

## 2008 VIRGINIA LEGISLATIVE UPDATE

A number of bills were introduced in this year's session of the Virginia General Assembly dealing with mortgage lending practices. Most were either defeated outright or sent to the Housing Commission for study. The prevailing view seemed to be that federal laws were pending, and it would make sense for the Housing Commission to ensure that new Virginia laws are consistent with federal laws. It will be interesting to see how this develops.

With one exception, the following bills will be effective July 1, 2008. I selected these bills based on my judgment as to those that would be of most interest to providers of consumer financial services. Accordingly, this summary discusses only part of the many bills that will become part of the Code in July.

Please let me know if you have any questions about the following bills or any other actions taken by this year's session of the General Assembly.

### MORTGAGE LENDING

*HB 1487* makes several amendments to the Mortgage Lender and Broker Act (the "Act").

- Licensees may now be fined by the State Corporation Commission (the "Commission") for violating any law applicable to their business, not just the Act.
- The Housing Commission is directed to study federal legislation dealing with mortgage lending and brokering.
- Interestingly, the bill authorizes the Commission to suspend or revoke a lender's or broker's license if it fails to pay when due reasonable fees of a licensed appraiser. I do not know how this will be interpreted when a consumer rescinds a mortgage loan.
- The Bureau must now perform a national and state criminal history records check, including fingerprinting, on members, senior officers, directors and principals of an applicant for a license. If the individual does not pay a records check fee or submit his fingerprints to the Bureau, the application for a license will be denied.
- Licensees must conduct background checks, including a criminal records check, when hiring employees who have access to personal identifying or financial information of the public.
- A licensee shall not employ any individual who has been convicted of a felony or any misdemeanor involving fraud, misrepresentation or deceit under the laws of any state or of the United States. A licensee may seek approval from the Commission for an exception to this requirement.
- The definition of "mortgage loan" has been amended to delete the reference to owner-occupied property.

- Licensees must ensure that their employees are properly trained in applicable state and federal mortgage lending laws.
- The Attorney General is authorized to bring actions for violation of RESPA.
- The Bureau will be issuing for comment in the near future regulations implementing several parts of this bill.

**HB 1133** reduces the statute of limitations for enforcing a deed of trust containing a maturity date from 20 years to 10 years.

**SB 118** appears to remove the requirement that went into effect last year that the notary public certificate must appear on the same page as the person giving the acknowledgment. This bill adds an exception saying that, as long as the certificate sets forth the name of each person giving the acknowledgment, the certificate may be on a separate page.

**SB 149** increases the surety bond required by CRESPA from \$100,000 to \$200,000.

**SB 158** says that a **lender** must disclose on the settlement statement relating to a loan subject to the Wet Settlement Act any fee charged to the borrower for an appraisal and any fee charged to the borrower for a valuation or opinion of value prepared using an automated or other mechanism by a person who is not licensed as an appraiser. I do not understand why lenders rather than settlement agents are required to make these disclosures on the HUD-1 settlement statement.

**SB 797** requires high-risk mortgage lenders or servicers to provide written notice of their intention to send an acceleration notice at least 10 business days prior to sending the notice of acceleration. If the borrower wishes to avoid foreclosure, the lender or servicer must then give the borrower 30 calendar days' forbearance. This bill should be reviewed carefully because it contains a definition of "high-risk mortgage loans" as well as exemptions. It also has a sunset date of July 1, 2010.

## CONSUMER PROTECTION

**HB 12** makes a number of changes to the Payday Loan Act. Interestingly, permitted charges today are \$15 per \$100 of loan amount for a total of \$75 in the event of a maximum loan of \$500. The new law will permit an annual interest rate of 36%, a loan fee of not more than 20% of the loan proceeds (\$100 for a \$500 loan), and a \$5 verification fee. Although the law contains a 36% interest cap, it will also permit payday lenders to charge more when the law becomes effective on January 1, 2009, than they are currently permitted to charge.

**HB 408** makes persons participating in or servicing foreclosure rescues for profit with the intent to defraud a violation of the Virginia Consumer Protection Act.

**HB 575** provides that, if a contractor undertakes work without a valid license in a consumer transaction, the contractor is also in violation of the Consumer Protection Act.

**HB 633** prohibits the dissemination of another person's social security number.

**HB 990** makes pyramid promotion schemes a prohibited practice under the Consumer Protection Act.

**HB 1311** authorizes consumers to freeze access to their credit reports. The bill is detailed and should be reviewed carefully.

**HB 1508** revises the definition of an "extended service contract" and clarifies that such contracts are not insurance or otherwise regulated under Title 38.2.

**SB 307** deals with identity theft and requires an individual or entity that owns or licenses computerized data that includes personal information to disclose any security breaches following discovery or notification of the breach to the Attorney General. This bill is also detailed and should be reviewed carefully.

## MISCELLANEOUS

**HB 218** clarifies changes regarding electronic notarization. It also contains certain other clarifications to the notary public law that was passed last year.

**SB 699** clarifies that, when the last day for bringing an action falls on a Saturday, Sunday, legal holiday, or day or part of a day in which the clerk's office is closed, the action may be filed on the next day that is not a Saturday, Sunday, legal holiday, or day or part of a day in which the clerk's office is closed as authorized by an act of the General Assembly.

**HB 926** says that the authority of certain business entities, including foreign and domestic corporations, limited liability companies, business trusts and limited partnerships to operate in Virginia may be terminated involuntarily or revoked if they hire or continue to employ illegal aliens.

## DISCLAIMER

This update is presented solely as a source of information. It does not contain a comprehensive summary of the foregoing bills. If you have questions about the laws addressed in this paper, please contact me or seek advice from another lawyer.