

October 23, 2006

Members of the Virginia Housing Study Commission
c/o Elizabeth A. Palen, Commission Coordinator
General Assembly Building
910 Capitol Street, Second Floor
Richmond, Virginia 23219

Re: S. B. 145

Dear Commission Members:

I am writing on behalf of the Virginia Bankers Association (“VBA”) to express our serious concerns with S. B. 145. The bill, as introduced, would create a number of ill-defined requirements relating to mortgage loan servicing and expose mortgage lenders and servicers to significant criminal and civil penalties and civil money damages (a minimum of \$1,000 per occurrence despite any actual harm) for violations thereof. The bill has been put forward despite the fact that there is little or no evidence indicating a need for such a draconian measure. We would urge the Commission to oppose the bill and offer the following comments for the Commission’s consideration.

The bill applies broadly to any entity receiving mortgage loan payments. It would therefore apply to Virginia banks. It would do so even though there has not been a single legitimate complaint of mortgage servicing abuse by a Virginia bank. Since Virginia banks have not been the source of any problems, we believe it is unfair to subject them to this kind of legislation. This is especially true given the fact that the bill will not apply to federally-chartered banks operating in Virginia because of federal preemption. We simply do not believe the General Assembly should subject Virginia banks to this bill because they have not caused any of the perceived problems the bill seeks to address and because their federally-chartered counterparts in the state will not be subject to such bill.

We would point out that many of the bill’s requirements are already covered, and covered more precisely, under the federal Real Estate Settlement Procedures Act (“RESPA”). Having overlapping and inconsistent state law requirements in this area will create unnecessary burdens for mortgage servicers in the state. A single uniform approach (i.e., RESPA) promotes efficiency in the mortgage servicing industry while ensuring that consumers are adequately protected from abuse. Importantly, the Attorney General of Virginia has the authority to enforce RESPA in federal court, so the Commonwealth can use existing law to protect consumers.

We would further note that the bill has provisions that conflict with secondary market rules. In particular, subsection 3 of §6.1-431.2 would require a mortgage servicer to promptly credit partial payments. This requirement conflicts with existing Fannie Mae

Members of the Virginia Housing Study Commission
c/o Elizabeth A. Palen, Commission Coordinator
October 23, 2006
Page Two

and Freddie Mac rules requiring the return of mortgage payments that are for less than the amount due. Subsection 6 of §6.1-431.2 conflicts with secondary market rules for the same reason.

In conclusion, we believe S. B. 145 would create far more problems than it would solve and would unfairly target responsible lenders, such as Virginia banks. We again urge the Commission to recommend that the Virginia General Assembly not adopt this bill.

Thank you for considering our views.

Sincerely,

A handwritten signature in blue ink that reads "Bruce T. Whitehurst". The signature is written in a cursive style with a small dot above the 'i' in "Whitehurst".

Bruce T. Whitehurst
Executive Vice President
Virginia Bankers Association

BTW/sk