

SENATE OF VIRGINIA

R. CREIGH DEEDS
25TH SENATORIAL DISTRICT
ALL OF ALLEGHANY, BATH, AND NELSON COUNTIES;
ALL OF THE CITIES OF BUENA VISTA, CHARLOTTESVILLE,
AND COVINGTON; AND PART OF ALBEMARLE,
BUCKINGHAM, AND ROCKBRIDGE COUNTIES
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COMMITTEE ASSIGNMENTS:
AGRICULTURE, CONSERVATION AND
NATURAL RESOURCES
PRIVILEGES AND ELECTIONS
REHABILITATION AND SOCIAL SERVICES
TRANSPORTATION

October 24, 2006

VIA FACSIMILE AND U.S. MAIL

The Honorable Terrie L. Suit, Chair
Virginia Housing Commission
General Assembly Building
910 Capitol Street, Second Floor
Richmond, VA 23219

Dear Delegate Suit:

I regret that I am unable to attend the Mortgage Work Group meeting on October 26 at 10:00 a.m. I am scheduled to be in court at 9:30 that morning in Staunton. Nonetheless, I appreciate the opportunity to submit written comments about the origin and intent of my bill, Senate Bill 145, to the Work Group for your consideration.

Last fall *The Rockbridge Advocate*, ran a story detailing the long and difficult struggle of Ms. Louise Sledd with her mortgage company. I am enclosing a copy of the article, which I hope you and all the members of the Work Group will read. Although Ms. Sledd diligently paid her mortgage on a timely basis, the company repeatedly returned her payments and sought foreclosure on her home. Ms. Sledd has been to court countless times and has been charged with onerous add-on fees over the past five years, despite paying her mortgage bills regularly and on time. The problems even persisted after the mortgage was sold to another company.

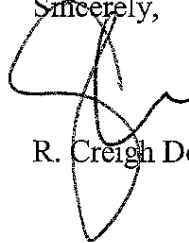
After careful consideration of Ms. Sledd's story, I introduced SB 145 to curb such predatory practices in our mortgage industry. According to the State Corporation Commission, the Bureau of Financial Institutions received 66 complaints last year on licensed mortgage companies last year and 40 on unlicensed or exempt companies pertaining to mortgage servicing. The Bureau had already received a total of 61 complaints (30 licensed and 31 unlicensed) through the last week in August of this year. Although I am uncertain which complaints would fall under the scope of the bill, the practices that are prohibited in the bill are reasonable restrictions on the industry.

The Honorable Terrie L. Suit, Chair
October 24, 2006
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SB 145 also provides an avenue for consumers to seek relief if they are victims of such practices and empowers the State Corporation Commission to investigate complaints of this nature. The only option under the current law is to go to court. Ms. Sledd was fortunate to have the services of Legal Aid to assist her, but financially the repeated court hearing would be a financial burden on most families, which is particularly egregious since Ms. Sledd was meeting her obligations.

I am not wed to any specific remedy offered in any version of SB 145. I feel that the poor and elderly are most vulnerable in this situation, and I want them to have a means of redress short of going to court.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Creigh Deeds". The signature is stylized with a large, loopy initial "R" and a long, sweeping horizontal stroke at the end.

R. Creigh Deeds

Enclosure

The Rockbridge ADVOCATE

"INDEPENDENT AS A HOG ON ICE"
VOL. 14, NO. 8 \$2.50 OCTOBER 2005

Giant mortgage company attacks woman's home

A national firm with a bad reputation added fees, refused payments, and tried to grab the widow Sledd's deed. It happened more than once.

When a new month rolls around, Louise Sledd expects she'll get a check in the mail — her own mortgage payment.

No, she's not expecting a refund.

She's expecting her mortgage company to send back her payment, as it often has, for no apparent reason. And she won't be surprised if after the company returns a few months' worth of her payments, she'll open the paper and find a foreclosure notice for her home. It's happened before. Actually, it's happened more than once.

Regular payments haven't stopped it. Letters from lawyers haven't stopped it. Court orders haven't stopped it. Huge legal settlements in similar cases haven't stopped it.

Louise Sledd tries to keep her sense of humor, but the stress has sent her to the hospital once, and she thinks it has a great deal to do with a heart condition she's developed.

Just this summer, a Glen Allen, Virginia, mortgage company that currently owns the mortgage of Louise's home was foiled in its efforts to foreclose.

The proceedings were instituted despite Louise's making all of the payments scheduled on her mortgage for the last several years.

And after that foreclosure was stopped, and Louise

kept making her payments, darned if the company didn't send a letter threatening foreclosure again.

Again, the threatened sale was derailed, and this time the mortgage company insists it won't try again as long as Louise makes her payments.

She has her doubts, and with good reason.

The story of Louise Sledd's mortgage ought to be a short and simple one.

In 1998, back when her husband, John, was still alive, the two went to Roanoke and took out a \$36,000 loan from First Greensboro Mortgage. The payments were figured at \$315.85 a month, Louise says.

They put up their house, a Jim Walters home on Pocahontas Street in Glasgow where they had lived since
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Mom fights to keep her kids

FORECLOSURE, from page 1

1961. It's a little frame house with three bedrooms.

The house was all paid for at the time the two obtained the mortgage. Louise had worked hard for years. She was, as she puts it with a smile, "a little black nanny."

John had worked for Burlington, lost his arm in a car accident, and later became disabled by a stroke.

When they obtained the mortgage, they needed the money to pay some bills and have a little work done on the house.

The mortgage was sold, and sold again, and sold again.

By October, 2000, the mortgage had been acquired by Fairbanks Capital Corp., of Salt Lake City.

Fairbanks, now known as Select Portfolio Servicing, recently, with another firm, settled a class-action consumer fraud suit in West Virginia. They denied all wrongdoing, and forgave nearly \$11 million in debts — monies allegedly still owed to the companies by 267 people whose homes had been questionably foreclosed.

The companies — Homecomings Financial Network was the other — were accused of charging illegal fees, including excessive late fees, "corporate advance fees," and other fees, and foreclosing on properties owned by borrowers who had allegedly fallen behind on payments, sometimes because of the illegal fees.

Fairbanks has also paid more than \$40 million in restitution to consumers as a result of suits brought against it by the Federal Trade Commission and H.U.D.

Louise has checked up on the company on the internet and found lots of stories like hers: payments not credited, mystery fees, foreclosures despite payments being made on time.

But in 2000, the Sleds didn't know anything about Fairbanks, didn't have any reason to suspect that a simple loan would turn into a nightmare, and had no control over who purchased their mortgage even if they had known.

But in October, shortly after Fairbanks acquired the loan, the Sleds got a letter from Fairbanks stating that they were a month behind in their payments. It was news to them. They were sure they had paid.

Every month, Louise says, John used to holler at her, "Louise, did you make that house payment? I don't want nobody to take our house!"

In November, Fairbanks told the Sleds they were four months behind. The news was so distressing to Louise that she was hospitalized for stress-related pains. "I'm still not over it," she says. And so, for the first time, she says, she actually did miss a payment.

In January, 2001, Fairbanks began foreclosure proceedings. The next month, the Sleds managed to keep the proverbial wolf from their door by declaring bankruptcy.

A court order added \$113.45 a month to the payments from June, 2001 to February, 2002. That would cover the payments the Sleds had allegedly missed.

After the order was entered, all the payments were made.

And that should have been the end of it. "I thought it was all straightened out," Louise says.

But it wasn't.

Despite the payments being made on time, in November, 2001, Fairbanks threatened foreclosure again, and the next month, the company sent back Louise's December payment and scheduled an auction of the house on the courthouse steps in January, 2002.

Sledd's attorney, Steve Grist, intervened and got the auction cancelled. And he referred Louise to Legal Aid.

Legal Aid set what seemed to be a simple goal: "[to] compel [an] elderly client's mortgage company to accept her payments, to credit her for fees related to the company's not accepting payments, and to seek indemnification for distress the company's unjustified foreclosure attempts have caused ..."

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Louise began bringing her payments to the Legal Aid office in Lexington. Legal Aid would send them by certified mail to an attorney representing the mortgage company. There's a big stack of green return cards from the envelopes at the office.

But how the payments were made didn't seem to make any difference. The company took to sending the payments back in batches. And it took to adding on fees: a \$1,096.80 foreclosure fee, a \$5,281.22 "reinstatement fee," "\$6,207.23 in "forbearance fees," late fees for payments that had been made but returned by the company ... on and on.

Louise got calls about foreclosures and calls about payments she had made.

On October, 2002, she picked up the News-Gazette and read that her home was to be auctioned in November. Legal Aid lawyer Kirby Mullen managed to stop the sale.

But demands for explanations of the fees that had been tacked onto the loan went unanswered.

Demands for explanations of why at least two payments had been applied to a "corporate advance," went unanswered. "When research is completed, you will be notified," said one response from the company. The research was apparently never completed.

At one point last year, eight months of Louise's payments were all deposited on one day. And some checks were never deposited.

"I don't know what the hell is wrong with these people," Louise says.

In April, Mayer attempted to find out what was wrong.

She sent the following certified letter to Fairbanks — by then doing business as Select Portfolio Servicing — officials in Jacksonville, Louisville, Richmond, and Salt Lake City. The recipients included two vice presidents and the CEO.

As you know from three years' correspondence, we represent Ms. Louise V. Sledd, who has experienced several problems with Select Portfolio Servicing, Inc., formerly known as Fairbanks Capital Corp., sometimes called Fairbanks Mortgage.

Select Portfolio is servicing a loan ... dated 3/26/98 in the original principal amount of \$34,241.35, originally payable to ContiMortgage Corporation. ...

1. She [Ms. Sledd] has been told repeatedly that her account is past due, though her records indicate the loan is current. She has three times faced near foreclosure, which went so far as to be advertised in the local newspaper.

2. She believes the outstanding balance cannot possibly be correct, as it includes fees and charges for cashier's checks which Select Portfolio Servicing and Fairbanks refused to cash in a timely manner (i.e., waiting until September 30, 2004 to cash checks from January through August 2004). Additionally, Fairbanks has a pattern of returning cashier's checks which had been sent by certified mail to its attorneys.

3. She believes her late charges and "funds advanced on borrower's behalf" are not accurate, and demands documentation of same.

On Ms. Sledd's behalf, we demand the following: >

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Detailed payment history from the inception of the loan, in common English, without cryptic annotations. The history will include the date the transaction was posted, the amount of the transaction, and the allocation of funds. If a transaction is anything other than a payment by the client, which is posted to principal, interest and escrow, a detailed, plain English definition will be given. ...

Ms. Sledd received a monthly mortgage statement dated March 16, 2005, which includes a notation that her current escrow balance was \$133.91 and her current fee balance was \$5,0808.30. You will explain each of those amounts and how they were calculated. If any "fees" represent third party payments, you will provide a copy of the invoice from which those charges were paid ...

Federal law requires the company to provide the information Legal Aid requested.

And Fairbanks, indeed, provided the information. It showed that Louise had been charged \$204 to cover the advertising costs of a foreclosure sale that had been halted. She had been charged \$10 for a fax, and a \$10 "history fee." She'd been charged \$85 for a "broker price opinion," \$437.55 in late payment fees for payments her records show she'd made on time. She'd been charged \$4,193.89 in "corporate advances."

Fairbanks sent the detailed history on June 2, 2005. But the day before, it had sold the loan to yet another company, EMC. And the history provided by Fairbanks claimed that Louise Sledd was behind on her payments.

"I've never seen anything like it," says Mayer. "Fairbanks showed that she hadn't paid, even though we'd send letters and checks to their attorneys. We'd send the checks, they'd send them back in batches, and we'd send them back again."

The current holder of the mortgage, EMC, thinking Louise was behind, did what Fairbanks had done — started another foreclosure procedure.

Mayer went to court for an injunction to halt the sale.

And in a motion, she again spelled out some of the story:

"The mortgage has been sold or transferred several times, the addresses for payment have changed, and no one has provided clear instruction to Ms. Sledd as to where payments should be made. As a consequence of the apparent confusion on the part of the note holders, Ms. Sledd has sent

all of the payments except one by certified mail, and the majority of payments to the counsel for the various note holders.

"Although all required payments have been tendered, some payments have not been credited to her account. Indeed, on several occasions, the payments were returned to Ms. Sledd or her counsel, without explanation. Ms. Sledd remitted, again, each of the returned checks, again often by certified mail, at considerable cost.

"Despite the full, complete and faithful performance by Ms. Sledd, the holder of the note has declared default, begun, and canceled, foreclosure proceedings, and otherwise improperly and illegally charged Ms. Sledd with the fees and costs the holder incurred for improperly commencing proceedings."

EMC's foreclosure of the property was set for August 4.

In the nick of time, a court order was entered putting a stop to it. The order says the sale was cancelled "and will not be rescheduled without further order."

Mayer and Louise Sledd were hopeful that with Fairbanks out of the picture, and with the court order entered, that would be the end of mortgage hell.

But it wasn't. Near the end of August, EMC returned her last two payments, again claiming that the money was insufficient to "fully reinstate the loan." And, despite the court order, the letter stated, "Please be advised that the foreclosure process will continue on your loan."

Mayer says it was all she could do to keep an obscene characterization out of her reply.

"If someone could possibly explain why EMC has returned Ms. Sledd's July payment (for the second time) and her August payment, along with a letter advising her that foreclosure proceedings are pending, we would appreciate it. We are submitting both those payments again."

Mayer says the trustee on the mortgage, an Arlington lawyer, has assured her that things are finally straight.

But neither Mayer nor Louise Sledd is convinced.

Louise is trying to take it in stride. "If you don't keep your sense of humor," she says, "You'd go stone crazy." Besides, she says, "If it was raining soup outside, I'd probably have a fork."

But Louise, who is in her late 60s, really wants to have things straightened out. She doesn't want to leave the mess to her daughter. And the worrying is getting to her.

"It really is unbearable," she says, "but life goes on."

