

2006 Legislative Report to Virginia Mortgage Lenders Association

2006 General Assembly Session

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Overview

The 2006 Session of the Virginia General Assembly having adjourned on March 11, we are providing this report on legislative matters that were handled on behalf of the VMLA. Although the General Assembly is scheduled to reconvene on March 27th, this special session will be limited to resolving the differences between the House and Senate budgets and transportation plans. Legislation outside of these topics will not be considered during the special session.

At the start of the session, Bill Axselle and Travis Hill, VMLA's legislative counsel, reviewed legislation with VMLA president, Linda Melton, and VMLA legislative chair, Boyd Allison to identify bills that were of interest to the VMLA membership. Additionally, prior to session, we were engaged in meetings with the Bureau of Financial Institutions (BFI), Virginia Bankers Association (VBA), Virginia Mortgage Brokers Association (VMBA) and the Virginia Housing Development Authority (VHDA) to discuss the prohibition on dual compensation for mortgage brokers. These meetings resulted in legislation that was introduced by Delegate Terrie Suit and supported by all of the parties listed above.

As a whole, the 2006 Session was extremely successful for VMLA. A bill introduced with VMLA support easily passed both the House and Senate. Also, none of the bills that VMLA opposed this session were approved by the General Assembly.

To review any of the bills referenced in this report, please visit <http://leg1.state.va.us/lis.htm>.

House Bill 698

Well before the start of session, Delegate Terrie Suit asked that VMLA review the statutory prohibition on a mortgage broker receiving compensation in the same transaction where the broker has an affiliated relationship with the realty company. (Va. Code §6.1-422). Her primary concern was that this prohibition applied to VHDA loans since VHDA technically funded the loans, causing the originating lender to potentially be considered a broker by BFI.

In order to get as many perspectives as possible on the issue, VMLA legislative counsel coordinated a meeting that included numerous representatives from VMLA and representatives from BFI, VBA, VMBA and VHDA. Following the meeting, VMLA

legislative counsel and VHDA's legal counsel crafted language that would exempt a lender from the dual compensation prohibition in those instances where the lender was the originating agent for a VHDA loan.

We worked closely with Delegate Suit, who introduced the proposed language in HB698 for consideration by the General Assembly. The bill was well received by both bodies and passed without opposition. The bill accomplishes the intent of Delegate Suit and all of the parties involved to ensure that a lender is not considered a mortgage broker in a VHDA transaction based on a technicality stemming from how the transaction is structured. It was the fear that to leave the law unchanged would be to place unwary lenders in possible violation of the dual compensation prohibition and possibly discourage them from making VHDA loans.

Delegate Suit has indicated that she is interested in further exploring the prohibition on dual compensation as a general policy in Virginia. To this end, the Virginia Housing Commission, which Delegate Suit chairs, may study the prohibition. VMLA will remain engaged in any study because of its potential impact on VMLA members.

Bills Defeated

The following bills were not passed by the General Assembly:

Credit file freeze legislation (House Bills 34, 222, 766, 1508 and 1511; Senate Bills 218, 266, 295): VMLA was part of a broad based coalition of Virginia business interests that opposed no fewer than 8 bills that would allow consumers to freeze their credit reports. VMLA opposed the legislation based on the unworkable restrictions that would have been placed on consumers, credit reporting agencies and users of credit reports, like VMLA members. It was VMLA's fear that consumers freezing and unfreezing their credit files on multiple occasions would make it difficult to easily access credit information during the mortgage approval process. A consumer who freezes their credit file and then attempts to get a mortgage could be exposed to unnecessary delays that result in not being able to competitively bid on the desired property.

HB 1190 Escrow accounts (Bob Marshall): HB 1190 would have prohibited a lender from charging a fee in the event that the borrower elected to pay real estate taxes and insurance premiums directly, rather than using an escrow account. VMLA teamed with the Virginia Bankers Association to oppose this legislation based on information we received that the fee was charged as a means of managing risk to the lender. The lender should be able to charge a fee in the event a borrower chooses not to place money into escrow because the lender then faces a greater risk that the borrower will not pay the real estate taxes or will not maintain insurance coverage on the home. The fee is a function of the greater risk involved for the lender. Additionally, if the lender were to sell the loan, the lender would be charged a fee by the buyer due to the fact that an escrow account is not in place to guarantee the required payments. The bill was tabled in House Commerce and Labor.

SB 145 Mortgage servicing (Deeds): SB 145 sought to establish a new regulatory structure for mortgage servicing. As initially drafted, the bill would have provided both civil and criminal penalties for a servicer that engaged in a list of prohibited acts. While VMLA made clear that it did not condone the prohibited practices, it opposed the legislation due to its being overly broad, extremely restrictive and discriminatory in regard to types of mortgage servicers. Many of the terms in the legislation were undefined and would have proven problematic for those attempting to comply with the law and those charged with enforcing it. Additionally, the bill exempted banks and their affiliates from the provisions, but included credit unions and mortgage lenders.

VMLA took the lead on this issue and offered a number of amendments to the bill in order to try to more narrowly define its terms and have it apply to only those entities who were not already licensed by the Bureau of Financial Institutions. VMLA, VBA, Virginia Credit Union League and VHDA all expressed strong reservations with exactly how the bill was trying to address problems with some, mostly out-of-state, servicers. The House Commerce and Labor Committee ultimately voted to carry the legislation over to the next session, with a letter to the Housing Commission asking that the issue be studied. We will continue to follow this issue as the Commission begins its study.

SB 708 Transportation funding (Hawkins): As part of its transportation funding package, the Virginia Senate proposed increasing the grantors tax from 50 cents for each \$500 in value to 30 cents for each \$100 – a three fold increase. VMLA joined the Virginia Realtors Association in press releases and otherwise to oppose the increase as placing a further burden on the housing industry. The increase was defeated in the House Finance Committee.

If you will recall, two years ago we were able to defeat an increase in the grantors tax during the session, only to have it reappear in the compromise budget. Given that the General Assembly will once again be crafting its budget in a special session this year, we face the potential of the grantors tax being included in the final budget package. We will continue to do what we can to advocate against another increase and provide updates as they become available.

Regulatory Matters

Proposed changes to mortgage lender and broker regulations: As you know, VMLA has been very involved in BFI's recent attempt to make changes to the regulations governing mortgage lenders and brokers. We have had numerous meetings with BFI staff and have filed two separate sets of comments on the proposed regulations. VMLA filed its third set of comments, as requested by the State Corporation Commission, to the Bureau's proposed regulations on February 22. These comments were filed following amendments to the proposed regulations by BFI. VMLA remains concerned that the proposed regulations will place additional regulatory burdens on licensed mortgage lenders and brokers that will not apply to exempt institutions, such as banks, savings institutions or credit unions. We are now waiting to see whether the Commission will request a response from BFI or decide to take action on the regulations.

Conclusion

The 2006 General Assembly Session was a good one for VMLA as it was able to successfully advocate for legislation it helped to initiate while also fending off a number of bills that would have done the industry harm. The events of this session are indicative of VMLA's need to remain involved with the legislative process in order to provide insight and information on the mortgage lending industry. Too often, legislation is proposed based on an individual's personal experience and is not informed by the specialized knowledge of the industry itself.

Delegate Suit was, again, a tremendous help in providing her insight and assistance on mortgage lending matters during the legislative session. She is extremely helpful in educating other legislators on the complexities of the mortgage lending business. She is always willing to meet with VMLA members and is a strong advocate for our interests. Linda Melton and Boyd Allison were also instrumental in helping us identify issues important to VMLA and providing information which we could use in our visits with legislators. For the VMLA Day on the Hill on February 17th, Linda, Boyd and Toni Ostrowski gave part of their day to discuss issues important with VMLA and make visits to legislators on the House Commerce and Labor Committee. We hope to expand VMLA membership's involvement with the Day on the Hill activities in order to further communicate with legislators about the issues important to VMLA.