



The Compliance Connection

Regulatory News for Virginia Mortgage and Consumer Finance Licensees

State Corporation Commission -- Bureau of Financial Institutions

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance, industrial loan and non-profit debt counseling agency 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, Virginia 23218-0640 or via e-mail at: nwalker@scc.state.va.us.

Special thanks to Tanya Allen, Susan Hancock, Todd Rose, Jon Orne, Bill Hewlett and Jane Owen for their contribution to this issue!

Virginia Law Prohibits "Upchargin"

Despite information in recent newspaper articles concerning "upcharges" on third-party fees, it is the Bureau's position that it is a violation of the Code of Virginia to collect any amount above the actual cost of a third-party fee. Section 6.1-330.70 of the Code of Virginia allows the collection of "reasonable and necessary" fees in connection with making a first mortgage loan. It is the Bureau's position that any amount collected over and above the actual, documented cost is unreasonable and unnecessary. With regard to subordinate loans, Section 6.1-330.72 of the Code of Virginia restricts collectible charges to the "actual cost" of specific third-party fees (fees for credit report, title exam, title insurance, mortgage guaranty insurance, recording, survey, attorney, appraisal and flood certification).

The recent ruling by the 4th U. S. Circuit Court of Appeals in *Boulware v. Crossland Mortgage Corp.* stated section 8(b) of the Real Estate Settlement Procedures Act (RESPA) does not prohibit a lender from charging a consumer more for a settlement service than the lender actually paid so long as the overcharge is not kicked back to or split with a third party.

In spite of the 4th Circuit's interpretation of federal law, we will continue to review mortgage loans in accordance with Virginia law to ensure that consumers are only charged the actual cost of third-party fees. Any overcharges will require reimbursement.

IN THIS ISSUE:

- Upchargin..... 1
- Right of Rescission.....1
- Payday Lenders.....2
- Greenspan & CSBS.....3
- Complaint Info..... 4
- Mortgage Orientation.....4
- License Update.....5

Right of Rescission 101

The Bureau has recently received several inquiries concerning a consumer's right to rescind a mortgage transaction pursuant to the federal Truth in Lending Act and Regulation Z. Federal Regulation Z (the Truth in Lending Act) allows consumers who are refinancing the loan on their principal dwelling to change their mind and rescind the refinance transaction.

In a transaction subject to rescission (for example, the refinance of a loan on a
(continued on Page 4)

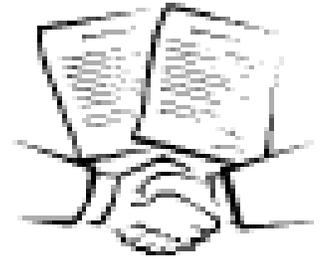
Payday Lenders: Applications Now Being Accepted

The State Corporation Commission (SCC) is seeking public comment on proposed new regulations regarding payday lenders. The regulations are designed to clarify certain requirements and consumer protections applicable to payday lending licensees and payday loans.

The SCC's proposed new regulations define various terms and address prepayment of payday loans, record-keeping requirements, interest and fees, and responses to requests from the SCC's Bureau of Financial Institutions. They would also require payday lenders to provide prospective borrowers with a pamphlet that explains the borrower's rights and responsibilities regarding payday loans, as well as a warning that payday loans are not intended to meet long-term or recurring financial needs.

Legislation enacted by the 2002 Virginia General Assembly allows payday lenders to transact business in Virginia. The legislation becomes effective and allows payday lenders **licensed** by the SCC to begin such business on July 1, 2002.

The Bureau of Financial Institutions is now accepting applications from companies seeking a license to conduct a payday lending business in Virginia. Application forms are available on the Bureau's Web site at <http://www.state.va.us/scc/division/banking/index.htm>. Basic requirements for filing an application include a \$500 application fee, a surety bond in the sum of \$10,000 per location to be licensed up to a maximum bond of \$50,000, and evidence that an applicant has at least \$25,000 in unencumbered liquid assets per location to be licensed.



Before issuing a license, the Commission must find that an applicant meets the standard tests of financial responsibility, character, reputation, experience and general fitness.

A copy of the SCC's May 28, 2002, order and proposed regulations are available on the Bureau's Web site at www.state.va.us/scc/division/banking.htm or, upon written request, through the Clerk's Office (see telephone number below).

IMPORTANT COMMISSION TELEPHONE NUMBERS

Consumer Finance and Mortgage Examinations(804) 371-9701
Licensing (applications, name changes, relocations).....(804) 371-9690
Consumer Complaints.....(804) 371-9705
Banks and Savings Institutions.....(804) 371-9704
Corporate Information – Clerk's Office.....(804) 371-9733
FAX Number for the Bureau of Financial Institutions.....(804) 371-9416

Greenspan Addresses CSBS

The Conference of State Bank Supervisors' (CSBS) Legislative Committee held its annual Washington Fly-In March 20-21 with Members of Congress and Federal regulators to defend the state banking system and its ability to be innovative.

Delegates kept to a full schedule of policy briefings and visits with members of Congress from noon Wednesday to noon Thursday. CSBS Legislative Committee Chairman E. J. Face, Jr., Virginia's Commissioner of Financial Institutions, chaired the program. The program was designed as a way for CSBS to communicate its position on current legislative issues on Capitol Hill, as well as for commissioners to receive first-hand information from key members of Congress who deal with financial institution issues on a day-to-day basis.

Wednesday afternoon featured presentations by House Financial Services Committee Counsel Carter McDowell and Senate Banking Committee Counsel Naomi Camper on deposit insurance reform. In addition, Ruben Barrales, deputy assistant to the President and director

of intergovernmental affairs, discussed the Administration's views on federalism.

Wednesday evening, Commissioner Face introduced Federal Reserve Board Chairman Alan Greenspan who welcomed the CSBS delegation prior to dinner in the conservatory of the U.S. Botanic Garden. Chairman Greenspan spoke on the importance of the dual chartering system. Keynoting the dinner was Senator Jon Corzine (D-NJ), who serves on the Senate Banking Committee. He discussed the legislative response to Enron and the importance of reliable financial information to our economy.

Thursday morning, House Financial Services Committee Chairman Michael Oxley (R-Ohio) and Committee Ranking Member John J. LaFalce (D-NY) briefed the CSBS delegates on legislation now pending in the House. Delegates then met on the Senate side of Capitol Hill for a Senate Legislative Overview from key Senate Banking Committee staff Jonathan Miller and Wayne Abernathy.



Federal Reserve Board Chairman Alan Greenspan (R) and Commissioner Face at CSBS Legislative Committee Fly-In.

Rescission 101 (continued from page 1)

borrower's principal dwelling), a creditor must provide two copies of the notice of the right to rescind to each consumer entitled to rescind. "Consumer" means any person who has an ownership interest in the dwelling used as security on the loan. The notice must be a separate document that identifies the transaction and must clearly and conspicuously disclose 1) the retention or acquisition of a security interest; 2) the customer's right to rescind the transaction; 3) how to exercise the right to rescind, with a form to do so, and the creditor's address; 4) the effects of rescission, and 5) the date the rescission period expires. A model form that meets the requirements can be found in appendix H of Regulation Z.

When a consumer rescinds a transaction, any security interest giving rise to the right of rescission becomes void. In addition, the consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the credit transaction. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party.¹

Contact your legal counsel with questions regarding this federal regulation. The Federal Trade Commission has enforcement authority over Regulation Z with respect to non-depository mortgage companies.

¹ Official Staff Commentary on Regulation Z §226.23 (d)

Take Note!

We continue to receive calls from licensees who have questions regarding the prohibition of collecting both a real estate commission and a mortgage broker fee on the same transaction. Please refer to the article titled "Clarification of July 1, 2001 Amendment to §6.1-422.C of the Code of Virginia" in the Summer 2001 issue of this newsletter for the Bureau's position and explanation. **PLEASE NOTE that referral fees are still prohibited by RESPA.**



New information concerning how to file a complaint is now available on our Web site. The information includes what to do if you have a complaint and who to contact regarding your complaint; and for those entities over whom the Bureau has authority, a form is provided. This information can be found at: <http://www.state.va.us/scc/division/banking/complaint.htm>.



The 2002 Edition of the Laws of Virginia Related to Non-Depository Financial Services will be mailed to all licensees sometime in September. The Stop Gap, which details any laws passed by the General Assembly this year that relate to entities regulated by the Bureau, will be available on our Web site (<http://www.state.va.us/scc/division/banking/index.htm>) by July 1, 2002.



Attention New Mortgage

Licensees:

Friday, August 23, 2002 is the date of the next orientation for new mortgage lender and/or broker licensees. Companies licensed between April 1, 2002 and June 30, 2002 will receive information about the session. Orientation begins at 9:30 a.m. at our office and concludes around 3:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties. Call Carol Foster at (804) 371-9701 to register!



License Update

The following is a list of companies that have surrendered their license, had their license revoked, had an application denied, or been fined by the Commission **since February 15, 2002**. This list should be helpful to keep track of companies with which you do business. **These lists are accurate as of May 15, 2002**. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at: <http://www.state.va.us/scc/division/banking/vamortgelist.htm> .

Mortgage License Surrenders:

- | | |
|--|--|
| MB – 635 Marilyn Swerdlow t/a Moneyline Mortgage Company – 2/25/02 | ML – 441 Anvil Funding Corporation – 3/26/02 |
| MB – 1281 1st Continental Mortgage, Inc. – 2/28/02 | MB – 84 City Mortgage Corporation – 3/28/02 |
| MB – 1558 Robert Fox d/b/a East Coast Mortgage Bankers -- 3/3/02 | MB – 1603 Atlanta Mortgage Corporation – 4/16/02 |
| MB -- 1168 Midas Mortgage, LLC – 3/4/02 | MB – 1341 Community Financial Services, Inc. – 5/1/02 |
| MB – 1491 Creative Finance, Inc. – 3/5/02 | MB – 244 Virginia Mortgage Corporation – 5/5/02 |
| ML – 428 OnePipeline.com, Inc. – 3/11/02 | MB – 619 Preferred Mortgage Services, Ltd. -- 5/7/02 |
| MB – 1483 Larry A. McCormick – 3/12/02 | MB --1115 Mortgage Service of Virginia, Inc. – 5/10/02 |
| MB – 1688 Brian Edward Barnes d/b/a The Mortgage Shop – 3/14/02 | MB – 1337 William J. Henderson d/b/a Moneylink – 5/13/02 |
| MB – 1211 Willow Financial Services, Inc. -- 3/18/02 | MB – 1074 Americorp Financial Services, Inc. – 5/13/02 |
| MB – 1065 Choice Mortgage Corporation – 3/20/02 | |

Consumer Finance Surrenders:

- Valley Finance Services, Inc. -- 12/31/01 (inadvertently omitted from previous issue) -- Harrisonburg (CF-161), Timberville (CF-732)
- Regional Acceptance Corporation -- 3/23/02 -- Virginia Beach (CF-2292), Woodbridge (CF-2447), Newport News (CF-2294), Chesterfield County (CF-2295), Roanoke (CF-2311)

Denials:

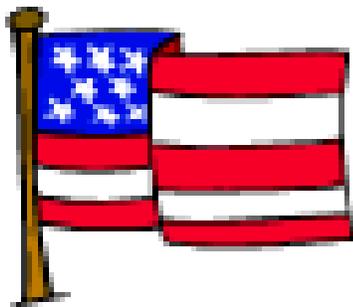
- MB – 1785 vanteq Mortgage Advisors, Inc. – 4/15/02
- MB – 1871 GetLoans.com, Inc. – 4/18/02
- MB – 1645 Rainbow Vision, Inc. – 11/4/01 (inadvertently omitted from previous issue)

Revocations:

- MB – 1020 Apple Tree Mortgage, Inc. – 5/10/02 – for failure to file annual report pursuant to §6.1-418 of the Code of Virginia

Penalties Paid:

- Bingham Financial Services Corporation 3/20/02 – paid \$1,000 settlement for failing to obtain approval prior to acquiring the stock of Dynex Financial, Inc. (now known as Origen Financial, Inc., ML – 252)



Bureau staff wish you and your family a very happy and safe Independence Day. The Commission will be closed on Thursday and Friday, July 4th and 5th in observance of the holiday.



**State Corporation Commission
Bureau of Financial Institutions
P.O. Box 640
Richmond, Virginia 23218-0640**



IMPORTANT REGULATORY INFORMATION ENCLOSED!