

New Regulations under the Virginia Mortgage Lender and Broker Act

Effective August 10, 2008, the Virginia State Corporation Commission adopted the following regulations to implement certain amendments in HB 1487 to the Mortgage Lender and Broker Act (the "Act").

10VAC5-160-80 – REQUIRED EMPLOYEE TRAINING

Licensees will now be responsible for providing their "covered employees" with initial and continuing education about federal and Virginia laws and regulations (collectively, "laws") applicable to the mortgage loan business. "Applicable laws" includes, without limitation, RESPA, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, federal and Virginia privacy protection laws, federal and Virginia laws relating to mortgage fraud, the Virginia Mortgage Lender and Broker Act, and all other Virginia laws applicable to a licensee's business.

"Covered employees" means all employees involved in originating, marketing, underwriting, closing or performing compliance or quality control functions in connection with mortgage loan transactions.

"Initial education" means at least twelve hours relating to federal laws, at least four hours relating to Virginia laws, and at least two hours relating to mortgage fraud prevention, including penalties for participating in mortgage fraud. Initial education must be provided to covered employees as of July 1, 2008 on or before May 1, 2009. Individuals who become covered employees after July 1, 2008 must receive initial education within 90 days of their hire date.

"Continuing education" means annual training of at least four hours related to federal laws, at least two hours related to Virginia laws, and at least one hour relating to mortgage fraud prevention.

Licensees must maintain a training manual and documentation available for examination demonstrating successful completion by covered employees of the required education. Licensees must retain the names of education providers, the names and descriptions of educational courses, the dates of attendance, and the number of hours completed by each covered employee. Licensees must also provide any additional information relating to such education as may be required by the Bureau.

I do not know what the Regulation means when it says "successful completion" of the required education. Presumably, since testing is not required, it means that someone has actually attended the required classes.

Training in the sale or marketing of mortgage loans does not count toward the required education.

Education that a covered employee has received about federal laws pursuant to like educational

requirements in other states may be used to fulfill these requirements. This does not apply to Virginia laws or mortgage fraud training.

A licensee that hires a covered employee who has received initial or continuing education while previously employed by another licensee is not required to provide that employee with such education. In such cases, however, the licensee must maintain adequate documentation showing that the employee has received such training.

If, prior to July 1, 2008, a covered employee has successfully obtained a mortgage certificate, designation or accreditation, a licensee may seek from the Commissioner an exemption, in whole or in part, from the initial education requirements for such covered employee.

A licensee is subject to a separate penalty (\$2,500) for each covered employee who has not been provided the education required by this Regulation.

10VAC5-160-70 – CRIMINAL RECORD INVESTIGATIONS FOR NEW EMPLOYEES

Beginning July 1, 2008, a licensee may not hire any individual who may have access to a customer's personal identifying or financial information (as defined below) without first obtaining a criminal history record from the Central Criminal Records Exchange. A prospective employee may not be hired if the record shows that he or she has been convicted in any court of any felony or any misdemeanor involving fraud, misrepresentation or deceit under the laws of any state or the United States. A licensee is subject to a separate penalty (\$2,500) for each individual hired without obtaining the criminal history record required by this section.

"Personal identifying or financial information" means the name, social security number, driver license number, home address, telephone number, date of birth, place of birth, race or ethnic origin of a customer, together with any information about the customer's account numbers, assets, liabilities, sources of income or credit worthiness.

The Regulation does not describe the meaning of "may have access to". Hopefully, the Bureau will be reasonable as we learn more about this requirement.

A licensee may file a petition with the Commission seeking an exemption from this requirement for a particular individual. The licensee has the burden of proof that an exemption should be granted. The petition must be accompanied by a copy of the individual's criminal history record. The Regulation spells out the factors that will be considered by the Commission in deciding whether to grant such petitions.

Licensees must make criminal history records obtained pursuant to this Regulation and employment history information available for review by the Bureau's examiners.

DEFINITIONS – 10VAC5-160-10

The amended Regulation defines “personal, family or household purposes” for purposes of the definition in the Act of a “mortgage loan”. In essence, it covers an individual obtaining a loan who intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be improved or rehabilitated by the purchaser for subsequent sale to one or more individuals who will reside in the dwelling on a temporary or permanent basis. The term also includes a loan to construct or purchase a dwelling that will be leased on a temporary or permanent basis.

The Bureau has historically required senior offices of applicants and licensees to submit personal financial statements. The Regulation now defines a “senior officer” to mean an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization’s affairs. The term includes compliance officers.

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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.