

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**The Activities Of
Financial Institutions And
Real Estate Brokers And
Agents In The Sale
And Financing Of
Residential Real Estate**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 25

**COMMONWEALTH OF VIRGINIA
RICHMOND
1990**

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REPORT OF THE JOINT SUBCOMMITTEE
STUDYING THE ACTIVITY OF
FINANCIAL INSTITUTIONS AND REAL ESTATE BROKERS
IN THE SALE AND FINANCING OF RESIDENTIAL REAL ESTATE

to

The Governor and the General Assembly of Virginia
Richmond, Virginia

January, 1990

To: The Honorable L. Douglas Wilder, Governor of Virginia,
and
The General Assembly of Virginia

I. EXECUTIVE SUMMARY

A. Authority for Study

Senate Joint Resolution 218 (SJR 218, 1989) established a joint subcommittee to study the desirability of revising the Commonwealth's laws to either expand or restrict the ability of financial institutions and real estate brokers and agents to offer both real estate brokerage services and mortgage loan services.

The subcommittee consisted of seven members as follows: four members representing the House Corporations, Insurance and Banking Committee that were appointed by the Speaker of the House; and three members representing the Senate Commerce and Labor Committee that were appointed by the Senate Committee on Privileges and Elections.

B. Overview

Based on the authority provided by SJR 218, the subcommittee addressed two issues. First, it examined whether real estate brokers and agents should be permitted to collect fees for assisting the home buyer in obtaining a mortgage loan. The subcommittee also studied whether financial institution holding companies should be permitted to operate third-party real estate brokerages.

The subcommittee held two meetings in Richmond during the fall of 1989. At its first meeting, the subcommittee heard testimony on the issues from numerous interested parties. The second meeting dealt primarily with discussion of the legislative options available to the General Assembly.

Upon the conclusion of its deliberations, the subcommittee decided that no recommendations would be made. The subcommittee did gain a thorough understanding of the positions of interested parties and the public policy implications of related legislative alternatives. This report will review that process.

II. BACKGROUND

In recent years, financial services markets have undergone significant changes. The trend toward deregulation has allowed financial institutions to enter nontraditional banking markets (e.g., real estate, insurance, and securities). In turn, nonbanking firms like Sears, Roebuck & Co. and Ford Motor Company have created financial services "supermarkets" that offer services which have traditionally been reserved for financial institutions.

Competition among firms within an industry for increased market share and higher profits has spurred attempts to expand into new areas. However, intense efforts have been made to prevent new competitors from entering traditional markets. As a result, "turf wars" have ensued in many instances--on both a federal and a state level.

A. Recent Legislative Activity

During the 1984 Session of the General Assembly, a subcommittee was established to study the operation of savings institutions in Virginia. This led to the enactment of the Virginia Savings Institutions Act of 1985, which expanded the powers of savings banks by permitting them to function more like commercial banks. A limitation on these powers, advocated by the Virginia Association of Realtors (VAR), expressly prohibited service corporation subsidiaries of savings institutions from providing real estate brokerage services to third-parties.

In 1988, the holding company of Investors Savings Bank, a Virginia state-chartered institution, applied to the State Corporation Commission for permission to acquire a real estate brokerage firm. This was not prohibited under the 1985 Act since there was no provision to prohibit savings institution holding companies from providing third-party real estate brokerage services.

Opposition to Investors' action by the VAR led to the introduction of House Bill 1499, which amends the 1985 Act to also prohibit savings institution holding companies from engaging in real estate brokerage activity (applications filed by January 23, 1989, were to be considered on their own merits). House Bill 1499 was passed and signed into law effective July 1, 1989.

During the same session of the General Assembly (1989), House Bill 1829 was introduced at the request of the Virginia League of Savings Institutions ("Virginia League"). The legislature passed the bill, which amended the Mortgage Lender and Broker Act. This Act now requires a real estate agent who receives any payment for finding financing for the purchaser to be licensed as a mortgage broker. In addition, the Act prohibits a mortgage broker, excepting those licensed as mortgage brokers prior to February 25, 1989, from collecting fees for assisting the buyer in obtaining a mortgage loan, where the broker also acted as the real estate broker/agent in the same transaction and received compensation for that service.

The conflicting interests of the Virginia Association of Realtors and the Virginia League of Savings Institutions served as the catalyst for this study. Senate Joint Resolution 218 was advocated by the Virginia League because its representatives believed that the issues needed to be examined further.

Senate Joint Resolution 218 instructed the subcommittee to examine (i) whether real estate brokers and agents should be permitted to collect fees for assisting the home buyer in obtaining a mortgage loan, and (ii) whether financial institution holding companies should be permitted to operate third-party real estate brokerages.

Although these issues are not directly related, the Virginia League advocated that they be part of the same study resolution because the legislative activity which precipitated the study involved principally the same parties.

While the subcommittee examined both aspects of the study, the issue of whether real estate brokers and agents should be permitted to collect fees for assisting the home buyer in obtaining a mortgage loan clearly generated most of the interest at the subcommittee meetings. As a result, the subcommittee devoted much of its work to this issue. That fact is reflected in the attention given to the respective issues in this report.

B. The Issues

The conflicting positions of realtors and financial institutions on both issues before the subcommittee are largely a product of the respective roles they play in the sale and financing of residential real estate. Although they must work in concert to complete the real estate transaction, the participants are increasingly competing for these inter-related, income-generating services. The inclination to expand into the related area (and the other's traditional domain) is the underlying source of the conflict between the parties.

1. CHARGING OF FEES BY REAL ESTATE BROKERS/AGENTS FOR ASSISTING THE BUYER IN OBTAINING A MORTGAGE LOAN.

Proponents of this practice. One of the most critical factors in closing a real estate sale is the prospective buyer's ability to obtain mortgage financing. Clearly, then, the real estate broker has a keen interest in the buyer's capacity to borrow the funds that are needed to purchase the property.

As a result, real estate brokers have recently stepped up efforts to be a part of the financing process. They maintain that this is a natural extension of their role, and add that it benefits the customer, as well, because the agent has already established a working relationship with the prospective buyer.

The interest of the real estate broker would appear to be twofold. First, the ability to assist the buyer in obtaining mortgage funds presumably increases the probability of closing the transaction, and, additionally, expediting the process. Second, in many cases the brokerage receives an additional fee for its role in locating financing for the buyer.

The ability of real estate brokers to provide this service has been facilitated by the advent and apparent growth of computerized loan origination (CLO) systems ("CLOs"). CLOs use computer technology to market home mortgage loans. Typically, the system has a database of loan products offered by either one or several lenders. The program provides the customer with a variety of information and permits him to examine several products in an efficient manner.

Realtors that are "grandfathered" (those licensed as mortgage brokers as of February 25, 1989) under the amendment to the Mortgage Lender and Broker Act may use CLO services to assist the buyer in obtaining a mortgage loan.

In one scenario, the CLO operator furnishes the loan information of several lenders through its database to prospective mortgagors, with the assistance of on-site representatives employed by the realtor. Other CLO services are provided by subsidiaries of lending institutions, where the institution's loan products are the only ones on the system. Generally, real estate brokers, mortgage brokers, and others who use CLOs in the second scenario, pay a base fee and incur additional costs to use the system. The primary benefit that accrues to the institution, though, is the origination of the loan.

Clearly, the independent CLO operators, along with those CLOs that are subsidiaries of lending institutions, advocate the realtors' right to charge for these services, because it can be argued that the realtors would otherwise be unwilling to pay for the CLO service. The issue of who pays the fee and who receives the fee is central to the debate, and is discussed in Section III ("Work of the Subcommittee") of the report.

Opponents of this practice. Many mortgage lenders are opposed to the practice of realtors receiving a fee for assisting the home buyer in obtaining a mortgage loan. They assert that the realtor is placed in a conflict of interests position by representing the property seller and receiving a commission from the seller and, at the same time, obtaining a fee from the buyer or from the lender who makes the mortgage loan.

It is the contention of many mortgage lenders, bankers, and brokers that CLO programs limit competition by offering a small percentage of the options (i.e., lenders) which should be available to the consumer. Those lenders that participate in these programs are said to do so because there is limited access to them. The result, contend those that oppose this practice, is that there is the potential to raise the cost of mortgage loans to consumers.

Federal Law: "RESPA". Activity on the federal level impacts this issue to the extent that state laws are "inconsistent with any provision" in the Real Estate Settlement Procedures Act of 1974 (RESPA, 28 U.S.C. 2601, et seq.) unless such state law "gives greater protection to the consumer."

RESPA, and the Department of Housing and Urban Development's (HUD) implementing regulations, are applicable to all "federally related mortgage loans" which include loans made by any lender whose deposits or accounts are insured by the Federal Government as well as home loans guaranteed by the Veteran's Administration and other Federal agencies. The HUD regulations implementing RESPA are commonly called Regulation X.

According to information received by the subcommittee staff, a final draft regulation "leaked" by HUD in December 1988 would have limited permissible borrower payments to a mortgage broker, or someone acting in a similar capacity, to those instances where its recipient was not otherwise involved in the transaction or affiliated with anyone involved in the transaction.

However, that draft regulation was never published by HUD and Regulation X remains unamended on the "loan referral" issue. Thus, HUD's interpretation of RESPA remains the last "official" word. The National Association of Realtors has stated that this interpretation "prohibits real estate agents from accepting referral fees from *lenders*, but allows them to collect fees from *buyers* for helping to locate mortgage financing as long as the fees are fully disclosed."

2. FINANCIAL INSTITUTION HOLDING COMPANIES OPERATING THIRD-PARTY REAL ESTATE BROKERAGES.

In their testimony before the subcommittee, representatives of financial institutions, particularly of savings institutions, advocate the position that their holding companies should be permitted to operate third-party real estate brokerages.

They maintain that some financial services operations, like the Sears, Roebuck & Co. "financial network," which are not chartered by the state, are permitted to engage in profitable activities which are denied to Virginia's state-chartered thrifts. In addition, financial institutions contend that permitting them to provide brokerage services would lead to lower commissions and greater convenience for consumers.

Real estate brokers and agents have expressed opposition to permitting financial institution holding companies to operate third-party real estate brokerages, as evidenced by the VAR's backing of House Bill 1499.

They contend that a conflict of interests arises when the lender also acts as the buyer's or seller's agent because the lender may not act in the best interests of the buyer. Moreover, they have said that potential mergers of the largest statewide savings and loans institutions would create an anti-competitive situation in the real estate brokerage industry.

C. The Participants

The subcommittee received materials and testimony on the issues from a wide variety of persons and groups at its meetings, including the Virginia League of Savings Institutions, Virginia Mortgage Bankers Association, Virginia Credit Union League, Virginia Bankers Association, American Bankers Association, Virginia Institute of Mortgage Brokers, Virginia Association of Realtors, National Association of Realtors, and representatives from the banking industry and from the computerized loan origination industry (RealAssist, Citicorp Mortgage, American Financial Network).

Senator William E. Fears served as Chairman of the joint subcommittee. Other members appointed to serve from the Senate were Frank W. Nolen and Richard Holland.

Delegate Lewis W. Parker, Jr., served as Vice Chairman of the joint subcommittee. Other members appointed to serve from the House of Delegates were William T. Wilson, V. Thomas Forehand, Jr., and Frank D. Hargrove.

Mark C. Pratt, research analyst, Arlen K. Bolstad, staff attorney, and C. William Crammé III, deputy director, all from the Division of Legislative Services, served as research and legal staff. John McE. Garrett, deputy clerk of the Senate, provided administrative and clerical assistance to the joint subcommittee.

III. WORK OF THE SUBCOMMITTEE

The subcommittee held two meetings; the first on October 16, 1989 to hear testimony and the second, held on November 22, 1989 to discuss legislative proposals and make recommendations.

A. Testimony on the Issues

1. CHARGING OF FEES BY REAL ESTATE BROKERS/AGENTS FOR ASSISTING THE BUYER IN OBTAINING A MORTGAGE LOAN.

The position of those in favor of the option to charge these fees was articulated primarily by CLO operators. Representatives of RealAssist of America, Inc., a Richmond-based CLO operation, and Citicorp Mortgage, Inc., a national mortgage lender, provided the subcommittee with descriptions of their computerized loan origination systems.

Mr. Thomas J. Conaty, RealAssist president, appeared before the subcommittee and used a portable lap-top computer and an overhead projector to demonstrate the RealAssist system. The subcommittee learned about many of the system's options, and typical output generated by the RealAssist program was displayed, including loan amount, total funds, monthly payment (including taxes and insurance), interest rate, total points, interest index, and lender code. It was pointed out that all materials are provided to the customer in a print-out.

Mr. Conaty explained that a RealAssist "financial representative" is brought into the process when the customer chooses a home and, at that time, the real estate agent starts to lose contact with the financing process. He asserted that the financial representative performs the same function as the institution's loan officer (e.g., prepares the application package, provides verification forms, does follow-up work).

Responding to concerns raised by subcommittee members, RealAssist representatives testified that the identity of the lender is not known by the real estate agent (the agent is unable to access the information through RealAssist) and not revealed to the customer until a loan is chosen.

A critical aspect of this issue is the source and destination of fees. Mr. Conaty, in his testimony and in communications with staff, said that RealAssist receives approximately .006 of the mortgage amount from the lender. Approximately 75% of that amount is passed on to this real estate brokerage as compensation for its services. For example, on a \$50,000 mortgage, the lender would pay \$300. RealAssist would retain \$75; the real estate broker/mortgage broker would receive \$225.

RealAssist representatives told the subcommittee the key to its service is that participating lenders contractually agree to reduce their origination fee by the amount of the RealAssist fee, so loans offered through the RealAssist program are equal to the lowest-priced loans offered by the lender on a direct basis. They added that competition is the reason why CLO services do not result in higher fees for consumers, because if lenders were to drive up their costs of borrowing they would not be competitive in the marketplace.

The subcommittee also heard testimony from Mr. David F. Peters, representing Citicorp Mortgage, a mortgage lender whose CLO system offers only its own loan products. The subcommittee was provided with a description of MortgagePower, a CLO system available in Virginia and across the country; and MortgagePower Plus, a more advanced program being test marketed in a number of states (including Pennsylvania, but not Virginia).

Mr. Peters indicated that due to the sophistication of the MortgagePower Plus program (which provides a loan commitment within fifteen minutes), the realtor incurs substantial charges (e.g., \$2,500 subscriber fee, cost of computer equipment, expense of dedicated phone lines) to use the system. The subcommittee also learned that the realtor provides a number of services to the customer, including assisting with the paperwork and following through with the closing of the loan.

According to Mr. Peters, Citicorp Mortgage permits, but does not require, the realtor to impose a fee upon the customer because the realtor incurs costs and provides a service. He explained that the realtor may charge the borrower because Citicorp Mortgage provides a lower origination fee for those loans that come through the CLO system, so the cost to the borrower remains the same. He emphasized that Citicorp Mortgage, as the lender, does not pay a fee to the realtor.

The subcommittee heard testimony from a number of parties who oppose the practice of real estate brokers, or their affiliates, receiving fees for assisting the home buyer in obtaining mortgage financing. Key testimony was provided by representatives of the Virginia Mortgage Bankers Association and the Virginia League of Savings Institutions. The position of those opposed to realtors' receiving these fees is summarized as follows.

Many representatives of mortgage lenders and originators maintained that the real estate brokers/agents receive a real estate commission from the seller of the property and should not be permitted to receive an additional fee from the home buyer or from the lender. It was asserted that since the real estate agent represents the seller's interests, he might not act in the best interests of the buyer.

Some witnesses told the subcommittee that the fees received by the realtor are obtained unfairly because the real estate agent has the ability to direct the buyer to a particular lender from the early stages of the process. It was asserted that the buyer is a captive audience of the real estate agent and is often willing to rely on his advice in choosing a lender, because the prospective borrower is often confused and anxious about the transaction.

Those opposed to realtors' receiving these fees maintained that, in addition to having an opportunity to influence the buyer, the realtor has an incentive to do so. This is particularly evident, they said, when the realtor utilizes a computerized loan origination system. With some CLOs, such as RealAssist's, the realtor receives a fee from the lender when a loan is placed with that lender as a result of using the RealAssist system. Others, like Citicorp Mortgage's, allow the realtor to charge the borrower a fee for the Citicorp Mortgage CLO service.

In either case, contended many mortgage lenders and originators, the realtor has an incentive to direct the prospective borrower to a lender that is on the CLO system used by the realtor. They told the subcommittee that such a practice is not in the best interests of consumers because it could potentially result in increased loan costs.

The subcommittee heard testimony which indicated that consumers are adversely affected because CLOs restrict the opportunity for natural competition to temper increases in lender interest rates and fees. Having noted that RealAssist has seven lenders on its system out of the seventy lenders available in the Richmond market, Mr. Paul S. Reid, of the Virginia Mortgage Bankers Association, submitted that lenders on some CLO systems are willing to pay a 6/10 of one percent fee because competition is limited, and expressed doubt that they would be willing to pay such a fee if there were unlimited access to these programs.¹

¹Testimony from RealAssist representatives indicated that there are constraints as to the number of products that can be added to its system. They said that RealAssist would like to add more lenders to its system, but that it is expensive to do so, and may not be prudent given the current state of the law.

The subcommittee learned of several programs that do not result in the realtor receiving a fee, either from the lender or the borrower. A computerized loan-finding program called "Stellar 2000," sponsored by the Richmond Association of Realtors, has forty lenders on its system in the Richmond area. Testimony indicated that access is open to all licensed real estate brokers and that home buyers are not required to pay a fee for the information. It was noted that the system has the ability to pre-qualify, check loan programs, do good-faith estimates, and perform investment analyses.²

These parties asserted that innovative computerized loan-finding programs, like Stellar 2000, encourage competition among lenders. While these programs benefit consumers by tempering the costs of borrowing, they said, systems that offer a more limited number of loan options and that result in the realtor receiving a fee, serve as a barrier to competition and are not in the consumer's best interests.

2. FINANCIAL INSTITUTION HOLDING COMPANIES OPERATING THIRD-PARTY REAL ESTATE BROKERAGES.

The opposing positions on this issue were debated before the subcommittee primarily by representatives of the Virginia League of Savings Institutions and the Virginia Association of Realtors.

Those in favor of permitting financial institution holding companies to operate real estate brokerages testified that savings institutions would lend expertise to the business of selling real estate because they have traditionally dealt with the evaluation, sale, and financing of real estate.

In response to concerns raised by the VAR about the riskiness of S&L involvement in real estate brokerage in light of recent S&L problems, Mr. Mark W. Saur, representing the Virginia League, asserted that it would not be a risky investment. Instead, he said, the potential for profitable real estate brokerage operations would assist savings institutions in meeting capital requirements mandated by new federal legislation.

Mr. Saur told the subcommittee that savings institutions should be permitted to have the same opportunities as other financial services operations. He pointed to Sears, Roebuck & Co. as an example of a non state-chartered operation that is permitted to provide many financial services which are denied to Virginia's state-chartered thrifts. He added that this subcommittee was examining the possibility of allowing realtors to move further into the traditional domain of financial institutions, and that the opportunity, if given, should be reciprocated.

²RealAssist representatives informed the subcommittee they believe that the RealAssist system provides the consumer with valuable information that Stellar 2000 does not provide (e.g., daily rate updating, lender specific data).

The subcommittee heard testimony from Mr. William McClure, counsel to the Virginia Association of Realtors, who expressed the VAR's opposition to the prospect of allowing financial institution holding companies to operate third-party real estate brokerages.

He testified that the presence of the lender "at the table" in a real estate brokerage capacity presents a conflict of interest. Mr. McClure said that there would be the potential for tie-ins or favorable treatment to be given to customers who would be enticed to use both of the institution's services.

Mr. McClure also maintained that if the legislature were to permit the holding companies of financial institutions to operate real estate brokerages, potential mergers of the largest statewide S&L's would create "a tremendous concentration" of real estate brokerage services among these holding companies.

B. Discussion of Legislative Proposals

At the subcommittee's second meeting, a number of parties provided the subcommittee with their legislative proposals and the corresponding reasons for those proposals. In addition, the members of the subcommittee discussed the potential effects of the various legislative options presented to it.

1. CHARGING OF FEES BY REAL ESTATE BROKERS/AGENTS FOR ASSISTING THE HOME BUYER IN OBTAINING A MORTGAGE LOAN.

Present Virginia law prohibits a mortgage broker, having acted also as a real estate broker, from receiving compensation in connection with any real estate transaction unless such person was regularly engaged in acting as a mortgage broker as of February 25, 1989 (§ 6.1-422 C). This grandfather provision was the legislative focus of the discussion on this issue.

The operators of computerized loan origination systems and representatives for the Virginia Association of Realtors testified that they supported a repeal of § 6.1-422 C. A repeal of this subsection would allow all real estate brokers (licensed as mortgage brokers) to charge fees for their mortgage brokerage services.

If the grandfather provision (subsection C) is repealed, realtors may be more prone to utilize the CLO service, since they would be permitted to charge a fee. Mr. Peters, representing Citicorp Mortgage, testified that subsection C "inhibits the growth of a very attractive business" because the grandfather clause "prohibits [CLOs] from expanding because they cannot sign on additional realtors." He said that the realtors need to be able to charge fees to offset the expense of using the CLO program.

Mr. Robert Kaplan, one of the RealAssist owners, told the subcommittee that RealAssist is "stopped dead in our tracks in terms of expanding" because realtors that are not grandfathered cannot receive a fee from RealAssist if they have already received a commission from the sale of the property.

The Virginia Association of Realtors' official statement of policy asserts that if a real estate broker provides a service in addition to or different from those obligated to by its agency agreement, the broker is entitled to remuneration provided that full and written disclosure is made and is accepted to by the borrower.

Representatives of mortgage lenders, bankers, and brokers testified that they supported the current law, and would advocate additional legislation to encompass those currently grandfathered. Ideally, they said, all realtors should be prohibited from collecting fees (whether they are collected indirectly from the CLO through the lender, or from the borrower) for assisting the buyer in obtaining financing. They asserted that this could help to eliminate the realtor's incentive to direct the borrower to particular lenders.

The subcommittee received testimony from Virginia League representatives who indicated that subsection C does not prevent CLO operators from expanding. Rather, it was argued that it prohibits them from paying the real estate broker or agent a fee to "steer" borrowers to certain lenders.

The Virginia League submitted a legislative proposal that parallels language in § 38.2-4614 of the insurance title. Its representatives asserted that legislation passed by the General Assembly in 1975 which prohibits "kickbacks" with regard to title insurance is analogous to the issue before this subcommittee.³ Effectively, the Virginia League's proposal would prohibit real estate brokers/agents from receiving any form of compensation (from any source) in connection with the making of a mortgage loan. Grandfathered CLOs, according to Virginia League representatives, would be able to continue their operations, but they would not be able to share their fee with the real estate agent.

Representatives of RealAssist and Citicorp Mortgage asserted that this proposal would greatly hinder their businesses. Mr. Peters, representing Citicorp Mortgage, maintained that under the Virginia League proposal, "the realtor has no hope of recouping any of his costs because he cannot charge a customer for the service that he providing to the customer." He added that if the realtor cannot charge for its services, "he's not going to have any interest in participating in the (Citicorp Mortgage) MortgagePower Plus program."

³Representatives of RealAssist, Citicorp Mortgage, and the Virginia Association of Realtors voiced their opposition to this proposal. In addition, they expressed concern about the use of the terms "kickbacks" and "referral fees" being used by some parties in testimony before this subcommittee.

2. FINANCIAL INSTITUTION HOLDING COMPANIES OPERATING THIRD-PARTY REAL ESTATE BROKERAGES

As a result of legislation adopted in 1989, the holding companies of savings institutions are no longer permitted to operate third-party real estate brokerages (item 2 of § 6.1-194.69). However, those applications which were submitted to the State Corporation Commission (SCC) as of January 23, 1989, would be considered independently. The holding company of Investors Savings Bank (discussed in "Background" section, p. 2) was the only operation that had filed with the SCC by that date. That application continues to be pending.

While no specific legislative proposal was submitted regarding this issue, Mr. Saur, representing the Virginia League, testified that savings institutions would like to see this prohibition removed. Representatives for the Virginia Association of Realtors told the subcommittee that the VAR supported the present law.

Mr. Saur said that the Virginia League would accept a legislative package that would change the present law by either (i) allowing the holding companies of savings institutions to operate third-party real estate brokerages or (ii) prohibiting real estate brokers/agents from receiving compensation for assisting the home buyer in obtaining a mortgage loan (which would be accomplished by repealing subsection C of § 6.1-422). He testified that this "trade-off" would serve to "level the playing field" for savings institutions and real estate brokerages.

C. Subcommittee Deliberations

After hearing presentations of interested parties at the first meeting and their corresponding legislative proposals at its second meeting, the subcommittee discussed the options available to it.

A motion was made to repeal subsection C of § 6.1-422 of the Code of Virginia, which would remove the prohibition against those real estate brokers/agents not grandfathered from collecting fees for assisting the buyer in obtaining mortgage financing. The motion failed for the lack of a second.

A substitute motion was made, and seconded, that, in addition to repealing subsection C of § 6.1-422, would add more specific language to the disclosure notice required by subdivision B 5 of § 6.1-422. The proposed notice would have included language suggesting that a prospective borrower consult savings institutions and banks to compare their rates and terms with those offered by the real estate broker/mortgage broker's CLO program. The substitute motion failed.

No vote was taken by the subcommittee to continue the study. Chairman Fears indicated that the subcommittee would rise without a recommendation and thanked all participating parties for their work and interest.

IV. CONCLUSION

While this subcommittee made no formal recommendations, it believes that the purpose of Senate Joint Resolution 218 was well served.

The subcommittee received materials and heard testimony from a great number of interested groups and individuals. This process educated all involved, and provided insight into a relatively new technological innovation--computerized loan origination. Further, the subcommittee achieved a thorough understanding of the positions of the interest groups and the public policy implications of their legislative proposals.

Legislative activity on these issues is certain to continue due to the dynamic nature of the regulatory environment and the creation of new business opportunities. This subcommittee believes that the General Assembly should continue to keep abreast of these issues, as they have a significant impact on industry participants as well as the citizens of the Commonwealth.

Respectfully submitted,

William E. Fears
Lewis W. Parker, Jr.
Frank W. Nolen
Richard Holland
William T. Wilson
V. Thomas Forehand, Jr.
Frank D. Hargrove

A P P E N D I C E S

- A- Senate Joint Resolution 218
- B- RealAssist of America, Inc. presentation materials
- C- Citicorp Mortgage, Inc. position paper
- D- Virginia League of Savings Institutions position paper
- E- Virginia Mortgage Bankers Association position paper

1989 SESSION
SENATE JOINT RESOLUTION NO. 218

Establishing a joint subcommittee to study the activities of financial institutions and real estate brokers and agents in the sale and financing of residential real estate.

Agreed to by the Senate, February 23, 1989
Agreed to by the House of Delegates, February 21, 1989

WHEREAS, a number of states permit financial institutions, or their holding companies, to own real estate brokerages and engage in real estate brokerage activity; and

WHEREAS, the present Virginia law permits holding companies of savings institutions to own real estate brokerages; and

WHEREAS, real estate brokers and agents in Virginia are increasingly acting as mortgage brokers and collecting fees for placing or finding mortgage loans in connection with real estate transactions in which they also receive sales commissions; and

WHEREAS, these activities by financial institutions and real estate brokers and agents tend to increase competition on the one hand, but, on the other hand, create the possibility of conflicts of interest which may detrimentally affect consumers; and

WHEREAS, it is therefore necessary and desirable that the laws of the Commonwealth promote the interest of consumers through business competition, while still protecting consumers from potential conflicts of interest by those who are involved in the sale, purchase and financing of residential real estate; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the desirability of revising the Commonwealth's laws to either expand or restrict the ability of financial institutions and real estate brokers and agents to offer both real estate brokerage services and mortgage loan services.

The joint subcommittee shall consist of seven members as follows: four members from the House Corporations, Insurance and Banking Committee to be appointed by the Speaker of the House; and three members from the Senate Commerce and Labor Committee to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

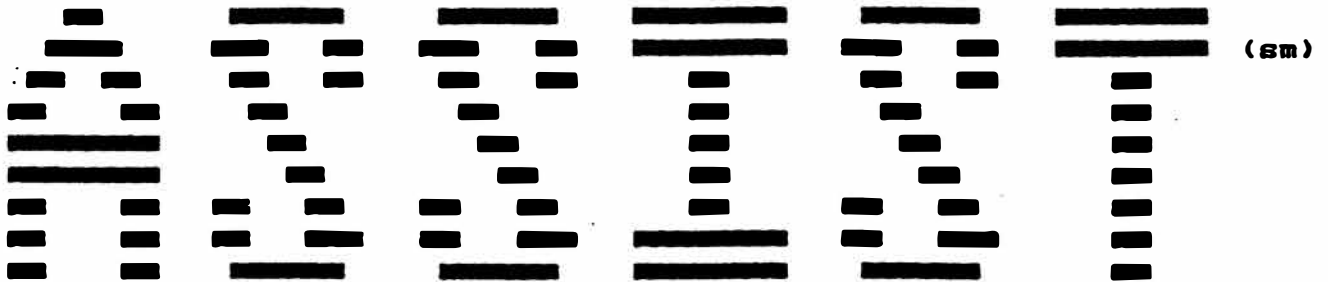
The indirect costs of this study are estimated to be \$9,650; the direct costs of this study shall not exceed \$5,040.



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ASSIST

| Mon Jul 10 14:20:28 1989



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MAIN MENU

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P	"Prequalify" a buyer
H	Print Home Affordability Guideline
O	Calculate Open House Loan Options
F	Calculate Financing (Selected Home)
S	Display Rate Survey
D	Display Important Information
R	Return to Sign On Screen

SAMPLE (1): PREQUALIFY A BUYER

SAMPLE (2): PRINT HOME AFFORDABILITY GUIDELINE.

SAMPLE (3): CALCULATE OPEN HOUSE LOAN OPTIONS.

SAMPLE (4): CALCULATE FINANCING.(SELECTED HOME)

PLEASE NOTE: THESE PRINT-OUTS ARE ONLY PARTIAL AND
FOR SAMPLE USE ONLY.

BNF GASKINS ROAD
 10001 Patterson Avenue
 Richmond, VA 23233
 (804)740-5187

GOOD FAITH ESTIMATE

The Good Faith ESTIMATE of Settlement Charges is made pursuant to the requirements of The Real Estate Settlement Procedures Act (RESPA). These figures are only estimates and the actual charges due at settlement may be different. THIS FORM MAY NOT COVER ALL ITEMS YOU WILL BE REQUIRED TO PAY AT SETTLEMENT. YOU MAY WISH TO INQUIRE AS TO THE AMOUNT OF SUCH OTHER ITEMS.

Date/Time: Wed Oct 04 07:32:40 1987

Borrower: ANY BUYER

Property Location: MY NEW HOUSE
 RICHMOND, VA 23232

Sales price: \$151,276.00

Day of Month of Closing: 30

Code	Term	Rate	Disc	Orig	%LTV	Dwn Pmt	Mtg Amt	PITI
====	====	=====	=====	=====	====	=====	=====	=====
A649	30	9.250	3.500	1.000	94	8,676	142,600	1,399.75

Seller's Contribution: Cash \$ 0 Points 0.000

CLOSING COSTS

PREPAIDS/ESCROW

Discount Fee	4,991.00
Origination Fee	570.40
In-House Orig Fee	855.60
Appraisal	250.00
Survey	175.00
Credit Report	35.00
Title Insurance	529.47
Recording Fees	609.75
Misc. Lender Fees	0.00
Inspections	0.00
Attorney Fees	350.00
Misc. Taxes	0.00
TOTAL CLOSING COSTS	8,366.22
Prin. & Int.	1,173.14
Taxes	123.44
Insurance	37.82
PMI	65.36
TOTAL EST. PITI	1,399.75

Interest	0.00
Local Tax A	0.00
Local Tax B	370.32
Prop. Ins. 1st yr.	453.83
Prop. Ins. Escrow 2 mo.	75.64
Flood Insurance	0.00
Mtg. Ins. 1st yr.	1,925.10
Mtg. Ins. renewal 2 mo.	130.72
TOTAL PREPAIDS	2,955.61

SUMMARY

Total Closing & Ppd.	11,321.82
+ Total Down Payment	8,676.00
- Seller's Contrib	0.00
- Deposit Binder	0.00
- Credit Rpt. & Appr.	285.00
= EST. CASH TO CLOSE	19,712.82

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (providing that the applicant has the capacity to enter into a binding contract), because all or part of an applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Protection Act. The Federal agency that administers compliance with this law concerning the creditor is Federal Home Bank of Atlanta, 260 Peachtree Street, N.W., Box 56527, Peachtree Center Station, Atlanta, GA 30343.

ACKNOWLEDGED (BORROWER):

DATE:

BILL WALTERS
 agent with
 CENTURY 21 U.S. REALTY
 2930 WEST BROAD STREET
 RICHMOND, VA 23333
 (804)359-1371

Loan programs available as of Mon Jul 10 12:34:22 1989 for:

BILL WALTERS
 2930 WEST BROAD STREET
 RICHMOND, VA 23333
 (804)359-1371(H) (804)359-1371(W)

I M P O R T A N T
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Please be aware that closing cost figures given are estimates only; actual closing costs may be different depending on the specific services provided. Closing costs do not include prorated taxes and insurance or pre-paid interest. They do include PMI (mortgage insurance). Monthly payment figures include principal, interest, taxes, insurance and PMI.

Available Cash: \$	40,000	Seller's Contribution: \$	0
Long Term Debt: \$	500	Revolving Debt: \$	1,000
Monthly Income: \$	5,000		

--Fixed Rate Loans--

30 YEAR CONFORMING FIXED RATE LOANS (ALL LTV%)
 MAXIMUM LOAN VALUE \$187,600

Max Home	Loan Amt	% LTV	Total Funds	PITI Pmt	Int Rate	Total Points	Int Index	Code
166,238	132,950	80	40,040	1,295.79	9.500	2.750	9.989	A215
164,654	129,350	79	39,991	1,299.39	9.875	1.250	10.094	A213
163,729	128,100	78	39,967	1,299.36	10.000	1.000	10.174	A211
162,871	128,500	79	39,987	1,349.71	10.500	2.000	10.865	A246
161,971	129,400	80	40,027	1,249.59	9.375	3.250	9.955	A242
161,253	128,100	79	40,007	1,249.67	9.500	3.000	10.036	A236
160,415	126,850	79	39,964	1,249.86	9.625	2.500	10.070	A240
159,700	124,200	78	39,957	1,249.37	9.875	1.000	10.048	A238
159,056	123,000	77	39,954	1,249.60	10.000	0.750	10.128	A233
158,812	125,100	79	39,675	1,349.48	10.875	2.375	11.316	A244
157,566	125,650	80	39,193	1,249.29	9.375	3.250	9.955	A241
157,114	124,450	79	39,060	1,249.82	9.500	2.750	9.989	A214
156,768	124,500	79	39,056	1,249.88	9.500	3.000	10.036	A219
156,745	124,500	79	38,932	1,249.86	9.500	3.000	10.036	A235
156,150	123,200	79	39,202	1,249.17	9.625	2.500	10.070	A239
155,659	122,050	78	39,085	1,249.73	9.750	2.000	10.105	A218
155,605	120,800	78	39,174	1,249.69	9.875	1.000	10.048	A237
155,436	120,800	78	39,093	1,249.51	9.875	1.250	10.094	A212

LOAN INFORMATION

Code	A649	Lock Duration	60
Type	F	Lawyer REQD?	Y
Term	30	Investor Qual?	N
Rate	9.250	Investor Qual%	0.000
LTV	95.000	Condos OK?	Y
Margin	0.000	ARM Adj Cap	0.000
Disc	3.500	ARM Life Cap	0.000
Orig	1.000	Neg Amortization?	N
Min Loan	25,000	Max LTV for no PMI	80.000
Max Loan	187,600	ARM Qual Adj	0.000
Inc Qual Ratio	28.000	Refinance?	Y
Debt Qual Ratio	36.000	Assumable?	N
ARM Term	0	Pay Mtg. Ins.?	N
Loan Appl. Fee	0	New Const.?	N

Indexed on:

LIBERAL DEBT RATIOS ON THIS FIXED RATE LOAN.

You may reach me at:
(804)359-1371 (o)

(h)

Taxing Zone: Henrico County

Mon Jul 10 14:12:27 1989

ASSIST would like to show you much home you can afford to buy. Shown below is selected mortgage information based upon some of the more popular loan products currently available. When you select a home and are ready to select a mortgage there will be many more options from which to choose and a loan can be tailored to your specific needs. ASSIST can provide in-depth information on any of the hundreds of loans in the system.

Mortgage Type : Conventional
Loan Term : 30

Rate Type : Fixed
Price Range: 100,000

Sales Price 90,000

MORTGAGE INFORMATION	95.00%	90.00%	80.00%
Cash Needed at Closing (Down Payment and Closing Costs)	9,360	13,366	21,292
Total Monthly Payment (Includes Taxes and Insurance)	895	846	741
Minimum Mo. Income	3,578	3,021	2,648
Maximum Mo. Other Debt (At minimum income)	286	242	212

Sales Price 100,000

MORTGAGE INFORMATION	95.00%	90.00%	80.00%
Cash Needed at Closing (Down Payment and Closing Costs)	10,304	14,756	23,563
Total Monthly Payment (Includes Taxes and Insurance)	994	940	824
Minimum Mo. Income	3,976	3,356	2,942
Maximum Mo. Other Debt (At minimum income)	318	268	235

Sales Price 110,000

MORTGAGE INFORMATION	95.00%	90.00%	80.00%
Cash Needed at Closing (Down Payment and Closing Costs)	11,249	16,145	25,834
Total Monthly Payment (Includes Taxes and Insurance)	1,093	1,034	906
Minimum Mo. Income	4,373	3,692	3,237
Maximum Mo. Other Debt (At minimum income)	350	295	259

THIS WORKSHEET IS FOR ILLUSTRATIVE PURPOSES ONLY, and does not constitute an offer or a loan commitment by any lender. Mortgage products, terms, and interest rates represent averages in the area and are subject to change. Loans are approved only after formal application and underwriting processing is completed.

Equal Opportunity Lenders

TEST
 agent with
 CENTURY 21 U.S. REALTY
 2930 WEST BROAD STREET
 RICHMOND, VA 23333
 (804)359-1371

Loan programs available as of Mon Jul 10 12:34:22 1989 for:

BILL WALTERS
 2930 WEST BROAD STREET
 RICHMOND, VA 23333
 (804)359-1371(H) (804)359-1371(W)

I M P O R T A N T
 =====

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Price of selected home: \$ 100,000
 Seller's contribution to closing: \$ 0 points 0.000%

--Fixed Rate Loans--

30 YEAR CONFORMING FIXED RATE LOANS (ALL LTV%)
 MAXIMUM LOAN VALUE \$187,600

PITI Pmt	Total Funds	Int Rate	Total Points	Int Index	Loan Amt	% LTV	Code
772.40	25,042	9.375	3.250	9.955	80,000	80	A242
779.68	24,430	9.500	2.750	9.989	80,000	80	A215
779.68	24,613	9.500	3.000	10.036	80,000	80	A236
779.68	24,713	9.500	3.000	10.036	80,000	80	A221
786.99	24,442	9.625	2.500	10.070	80,000	80	A240
794.32	23,773	9.750	2.000	10.105	80,000	80	A228
794.32	23,913	9.750	2.000	10.105	80,000	80	A220
801.68	23,242	9.875	1.000	10.048	80,000	80	A238
801.68	23,230	9.875	1.250	10.094	80,000	80	A213
809.06	22,973	10.000	1.000	10.174	80,000	80	A226
809.06	22,813	10.000	0.750	10.128	80,000	80	A233
809.06	23,030	10.000	1.000	10.174	80,000	80	A211
831.33	24,738	10.375	3.250	10.975	80,000	80	A243
838.79	23,828	10.500	2.000	10.865	80,000	80	A246
881.07	15,726	9.375	3.250	9.955	90,000	90	A241
889.27	15,136	9.500	2.750	9.989	90,000	90	A214
889.27	15,434	9.500	3.000	10.036	90,000	90	A235

TEST
 agent with
 CENTURY 21 U.S. REALTY
 2930 WEST BROAD STREET
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Available Cash: \$	40,000	Seller's Contribution: \$	0
Long Term Debt: \$	500	Revolving Debt: \$	1,000
Monthly Income: \$	5,000	Price of selected home: \$	100,000

--Fixed Rate Loans--

30 YEAR CONFORMING FIXED RATE LOANS (ALL LTV%)
 MAXIMUM LOAN VALUE \$187,600

PITI Pmt	Total Funds	Int Rate	Total Points	Int Index	Loan Amt	% LTV	Code
643.48	40,007	9.375	3.250	9.955	64,500	65	A241
643.48	40,007	9.375	3.250	9.955	64,500	65	A242
643.89	39,959	9.375	3.250	9.955	64,550	65	A248
644.73	40,007	9.500	2.750	9.989	63,950	64	A214
644.73	40,007	9.500	2.750	9.989	63,950	64	A215
645.15	39,958	9.500	2.750	9.989	64,000	64	A224
645.99	40,004	9.500	3.000	10.036	64,100	64	A236
645.99	40,004	9.500	3.000	10.036	64,100	64	A235
646.41	39,956	9.500	3.000	10.036	64,150	64	A234
646.83	40,007	9.500	3.000	10.036	64,200	64	A221
646.83	40,007	9.500	3.000	10.036	64,200	64	A219
647.25	39,959	9.500	3.000	10.036	64,250	64	A217
650.99	40,010	9.625	2.500	10.070	64,000	64	A240
650.99	40,010	9.625	2.500	10.070	64,000	64	A239
651.42	39,961	9.625	2.500	10.070	64,050	64	A247
651.70	40,008	9.750	2.000	10.105	63,400	63	A228
651.70	40,008	9.750	2.000	10.105	63,400	63	A227

(SAMPLE 4: CALCULATE FINANCING-SELECTED HOME)

STUDY PURSUANT TO SENATE JOINT RESOLUTION NO. 218

Comments of Citicorp Mortgage, Inc.
August 30, 1989

Senate Joint Resolution No. 218, adopted at the 1989 session of the Virginia General Assembly, authorized a study of "the desirability of revising the Commonwealth's laws to either expand or restrict the ability of financial institutions and real estate brokers and agents to offer both real estate brokerage services and mortgage loan services." This study authorization was prompted by two issues that were presented at the 1989 session: (1) Whether savings and loan holding companies should be able to own subsidiaries that provide real estate brokerage services; and (2) whether real estate brokers may properly charge for the service of assisting home buyers in locating mortgage loans.

Citicorp Mortgage, Inc., an established, national mortgage lender with six offices in Virginia, desires to address by means of this paper the second issue only -- i.e., the services of realtors in helping home buyers find sources for mortgage loans. Citicorp Mortgage would appreciate the opportunity to amplify these comments by means of a presentation at one of the study committee's hearings.

Background on Citicorp Mortgage

Citicorp Mortgage, a wholly-owned subsidiary of Citicorp, provides mortgage loans to home buyers. The company is based in St. Louis and has offices throughout the United States. The six Virginia offices are located in Alexandria (211 N. Union Street),

Fairfax (11351 Random Hills Road), McLean (7918 Jones Branch Drive), Richmond (2924 Emerywood Parkway and 7400 Beaufort Springs Drive), and Virginia Beach (1206 Laskin Road).

Citicorp Mortgage provided \$282,252,000 in mortgage loans to Virginia homeowners in 1988. The company employs more than 130 persons in its Virginia offices. Its Virginia payroll for 1988 totaled in excess of \$3,600,000.

MortgagePower and MortgagePower Plus Programs

MortgagePower is a proprietary program Citicorp Mortgage began offering two years ago to provide a streamlined system for loan processing that greatly reduces the time for loan application review and approval. At that time, a typical loan application was taking a minimum of 60 days for review and approval. Today, the industry average time frame for application review and approval is 34 days. With MortgagePower, Citicorp Mortgage commits to provide loan approvals to qualified applicants within 15 business days after receipt of a completed loan application. This is possible because of a simplified application process; written verification of income is not required, provided the customer puts 20% down on the home purchase price; and private mortgage insurance, with attendant delays from insurance agency review and approval, is not required because Citicorp Mortgage prices the loan to account for the additional risk.

The MortgagePower program offers a wide variety of home loan financing plans. These alternatives give homeowners greater flexibility in structuring repayment plans that maximize their purchasing power. The program provides jumbo mortgage financing on higher priced homes; it allows higher debt ratios; and because of increased efficiencies realized, Citicorp Mortgage charges a lower origination fee than is the case with conventional loans outside the program. A detailed summary of the features of MortgagePower is attached as Exhibit A.

Citicorp Mortgage has developed a new technology that will revolutionize the mortgage industry. This technology is a new computer loan origination program, known as MortgagePower Plus, that provides a loan commitment within 15 minutes of receipt of a completed loan application, subject to a satisfactory property appraisal or pre-appraisal and the accuracy of the information supplied by the applicant. This remarkable new program will virtually eliminate the anxiety experienced by home buyers in awaiting loan approvals, and will enable the loan to close in as few as three days. It represents a new level of efficiency and information flow that enables a consumer to make a more knowledgeable financing decision. This is a major breakthrough in mortgage lending, equivalent to the introduction of automated teller machines to branch banking. The specific features of MortgagePower Plus are listed on Exhibit B.

The Role of the Realtor

Citicorp Mortgage offers its MortgagePower and MortgagePower Plus programs only through real estate brokers, builders, mortgage brokers and other intermediaries who subscribe to the program as members.

Generally, member brokers pay to Citicorp Mortgage an annual fee of \$2,500. This fee is not related to the amount or number of loans placed with Citicorp. The brokers must purchase and maintain their own computer equipment to connect with the Citicorp Mortgage system, and they must pay the costs for dedicated phone lines and telephone costs.

Citicorp Mortgage does not pay any member for securing mortgage applicants. Citicorp Mortgage does not have a financial interest, direct or indirect, in any of its members, nor does it regularly engage in residential real estate sales in Virginia. Its mortgage lending activities are separate and distinct from the businesses of its members. Citicorp Mortgage does not share in or gain from the income received by members.

Citicorp Mortgage does not require subscribing brokers to refer customers to it for loans. The programs are non-exclusive and members are free to deal with other lenders. Indeed, members are almost always participants in several other mortgage loan programs offered by other competing lenders.

Fees Charged by Realtors

With so many loan products available today and more on the way, choices in financing have become more and more complex. Consumers not only look to realtors for help in finding a home, they rely more on realtors for counseling, direction and assistance in securing a loan than any other source. Realtors may take applications, collect documentation, provide necessary follow-up, and prepare home buyers for closing. Realtors who offer this financial assistance to buyers undertake significant responsibilities and dedicate more and more of their time to their buyers. Many have full-time specialists in their offices dedicated to providing these financial services.

Citicorp Mortgage permits, but does not require, the brokers who subscribe to its programs to charge their customers for their services in counseling on available home financing products and in assisting with the loan application process. Citicorp Mortgage believes brokers should be permitted to charge for the value of these services and for their costs associated with the equipment and training required personnel (financial service representatives) and the program subscription fees.

Citicorp Mortgage and its broker members enter into written agreements that set out the terms of the program. The agreement obligates the broker to be familiar with applicable laws concerning mortgage lending and to be in compliance with all provisions of state and local law.

If a broker elects to charge a fee to its customers for its MortgagePower or MortgagePower Plus services, the broker's agreement with Citicorp Mortgage obligates the broker to enter into a written agreement with the customer that fully discloses the amount and nature of the fee. Citicorp Mortgage does not undertake to enforce fee agreements between member brokers and their customers, and closes loan transactions without regard to whether the member has collected fees from its customers to which the member was entitled.

Response to Objections to the Programs

Other lenders that have not developed programs competitive with MortgagePower, MortgagePower Plus and the other computerized mortgage loan origination services that are now becoming available on the market, object that the realtor has a conflict of interest -- he represents the seller of the property in the real estate sales transaction, and he represents the buyer in helping the buyer locate a source of mortgage financing for the transaction. Citicorp Mortgage believes that this contention is a red herring, and that the real objective of the opponents is to cut off competition from innovative mortgage loan programs that provide benefits of significant value to home buyers.

To begin with, there can be no conflict of interest if the realtor fully discloses, before the services are provided, the nature of the service offered and the amount of any fee that will be charged. The buyer then may either choose to use these

services or to seek other alternatives. Both the home buyer and the seller benefit from the provision of loan assistance to the buyer which promotes completion of the transaction both parties have agreed to make. The realtor has no motivation to service either party to the disadvantage of the other. Among other reasons, realtors rely on repeat business from both sellers and buyers. Also, there is no disservice to a seller if a realtor assists the buyer in finding the best mortgage available.

Further, there is simply no basis for any suggestion that the broker members of the MortgagePower and MortgagePower Plus programs "steer" a home buyer to Citicorp Mortgage for a loan. As noted above, most brokers that subscribe to the Citicorp programs are also participants in programs provided by other lenders. MortgagePower and MortgagePower Plus do not require exclusivity; they are simply options among several that the brokers can bring to the attention of their customers.

Moreover, there is nothing sinister or unseemly about the practice of realtors in charging for these services. It costs money for a realtor to participate in the programs, both in the form of subscription fees and for the cost of the equipment, full-time personnel, telephone costs, office space, utilities and the training the broker must have to participate. The services provided have significant value to the customer. The ability to charge for the services compensates the realtor for these costs.

Finally, it is not true that federal agencies like the Department of Housing and Urban Development and the Veterans Administration have determined that the collection of such fees by realtors is unlawful. HUD expressly advised counsel for Citicorp by letter of April 24, 1986, a copy of which is appended at Exhibit C, that the MortgagePower program and the charging of fees by participating realtors to their customers do not violate the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2607, et seq.) (RESPA). When HUD proposed a specific rule under RESPA in 1988, the opinion to Citicorp was expressly reaffirmed. Dept. of HUD Docket No. R-88-1256, 53 Fed. Reg. 17424, at 17429 (May 16, 1988). HUD has issued no rule or advice reversing that conclusion. Indeed, the Chairman of the Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives has expressly urged HUD not to do so. See letter from Congressman Henry Gonzales attached at Exhibit D.

Similarly, by letter of March 24, 1989, the Veterans Administration advised RealAssist of America, Inc., a Richmond-based developer of a computerized mortgage loan origination system, that it had reconsidered its earlier opposition to such programs and had concluded that the charging of a fee to the buyer violates neither RESPA nor the V.A.'s regulations. A copy of the V.A.'s letter is attached at Exhibit E.

Conclusion

The consumer public stands to benefit from efficient, quality loan origination programs like MortgagePower and MortgagePower Plus. Customer_satisfaction surveys by Citicorp Mortgage confirm beyond question a high satisfaction level. Before the MortgagePower program was implemented on a national basis, 56% of customers surveyed reported high satisfaction marks for Citicorp Mortgage. That approximated the customer satisfaction levels experienced by other lenders generally. By 1988, the MortgagePower program had helped boost that high satisfaction rate to 81%.

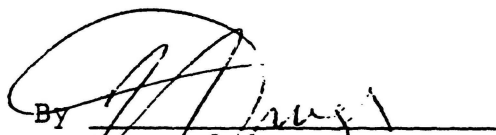
This favorable consumer response is understandable. The customer receives faster service at the point of sale, plus the benefits of cost savings as the result of lower origination fees.

Realtors are an important channel for the distribution of these programs to the public. Their participation lends true value to the mortgage lending process, a value that has every right to be compensated. Importantly, if realtors in Virginia are precluded from charging a fee to recover their costs, it is likely that Virginia's consumers will be foreclosed from the most efficient, informative and customer friendly mortgage programs available on the market today. This will be to the detriment of the citizens of Virginia.

As acknowledged by SJR 218, the offerings of such programs by realtors "tend to increase competition." Legislative efforts to restrict that competition, and the value Virginia consumers gain from it, should be avoided.

Citicorp Mortgage appreciates this opportunity to present its views, and invites the opportunity to participate further in the study committee's deliberations.

CITICORP MORTGAGE, INC.

By 
Leonard N. Druger
Vice Chairman

COMMENTS OF VIRGINIA LEAGUE OF SAVINGS INSTITUTIONS
ON STUDY PURSUANT TO SENATE JOINT RESOLUTION NO. 218

The 1989 session of the General Assembly adopted Senate Joint Resolution No. 218 (SJR 218), which established a special legislative subcommittee to study two topics relating to the purchase of real estate and the financing of such purchases. The first issue to be addressed by the subcommittee is whether financial institution holding companies should be permitted to establish subsidiaries which engage in providing real estate brokerage services. The second issue is whether licensed real estate brokers, or their affiliates, should be permitted to collect fees for directing home buyers to particular lenders, where the broker is also receiving a substantial commission from the seller of the property.

The Virginia League, whose membership consists of the federally chartered and state chartered savings institutions located in the Commonwealth, offers the following comments on these two important issues.¹

¹ The following discussion presents only the position of the savings and loan industry. We believe that the Virginia Bankers Association, the Virginia Community Bankers Association and other financial institution groups will provide the subcommittee with statements of their positions on these issues.

PRELIMINARY STATEMENT

The Virginia League believes that the prevailing legislative philosophy in Virginia has long been that open competition among businesses is the most effective means of promoting the interests of the consuming public, in terms of both the quality and the price of products and services. Only in those instances where the public interest clearly demanded it, has the General Assembly acted to restrict competition among businesses. This philosophy has inured to the economic benefit of consumers by not only promoting the best products, services and prices available, but also by making Virginia a desirable location for businesses, thereby promoting the availability of employment and the general economic welfare of the Commonwealth. The Virginia League supports this long standing policy and believes that this policy should serve as the foundation for the subcommittee's deliberations.

OPERATION OF REAL ESTATE BROKERAGES BY FINANCIAL INSTITUTION HOLDING COMPANIES

Earlier this year, the Virginia League sent a questionnaire to savings and loan trade associations in other states and territories of the United States, asking whether the laws of those jurisdictions prohibited savings institutions and/or their holding companies from operating real estate agencies. Responses were received from twenty states and territories. Of those responding, the only jurisdiction that reported that its laws

prohibited savings institutions, or their holding companies, from operating real estate agencies was Puerto Rico.² Legislation enacted by the 1989 session of the General Assembly has now put Virginia in the same camp as Puerto Rico.

Legislative History of Virginia Statutes

Prior to 1985, a Virginia state-chartered savings institution, or its holding company, could legally operate a real estate agency through a subsidiary corporation. The 1984 session of the General Assembly established a special subcommittee to study the need to recodify Virginia's statutes governing the formation and operation of savings institutions. The goal of that study was to provide Virginia with a modern set of statutes which expanded, within reasonable limits, the powers of savings institutions to permit them to function more like commercial banks. The study resulted in the passage of the Virginia Savings Institutions Act of 1985, which has been recognized throughout the country as one of the best pieces of legislation of its type.

During the legislative study of the proposed 1985 Act, the Virginia Realtors Association voiced opposition to any expansion of a savings institution's ability to invest its assets in a subsidiary service corporation, unless there was a prohibition on

² Those states reporting that their laws permitted savings institutions, or their holding companies, to operate agencies were: Arizona, California, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New York, North Carolina, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

such service corporation's operating a real estate agency. In order to alleviate this opposition, the Virginia League agreed to an amendment drafted by the Realtors which provided that service corporation subsidiaries of savings institutions could not provide real estate brokerage services to third parties that were not affiliated with the institution. This prohibition was codified in subdivision 2 of Virginia Code § 6.1-194.69. There was no discussion of a similar prohibition against a subsidiary of a savings institution holding company operating a real estate agency, and no provision was included in the 1985 Act to prohibit holding company subsidiaries from operating agencies.

In 1988, the holding company of Investors Savings Bank, a Virginia state-chartered savings institution, applied to the State Corporation Commission for permission to acquire S. L. Nusbaum Company, a Virginia real estate brokerage firm. Claiming that Investors was attempting to exploit a "loophole" in the law, the Realtors requested the introduction in the 1989 session of what became House Bill 1499. This bill provided that, in addition to subsidiaries of savings institutions themselves, the subsidiaries of savings institution holding companies would also be prohibited from operating real estate agencies.³ House Bill 1499 was eventually passed by the General Assembly and signed by the Governor in that form, and will become law on July 1, 1989.

³ While the bill was pending before the House Corporations, Insurance and Banking Committee, the Realtors agreed to an amendment permitting the Investors holding company to continue to pursue its application to acquire the Nusbaum Company.

Policy Considerations

In arguing for the prohibition enacted in 1989, the Realtors relied upon several arguments, to which the Virginia League would like to respond:

First Realtor's argument: The real estate brokerage business is too risky for a savings institution holding company.

Response: In support of their argument, the Realtors point to recent failures by a number of thrifts resulting from involvement in business ventures unrelated to mortgage lending. While it is possible that some of these failed thrifts may have operated real estate brokerages, the Virginia League is unaware of any evidence that those institutions failed as a result of losses arising from the operation of a brokerage. Rather, by and large, these failures resulted from fraud, poorly analyzed equity investments, and ventures requiring a substantial capital outlay.

The fact is that the establishment and operation of a real estate brokerage does not require a substantial investment of capital, since it is a service-oriented business. Staffing and facility requirements are relatively minimal, and agents are paid on a commission basis. Furthermore, the operation of a brokerage business does not require a savings institution to enter into a business area with which it is not familiar. Rather, the business is a natural fit to the traditional savings institution business that of dealing with the evaluation, sale and financing of real estate.

Neither the federal nor state regulators view the operation of a real estate brokerage as a risky investment for a savings institution holding company. To the contrary, those regulators with whom the Virginia League has discussed the subject believe that profitable operations would result from the operation of such an agency, which would assist savings institutions in meeting increased capital requirements contained in new federal legislation. Moreover, any proposed acquisition or operation of a brokerage by a holding company would be subject to regulatory approval on a case by case basis.

Second Realtor's Argument: A savings institution holding company could compete unfairly by using federally-insured deposits to operate a real estate brokerage.

Response: Neither a savings institution holding company, nor an uninsured subsidiary corporation of such holding company, could use insured deposits of the savings institution to compete with other real estate brokers. Under federal law, savings institutions may not invest in the securities of its holding company or of other subsidiaries, lend money to the holding company or its other subsidiaries, or guarantee holding company or subsidiary debt. Rather, the operation of non-depository subsidiaries of a savings institution holding company must be funded through the holding company's own separate resources.

Third Realtor's argument: Savings institution holding companies, through the use of their resources, could control the market and force out small, independent brokerages.

Response: This is simply an argument that could apply to any large, well-financed competitor. It might just as well be argued that tobacco companies or automobile manufacturers should not be permitted to own real estate brokerage subsidiaries, simply because they can devote substantial financial resources to making those subsidiaries competitive. However, experience has shown that well-managed small businesses can effectively compete with larger businesses in most contexts, particularly where a service industry is involved. A specific example is that involving insurance agencies. For years, the major bank holding companies in Virginia, as well as several major savings institutions, have operated insurance agency subsidiaries, without any demonstrated ability to monopolize that industry. There is no reason to believe that there would be a different result in the case of the operation of real estate brokerage subsidiaries.

Inequities of Present Virginia Law

The prohibitions enacted in 1985 and 1989 apply only to savings institutions chartered by the Commonwealth of Virginia, and the holding companies of these Virginia institutions. The law has no effect on the numerous other savings institutions that operate in Virginia that are not chartered by the Commonwealth. For example, Sears Roebuck Company is a savings institution holding company, since it owns a thrift chartered by the state of California. Sears also currently operates at least seventeen real estate brokerage offices in Virginia and there is no

prohibition on this activity by Sears. Similarly, Ford Motor Company owns a California thrift that operates in Virginia, and the present law does not prohibit Ford from owning and operating a real estate brokerage subsidiary in Virginia. Given the restrictions of the Commerce Clause of the U.S. Constitution, it is doubtful that Virginia could pass valid legislation denying interstate businesses, such as Sears and Ford, the right to operate real estate brokerage subsidiaries in Virginia, merely because those companies also own savings institutions.

Simply put, the current Virginia law discriminates against Virginia's own institutions, by permitting out-of-state holding companies to engage in profitable activities which are denied to Virginia's state-chartered thrifts.

Conclusion

In 1985, the Virginia League agreed to a prohibition against a state savings institution subsidiary service corporation's engaging in third party real estate brokerage activities. The Virginia League is willing to live with that commitment. However, there is no rationale that supports a prohibition on a holding company's operation of a real estate brokerage subsidiary, other than the Realtor's desire to reduce competition. The Virginia League believes that the subcommittee should conclude that the legislation enacted through House Bill 1499 in the 1989 session should be repealed.

MORTGAGE BROKERAGE ACTIVITIES
OF REAL ESTATE BROKERS AND AGENTS

Typically, the sale and purchase of residential property involves four parties, i.e., a seller, a buyer, a real estate agent and a mortgage lender. In most instances, the real estate agent is the legal agent of the seller, from whom the agent collects a sales commission. Historically, however, real estate agents have frequently assisted the buyer in locating a mortgage lender willing to advance funds necessary to close the sales transaction. The agent's interest in providing this assistance to the buyer is self evident. Unless the buyer obtains financing, the transaction will not close and the agent will not receive the commission from the seller. .Since the agent was obtaining a commission from the seller and this activity on behalf of the buyer was in furtherance of the agent's interest in obtaining that commission, no charge was made to the buyer for this assistance.

In the last several years, however, an increasing number of residential real estate transactions have involved the real estate agent's obtaining a finder's fee for assisting the buyer in obtaining a mortgage loan. Such fees are paid by either the buyer or the lender. The collecting of such fees by real estate agents has usually coincided with the agent's use of computer assisted information systems which provide the current interest rates and loan terms of one or more lenders. In some instances the agent provides loan application forms and assists the buyer

in completing those forms. Under some existing programs, this loan-finding process is not conducted by the real estate agent, but rather by a representative of a company that is affiliated with the broker for whom the agent works.⁴

These loan brokering activities by real estate agents and brokers have been called into question by a number of groups, on the grounds that the agent is placed in a conflict of interest position by representing the property seller and obtaining a commission from the seller, while purporting to represent the buyer in the same transaction and obtaining a fee from the buyer or the lender who makes the mortgage loan. This conflict arises because of the agent's interest in concluding the sales transaction and collecting a fee from the seller, which motivates the agent to locate a lender that will commit to making the loan and close the transaction quickly. However, that lender may not offer the best interest rates and loan terms available. Also, where the buyer's credit rating for the amount to be borrowed is marginal, the agent would be motivated to steer the borrower to a lender with less stringent credit requirements but correspondingly higher interest rates and loan fees. The conflict is even more apparent where the agent steers the buyer to a particular lender because that lender has agreed to pay a fee to the agent or to a company affiliated with the broker for whom the agent works.

⁴ As used herein, an "affiliate" includes any entity that is owned or controlled, directly or indirectly, by the owners of the real estate brokerage.

These issues were raised when the Department of Housing and Urban Development was in the process of revising its regulations under the Real Estate Settlement Procedures Act ("RESPA") during 1988. After receiving and analyzing hundreds of comments, HUD concluded that its regulations should be revised to prohibit real estate agents, and their affiliates, from collecting loan finder fees from either home buyers or mortgage lenders. See Excerpt from HUD Discussion of Proposed Regulations, issued in December, 1988, attached as Exhibit A.⁵

In January, 1989, the Veterans Administration issued an opinion that fees paid by lenders to real estate agents for steering borrowers to the lenders were in violation of V.A. regulations and indicated that lenders engaging in this practice would be suspended from the V.A. guaranty program. See Exhibit B, attached.

Consumer groups, such as the Consumers Union, have come out in opposition to the charging of loan finder fees by Realtors. See news article attached as Exhibit C.

In Virginia, even some local Realtor associations have announced their opposition to the charging of such fees. In January, 1989, the Northern Virginia Board of Realtors stated this position in an article in their newsletter, a copy of which is attached as Exhibit D.

⁵ These regulations are still under consideration by HUD and have not been adopted in final form.

Those in favor of permitting real estate agents, and their affiliates, to collect loan referral fees, argue that the computerized loan finding programs, which are used as a justification for charging these fees, constitute a service for which there is much consumer demand. However, a recent survey found that a majority of the consumers questioned were opposed to agents' collecting fees for finding loans for home buyers and viewed these activities by real estate agents as constituting a conflict of interests. See Richmond Times-Dispatch article, April 30, 1989 Ed., attached as Exhibit E.

The Virginia League believes that fair competition among lenders demands that consumers be able to shop for the best loan rates and terms available, without being charged a fee by a real estate agent whose interest is not the same as that of the home buyer. The Virginia League believes it is particularly inappropriate for home buyers to be steered to particular lenders because those lenders have agreed to pay a kick-back to the agent or an affiliated entity.

The real estate agent's position vis-a-vis the home buyer is not the same as that of an independent mortgage broker. In the case of an independent mortgage broker, the home buyer goes to the broker for the express purpose of having the broker locate a loan for the borrower. In the case of the real estate agent, the home buyer approaches the agent for the purpose of purchasing a home, not to obtain mortgage brokerage services. Having gained the buyer's confidence by negotiating a real estate contract, the

agent is then in a position to take advantage of that confidence by offering to assist the buyer in locating a loan. At this point, however, most buyers will not recognize that the agent is not motivated to act in the best interest of the buyer, but rather in the agent's own interest, particularly where the agent or an affiliate stands to collect a fee from a lender for steering the buyer to that lender.

The 1989 session of the General Assembly passed House Bill 1829, which prohibited real estate agents and their affiliates from collecting fees for acting as a mortgage broker in the same transaction in which the agent was receiving a commission from the property seller. However, agents and affiliates who were already engaged in this business as of February 25, 1989, were permitted to continue in this business, provided that they gave a written disclosure to each prospective borrower as specified in the statute. The Virginia League supported this legislation, and believes it should remain the law of Virginia. In addition, the legislation should be strengthened by enacting provisions which prohibit all lenders from paying a fee, kickback, discount or other form of consideration to an agent, or an affiliate of the agent, for steering a home buyer to the lender to obtain a mortgage loan.

CONCLUSION

Present Virginia law dealing with the subjects to be studied by the Subcommittee places restrictions on competition between

savings institutions and realtors, but does not totally preclude competition between the two businesses because of existing exemptions in the law. A similar state of affairs exists with regard to Virginia's laws regulating insurance, which allows insurance companies and agents to compete freely in the primary business of savings institutions, but, with certain exceptions, prevents savings institutions from competing with insurance agents and insurance companies in the insurance business. The Virginia League believes that this lack of uniform treatment is counter-productive to the best interests of Virginia's citizens, and to the Commonwealth's economy. The Virginia League believes that free competition among these businesses should be allowed. However, if barriers to competition are to be erected, they should apply equally to all, rather than selectively allowing certain industries to compete in the traditional business activities of other industries without permitting reciprocal competitive rights.

The Virginia League looks forward to participating in the Subcommittee's deliberations during the course of the study of these issues of great importance to the real estate industry and to home buyers in Virginia.

Important Issues Affecting Mortgage Banking Interests

An important issue affecting mortgage banking interests will be faced by the upcoming session of the Virginia General Assembly. The issue is whether real estate brokers or their affiliates should be permitted to collect referral fees from either home buyers or lenders for directing home buyers to particular mortgage lenders in situations where the broker or an affiliate of the broker is also receiving a substantial commission from the seller of the property.

The referral fees are often associated with computerized mortgage finding and origination systems pursuant to which home buyers pay a fee for the benefit of participating in the program and being referred to a particular lender.

Because such referral fee programs represent an inherent conflict of interest for the real estate broker and are not in the best interest of the consumer, the Virginia Mortgage Bankers Association, and the Virginia League of Savings Institutions and the Virginia Bankers Association all oppose such practices.

As background, the 1989 session of the General Assembly took two actions directly bearing on the referral fee issue.

The first was the adoption of House Bill 1829. That Bill required that real estate brokers who receive any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage loan for others must become licensed as mortgage brokers under the Virginia Mortgage Lender and Broker Act.

The Bill also required that a real estate broker receiving referral fees for referring homebuyers to particular lenders, give those buyers a specific written disclosure of the conflict inherent in such referrals as a condition to receiving the referral fee.

Finally, the Bill prohibited any real estate broker from referring a buyer to a lender for compensation in connection with any real estate sales transaction in which such broker or affiliate also acted as real estate broker for the seller, unless the broker was regularly engaged in those activities for compensation as of February 25, 1989.

The purpose of this last provision, which is a "stand still" provision, was to hold the various players in a status quo position so that the question of referral fees could be studied by a joint legislative subcommittee set up under Senate Joint Resolution 218.

Senate Joint Resolution 218 calls for a study of the question of whether real estate brokers should be engaged in the practice of referring home buyers to particular lenders for compensation. The Joint Subcommittee plans a meeting on October 16 at which time it will receive information and testimony on this issue, and in all likelihood will make a report to the next session of the General Assembly.

As I mentioned at the beginning of these remarks, the Virginia Mortgage Bankers Association, as well as a number of

other associations of mortgage lenders, believe that real estate brokers should be prohibited from receiving referral fees or directing borrowers to particular lenders because, (1) there is an inherent conflict of interest involved in such referrals, and (2) the consumer may not be referred to the lender with the best available terms in the marketplace but rather to the lender who has agreed to either split fees with the real estate broker or pay the real estate broker directly for the referral.

The real estate broker is placed in a conflict of interest situation because, through his representation of the seller, he is in a position to shape the terms of the sales contract between the seller and the buyer, particularly the financing terms, in order to earn a sales commission from the seller. Then, through his representation of the buyer, he exerts influence to direct the use of one lender over another and receives an additional fee from the buyer or the lender in the process.

The buyer has not chosen to be assisted by an independent party to obtain a mortgage loan but rather is in the position of being influenced by the real estate broker to choose a particular lender in part to serve the broker's own purposes. The lender to which the buyer has been referred may not offer the best interest rates and loan terms available in the market place. In fact, in referral fee situations, the buyer is paying a fee not otherwise included in a mortgage transaction. Accordingly, referral fees are likely to result in higher costs to the consumer.

The referral fee programs limit the consumer's access to mortgage lenders. The real estate broker does not refer the home buyer to a lender unless the particular lender has agreed to split fees with the real estate broker or the operator of the system is otherwise compensated by the borrower of the lender for the referral. Because the access of mortgage lenders is limited in such a way, the referral fee system has the effect of limiting competition.

Historically, Virginia has supported legislation which has encouraged the free market to work and for lenders to compete against each other to make mortgage loans available to consumers. Any system which has the potential to increase the costs of obtaining a mortgage loan to the consumer and also restricts the access of all mortgage lenders to the opportunity to make the loan is not in keeping with the tradition of doing business in Virginia.

For those reasons, consumer groups such as Consumers Union have expressed concern about referral fees. Consumers Union, the group which publishes the Consumers Report magazine, has said that it believes that serious problems can arise if a real estate broker cannot give impartial advice with respect to the various mortgage loan alternatives available and particularly where the broker has a financial incentive to steer a consumer to a particular lender.

Finally, the April 30, 1989 issue of the Richmond Times Dispatch reported that home buyers resent the fact that a growing

number of real estate brokers get referral fees from mortgage lending institutions. The article stated that about two-thirds of the Americans surveyed said that they realize that selling agents often receive fees and 76 percent of those thought that such a practice was unfair.

Please understand that the Virginia Mortgage Bankers Association is not opposed to innovations which speed up the closing of mortgage loans, including the use of computerized loan finding and origination systems which help borrowers locate a mortgage loan which best suits their needs at rates and under terms which they find acceptable. Such systems which provide open access to all mortgage lenders will benefit and not hinder the consumer in an effort to obtain the best loan available. Some of those who argue in favor of referral fees claim that we are against progress in opposing such computerized systems. That clearly is not the case.

Our position is simple. We believe that fair competition among lenders demands that consumers be able to shop for the best loan rates and terms available, without being charged a referral fee by real estate brokers whose interests are not the same as those of the home buyer. We believe it is particularly inappropriate for home buyers to be steered to particular lenders because those lenders have agreed to split a fee or pay a kickback to the agent, or an entity affiliated with the agent, for the referral.

I enclose a copy of a brochure prepared by the Mortgage Bankers Association of American entitled "An Educated Homebuyer Gets The Best Deal". If any of us can supply you with any additional information on this subject, please let me know.

Virginia Mortgage Bankers Association

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