

1 CHAPTER ~~27.2~~ XX [4].

2 REAL ESTATE SETTLEMENTS.

3 **Drafting note: Existing Chapter 27.2, Real Estate Settlements, is retained as**
4 **proposed Chapter XX [4].**

5 § ~~55-525.8~~ 55.1-xxx. Definitions.

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

7 "Disbursement of loan funds" means the delivery of the loan funds by the lender to the
8 settlement agent in one or more of the following forms:

9 1. Cash;

10 2. Wired funds;

11 3. Certified check;

12 4. Checks issued by the Commonwealth or a political subdivision of the Commonwealth;

13 5. Cashier's check, or teller's check with equivalent funds availability in conformity with
14 the federal Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.);

15 6. Checks issued by a financial institution, the accounts of which are insured by an agency
16 of the federal or state government, which checks are drawn on a financial institution located
17 within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the
18 federal or state government;

19 7. Drafts issued by a state chartered or federally chartered credit union, ~~which drafts are~~
20 ~~drawn on the United States Central Credit Union;~~

21 8. Checks issued by an insurance company licensed and regulated by the State
22 Corporation Commission, which checks are drawn on a financial institution located within the
23 Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal
24 government; or

25 9. Checks issued by a state or federal savings and loan association or savings bank
26 operating in the Commonwealth, which checks are drawn on the Federal Home Loan Bank of
27 Atlanta.

28 "Disbursement of settlement proceeds" means the payment of all proceeds of the
29 transaction by the settlement agent to the persons entitled ~~thereto~~ to such proceeds.

30 "Lender" means any person regularly engaged in making loans secured by mortgages or
31 deeds of trust on real estate.

32 "Loan closing" means the time agreed upon by the borrower and lender, when the
33 execution of the loan documents by the borrower occurs.

34 "Loan documents" means the note evidencing the debt due the lender, the deed of trust,
35 or the mortgage securing the debt due the lender, and any other documents required by the lender
36 to be executed by the borrower as a part of the transaction.

37 "Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at
38 loan closing.

39 "Settlement" means the time when the settlement agent has received the duly executed
40 deed, loan funds, loan documents, and other documents and funds required to carry out the terms
41 of the contract between the parties and the settlement agent reasonably determines that
42 prerecordation conditions of such contracts have been satisfied. A determination by a settlement
43 agent that prerecordation conditions have been satisfied shall not control the rights and
44 obligations of the parties under the contract, including whether settlement has occurred under
45 the terms and conditions of the contract. "Parties," as used in this definition, means the seller,
46 purchaser, borrower, lender, and ~~the~~ settlement agent.

47 "Settlement agent" means the person responsible for conducting the settlement and
48 disbursement of the settlement proceeds and includes any individual, corporation, partnership,
49 or other entity conducting the settlement and disbursement of loan proceeds.

50 "Settlement service provider" means any person providing settlement services, as that
51 term is defined under the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et
52 seq.).

53 "Thing of value" means any payment, advance, funds, loan, service, or other
54 consideration.

55 **Drafting note: In subdivision 7 of the definition of "disbursement of loan funds,"**
56 **the reference to the United States Central Credit Union is deleted because as of 2012 it no**
57 **longer exists and has not been replaced with another entity. Technical changes.**

58 § ~~55-525.9~~ [55.1-xxx](#). Applicability; effect of noncompliance.

59 A. This chapter applies only to transactions involving loans that (i) are made by lenders
60 and (ii) will be secured by first deeds of trust or mortgages on real estate containing not more
61 than four residential dwelling units.

62 B. Failure to comply with the provisions of this chapter shall not affect the validity or
63 enforceability of any loan documents.

64 **Drafting note: No change.**

65 § ~~55-525.10~~ [55.1-xxx](#). Duty of lender.

66 The lender shall, at or before loan closing, cause disbursement of loan funds to the
67 settlement agent. In the case of a refinancing or any other loan where a right of rescission applies,
68 the lender shall, within one business day after the expiration of the rescission period required
69 under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.), cause disbursement of loan
70 funds to the settlement agent. The lender shall not be entitled to receive or charge any interest on
71 the loan until disbursement of loan funds and loan closing has occurred.

72 **Drafting note: No change.**

73 § ~~55-525.11~~ [55.1-xxx](#). Duty of settlement agent.

74 The settlement agent shall cause recordation of the deed, the deed of trust, or the
75 mortgage, or other documents required to be recorded and shall cause disbursement of settlement
76 proceeds within two business days of settlement. A settlement agent may not disburse any or all
77 loan funds or other funds coming into its possession prior to the recordation of any instrument
78 except (i) funds received that are overpayments to be returned to the provider of such funds, (ii)
79 funds necessary to effect the recordation of instruments, or (iii) funds that the provider has by
80 separate written instrument directed to be disbursed prior to recordation of any instrument.
81 Additionally, in any transaction involving the purchase or sale of an interest in residential real

82 property, the settlement agent shall provide notification to the purchaser of the availability of
83 owner's title insurance as required under § 38.2-4616.

84 **Drafting note: Technical changes.**

85 § ~~55-525.12~~ 55.1-xxx. Prohibition against payment or receipt of settlement services
86 kickbacks, rebates, commissions, and other payments; penalty.

87 A. No person selling real property, or performing services as a real estate agent, attorney,
88 lay settlement agent, or lender incident to any real estate settlement or sale, shall pay or receive,
89 directly or indirectly, any kickback, rebate, commission, thing of value, or other payment
90 pursuant to any agreement or understanding, oral or otherwise, that business incident to services
91 required to complete a settlement be referred to any person.

92 B. Nothing in this section shall be construed to prohibit:

93 1. Expenditures for bona fide advertising and marketing promotions otherwise
94 permissible under the provisions of the federal Real Estate Settlement Procedures Act (12 U.S.C.
95 § 2601 et seq.);

96 2. The provision of educational materials or classes, if such materials or classes are
97 provided to a group of persons or entities pursuant to a bona fide marketing or educational effort;

98 3. The payment to any person of a bona fide salary or compensation or other payment for
99 services actually performed for the business of the settlement service provider; or

100 4. An employer's payment to its own bona fide employees for referrals of mortgage loan
101 or insurance business. An employer's payment to its own employees for the referral of insurance
102 business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

103 C. No person shall be in violation of this section solely by reason of ownership in a
104 settlement service provider, where such person receives returns on investments arising from the
105 ownership interest, provided that such person discloses in writing to the consumer an ownership
106 interest in those settlement services, including ~~their~~ such person's ownership percentage in the
107 settlement service provider pursuant to the requirements of § ~~55-525.13~~ 55.1-xxx.

108 D. Any person who knowingly and willfully violates this section is guilty of a Class 3
109 misdemeanor. Any criminal charge brought under this section shall be by indictment pursuant to
110 Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

111 **Drafting note: Technical changes.**

112 § ~~55-525-13~~ 55.1-xxx. Disclosure of affiliated business by settlement service providers.

113 Any person making a referral to an affiliated settlement service provider shall disclose
114 the affiliation in accordance with the federal Real Estate Settlement Procedures Act (12 U.S.C.
115 § 2601 et seq.). Such disclosure shall be provided regardless of the amount of the person's actual
116 ownership interest in the affiliated provider. However, if the person's ownership interest is one
117 percent or less of the capital stock of a corporation or entity with a class of securities registered
118 under the federal Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), the disclosure shall
119 not be required. If the person's ownership interest is greater than one percent, then the disclosure
120 shall include the percentage of ownership, or, if the person making the referral owns more than
121 50 percent of the affiliated business, the disclosure ~~must~~ shall state that the settlement service
122 provider is a subsidiary of the person making the referral.

123 **Drafting note: Technical changes.**

124 § ~~55-525-14~~ 55.1-xxx. Disclosure of charges for appraisal or valuation using automated
125 or other valuation mechanism.

126 Any lender providing a loan secured by a first deed of trust or mortgage on real estate
127 containing not more than four residential dwelling units shall disclose on the settlement statement
128 or closing disclosure, as those terms are defined in § ~~55-525-16~~ 55.1-xxx, any fee charged to the
129 borrower for an appraisal, as that term is defined in § 54.1-2009, and any fee charged to the
130 borrower for a valuation or opinion of value of the property prepared using an automated or other
131 mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-
132 2009 et seq.) of Title 54.1.

133 **Drafting note: Technical change.**

134 § ~~55-525-15~~ 55.1-xxx. Penalty.

