

ENROLLED

CS/HB 935, Engrossed 1, Corrected

2018 Legislature

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 2 An act relating to mortgage regulation; amending s.
 3 494.001, F.S.; defining the term "business purpose
 4 loan"; amending s. 494.00115, F.S.; defining the term
 5 "hold himself or herself out to the public as being in
 6 the mortgage lending business"; amending s. 494.0025,
 7 F.S.; prohibiting the misrepresentation of a
 8 residential mortgage loan as a business purpose loan;
 9 reenacting s. 494.0018, F.S., relating to penalties,
 10 to incorporate the amendment made to s. 494.0025,
 11 F.S., in a reference thereto; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Present subsections (4) through (37) of section
 17 494.001, Florida Statutes, are redesignated as subsections (5)
 18 through (38), respectively, and a new subsection (4) is added to
 19 that section, to read:

20 494.001 Definitions.—As used in this chapter, the term:
 21 (4) "Business purpose loan" means a mortgage loan, the
 22 proceeds of which the borrower intends to use primarily for a
 23 business purpose and not primarily for a personal, family, or
 24 household purpose. In determining if the loan is for a business
 25 purpose, a person must refer to the official interpretation by

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26 | the Consumer Financial Protection Bureau of 12 C.F.R. s.
 27 | 1026.3(a).

28 | Section 2. Subsection (4) is added to section 494.00115,
 29 | Florida Statutes, to read:

30 | 494.00115 Exemptions.—

31 | (4) As used in this section, the term "hold himself or
 32 | herself out to the public as being in the mortgage lending
 33 | business" includes any of the following:

34 | (a) Representing to the public, through advertising or
 35 | other means of communicating or providing information, including
 36 | the use of business cards, stationery, brochures, signs, rate
 37 | lists, or promotional items, by any method, that such individual
 38 | can or will perform the activities described in s. 494.001(24).

39 | (b) Soliciting in a manner that would lead the intended
 40 | audience to reasonably believe that such individual is in the
 41 | business of performing the activities described in s.
 42 | 494.001(24).

43 | (c) Maintaining a commercial business establishment at
 44 | which, or premises from which, such individual regularly
 45 | performs the activities described in s. 494.001(24) or regularly
 46 | meets with current or prospective mortgage borrowers.

47 | (d) Advertising, soliciting, or conducting business
 48 | through the use of a name, trademark, service mark, trade name,
 49 | Internet address, or logo that indicates or reasonably implies
 50 | that the business being advertised, solicited, or conducted is

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51 of the kind or character of business transacted or conducted by
 52 a licensed mortgage lender or is likely to lead any person to
 53 believe that such business is that of a licensed mortgage
 54 lender.

55 Section 3. Subsection (4) of section 494.0025, Florida
 56 Statutes, is amended to read:

57 494.0025 Prohibited practices.—It is unlawful for any
 58 person:

59 (4) In any practice or transaction or course of business
 60 relating to the sale, purchase, negotiation, promotion,
 61 advertisement, or hypothecation of mortgage loan transactions,
 62 directly or indirectly:

63 (a) To knowingly or willingly employ any device, scheme,
 64 or artifice to defraud;

65 (b) To engage in any transaction, practice, or course of
 66 business which operates as a fraud upon any person in connection
 67 with the purchase or sale of any mortgage loan; ~~or~~

68 (c) To obtain property by fraud, willful misrepresentation
 69 of a future act, or false promise; or

70 (d) To misrepresent a residential mortgage loan, as
 71 described in s. 494.001(25) (a), as a business purpose loan.

72 Section 4. For the purpose of incorporating the amendment
 73 made by this act to section 494.0025, Florida Statutes, in a
 74 reference thereto, section 494.0018, Florida Statutes, is
 75 reenacted to read:

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76 | 494.0018 Penalties.—

77 | (1) Whoever knowingly violates any provision of s.
78 | 494.00255(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4),
79 | or (5), except as provided in subsection (2) of this section,
80 | commits a felony of the third degree, punishable as provided in
81 | s. 775.082, s. 775.083, or s. 775.084. Each such violation
82 | constitutes a separate offense.

83 | (2) Any person who violates any provision of this chapter,
84 | in which the total value of money and property unlawfully
85 | obtained exceeds \$50,000 and there are five or more victims,
86 | commits a felony of the first degree, punishable as provided in
87 | s. 775.082, s. 775.083, or s. 775.084.

88 | Section 5. This act shall take effect July 1, 2019.