to all licensees around the middle of September. Be sure information concerning the law changes are distributed to all necessary personnel.

There is one change that everyone seems to be interested in -- the amount of points that a mortgage broker can collect from the borrower on a subordinate mortgage loan. As of July 1, 1996, mortgage brokers will no longer be limited to a broker fee of 2% of the principal amount of the loan. The maximum number of points that can be charged on a subordinate loan is still 5% of the principal, but the lender and broker may divide the 5 points anyway they wish, as long as the fees are properly disclosed on the good faith estimate and settlement statement and brokers have obtained an executed broker agreement for the amount of their fee.

REMEMBER: THIS CHANGE DOES NOT GO INTO EFFECT UNTIL JULY 1, 1996.

RESPA Rulemaking Committee:

In December 1995, HUD held the first of several "Negotiated Rulemaking Advisory Committee on Mortgage Broker Disclosure" meetings. This committee consisted of representatives from selected organizations involved in the mortgage industry. The negotiations were facilitated by HUD Chief Administrative Law Judge Alan Heifetz and were open to the public. Joe Face was a member of this committee, representing the American Association of Residential Mortgage Regulators.

HUD established the Negotiated Rulemaking Advisory Committee to 1) determine whether or not the amount and nature of indirect payments to mortgage brokers and certain other mortgage originators should be disclosed to consumers, and 2) resolve whether RESPA permits volume-based compensation from wholesale lenders to mortgage brokers, and if such compensation is found permissible, whether and how the compensation should be disclosed.

Historically, the mortgage industry and mortgage regulators have been frustrated with HUD's inability to articulate what is and is not allowable under RESPA. Some industry representatives believe that if HUD fails to promulgate clear RESPA rules and guidelines, the threat of litigation is imminent. Such litigation could throw the industry into a quagmire.

Meetings were held every month from December 1995 to May 1996. It was hoped that negotiations would lead to a consensus of opinion on mortgage broker disclosures. HUD pledged to use "any consensus reached in these negotiations" in implementing a revised RESPA regulation on such disclosures. However, during the April meetings, negotiations broke down as consumer advocates began pushing for full up front disclosure by brokers of all direct and indirect fees, including any compensation from lenders. That was the consumer group's position from the outset of the negotiations, and group representatives were unwilling to compromise claiming that indirect fees are simply a kickback from the lender to the broker for "steering" the borrower to a particular lender.

The final meeting in May produced no new developments. HUD has promised to begin work in this area promptly with hopes of coming out with final revisions prior to the November elections.

"Intermediate" Mortgage Activities

Intermediate mortgage activities can be defined as any activity that may facilitate bringing a potential mortgage borrower together with a mortgage lender for compensation. It can include but is not limited to, such things as mortgage loan "*processing*" and "*telemarketing*". Such activities involve "dealing with" or "managing" part of the mortgage loan process. "Loan processing" is an intermediate activity between lender, broker and borrower which sees to the fulfillment of documentation and underwriting requirements and facilitates the making of mortgage loans. "Telemarketing" is also an intermediate activity when it directs a potential borrower to a mortgage broker or lender. Virginia Code §6.1-409 broadly defines a mortgage broker as any person who directly or indirectly negotiates, places or finds mortgage loans for others. The word negotiate means to "deal with" or "manage". In our view, all three terms, "negotiate, place or find" connote in the mortgage lending context, acting as an intermediary between lender and borrower, or between another broker and borrower, by performing functions that facilitate the making of mortgage loans.

Accordingly, anyone engaged in these types of activities must apply for and obtain a Virginia mortgage broker license and comply with all applicable laws and regulations, including record retention. Each day such person operates a mortgage business without having obtained the required license is a felony, as well as, a separate violation of law subject to a \$1,000 fine for each violation, pursuant to Virginia Code §6.1-428. Any person dealing with such an unlicensed entity is an accomplice to the violation, as set forth in Administrative Ruling 1603.

License Update

Here is a list of companies who have surrendered their license, had their license revoked, or been fined by the Commission since March 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 June 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 MARCH 1, 1996

MB - 665 FINAMARK, INC. - 3/5/96	MB - 782 EMPIRE FUNDING GROUP, INC. - 4/24/96
MB - 630 WILLIAM LAWRENCE BASHAW II T/A ADVANTAGE FUNDING - 3/6/96	MB - 677 UNITED STATES MORTGAGE CORPORATION OF DELAWARE, INC. - 4/25/96
ML - 187 RJ RESIDENTIAL FUNDING CORP. - 3/7/96	MB-865 CAPITAL FINANCE, LLC - 5/1/96
MB - 142 MARK WAYNE BROOKS - 3/11/96	ML - 150 PATRIOT MORTGAGE COMPANY, LP - 5/6/96
MB - 248 AMERICAN MORTGAGE SERVICES, INC. - 3/19/96	MB-927 JAMES W. RESPESS - 5/6/96
MLB - 270 VIP MORTGAGE CORPORATION - 3/18/96	ML - 150 PATRIOT MORTGAGE COMPANY, L.P. - 5/6/96
MB - 892 DISCOUNT MORTGAGE CORP. - 3/19/96	MLB - 363 VIRGINIA BUILDERS FUNDING CORP. (USED IN VA BY BUILDERS FUNDING CORP.) - 5/8/96
MB - 197 LYNN SEALS WILLIAMS - 3/22/96	MLB - 331 FIRST FRANKLIN FINANCIAL CORP. - 5/8/96
MB - 899 MARY E. SPARKMAN T/A MORTGAGE NETWORK - 3/22/96	MLB - 344 JHS MORTGAGE CORP. (USED IN VA BY CITIZENS MORTGAGE CORP.) - 5/21/96
MB - 946 GOA MORTGAGE, INC. - 3/25/96	MB-573 MORTGAGE ADVANTAGE CORP. - 5/24/96
ML - 166 THE PHOENIX FINANCIAL GROUP, INC. - 3/26/96	ML - 120 PRINCIPAL RESIDENTIAL MORTGAGE, INC. - 5/24/96
MB - 87 CLIFFORD D. DEWEY T/A MORTGAGE FUNDING SYSTEM - 3/26/96	
MLB - 312 UNITED MORTGAGE CORPORATION - 3/29/96	
MB - 495 LYNN JENNINGS WHITE - 4/4/96	
MB - 262 MORTGAGE SERVICE AMERICA CO. - 4/8/96	
MB - 868 GREAT EASTERN MORTGAGE CORP. - 4/11/96	

MORTGAGE APPLICATIONS DENIED SINCE MARCH 1, 1996

NONE

MORTGAGE LICENSE REVOCATIONS SINCE MARCH 1, 1996

MLB - 284 MEDALLION MORTGAGE COMPANY - 3/8/96 - FAILURE TO MAINTAIN BOND
 MB - 450 ACE MORTGAGE CORPORATION - 5/2/96 - FAILURE TO MAINTAIN BOND
 MB - 790 FINANCIAL SECURITY MORTGAGE CORPORATION - 5/31/96 - FAILURE TO FILE ANNUAL REPORT
 MB - 788 CENTURY CAPITAL MORTGAGE, INC. - 5/31/96 - FAILURE TO FILE ANNUAL REPORT

MORTGAGE LICENSES REVOKED (CONTINUED)

MB - 652 METRO MORTGAGE ASSOCIATES INCORPORATED - 5/31/96 - FAILURE TO FILE ANNUAL REPORT
 MB - 464 AMERICAN FUNDING & INVESTMENT CORPORATION - 5/31/96 - FAILURE TO FILE ANNUAL REPORT
 MB - 446 LIBRA INVESTMENTS LIMITED - 5/31/96 - FAILURE TO FILE ANNUAL REPORT
 MB - 487 TELNET CAPITAL, INC. - 5/31/96 - FAILURE TO FILE ANNUAL REPORT

PENALTIES PAID BY MORTGAGE LICENSEES SINCE MARCH 1, 1996

MLB - 107 ABBOT MORTGAGE SERVICE, INC. - 3/6/96 PAID A PENALTY OF \$500 FOR FAILURE TO OBTAIN APPROVAL PRIOR TO RELOCATION
 MB - 531 JOHN T. ROGERS - 4/5/96 PAID A PENALTY OF \$500 FOR FAILURE TO OBTAIN APPROVAL PRIOR TO THE ACQUISITION OF STOCK IN AMERICAN FINANCE & INVESTMENTS, INC.
 MLB - 386 MORTGAGE SERVICING ACQUISITION CORP. - 4/5/96 PAID A PENALTY OF \$500 FOR FAILURE TO OBTAIN APPROVAL PRIOR TO ACQUISITION OF STOCK IN B FIRST RESIDENTIAL CORP.
 MLB - 351 1ST PREFERENCE MORTGAGE CORP. - 5/8/96 PAID A PENALTY OF \$300 FOR FAILURE TO OBTAIN APPROVAL PRIOR TO RELOCATION
 MB - 948 HFS ASSOCIATES, INC. - 5/8/96 PAID A PENALTY OF \$1,000 FOR ACTING AS A BROKER PRIOR TO OBTAINING LICENSE FROM THE COMMISSION

PENALTIES PAID BY CONSUMER FINANCE LICENSEES SINCE MARCH 1, 1996

CF - 2177 BANC ONE FINANCIAL SERVICES, INC. - 5/31/96 PAID A PENALTY OF \$15,000 FOR NUMEROUS VIOLATIONS OF THE CONSUMER FINANCE ACT



Joint Ventures:

A joint venture is a controlled business arrangement (CBA) which is exempt from the provisions of Section 8 of RESPA. The ownership of more than 1% in another settlement service provider is enough to create a CBA, which must meet specific requirements to be exempt under Section 8. For example, at or before the time of referral, there must be a written disclosure of the CBA and its range of charges. The consumer cannot be required to use the affiliate, and the only thing of value which can be derived from the CBA is a return on ownership interest, as in the case of dividends on one's stock interest.

Bureau examiners rely on the following criteria (offered by HUD) to determine whether establishment of a particular joint venture is acceptable and whether a joint venture meets the test of a CBA, or whether it is a "sham" arrangement.

1) The joint venture should be appropriately capitalized by the joint venture partners. Each partner should contribute its appropriate share of capital. The capital contribution (which must reflect real value) and stock interest of each joint venturer will then control the proportion of the profits each partner will obtain from the joint venture. These proportional interests should not change depending on the volume of business referred.

2) The joint venture should have its own employees. These employees should not be shared with one of the joint venturers, nor should one of the joint venturers be performing contracted services which would, more appropriately, be performed by the joint venture itself. In this regard, the joint venture should, with its own employees, be performing meaningful services. By contracting services out, whether to a joint venture partner or others, the joint venture begins to appear less like a necessary entity and more like a "shell".

Joint Ventures (continued):

3) Is the joint venture doing business outside its own joint venture partnerships and does it perform legitimate services? This indicates, in part, whether there is a legitimate business purpose for the joint venture. Doing business solely with joint venture partners is not a negative factor, but will be taken together with other factors in determining how regulators view a particular entity.

4) Anything paid by joint venturers to the joint venture for the performance of settlement services should be reasonably related to the value of those services, so that it does not appear that more value is being provided in order to compensate for referrals.

In sum, a joint venture performing actual and meaningful services, utilizing its own employees, with capital fairly contributed by the joint venture partners (who are not taking any remuneration from the joint venture except a return on ownership interest), will probably be considered by HUD and the Bureau a lawful CBA and not a sham. However, joint ventures will be subject to a case-by-case analysis and regulators will be looking to determine which factors weigh in favor of the joint venture's legality and which do not.

Relationships between Virginia mortgage licensees and their affiliated companies will be evaluated by Bureau examiners for compliance with Virginia law as well. When loan officers are maintaining desks and telephones, and taking loan applications, at various real estate offices with some regularity, each specific location at which this level of activity occurs must be a licensed location under the Mortgage Lender and Broker Act (Ref. §6.1-416.A). Please pay particular attention to Virginia Code §6.1-422.B(5) which prohibits real estate persons from acting as mortgage brokers unless licensed as a mortgage broker prior to February 25, 1989.

Requirements for Providing Payoff Information...

An owner of real estate (if allowed to prepay the loan) is entitled to receive from the mortgage holder a written statement providing the total amount to be paid as of a particular date. The holder of the mortgage must mail or deliver the written statement of the payoff amount to the property owner or his designee within 10 business days of the receipt of a written request for payoff information. The request must be from the property owner or his designee and must include the loan number and the address (or other description) of the subject property. The first request for payoff information within a 12 month period must be free of charge, and a fee not exceeding \$15 may be charged for each additional request within such period.

PLEASE REFER TO §6.1-330.82 FOR ADDITIONAL INFORMATION CONCERNING PAYOFF INFORMATION REQUIREMENTS.

Prepayment Penalties...Allowed or not?**OWNER OCCUPIED PROPERTY:**

A prepayment penalty not to exceed 2% may be charged on the amount of the prepayment for first mortgages secured on a home which is owner occupied. No prepayment penalty may be charged on subordinate loans (refer to §6.1-330.85B for exceptions).

NON-OWNER OCCUPIED PROPERTY:

A 1% prepayment penalty may be charged on the amount of the prepayment if the principal amount of the loan is less than \$75,000 and the property is non-owner occupied. If the principal amount of the loan is \$75,000 or more, the amount of the prepayment penalty is not regulated, unless regulated by §6.1-330.83, §6.1-330.84 or by some other regulatory agency.

PLEASE REFER TO §6.1-330.81, §6.1-330.83, §6.1-330.84 AND §6.1-330.85 FOR ADDITIONAL INFORMATION CONCERNING PREPAYMENT PENALTIES.

Important Commission telephone numbers:

Consumer Finance and Mortgage Section (examinations).....	(804)....371-9701
Research and Structure 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



Check your mailbox in September for the next issue of The Compliance Connection!!!

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