

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 6.2-1600, 6.2-1605, and 6.2-1608 of the Code of Virginia, relating to*  
 3 *mortgage lenders and brokers; criminal history records check.*

4 [H 1307]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 6.2-1600, 6.2-1605, and 6.2-1608 of the Code of Virginia are amended and reenacted as**  
8 **follows:**9 **§ 6.2-1600. Definitions.**

10 As used in this chapter, unless the context requires a different meaning:

11 "Entity" means any corporation, partnership, association, cooperative, limited liability company, trust,  
12 joint venture, or other legal or commercial entity.13 "*FBI-approved channeler*" means a private contractor that has been authorized by the Federal Bureau of  
14 *Investigation to electronically submit fingerprints to the Federal Bureau of Investigation and receive national*  
15 *criminal history record information on behalf of authorized recipients.*16 "Licensee" means a mortgage lender or mortgage broker licensed by the Commission pursuant to this  
17 chapter.18 "Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans  
19 for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage lender that,  
20 pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or  
21 offers to act as an originating agent of the Virginia Housing Development Authority in connection with a  
22 mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but  
23 shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that  
24 the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage  
25 loan and that the Virginia Housing Development Authority provides or would provide the funding of such  
26 mortgage loan prior to or at the settlement thereof.

27 "Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

28 "Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for  
29 personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any  
30 interest in one- to four-family residential property located in the Commonwealth, regardless of where made,  
31 including the renewal or refinancing of any such loan, but excluding (i) loans to persons related to the lender  
32 by blood or marriage and (ii) loans to persons who are bona fide employees of the lender. "Mortgage loan"  
33 shall not include any loan secured by a mortgage or deed of trust upon any interest in a more than four-family  
34 residential property or property used for a commercial or agricultural purpose.35 "Nationwide Mortgage Licensing System and Registry" or "Registry" means the mortgage licensing and  
36 registration system developed and maintained by the Conference of State Bank Supervisors and the American  
37 Association of Residential Mortgage Regulators.38 "Office" means a location other than a licensee's principal place of business where (i) the licensee  
39 negotiates, places, finds, or makes Virginia mortgage loans; (ii) the licensee's name, advertising or  
40 promotional materials, or signage indicates that the licensee negotiates, places, finds, or makes Virginia  
41 mortgage loans from the location; or (iii) the licensee maintains books, accounts, or records of Virginia  
42 mortgage loans. A remote location is not an office if the requirements set forth in subsection F of § 6.2-1607  
43 are met.

44 "Person" means any individual or entity.

45 "Principal" means any person who, directly or indirectly, owns or controls a 10 percent or greater interest  
46 in any entity.47 "Remote location" means a location, other than a licensee's principal place of business or office, at which  
48 the employees or exclusive agents of a licensee may conduct business if the requirements set forth in  
49 subsection F of § 6.2-1607 are met.50 "Residential property" means improved real property used or occupied, or intended to be used or  
51 occupied, for residential purposes.52 **§ 6.2-1605. Investigation of applications.**53 A. The Commissioner may make such investigations as he deems necessary to determine if the applicant  
54 has complied with all applicable provisions of law and regulations.55 B. For the purpose of investigating individuals who are members, senior officers, directors, and principals  
56 of an applicant, such persons shall consent to a national ~~and state~~ criminal history records check and submit

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57 to fingerprinting. Each member, senior officer, director, and principal shall pay for the cost of such  
 58 fingerprinting and criminal records check. Such persons shall cause their fingerprints, personal descriptive  
 59 information, and records check fees to be submitted to either of the following, as prescribed by the  
 60 Commission:

61 1. ~~The Commissioner An FBI-approved channeler, who~~ which shall forward these items to the Central  
 62 Criminal Records Exchange. ~~The Central Criminal Records Exchange shall~~ (i) conduct a search of its own  
 63 criminal history records and forward such individuals' fingerprints and personal descriptive information to the  
 64 Federal Bureau of Investigation for the purpose of obtaining national criminal history record information  
 65 regarding such individuals; and (ii) forward the results of the state and national records search to the  
 66 Commissioner or his designee, who shall be an employee of the Commission; or

67 2. The Registry, provided that it is capable of processing such criminal history records check.

68 C. If any member, senior officer, director, or principal of an applicant fails to cause his fingerprints,  
 69 personal descriptive information, or records check fees to be submitted in accordance with subsection B, the  
 70 application for licensure as a mortgage lender or mortgage broker shall be denied.

71 **§ 6.2-1608. Acquisition of control; application.**

72 A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or more of  
 73 the voting shares of a corporation or 25 percent or more of the ownership of any licensee unless such person  
 74 first:

75 1. Files an application with the Commission in such form as the Commissioner may prescribe from time  
 76 to time;

77 2. Delivers such other information to the Commissioner as the Commissioner may require concerning the  
 78 financial responsibility, background, experience, and activities of the applicant, its directors, senior officers,  
 79 principals and members, and of any proposed new directors, senior officers, principals, or members of the  
 80 licensee;

81 3. Submits and furnishes to the Commissioner information concerning the identity of the directors, senior  
 82 officers, principals, and members of the applicant, and of any proposed new directors, senior officers,  
 83 principals, or members of the licensee. Such individuals shall (i) consent to a national and state criminal  
 84 history records check, submit to fingerprinting, and pay for the cost of such fingerprinting and criminal  
 85 records check; and (ii) cause their fingerprints, personal descriptive information, and records check fees to be  
 86 submitted to either of the following, as prescribed by the Commission:

87 a. ~~The Commissioner An FBI-approved channeler, who~~ which shall forward these items to the Central  
 88 Criminal Records Exchange. ~~The Central Criminal Records Exchange shall~~ (i) conduct a search of its own  
 89 criminal history records and forward such individuals' fingerprints and personal descriptive information to the  
 90 Federal Bureau of Investigation for the purpose of obtaining national criminal history record information  
 91 regarding such individuals; and (ii) forward the results of the state and national records search to the  
 92 Commissioner or his designee, who shall be an employee of the Commission; or

93 b. The Registry, provided that it is capable of processing such criminal history records checks; and

94 4. Pays such application fee as the Commission may prescribe.

95 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to  
 96 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior  
 97 officers and principals, and any proposed new directors, members, senior officers and principals have the  
 98 financial responsibility, character, reputation, experience and general fitness to warrant belief that the  
 99 business will be operated efficiently and fairly, in the public interest, and in accordance with law. The  
 100 Commission shall grant or deny the application within 60 days from the date a completed application  
 101 accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting  
 102 the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the  
 103 denial and the reasons for the denial. If an applicant or any individual specified in subdivision A 3 fails to  
 104 comply with the requirements of this section, the application shall be denied.

105 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee directly or  
 106 indirectly including an acquisition by merger or consolidation by or with another licensee or a person exempt  
 107 from this chapter under the provisions of subdivisions 2 through 11 of § 6.2-1602, (ii) the acquisition of an  
 108 interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a  
 109 person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a  
 110 licensee by a person by bequest, descent, or survivorship or by operation of law. The person acquiring an  
 111 interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send  
 112 written notice to the Commissioner of such acquisition within 30 days of its closing.