

Tab 1	SB 1016 by Burgess; (Similar to H 00335) Mortgage Payoff Letters					
184796	D	S	RCS	BI, Burgess	Delete everything after	02/10 02:19 PM

Tab 2	SB 1258 by Jones (CO-INTRODUCERS) Bracy; (Identical to H 00855) Managed Care Plan Performance					
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Tab 3	SB 1368 by Gruters; (Similar to CS/H 01001) Trusts					
503122	A	S	RCS	BI, Gruters	Delete L.53 - 153:	02/10 02:19 PM

Tab 4	SB 1706 by Garcia (CO-INTRODUCERS) Taddeo; (Similar to H 01051) Servicers and Lenders of Residential Mortgage Loans					
453068	A	S	RCS	BI, Garcia	Delete L.110 - 371:	02/10 02:19 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Boyd, Chair
Senator Broxson, Vice Chair

MEETING DATE: Tuesday, February 8, 2022
TIME: 3:00—5:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Boyd, Chair; Senator Broxson, Vice Chair; Senators Brandes, Burgess, Gruters, Passidomo, Rodrigues, Rouson, Stargel, Stewart, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1016 Burgess (Similar H 335, CS/H 353)	Mortgage Payoff Letters; Revising the timeframe in which mortgagees must send an estoppel letter after receiving a written request; prohibiting mortgagees or servicers of mortgages from taking certain actions relating to reliance on information in estoppel letters; prohibiting mortgagees or servicers of mortgages from denying the accuracy of information in estoppel letters if a person reasonably and detrimentally relied upon such information; requiring mortgagees and servicers of mortgages to execute and record a specified instrument after certain payments are received; revising the definition of the term “estoppel letter”, etc. BI 02/08/2022 Fav/CS JU RC	Fav/CS Yeas 11 Nays 0
2	SB 1258 Jones (Identical H 855)	Managed Care Plan Performance; Requiring managed care plans to collect and report specified measures beginning with a certain data reporting period; requiring plans to stratify reported measures by specified categories beginning with a certain data reporting period; requiring a plan’s performance to be published on its website in a specified manner; requiring the Agency for Health Care Administration to use the measures to monitor plan performance, etc. HP 01/26/2022 Favorable BI 02/08/2022 Favorable RC	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 8, 2022, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1368 Gruters (Similar H 1001, Compare H 1229)	Trusts; Revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries upon termination of the trust; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child, etc. JU 01/31/2022 Favorable BI 02/08/2022 Fav/CS RC	Fav/CS Yeas 11 Nays 0
4	SB 1706 Garcia (Similar H 1051)	Servicers and Lenders of Residential Mortgage Loans; Requiring mortgage lenders and mortgage servicers to comply with specified federal law; requiring mortgage servicers and mortgage lenders to assume duties and obligations relating to previously approved first lien loan modifications, foreclosure prevention alternatives, and other loan modifications under certain circumstances; prohibiting mortgage servicers and mortgage lenders from commencing certain civil actions, recording specified notices, or conducting foreclosure sales unless specified conditions are met; prohibiting insurers and insurance agents from engaging in certain acts relating to lender-placed insurance for residential mortgage loan guaranty; prohibiting mortgage servicers and mortgage lenders from commencing certain civil actions, recording specified notices, or conducting foreclosure sales unless specified conditions are met; providing an exception, etc. BI 02/08/2022 Fav/CS JU RC	Fav/CS Yeas 10 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1016

INTRODUCER: Banking and Insurance Committee and Senator Burgess

SUBJECT: Mortgage Payoff Letters

DATE: February 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1016, makes significant revisions to Florida law regarding estoppel letters provided by mortgagees and mortgage servicers under ch. 701, Florida Statutes (F.S.). Specifically, SB 1016:

- Reduces from 14 days to 10 days the timeframe during which a mortgagee or mortgage servicer must respond to an estoppel letter request.
- Allows mortgagees and mortgage servicers to send corrected estoppel letters which supersede previous letters, subject to specified conditions.
- Prohibits a mortgagee or mortgage servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on a current, valid estoppel letter.
- Prohibits a mortgagee or mortgage servicer from refusing to accept funds received that conform with the amount provided in a current, valid estoppel letter; and requires the mortgagee or mortgage servicer to apply such funds to the balance of the loan.
- Specifies that within 60 days after the mortgage loan has been paid pursuant to the estoppel letter, the mortgagee or mortgage servicer must execute an instrument acknowledging release of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. Also provides for attorney fees for prevailing parties in civil actions relating to these requirements.

- Specifies that the release of a mortgage does not necessarily relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.
- Provides the requirements for making and responding to an estoppel letter request.
- Standardizes the minimum contents of an estoppel letter.
- Revises the definition of an estoppel letter.
- Provides for retroactive application to existing mortgage contracts.

The effective date of the bill is October 1, 2022.

II. Present Situation:

Estoppel Letters

In general, an estoppel letter (or estoppel certificate) is a legal document that stops someone from claiming different facts or terms regarding an agreement.¹ In regards to real estate, these types of letters are typically used to confirm amounts of moneys owed that attach to a certain piece of property, such as mortgage debt, condominium association fees, home owners association fees, and outstanding claims or deposits due to tenants. These types of letters are often sought prior to closing on a real estate transaction as part of due diligence to confirm proper amounts due that can affect the settlement of said transaction.

In Florida, s. 701.04, F.S., provides the requirements for estoppel letters in regards to real estate mortgages (these letters are also commonly known as mortgage payoff letters).² Section 701.04(1), F.S., requires that a mortgage lender (also known as the mortgagee) or mortgage servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage. The request may be made by a mortgagor (the borrower under the mortgage), a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property.

Section 701.04(2), F.S., requires that, upon the payment of the money due on a mortgage, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county.³ Within 60 days after the date of receipt of the full payment of the mortgage the person required to acknowledge satisfaction of the mortgage must send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of these requirements, the prevailing party is entitled to attorney fees and costs.

¹ *Estoppel Letter*, CREPedia, <https://www.crepedia.com/dictionary/definitions/estoppel-letter/> (last visited Feb. 4, 2022); and *What is an Estoppel Certificate*, Redfin <https://www.redfin.com/definition/estoppel-certificate> (last visited Feb. 4, 2022).

² Section 701.041, F.S., defines an estoppel letter in regards to mortgages as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and the interest on a per-day basis for the unpaid balance.

³ Section 701.04(2), F.S., also applies to liens and judgments attached to a property.

It is notable, that s. 701.04(2), F.S., requires the *full* payment of the mortgage, not the amount that was specified in the estoppel letter provided pursuant to 701.04(1), F.S. This is in contrast with homeowners' association estoppel certificates in Florida where s. 701.04(s), F.S., specifically states that a homeowners' association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." Sections 718.116(8)(c), and 719.108(6)(c), F.S., provide similar language regarding estoppel certificates for any unpaid condominium association assessments and unpaid rents, and assessments due to cooperatives (i.e. co-ops), respectively.⁴ A mortgagee is not necessarily held to the same waiver of rights to collect additional moneys from a mortgagor upon the provision of an estoppel letter as s. 701.04, F.S., does not provide a similar waiver provision as seen for homeowners' associations, condominium associations, and cooperatives.⁵

Qualifying Language in Estoppel Letters

Some mortgage servicers and lenders, when sending the estoppel letter required under 701.04(2), F.S., include language which seeks to reserve that servicer's or lender's right to change the amounts listed in the payoff letter or disclaiming the reliance of others on the information in the payoff letter. Examples of such language include:

- "The payoff figures provided are subject to final verification by the Note Holder. The noteholder reserves the right to adjust these figures and refuse or accept any funds which are insufficient to satisfy the full indebtedness for any reason."
- "The payoff amount is subject to our final verification once we receive payoff funds. ... If the payoff funds received are insufficient to pay off the account in full for any reason including, but not limited to, error in calculation, NSF, or additional escrow disbursements and/or adjustments. [We] reserve the right to decline to pay the account in full. In addition, any and all interest will be due at the time of payoff."
- "All payoff figures are subject to final verification of the mortgage lender. We may adjust any portion of this payoff statement, at any time, for the following reasons, including but not limited to: escrow disbursements made on behalf of the loan holder(s), fee advances, items returned by your financial institution including previously made payments, additional fees or charges, and any good faith and/or inadvertent clerical errors."
- "We will not be bound by errors and/or omissions contained herein."
- "Agent hereby reserves the right to adjust Payoff Amount or the Per Diem Amount in the event that we discover a mathematical, typographical, bookkeeping or clerical error."

⁴ Section 701.116(8)(c) states that a condominium association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." 719.108(6)(c), F.S. states that a cooperative association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns."

⁵ *But see, Rissman on Behalf of Rissman Inv. Co. v. Kilbourne*, 643 So. 2d 1136, 1139 (Fla. 1st DCA 1994), where the 1st District Court of Appeal found that a lender could be estopped from claiming additional moneys after an estoppel letter. The facts of this case, however, were rather unique. As the court mentioned, the mortgagee regularly reaffirmed the amount given in the estoppel letter over a number of years. In addition, the mortgagor made a number of transactions based in detrimental reliance on the amount provided by the mortgagee.

- “Borrower forever releases and discharges Agent, the Lenders, and their respective officers, directors, employees, agents, representatives, successors and assigns...from any and all claims, causes of action, damages and liabilities of any nature whatsoever, known or unknown, which such person ever had, now has or might hereafter have against [the parties] which relates, directly or indirectly, to any of the Loan Documents or the Loan.”⁶

Such language can frustrate the parties involved in a real estate transaction since, arguably, the amounts provided in estoppel letters with such language cannot be definitively relied upon. In the event that the mortgage lender or servicer determines after sending an estoppel letter that the borrower owes additional money beyond that provided in the estoppel letter, some mortgage lenders or servicers return all of the funds received from the closing and demand full payment—even if such funds were sent in reliance on an estoppel letter that was never corrected or revised by the lender or servicer. This can result in the continued accrual of interest on the full amount of the mortgage (not just the amount in dispute) during the pendency of resolving the discrepancy in the amount owed. Further, prior to resolution of the discrepancy, there may not be clear title to the property.⁷

Retroactive Application and the Contracts Clause

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective. The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.⁸ When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”⁹ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.¹⁰

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.¹¹ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.¹²

⁶ See Email from Melissa Murphy, Executive Vice President, Chief Legal Officer & General Counsel, The Fund (Feb. 4, 2022, 11:46 EST) (on file with the Senate Banking and Insurance Committee), which provided samples of escrow letters that were sent to Florida borrowers.

⁷ *Id.*

⁸ *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

⁹ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).

¹⁰ *Love*, *supra* note **Error! Bookmark not defined.** at 184.

¹¹ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

¹² *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

Florida's contracts clause states that "no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."¹³ Regarding the impairment of an existing contract by the retroactive application of a statute, the Supreme Court, in *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 780 (Fla. 1979) stated that it is a "well-accepted principle that virtually no degree of contract impairment is tolerable." However, the *Pomponio* court did state that such a principle does allow for some impairment. In determining the degree to which such impairment is tolerable, the court weighed "the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." Essentially, the court established a balancing test asking "whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."

III. Effect of Proposed Changes:

Section 1 of the bill substantially amends s. 701.04, F.S., in regards to estoppel letters and the satisfaction of mortgages. Specifically, the bill:

- Reduces from 14 days to 10 days the amount of time a mortgagee or mortgage servicer has to send, or cause to be sent, a requested estoppel letter setting forth the unpaid balance of the mortgage loan;¹⁴
- Requires that if the estoppel letter request is sent by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request ; and
- Specifies that the mortgagee or mortgage servicer must send the estoppel letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service.

For an estoppel request to be valid under the bill, a written request from an estoppel letter must be sent to the mortgagee or mortgage servicer, servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgagee or mortgage servicer for such purpose or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter. The mortgagee or mortgage servicer is deemed to have received said request:

- Five business days after the request sent by first-class mail is deposited with the United States Postal Service;
- The day the request is delivered by a common carrier delivery service; or

¹³ Art. I, s. 10, Fla. Const.

¹⁴ If the 10th day after receipt of a written request is a Saturday, Sunday, or legal holiday, the estoppel letter would be considered timely if sent on the next business day.

- The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.¹⁵

The bill also creates a standard specifying the minimum information that must be included in an estoppel letter (regardless of which party made the request). Such letters must include:

- The unpaid balance secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

In addition, the bill – except for those mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded – prohibits mortgagees and mortgage servicers from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in said estoppel letter.¹⁶ However, the bill does allow for mortgagees or servicers of mortgages to send corrected estoppel letters in the event that they determine that a previous letter that was sent was inaccurate. In such case, if the person who requested the original letter receives a corrected letter by 3 p.m. in such person’s time zone, at least 1 business day before a payment is issued in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters.

If any of the required information in the estoppel letter is inaccurate, and is not corrected as provided above, the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it. In addition, such mortgagee or servicer of the mortgage may not return or refuse to accept any funds received in response to an estoppel letter if such funds were received in the location and manner specified in such letter. Further, such mortgagee or servicer must promptly apply such funds to the unpaid balance of the loan properly due under or secured by the mortgage. The bill specifies that the prohibition against a mortgagee denying the accuracy of information in an inaccurate, uncorrected estoppel letter does not, however, affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery that such person may have at law or in equity.

The also bill requires that, within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to the last effective estoppel letter, whichever is earlier, the mortgagee or mortgage servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. For civil actions seeking to enforce these satisfaction and recording requirements, the prevailing party is entitled to recover reasonable

¹⁵ If any of these days falls upon on a Saturday, Sunday, or legal holiday, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

¹⁶ Any attempt to do so is void and unenforceable under the provisions of the bill.

attorney fees and costs. Such recording, however, does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage.¹⁷

Finally, the section makes conforming changes to provisions involving the cancellation of liens and judgments under the section.

Section 2 of the bill revises the definition of an "estoppel letter" to be a statement containing, at minimum, the information required for estoppel letters under proposed s. 701.04(1)(b), F.S., and makes a technical change.

Section 3 of the bill is a statement of retroactive application providing that applying the requirements of **Sections 1** and **2** to existing mortgage contracts achieves an important state interest.

Section 4 provides an effective date of October 1, 2022, and also states that the provisions of the bill apply to all mortgages existing as of that date and entered into on or after that date, as well as to all loans secured by such mortgages.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Sections 3 and **4** of the bill provide for retroactive application of **Section 1** and **2's** provisions to existing mortgage contracts. Though the bill does clearly state the Legislature's intention that the bill's provisions be retroactively applied, and gives the justifications for doing so, it is unclear whether such justifications would satisfy the balancing test adopted by the Florida Supreme Court in *Pomponio*.

¹⁷ Essentially, what the proposed provisions of the bill allow, is that if the lender later determines that additional funds are due from the borrower (over and above what was in the last-effective estoppel letter), the lender must release the mortgage; however, the lender will still have an unsecured debt that they can attempt to collect from the borrower or their successors or assigns.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will likely lead to fewer irregularities in real estate closings since the bill creates additional incentive for the mortgagee or mortgage servicer to provide accurate information in estoppel letters. In regards to consumers, the bill will prevent the accrual of interest and potential fees while the mortgagee or mortgage servicer and the mortgagor work through any dispute regarding funds due to the mortgagee or mortgage servicer over and above that provided in the estoppel letter. The bill will also likely reduce issues with titles during the pendency of such disputes by requiring the mortgagee or mortgage servicer to deem such mortgage satisfied.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Proposed s. 701.04(2)(b), F.S., authorizes a lender, under certain conditions and after the satisfaction of a mortgage, to seek recovery of a shortfall from the mortgagor, or the mortgagor's successors or assigns. However, if the mortgage has been satisfied, it is unclear who the mortgagor's assigns would be, at least in regards to the property subject to the satisfied mortgage.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 701.04 and 701.041 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 8, 2022:

The committee substitute:

- Clarifies that a mortgage servicer may send the estoppel letter required by s. 701.04, F.S.
- Requires the mortgagee or mortgage servicer to notify a mortgagor of an estoppel letter request when such request is not made by the mortgagor.
- Revises the information that must be included in an estoppel letter.

- Expects mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, from a prohibition that a mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on an estoppel letter said mortgagee or mortgagor has sent.
- Revises certain rights and defenses of parties relating to estoppel letters.
- Revises the timeframe by which a corrected estoppel letter may be received by the mortgagor in order for such correction to be effective.
- Revises the requirements of the provision in the bill which specify that a mortgagee or mortgage servicer must accept a payment made in compliance with an effective estoppel letter and must apply such payment to the balance of the mortgage.
- Revises the requirements for sending a request for an estoppel letter and when such letter has is deemed received.
- Revises how, and the deadline for when, an estoppel letter is sent by a mortgagee or mortgage servicer.
- Clarifies recording requirements for satisfaction of mortgages.
- Revises an attorney fee provision to make it only apply to actions regarding mortgages instead of mortgages, liens, and judgments.
- Revises the definition of “estoppel letter.”
- Makes technical changes..

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
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The Committee on Banking and Insurance (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 701.04, Florida Statutes, is amended to
read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) (a) Within 10 ~~14~~ days after receipt of the written
request of a mortgagor, a record title owner of the property, a
fiduciary or trustee lawfully acting on behalf of a record title



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11 owner, or any other person lawfully authorized to act on behalf
12 of a mortgagor or record title owner of the property, the
13 ~~mortgagee holder of a mortgage shall deliver or mortgage cause~~
14 ~~the servicer shall send or cause to be sent of the mortgage to~~
15 ~~deliver to the person making the request at a place designated~~
16 ~~in the written request~~ an estoppel letter setting forth the
17 unpaid balance of the loan secured by the mortgage. If the
18 written request is made by a person other than the mortgagor,
19 the request must include a copy of the instrument showing such
20 person's title in the property or other lawful authorization,
21 and the mortgagee or mortgage servicer must notify the mortgagor
22 of the request.

23 ~~(a) If the mortgagor, or any person lawfully authorized to~~
24 ~~act on behalf of the mortgagor, makes the request, the estoppel~~
25 ~~letter must include an itemization of the principal, interest,~~
26 ~~and any other charges properly due under or secured by the~~
27 ~~mortgage and interest on a per-day basis for the unpaid balance.~~

28 ~~(b) If a record title owner of the property, or any person~~
29 ~~lawfully authorized to act on behalf of a mortgagor or record~~
30 ~~title owner of the property, makes the request:~~

31 ~~1. The request must include a copy of the instrument~~
32 ~~showing title in the property or lawful authorization.~~

33 ~~2. The estoppel letter may include the itemization of~~
34 ~~information required under paragraph (a), but must at a minimum~~
35 ~~include:~~

36 1. The total unpaid balance of the loan due under or
37 secured by the mortgage as of the date specified in the estoppel
38 letter, including an itemization of the principal, interest, and
39 any other charges comprising the unpaid balance; and



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40 2. Interest accruing on a per-day basis for the unpaid
41 balance, if applicable.

42 (c)1. Except for mortgages for which a notice of lis
43 pendens in a foreclosure action or a suggestion of bankruptcy
44 has been properly filed and recorded, the mortgagee or mortgage
45 servicer may not qualify, reserve the right to change, or
46 condition or disclaim the reliance of others on the information
47 provided in an estoppel letter under paragraph (b), and any
48 attempt to do so is void and unenforceable. However, if the
49 mortgagee or mortgage servicer determines that any of the
50 information provided in the estoppel letter under paragraph (b)
51 was inaccurate, the mortgagee or mortgage servicer may send a
52 corrected estoppel letter to the person who requested the
53 estoppel letter.

54 2. If the person who requested the original estoppel letter
55 under subparagraph (f)1. receives a corrected estoppel letter by
56 3 p.m. in such person's time zone at least 1 business day before
57 a payment is issued in reliance on the previous estoppel letter,
58 the corrected estoppel letter supersedes all prior estoppel
59 letters.

60 3. If any of the information provided in the estoppel
61 letter under paragraph (b) was inaccurate, but the person who
62 requested the estoppel letter did not timely receive a corrected
63 estoppel letter as provided in subparagraph 2., the mortgagee or
64 mortgage servicer may not deny the accuracy of such information
65 as against any person who relied on it. This subparagraph does
66 not affect the right of a mortgagee to recover any sum that it
67 did not include in an estoppel letter from any person liable for
68 payment of the loan or other obligations secured by the



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69 mortgage, nor does it limit any claim or defense to recovery
70 that such person may have at law or in equity ~~on a per-day~~
71 basis.

72 (d)3. The mortgagee or mortgage servicer ~~of the mortgagee~~
73 acting in accordance with a request in substantial compliance
74 with this subsection ~~paragraph~~ is expressly discharged from any
75 obligation or liability to any person on account of the release
76 of the requested information, other than the obligation to
77 comply with the terms of the estoppel letter.

78 (e) If a payment is received at the location and in the
79 manner specified by the mortgagee or mortgage servicer, the
80 mortgagee or mortgage servicer must accept and may not return
81 any payment received in reliance on an estoppel letter and must
82 promptly apply such payment to the unpaid balance of the loan
83 properly due under or secured by the mortgage.

84 (f)1. A written request for an estoppel letter under
85 paragraph (a) must be sent to the mortgagee or mortgage servicer
86 by first-class mail, postage prepaid; by common carrier delivery
87 service; or by e-mail, facsimile, or other electronic means at
88 the address made available by the mortgagee or mortgage servicer
89 for such purpose or through an automated system provided by the
90 mortgagee or mortgage servicer for requesting an estoppel
91 letter. The written request is considered received by the
92 mortgagee or mortgage servicer:

93 a. Five business days after the request sent by first-class
94 mail is deposited with the United States Postal Service;

95 b. The day the request is delivered by a common carrier
96 delivery service; or

97 c. The day the request is sent by e-mail, facsimile, or



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98 other electronic means or through an automated system provided
99 by the mortgagee or mortgage servicer for requesting an estoppel
100 letter.

101
102 If any of the days in sub-subparagraph a., sub-subparagraph b.,
103 or sub-subparagraph c. falls on a Saturday, Sunday, or legal
104 holiday under the laws of this state or the United States, the
105 request for an estoppel letter is considered timely received by
106 the mortgagee or mortgage servicer on the next business day.

107 2. The mortgagee or mortgage servicer must send an estoppel
108 letter by first-class mail; by common carrier delivery service;
109 or by e-mail, facsimile, or other electronic means, as directed
110 in the written request, or through an automated system provided
111 by the mortgagee or mortgage servicer for this purpose. However,
112 the mortgagee or mortgage servicer is not required to pay for a
113 common carrier delivery service. If the 10-day period after a
114 written request is received by the mortgagee or mortgage
115 servicer ends on a Saturday, Sunday, or legal holiday under the
116 laws of this state or the United States, the estoppel letter is
117 considered timely if it is sent by the close of business on the
118 next business day.

119 (g)(e) Notwithstanding s. 655.059, a mortgagee or mortgage
120 servicer ~~mortgage holder~~ may provide the financial information
121 required under this subsection to a person authorized under this
122 subsection to request the financial information ~~notwithstanding~~
123 s. ~~655.059~~.

124 (2) (a) Within 60 days after the unpaid balance of a loan
125 secured by a mortgage has been fully paid or paid pursuant to an
126 estoppel letter under subsection (1), whichever is earlier, the



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127 mortgagee or mortgage servicer shall execute in writing an
128 instrument acknowledging release of the mortgage; have the
129 instrument acknowledged, or proven, and send it or cause it to
130 be sent for recording in the official records of the proper
131 county; and send or cause to be sent the recorded release to the
132 mortgagor or record title owner of the property. The prevailing
133 party in a civil action brought against the mortgagee or
134 mortgage servicer to enforce the requirements of this paragraph
135 is entitled to reasonable attorney fees and costs.

136 (b) The recorded release of the mortgage does not relieve
137 the mortgagor, or the mortgagor's successors or assigns, from
138 any personal liability on the loan or other obligations
139 previously secured by the mortgage.

140 (3)-(2) Within 60 days after the unpaid balance ~~Whenever the~~
141 ~~amount of money due on a any mortgage, lien, or judgment has~~
142 ~~been fully paid to the person or party entitled to the payment~~
143 ~~thereof, the mortgagee, creditor, or assignee, or the attorney~~
144 ~~of record in the case of a judgment, to whom the payment was~~
145 ~~made, shall execute in writing an instrument acknowledging~~
146 ~~satisfaction of the mortgage, lien, or judgment; and have the~~
147 ~~instrument acknowledged, or proven, and duly entered in the~~
148 ~~official records of the proper county; and. Within 60 days after~~
149 ~~the date of receipt of the full payment of the mortgage, lien,~~
150 ~~or judgment, the person required to acknowledge satisfaction of~~
151 ~~the mortgage, lien, or judgment shall send or cause to be sent~~
152 ~~the recorded satisfaction to the person who has made the full~~
153 ~~payment. In the case of a civil action arising out of this~~
154 ~~section, The prevailing party in a civil action brought against~~
155 the creditor or assignee, or the attorney of record in the case



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156 of a judgment, to enforce the requirements of this subsection is
157 entitled to reasonable attorney fees and costs.

158 (4)~~(3)~~ When ~~Whenever~~ a writ of execution has been issued,
159 docketed, and indexed with a sheriff and the judgment upon which
160 it was issued has been fully paid, it is the responsibility of
161 the person party receiving payment to request, in writing,
162 addressed to the sheriff, return of the writ of execution as
163 fully satisfied.

164 Section 2. Paragraph (a) of subsection (1) and subsection
165 (2) of section 701.041, Florida Statutes, are amended to read:

166 701.041 Title insurer; mortgage release certificate.-

167 (1) DEFINITIONS.-For purposes of this section:

168 (a) "Estoppel letter" means a statement containing, at a
169 minimum, the information required in s. 701.04(1)(b) of the
170 amount of:

171 ~~1. The unpaid balance of a loan secured by a mortgage,~~
172 ~~including principal, interest, and any other charges properly~~
173 ~~due under or secured by the mortgage.~~

174 ~~2. Interest on a per day basis for the unpaid balance.~~

175 (2) CERTIFICATE OF RELEASE.-An officer or duly appointed
176 agent of a title insurer may, on behalf of a mortgagor or a
177 person who acquired from the mortgagor title to all or a part of
178 the property described in a mortgage, execute a certificate of
179 release that complies with the requirements of this section and
180 record the certificate of release in the real property records
181 of each county in which the mortgage is recorded if a
182 satisfaction or release of the mortgage has not been executed
183 and recorded after the date payment in full of the loan properly
184 due under or secured by the mortgage was made in accordance with



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185 an estoppel letter ~~a payoff statement~~ furnished by the mortgagee
186 or ~~the~~ mortgage servicer.

187 Section 3. The Legislature finds that the timeliness and
188 accuracy of an estoppel letter is critical because the parties
189 to a real estate transaction must rely on the estoppel letter to
190 establish the loan payoff amount necessary to release the
191 mortgage, which in turn will allow the owner to confer clean
192 title to a buyer or to refinance the property. The Legislature
193 further finds that estoppel letters increasingly contain
194 conditional language disclaiming the ability of an owner to rely
195 on the stated loan payoff amounts, extending even to the return
196 of such payments submitted by owners, creating unnecessary
197 delays in the efficient operation of this state's real estate
198 market, which is a vital economic contributor to this state, and
199 imposing needless costs and burdens on property owners and
200 buyers. In addition, the Legislature finds that real estate
201 lending, mortgages, real estate transactions, and estoppel
202 letters are extensively regulated under both Florida and federal
203 law. The Legislature finds and determines that this act makes
204 changes to state law that appropriately balance the parties'
205 interests, are reasonable and necessary to serve and achieve an
206 important state interest, are necessary for the prosperity and
207 welfare of the state and its property owners and inhabitants,
208 and must be applied to existing mortgages in order to provide
209 effective relief.

210 Section 4. This act shall take effect October 1, 2022, and
211 applies to all mortgages existing as of that date and entered
212 into on or after that date, as well as to all loans secured by
213 such mortgages.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to mortgage payoff letters; amending
s. 701.04, F.S.; revising the timeframe within which a
mortgagee or mortgage servicer must send or cause to
be sent an estoppel letter containing specified
information; revising the circumstances under which a
copy of the instrument showing title in the property
or other lawful authorization must be included in a
request for an estoppel letter; requiring notice to
the mortgagor of a request for an estoppel letter
under certain circumstances; revising requirements for
an estoppel letter; prohibiting certain actions by the
mortgagee or mortgage servicer; authorizing the
mortgagee or mortgage servicer to send a corrected
estoppel letter under certain circumstances; providing
that a corrected estoppel letter supersedes any
previous estoppel letter under certain circumstances;
prohibiting the mortgagee or mortgage servicer from
denying the accuracy of certain information provided
in an estoppel letter under certain circumstances;
providing construction; prohibiting payments received
pursuant to an estoppel letter from being returned and
requiring such payments to be promptly applied to any
unpaid balance of the loan properly due under or



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243 secured by a mortgage; providing methods for sending a
244 written request for an estoppel letter and for sending
245 an estoppel letter; providing that the mortgagee or
246 mortgage servicer is not required to pay for a common
247 carrier delivery service; requiring the mortgagee or
248 mortgage servicer to take certain actions within a
249 specified time after the unpaid balance of a loan
250 properly secured by a mortgage has been fully paid or
251 paid pursuant to an estoppel letter; authorizing
252 reasonable attorney fees and costs; providing that
253 certain persons may still be personally liable after
254 the recording of a release of a mortgage; amending s.
255 701.041, F.S.; revising the definition of the term
256 "estoppel letter"; conforming provisions to changes
257 made by the act; providing legislative findings;
258 providing for retroactive applicability; providing an
259 effective date.

By Senator Burgess

20-00661A-22

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1 A bill to be entitled
 2 An act relating to mortgage payoff letters; amending
 3 s. 701.04, F.S.; revising the timeframe in which
 4 mortgagees must send an estoppel letter after
 5 receiving a written request; revising requirements for
 6 written requests for estoppel letters; revising
 7 requirements for estoppel letters; prohibiting
 8 mortgagees or servicers of mortgages from taking
 9 certain actions relating to reliance on information in
 10 estoppel letters; authorizing mortgagees or servicers
 11 of mortgages to send corrected estoppel letters that
 12 supersede earlier estoppel letters under certain
 13 circumstances; prohibiting mortgagees or servicers of
 14 mortgages from denying the accuracy of information in
 15 estoppel letters if a person reasonably and
 16 detrimentally relied upon such information; providing
 17 prohibitions and requirements for mortgagees and
 18 servicers of mortgages relating to funds received in
 19 response to an estoppel letter; requiring mortgagees
 20 and servicers of mortgages to execute and record a
 21 specified instrument after certain payments are
 22 received; specifying that recording a satisfaction of
 23 the mortgage does not relieve mortgagors or successors
 24 or assigns of mortgagors from personal liability on
 25 the loan or obligations secured by the mortgage;
 26 entitling prevailing parties to attorney fees and
 27 costs; amending s. 701.041, F.S.; revising the
 28 definition of the term "estoppel letter"; making a
 29 technical change; providing an effective date.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 701.04, Florida Statutes, is amended to
 34 read:
 35 701.04 Cancellation of mortgages, liens, and judgments.—
 36 (1) (a) Within 10 ~~14~~ days after receipt of the written
 37 request of a mortgagor, a record title owner of the property, a
 38 fiduciary or trustee lawfully acting on behalf of a record title
 39 owner, or any other person lawfully authorized to act on behalf
 40 of a mortgagor or record title owner of the property, the
 41 mortgagee shall send ~~holder of a mortgage shall deliver~~ or cause
 42 the servicer of the mortgage to send ~~deliver to the person~~
 43 making the request at a place designated in the written request
 44 an estoppel letter setting forth the unpaid balance of the loan
 45 properly due under or secured by the mortgage. If the request is
 46 made by a person other than a mortgagor, the request must
 47 include a copy of the instrument showing title in the property
 48 or lawful authorization
 49 ~~(a) If the mortgagor, or any person lawfully authorized to~~
 50 ~~act on behalf of the mortgagor, makes the request, the estoppel~~
 51 ~~letter must include an itemization of the principal, interest,~~
 52 ~~and any other charges properly due under or secured by the~~
 53 ~~mortgage and interest on a per-day basis for the unpaid balance.~~
 54 ~~(b) If a record title owner of the property, or any person~~
 55 ~~lawfully authorized to act on behalf of a mortgagor or record~~
 56 ~~title owner of the property, makes the request:~~
 57 ~~1. The request must include a copy of the instrument~~
 58 ~~showing title in the property or lawful authorization.~~

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59 (b)2- The estoppel letter ~~may include the itemization of~~
60 ~~information required under paragraph (a), but must,~~ at a
61 minimum, include:

62 1. The total unpaid balance of the loan properly due under
63 or secured by the mortgage, including an itemization of the
64 principal, interest, and other charges comprising the unpaid
65 balance; and

66 2. Interest on a per-day basis for the unpaid balance.

67 (c) The mortgagee or servicer of the mortgage may not
68 qualify, reserve the right to change, or condition or disclaim
69 the reliance of others on the required information provided in
70 the estoppel letter pursuant to paragraph (b) on a per-day
71 basis.

72 (d)3- The mortgagee or servicer of the mortgagee acting in
73 accordance with a request in substantial compliance with this
74 subsection paragraph is expressly discharged from any obligation
75 or liability to any person on account of the release of the
76 requested information, other than the obligation to comply with
77 the terms of the estoppel letter.

78 (e) If the mortgagee or servicer of the mortgage determines
79 that any of the required information provided in the estoppel
80 letter pursuant to paragraph (b) was inaccurate, the mortgagee
81 or servicer of the mortgage may send a corrected estoppel
82 letter. If the mortgagor or record title owner of the property,
83 or any person lawfully authorized to act on behalf of the
84 mortgagor or record title owner, receives and has a reasonable
85 opportunity to act upon a corrected estoppel letter before
86 making payment, the corrected estoppel letter supersedes any
87 earlier estoppel letter.

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88 (f) If any of the required information provided in the
89 estoppel letter pursuant to paragraph (b) was inaccurate, the
90 mortgagee or servicer of the mortgage may not deny the accuracy
91 of that information if a person reasonably and detrimentally
92 relied upon such information.

93 (g) A mortgagee or servicer of the mortgage may not refuse
94 to accept or return any funds received in response to an
95 estoppel letter and must promptly apply such funds to the unpaid
96 balance of the loan properly due under or secured by the
97 mortgage.

98 (h)1. A written request for an estoppel letter under
99 paragraph (a) must be sent to the mortgagee or servicer of the
100 mortgage, using address information made available by the
101 mortgagee or servicer of the mortgage for such purpose, by
102 first-class mail, common carrier delivery service, facsimile
103 transmission, or e-mail. The request shall be deemed received by
104 the mortgagee or servicer the day that it is sent by facsimile
105 transmission or e-mail, the fifth day after it is deposited with
106 the U.S. Postal Service for prepaid first-class delivery, or the
107 day of delivery by a common carrier delivery service.

108 2. The mortgagee or servicer of the mortgage shall send the
109 estoppel letter by first-class mail, common carrier delivery
110 service, facsimile transmission, or e-mail, as directed in the
111 written request, provided, however, that the mortgagee or
112 servicer is not required to pay for common carrier delivery
113 service. If the 10th day after receipt of a written request is a
114 Saturday, Sunday, or legal holiday under the laws of this state
115 or the United States, the estoppel letter shall be considered
116 timely if sent on the next business day.

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117 (i)~~(e)~~ A mortgage holder may provide the financial
 118 information required under this subsection to a person
 119 authorized under this subsection to request the financial
 120 information notwithstanding s. 655.059.

121 (2) Whenever the amount of money due on any mortgage has
 122 either been fully paid or paid pursuant to an estoppel letter,
 123 the mortgagee or servicer of the mortgage must, within 60 days,
 124 execute in writing an instrument acknowledging satisfaction of
 125 the mortgage and have the instrument acknowledged, or proven,
 126 and duly entered in the official records of the proper county
 127 and send or cause to be sent the recorded satisfaction to the
 128 mortgagor or record title owner of the property. Recording a
 129 satisfaction of the mortgage by the mortgagee or servicer of the
 130 mortgage does not relieve the mortgagor, or the mortgagor's
 131 successors or assigns, from any personal liability on the loan
 132 or other obligations secured by the mortgage.

133 (3) Whenever the amount of money due on any mortgage, lien,
 134 or judgment has been fully paid to the person or party entitled
 135 to the payment thereof, the mortgagee, creditor, or assignee, or
 136 the attorney of record in the case of a judgment, to whom the
 137 payment was made, shall execute in writing an instrument
 138 acknowledging satisfaction of the mortgage, lien, or judgment
 139 and have the instrument acknowledged, or proven, and duly
 140 entered in the official records of the proper county. Within 60
 141 days after the date of receipt of the full payment of the
 142 mortgage, lien, or judgment, the person required to acknowledge
 143 satisfaction of the mortgage, lien, or judgment shall send or
 144 cause to be sent the recorded satisfaction to the person who has
 145 made the full payment. In the case of a civil action arising out

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146 of this section, the prevailing party is entitled to attorney
 147 fees and costs.

148 (4)~~(3)~~ Whenever a writ of execution has been issued,
 149 docketed, and indexed with a sheriff and the judgment upon which
 150 it was issued has been fully paid, it is the responsibility of
 151 the party receiving payment to request, in writing, addressed to
 152 the sheriff, return of the writ of execution as fully satisfied.

153 (5) In the case of a civil action arising out of this
 154 section, the prevailing party is entitled to attorney fees and
 155 costs.

156 Section 2. Paragraph (a) of subsection (1) and subsection
 157 (2) of section 701.041, Florida Statutes, are amended to read:
 158 701.041 Title insurer; mortgage release certificate.—

159 (1) DEFINITIONS.—For purposes of this section:

160 (a) "Estoppel letter" means a statement of the amount of:

161 1. The unpaid balance of a loan properly due under or
 162 secured by a mortgage, including principal, interest, and any
 163 other charges comprising the unpaid balance ~~properly due under~~
 164 ~~or secured by the mortgage.~~

165 2. Interest on a per-day basis for the unpaid balance.

166 (2) CERTIFICATE OF RELEASE.—An officer or duly appointed
 167 agent of a title insurer may, on behalf of a mortgagor or a
 168 person who acquired from the mortgagor title to all or a part of
 169 the property described in a mortgage, execute a certificate of
 170 release that complies with the requirements of this section and
 171 record the certificate of release in the real property records
 172 of each county in which the mortgage is recorded if a
 173 satisfaction or release of the mortgage has not been executed
 174 and recorded after the date payment in full of the loan secured

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175 by the mortgage was made in accordance with an estoppel letter a
176 ~~payoff statement~~ furnished by the mortgagee or the mortgage
177 servicer.

178 Section 3. This act shall take effect October 1, 2022.

Page 1 of 2

'CERTIFIED FUNDS ONLY'

December 01, 2021

OUR OFFICES WILL BE CLOSED ON FRIDAY DECEMBER 24TH AND FRIDAY DECEMBER 31ST

386-269-9664

LOAN NUMBER: 1476398191
LOAN TYPE: Conventional
PROPERTY ADDRESS:
BLVD
DAYTONA BEACH FL 32124

PAYOFF STATEMENT FOR:

These figures are good to December 29, 2021.

This loan is due for the December 01, 2021 payment.

The current total unpaid principal balance is:	\$	294,022.41
Interest at 2.75000 %		1,294.06
Unpaid late charges		61.24
RECORDG/ASSIGNMT FEE		10.00
*** TOTAL AMOUNT TO PAY LOAN IN FULL ***	\$	295,387.71

Funds received on or after December 29, 2021 will require an additional \$22.15 in interest per Day.

FUNDS RECEIVED FOR PAYOFF MUST BE U.S. DOLLARS IN THE FORM OF CERTIFIED FUNDS OR WIRE TRANSFER ONLY, PAYABLE TO Ameris Bank.

WIRES RECEIVED AFTER 3 PM CST WILL BE CREDITED ON THE NEXT BUSINESS DAY AND WILL REQUIRE ADDITIONAL PER DIEM INTEREST.

*If the Property Address shown above is located in Nassau County, New York, the amount disclosed includes a \$ 355.00 fee for the Verification of Tax Map document required by the Nassau County Clerk's Office to be submitted as part of the Mortgage Release/Satisfaction filing.

Funds sent by wire to Bank of America, Chicago, IL, ABA Number 026009593, Account Number 8666116790, Account Title: Payoff Clearing Account. The borrower(s) name and loan number must be referenced as part of the wire transfer package, otherwise, funds will be rejected. To confirm our receipt of your wire transfer and application of our Payoff, contact our Customer Service Department at 1-855-249-8131 the day following your wire transfer.

PAYOFF CHECKS should be mailed to Ameris Bank, 1 Corporate Drive, Suite 360, Lake Zurich, IL 60047, Attention: Payoff Processing.

The payoff figures provided are subject to final verification by the Note Holder. The noteholder reserves the right to adjust these figures and refuse or accept any funds which are insufficient to satisfy the full indebtedness for any reason.

Issuance of this statement does not suspend the contract requirement to make the mortgage payments when due. A late charge of \$ 61.24 will be assessed 15 days after a current payment is due and should be added to the payoff total if received after that time. PLEASE ENSURE THAT

Loan Number:1476398191

XQ611/@@@

NO MORTGAGE PAYMENTS SUBMITTED PRIOR TO PAYOFF ARE RETURNED FOR ANY REASON OR THE LIEN ON THE PROPERTY WILL NOT BE RELEASED. If the Bank notifies us that a mortgage payment submitted prior to payoff is being returned, we will consider the payoff to be short in the amount of the mortgage payment(s) and will not transmit a mortgage satisfaction/release to the requestor or county recorder's office for recording, as applicable, until the shortage has been paid. If the mortgage satisfaction/release document has already been transmitted to the requestor or county recorder's office, if we do not receive the shortage immediately upon notification to you, we will take appropriate steps to rescind the mortgage satisfaction/release as the loan will not have been paid in full.

If the funds received for payoff are not sufficient to satisfy the full indebtedness of the loan, the lender, at its option (and with the borrower's)' escrow/impound account (if applicable). If the lender elects not to net the escrow/impound account for the shortage, or nets the escrow/impound account for the shortage and the funds are still not sufficient to satisfy the full indebtedness, the payoff funds will be returned. This delay will cost you (the borrower) additional interest, as interest continues to accrue on the indebtedness until the total amount required for payoff is received.

Unless your escrow balance is being credited to your payoff balance at the lender's option (and with the borrower's consent if required by applicable)' (1 from the escrow/impound account until the date Ameris Bank receives payoff funds. Any escrow balance or overpayment will be mailed to the borrowers within 15 business days after the receipt and processing of the funds required to pay the loan in full.

If your (the borrower(s)) monthly payments are automatically deducted from a checking or savings account, a written cancellation request must be received by our Automatic Drafting Department thirty (30) days prior to the payoff date. Payments will continue to be automatically deducted until the written request is received and has been processed.

Provide any changes to the borrower(s) mailing address where the executed release/reconveyance documents should be sent.

Loan Number:1476398191

XQ612/@@@



December 16, 2020

[Redacted]

Subject: Request for Payoff
Collateral: Property located at [Redacted]

Dear Mr. [Redacted]

The following is the payoff information on the above referenced loan as of December 16, 2020:

Principal balance	\$ 888,069.90
Accrued interest	2,997.24
Estoppel fee	100.00
Recording fee	75.00
Net Payoff	\$ 891,242.14 (Good thru 12/16/2020)
Net due date	12/19/2020
Per diem	\$ 111.01*

**Please add to the net payoff figure for every day after 12/16/2020*

Please contact our office for an updated payoff prior to submitting funds via wire transfer to:

American National Bank
4301 North Federal Highway
Oakland Park, FL 33308
ABA [Redacted]

The net payoff figure reflected above is subject to the collection and clearance of any items in process.

We will not be bound by errors and/or omissions contained herein.

Note: This account has Automatic Payment activity scheduled for 12/19/20. If the payoff is not received prior to this date, please contact the undersigned for updated payoff information after the transaction occurs.

Please do not hesitate to contact the undersigned at (954) 267-8132 or via email at lcorrea@americannationalbank.com, if you should require further information.

Sincerely,
Lori Correa
Lori Correa
Loan Operations

/lc



December 8, 2020

[REDACTED]
[REDACTED] 40
[REDACTED]

Re: Full Payoff of Indebtedness (the "Loan") of [REDACTED] a Florida limited liability company ("Borrower"), pursuant to the Loan Agreement dated [REDACTED], as amended from time to time (the "Loan Agreement"), by and among Borrower, Capital One, National Association (as successor-by-merger to [REDACTED] as successor-in-interest to [REDACTED]), as administrative agent (in such capacity "Agent"), and the Lenders

Ladies and Gentlemen:

As you requested, we are writing to provide you with a payoff statement to be used in connection with an assignment of the Loan referenced above to Borrower's refinancing lender ("New Lender"). The Loan is evidenced by the Amended and Restated Promissory Note dated June 30, 2015, in the original principal amount of \$19,000,000.00, made payable by Borrower to Capital One, National Association ([REDACTED]), together with the Loan Agreement and certain other financing and security documents executed and delivered in connection therewith (collectively, the "Loan Documents"). Capitalized terms used but not defined in this letter will have the meaning given to such terms in the Loan Agreement.

As of the date of this letter, the Payoff Amount is \$17,257,484.89, which amount shall be effective through and including the close of business on December 10, 2020, (the "Proposed Payoff Date"). In the event the Agent fails to receive the Payoff Amount by the Proposed Payoff Date, per diem interest in the amount of \$1,792.72 ("Per Diem Interest") shall accrue and will be added to the Payoff Amount for each day after the Proposed Payoff Date that the Loan remains outstanding through December 15, 2020 (the "Outside Payoff Date"). Following the Outside Payoff Date, a new amount of Per Diem Interest may begin accruing.

The Payoff Amount is comprised of the following amounts:

Principal	\$17,210,120.14
Current Interest Due	\$16,134.49
Deferred Interest	\$204,770.19
Deferred Fees	\$450.00
Refund of Funds	(\$173,989.93)
TOTAL PAYOFF AMOUNT	\$17,257,484.89

In addition, Borrower is responsible for paying Agent's legal fees in the amount of \$3,500.00 to [REDACTED] Agent's counsel, in accordance with the instructions below.

For any payoff after the Proposed Payoff Date, please contact me to confirm the updated Payoff Amount including applicable Per Diem Interest. For any payoff after the Outside Payoff Date, please contact me for

an updated Payoff Amount and Per Diem Interest amount. Borrower should pay the Payoff Amount (including any applicable Per Diem Interest) in accordance with the wire instructions set forth below.

Upon Borrower's acceptance of this letter or any earlier receipt by Agent of the Payoff Amount (including any applicable Per Diem Interest), all of the Lenders' commitments to extend further credit to Borrower under the Loan Documents (if any) shall terminate.

Upon Agent's receipt of the Payoff Amount (including any applicable Per Diem Interest) by the Outside Payoff Date, together with Borrower's facsimile of its countersignature to this letter to Agent, Agent will deliver the relevant assignment documents necessary to assign the Loan to New Lender and will deliver the original Note to New Lender. All obligations of Borrower to Agent or the Lenders under the Loan Documents shall terminate (other than any provision of any of the Loan Documents which survives repayment of the Indebtedness and termination of the Loan Documents).

Following Agent's receipt of the Payoff Amount (including any applicable Per Diem Interest) and Borrower's countersignature to this letter, Agent will cause to be delivered to Borrower, within fifteen (15) business days of Agent's receipt of the Payoff Amount (including any applicable Per Diem Interest), evidence of the filing of a UCC-3 termination statement with respect to each financing statement described on the attached UCC Schedule. Borrower shall be authorized to file such termination statements with the appropriate filing offices at Borrower's expense.

Payment of the Payoff Amount (including any applicable Per Diem Interest) should be made by wire transfer in accordance with the following instructions:

Bank Name: Capital One, N.A.

ABA/Routing Number:

Account Name:

Account Number:

Reference:

To insure application of the Payoff Amount to Borrower's loan account on or before the Proposed Payoff Date, Borrower shall provide Agent via electronic mail the federal reference number or other identifying information with respect to the transfer of the Payoff Amount to Agent.

PLEASE NOTE THAT [REDACTED] LEGAL FEES SHOULD BE SENT DIRECTLY TO THEM IN ACCORDANCE WITH THE INSTRUCTIONS ATTACHED TO THEIR INVOICE.

Agent hereby reserves the right to adjust the Payoff Amount or the Per Diem Interest Amount in the event that we discover a mathematical, typographical, bookkeeping or clerical error.

Agent's receipt of the Payoff Amount does not affect any rights of Agent or the Lenders, or obligations of the addressee of this letter or its affiliates and/or subsidiaries, or any other obligor, in connection with any other outstanding credit facility (other than the Loan), all of which survive repayment of the Indebtedness and termination of the Loan Documents.

For and in consideration of Agent's agreements set forth herein, Borrower forever releases and discharges Agent, the Lenders and their respective officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Released Parties") from any and all claims, causes of action, damages and liabilities of any

nature whatsoever, known or unknown, which such person ever had, now has or might hereafter have against the Released Parties which relates, directly or indirectly, to any of the Loan Documents or the Loan.

For and in consideration of the Agent's agreements contained herein, (a) the Borrower agrees to reimburse and pay, within three days of demand therefor, in immediately available funds, all losses, liabilities, charges, expenses and fees which Agent or any Lender may incur as a result of any non-payment, claim, refund or charge back of any checks or other items which have been credited to Borrower's loan account with Agent or any Lender, together with all expenses and other charges incident thereto, and (b) Borrower agrees to reimburse and pay, within three days of demand therefor, in immediately available funds, all losses, liabilities, charges, expenses and fees (i) which Agent or any Lender may have incurred or may now or hereafter incur in connection with the transactions contemplated hereby which have not as yet been reflected in Borrower's loan account which Borrower is or may be required to bear pursuant to the applicable loan documents, and (ii) which Agent or any Lender may incur as a result of errors in calculation of any amounts due to Agent or any Lender by Borrower.

This letter shall become binding upon Agent only if Agent receives Borrower's written acceptance of its terms on or before 5:00 pm (Eastern time) on December 9, 2020, Delivery of a photocopy or telecopy of an executed counterpart of this letter shall be effective as delivery of a manually executed original counterpart of this letter.

If you have any questions concerning this letter, please Connor O'Donnell at 301-741-2264.

Sincerely,

CAPITAL ONE, NATIONAL ASSOCIATION

By: 
Name: Katarzyna Dobrzanska
Title: Duly Authorized Signatory

ACCEPTED AND AGREED TO:



By: _____
Name: _____
Title: _____

Attachment (UCC Schedule)

cc: 



Shelley - FYI

P.O. Box 5001, Westfield, IN 46074
Phone (800) 561-4567 Fax (800) 486-5134

08/27/21

for you and Sabine?

To: SOUTHERN TITLE
3862699664

Loan Number: 2000026572
FHA Case Number: FR0947395602703
Re: Mortgagor: [REDACTED]
Co-Mortgagor: [REDACTED]

Property: 1921 FERN PL
DAYTONA BEACH FL 32119

PAYOFF STATEMENT "AMENDED"

- pre-fee fees?
- when disbursement from escrow? (next?)

These figures are good through 10/01/21 subject to the conditions herein.
This loan is due for the 06/01/21.

The current total unpaid principal balance is:	\$110,592.40
Interest at 4.50000:	\$2,073.60
Principal & Interest Advance:	\$.00
Recording Cost:	\$.00
Other Unpaid Expenses:	\$40.00
Recon/Release Cost:	\$.00
Deferred Pursuant to Loan Modification:	\$0.00
Late charges:	\$100.20
PMI/MI Premium Due:	\$219.24
Escrow Impound Shortage:	\$152.88
Escrow Credit:	\$- .00
Prepayment Penalty:	\$.00
Suspense Balance:	\$0.00
TOTAL AMOUNT TO PAY LOAN IN FULL	\$113,178.32

Funds received after 10/01/21 will require an additional \$13.6347 interest per day.

See next page!



P.O. Box 5001, Westfield, IN 46074
Phone (800) 561-4567 Fax (800) 486-5134

Important information about your payoff

The payoff amount is subject to our final verification once we receive the payoff funds. Regardless of the "good through" date on Page 1, if the loan is in default-related proceedings, including, but not limited to, foreclosure sale, such proceedings will continue, and all fees and costs incurred after this payoff quote is issued will continue to be assessed until the loan is paid in full. If the payoff funds received are insufficient to pay off the account in full for any reason, including, but not limited to, error in calculation, NSF, or additional escrow disbursements and/or adjustments, Carrington reserves the right to decline to pay the account in full. In addition, any and all accrued interest will be due at the time of payoff.

Notice to borrowers with adjustable rate mortgages: The interest rate provided on the payoff statement represents the interest rate in effect on your account at the time the payoff statement was generated. Payoff funds received may not be applied at this interest rate if the interest rate subsequently changed.

FHA-Insured Loan Payoff Procedure Disclosure:

Mortgages Insured on or after August 2, 1985, and Closed Before January 21, 2015:

You may prepay your mortgage at any time without penalty. However, in order to avoid the accrual of interest on your loan after the date of prepayment, the prepayment must be received on the installment due date (generally the first day of the month). Otherwise, you may be required to pay interest on the amount pre-paid through the end of the month.

NOTE: Because your loan provides for the collection of interest through the end of the calendar month in which your prepayment is received, it is to your advantage to ensure that the prepayment reaches us as close to the end of the month as possible, but no later than the first work day of the following month.

Mortgages Closed on or After January 21, 2015

You may prepay your mortgage at any time without penalty. You will only be required to pay interest through the date the prepayment is made.

Short Payoff

If the payoff funds are insufficient to pay the total amount owed to pay off this loan, funds in the escrow balance may be used to cover the short payoff. Written authorization from you is required to apply positive escrow balance to the payoff amount. If the escrow balance is insufficient to pay off the total owed, we will return the payoff funds and you will need to order a new quote.



CHANGING THE FACE OF HOME LOANS

PO Box 818060
5801 Postal Road
Cleveland, OH 44181

QUOTE INFORMATION

Statement Date: 9/8/20
Payoff Good Through Date: 9/17/20
Loan Number:
Property Address:

1100110000
1000 Main Street
Tampa, FL

Steve Selleg
100 Main Street
Tampa, Florida

PAYOFF BREAKDOWN

Current Unpaid Principal Balance:	\$279,118.05
Interest - from 8/1/20 to 9/17/20	\$1,197.96
County Recording Fee	\$18.50
Third Party Reconveyance Preparation Fee	\$20.00
TOTAL PAYOFF AMOUNT	\$280,354.51
GOOD THROUGH 9/17/20	

INTEREST

Annual Interest Rate	3.375%
Interest Calculated From	8/1/20 - 9/17/20
Daily Interest Amount*	\$25.81

HOW IS THIS CALCULATED?

This is actually quite simple but also tricky. Essentially, your annual interest rate, remaining balance, and days are distilled down into a single number. Here's how we calculated your daily rate. Learn more on the next page.

HOW IS MY DAILY INTEREST CALCULATED?

{upb} x {interest rate} / {365} x {number of days up to payoff date} = daily interest due

*Funds received after the good through date 9/17/20 or funds that cannot be posted due to missing or incorrect information will require an additional \$25.81 of interest per day.

PAYMENT INSTRUCTIONS

Payoff funds must be remitted via certified funds (wire transfer or cashier's check only).

WIRE TRANSFER

Account #: 40590000617387766
ABA/Routing NUMBER: 121000248
Bank Name: Wells Fargo Bank, N.A.
Bank Address: 420 Montgomery Street
San Francisco, CA 94104

CASHIER'S CHECKS

Cashier's Checks must be made payable to Mr. Cooper and mailed to:
Mr. Cooper
Lake Vista 4
800 State Highway 121 Bypass
Lewisville, TX 75067

*Customer Name, Loan Number, and Property Address should be provided on all cashier's checks and correspondence

CUSTOMER SERVICE

888-480-2432
www.mrcooper.com

Monday - Thursday 7 a.m. to 8 p.m. (CT)

Friday 7 a.m. to 7 p.m. (CT)

Saturday 8 a.m. to 12 p.m. (CT)

FREQUENTLY ASKED QUESTIONS

How is my daily interest calculated?

Here's how we get there: Multiply your unpaid principal balance with your interest rate. This is the interest for your unpaid principal. Divide this by 365 days to get your daily interest rate.

Should I continue to make my scheduled payments?

Yes, continue to make your scheduled payments. If your payoff payment is received after your payoff date and a payment has not been made, then a late charge may be assessed and added to the payoff amount due. So, please don't stop payment prior to your payoff closing date. Note that if any payment previously made to this account is returned for any reason, the payoff amount will be insufficient.

Which form of payment can I use for my payoff?

We only accept cashier's check or wire transfers for payoff payments. Forms of payment that we cannot accept include: personal checks, third party checks, attorney/trustee checks, money orders, ACH/ARC entries, direct deposit, internal bank-to-bank transfers, or others. Please note that additional fees, costs disbursements, and interest may continue to accrue on the loan until acceptable payoff funds are received to satisfy the mortgage payoff. Additionally, delays can occur when incorrect forms of payment are received.

When will my payoff post?

Funds must be received by 5 p.m. (CT) for same day processing. Funds received after 5 p.m. (CT) will be posted the following business day.

What if I have set up AutoPay or direct pay?

Please ensure that you discontinue automatic payment services prior to the date of payoff and at least 3 business days prior to your draft date in an effort to avoid any unnecessary withdrawals against your bank account. Note: If AutoPay is not cancelled and is still scheduled for AFTER the date of payoff, it will be automatically cancelled.

What happens if I send in the wrong payoff amount?

If your payment is short and you have an escrow account that will cover the difference, then we will apply those funds toward the payoff. If you don't have an escrow account or the balance is not enough, then we will attempt to contact the sending source to satisfy the payoff. Please note, if this falls after the payoff date deadline or we cannot contact the sending source, then a refund of the total payment amount will be issued back to the original source. For this reason, we encourage you to pay the amount that is stated on your payoff quote.

In the event of any overages, you will automatically receive a check for those differences once the account has been balanced out.

What if I move, do you need my updated address?

Yes, we will need your new address in order to send you refunds, year-end statements, and other documents pertaining to your loan and payoff.

What if I'm in foreclosure?

This payoff quote is good through the date listed on the front page. However, if you are in default and a foreclosure sale is scheduled prior to the expiration of the good through date, you **MUST** contact us prior to the foreclosure sale for an updated and accurate payoff amount. Payoff funds should be overnighted and received by us at least 24 hours prior to the sale date to ensure that the foreclosure is cancelled.

Because any pending foreclosure action will not be delayed or dismissed, additional fees and costs may be incurred prior to the expiration of this quote. Therefore, for informational purposes only, we are providing an estimated amount of fees and costs that may become due and owing between the date of this quote and its good through date. Should any estimated fee and/or cost become due during this period, the total amount necessary to pay off your loan, as quoted above, will increase. As of the date of this quote, no estimated fees and costs have been included in the amount required to pay off your loan. This estimate is being provided solely as a courtesy and no portion thereof will be collected, unless actually billed and/or incurred. If any estimated fee and/or cost is actually incurred and/or billed before the expiration of this quote, a new payoff quote will be sent to you.

How will I know that the payoff is complete and final?

Upon processing of payment in full, and within State specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. When applicable, and as mandated by state guidelines, any overpayment or remaining escrow funds will be disbursed off the loan no more than 20 business days after the payoff has occurred and will subsequently be mailed thereafter.

All payoff figures are subject to final verification of the mortgage lender. We may adjust any portion of this payoff statement, at any time, for the following reasons, including but not limited to: escrow disbursements made on behalf of the loan holder(s), fee advances, items returned by your financial institution including previously made payments, additional fees or charges, and any good faith and/or inadvertent clerical errors.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2-8-2022

Meeting Date

2B 1016

Bill Number or Topic

Banking & Insurance

Committee

Amendment Barcode (if applicable)

Name

KARI HEBRANK

Phone

850-566-7824

Address

215 S. Monroe St. #500

Email

khebrank@carltonfields.com

Street

TALLAHASSEE FL

32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Southern Title

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

2-8-2022

Meeting Date

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1016

Bill Number or Topic

Amendment Barcode (if applicable)

Name ^{Committee} Shelley Stewart

Phone 386-316-1222

Address 6074 Hawk Owl

Email SStewart@sttle.com

^{Street} Port Orange FL
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1016

2-8-22

Meeting Date

Bill Number or Topic

Banking Insurance

Deliver both copies of this form to Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Ashley Kalifeh

Phone

800-222-9073

Address

124 W Jefferson H.

Email

ashley@cedfla.com

Street

Tallahassee FL

32303

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Old Republic Title

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

2/8/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1016

Bill Number or Topic

184796

Amendment Barcode (if applicable)

Banking + Insurance
Committee

Name Warren Husband

Phone (850) 205-9000

Address PO Box 10909

Email _____

Street

Tallahassee FL

32302

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Attorneys' Title Fund Services, LLC

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: December 15, 2021

I respectfully request that **Senate Bill #1016**, relating to Mortgage Payoff Letters, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 20

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1258

INTRODUCER: Senator Jones

SUBJECT: Managed Care Plan Performance

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1258 statutorily requires managed care plans contracting with the Agency for Health Care Administration (AHCA) under the Statewide Medicaid Managed Care (SMMC) program to collect and annually report an expanded set of performance measures, including Healthcare Effectiveness Data and Information Set (HEDIS) measures, the federal Core Set of Children’s Health Care Quality measures, and the federal Core Set of Adult Health Care Quality performance measures, as specified by the AHCA. For calendar year 2020, the plans were required to report 27 HEDIS measures related to medical care and nine measures related to Child and Adult Core Set measures.

Beginning in calendar year 2025, the bill requires each managed care plan to collect and report all of the Adult Core Set behavioral health measures, which are not currently required to be reported. Beginning in calendar year 2026, the bill requires each managed care plan to stratify all performance measure data by recipient age, race, ethnicity, primary language, sex, and disability status.

The bill will have a moderate operational and fiscal impact on the Florida Medicaid Program. Implementation of the bill will require one additional FTE at the AHCA. The total cost to the AHCA for the additional FTE is \$79,930, which includes non-recurring expenditures, salary, and benefits for the position. The cost of the additional FTE is funded by the Medical Care Trust Fund. The state’s portion of the total cost is \$39,965.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Florida Medicaid Program

The AHCA is responsible for the administration of the Florida Medicaid program, authorized under Title XIX of the Social Security Act.¹ This authority includes establishing and maintaining a Medicaid state plan approved by the Centers for Medicare & Medicaid Services (CMS) and maintaining any Medicaid waivers needed to operate the Florida Medicaid program as directed by the Legislature.²

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, the state Medicaid program pays health care providers for each service provided to a Medicaid enrollee. In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the SMMC program. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

Managed Care Plan Performance Measure Reporting

The AHCA monitors contracted managed care plan performance through a combination of performance measures developed by the National Committee for Quality Assurance (NCQA), the federal CMS, and the AHCA itself.³

The NCQA develops the HEDIS as a standardized tool to measure the performance of health plans. More than 90 percent of health plans in America use the HEDIS tool to measure performance on important dimensions of care and service, making it convenient to compare plan performance.⁴ Current law requires managed care plans participating in the SMMC program to collect and report HEDIS measures specified by the AHCA on an annual basis and to post the information its website in a manner that allows recipients to compare the performance of available plans.⁵

For calendar year 2020, the managed care plans were required to report 27 HEDIS measures related to medical care and nine Child and Adult Core Set measures, a total of 36 measures.⁶ Many of these measures include sub-measures. The total number of performance measure rates, or lines of data that must currently be reported for the measures and sub-measures is 192.⁷

¹ Section 409.902, F.S.

² Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited Feb. 4, 2022).

³ Agency for Health Care Administration, Performance Measure Data Submissions for Medicaid, https://ahca.myflorida.com/medicaid/quality_mc/submission.shtml (last visited Feb. 4, 2022).

⁴ U.S. Department of Health and Human Services, Healthcare Effectiveness Data and Information Set, <https://www.healthypeople.gov/2020/data-source/healthcare-effectiveness-data-and-information-set> (last visited Feb. 4, 2022).

⁵ Section 409.967(2)(f)2., F.S.

⁶ Agency for Health Care Administration, Agency Analysis of HB 855, Dec. 16, 2021 (on file with Committee on Banking and Insurance).

⁷ *Id.*

Each managed care plan operates in at least one region of the state and several managed care plans operate in all 11 regions. For calendar year 2020 performance measure reporting (which occurred in 2021), the AHCA required managed care plans to provide regional breakouts in addition to the statewide rates for most of the HEDIS and Child and Adult Core Set measures that it currently requires plans to report.⁸ The AHCA required the regional stratifications to identify potential differences in plan performance by region and to better target areas where improvement may be needed.⁹

- For plans operating in only one region, the base number of 192 performance measure rates, or lines of data, were required to be reported since the plan's statewide and regional results are the same.
- For a plan operating in two regions of the state, the base number of 192 performance measure rates is multiplied by three, as the plan will be reporting a statewide rate and separate rates for each of the two regions. In this case, 576 performance measure rates were required to be reported.

For a plan operating in all 11 regions of the state, the base number of 192 performance measure rates is multiplied by 12, as the plan will be reporting a statewide rate and separate rates for each of the 11 regions. In this case, 2,304 performance measure rates were required to be reported.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 409.967(2)(f), F.S., to require managed care plans to collect and annually report HEDIS measures, the federal Core Set of Children's Health Care Quality measures, and the federal Core Set of Adult Health Care Quality performance measures, as specified by the AHCA. Section 409.967(2)(f), F.S., currently requires managed care plans to collect and annually report HEDIS measures. The AHCA currently requires plans participating in the MMA program to report a selection of 27 HEDIS measures related to medical care and nine measures related to Child and Adult Core Set measures in its contracts with those plans.¹¹

The bill requires each plan to collect and report the Adult Core Set behavioral health measures, which are not currently required by statute to be reported, beginning with data reports for the 2025 calendar year. Each plan must stratify reported measures by age, sex, race, ethnicity, primary language, and whether the enrollee received a Social Security Administration determination of disability for purposes of Supplemental Security Income, beginning with data reports for the 2026 calendar year. The bill requires each managed care plan to post all these measures, and the corresponding stratified data, to the plan's website.

Although the managed care plans have recently added regional and race and ethnicity stratifications to several of the measures they reported on this year, this bill will require them to add race and ethnicity stratifications to all measures, and add stratifications in four additional areas (age, sex, primary language, and disability status) to all AHCA-required measures.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The bill updates a reference to the “HEDIS” data set, which was formerly referred to as “Health Plan Employer Data and Information Set” but is now referred to by the NCQA as the “Healthcare Effectiveness Data and Information Set.”

The bill also corrects a grammatical error in current law by changing “s.” to its plural form “ss.”

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide additional measures that can be used to evaluate and compare the performance of plans.

Effective for data reports for beginning in calendar years 2025 and 2026, the bill increases the stratifications and the volume of performance measure rates to be calculated, audited, and reported. The AHCA reports that this will result in increased operational and administrative costs for the managed care plans due to increased workload for the plans and increased costs for the plans’ contracted NCQA-certified auditors and NCQA-certified HEDIS software vendors.¹³

¹³ *Id.*

C. Government Sector Impact¹⁴:

The changes required by this bill would not need to be implemented until calendar year 2025. As such, the current Statewide Medicaid Managed Care (SMMC) contracts would not be affected and would not require an amendment. However, these requirements and would need to be included in the next procurement and in the rates for the next contracts. The exact fiscal impact to the plans and thus, to the rates, is unknown at this time.

SB 1258 poses a moderate operational and fiscal impact on the Florida Medicaid Program. The AHCA reports that the requirements of the bill will increase staff workload and will require one additional FTE. The total cost to the AHCA for the additional FTE is \$79,930. This amount includes non-recurring expenditures, salary, and benefits for the position. The Medical Care Trust Fund funds the cost of the additional FTE. The state's portion of the total cost is \$39,965.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.967 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ *Id.*

By Senator Jones

35-01313A-22

20221258__

1 A bill to be entitled
 2 An act relating to managed care plan performance;
 3 amending s. 409.967, F.S.; requiring managed care
 4 plans to collect and report specified measures
 5 beginning with a certain data reporting period;
 6 requiring plans to stratify reported measures by
 7 specified categories beginning with a certain data
 8 reporting period; requiring a plan's performance to be
 9 published on its website in a specified manner;
 10 requiring the Agency for Health Care Administration to
 11 use the measures to monitor plan performance;
 12 providing an effective date.

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

15
 16 Section 1. Paragraph (f) of subsection (2) of section
 17 409.967, Florida Statutes, is amended to read:

18 409.967 Managed care plan accountability.—

19 (2) The agency shall establish such contract requirements
 20 as are necessary for the operation of the statewide managed care
 21 program. In addition to any other provisions the agency may deem
 22 necessary, the contract must require:

23 (f) *Continuous improvement.*—The agency shall establish
 24 specific performance standards and expected milestones or
 25 timelines for improving performance over the term of the
 26 contract.

27 1. Each managed care plan shall establish an internal
 28 health care quality improvement system, including enrollee
 29 satisfaction and disenrollment surveys. The quality improvement

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

35-01313A-22

20221258__

30 system must include incentives and disincentives for network
 31 providers.

32 2. Each managed care plan must collect and report the
 33 Healthcare Effectiveness Health Plan Employer Data and
 34 Information Set (HEDIS) measures, the federal Core Set of
 35 Children's Health Care Quality Measures, and the federal Core
 36 Set of Adult Health Care Quality Measures, as specified by the
 37 agency. Each plan must collect and report the Adult Core Set
 38 behavioral health measures beginning with data reports for the
 39 2025 calendar year. Each plan must stratify reported measures by
 40 age, sex, race, ethnicity, primary language, and whether the
 41 enrollee received a Social Security Administration determination
 42 of disability for purposes of Supplemental Security Income
 43 beginning with data reports for the 2026 calendar year. A plan's
 44 performance on these measures must be published on the plan's
 45 website in a manner that allows recipients to reliably compare
 46 the performance of plans. The agency shall use the ~~HEDIS~~
 47 measures as a tool to monitor plan performance.

48 3. Each managed care plan must be accredited by the
 49 National Committee for Quality Assurance, the Joint Commission,
 50 or another nationally recognized accrediting body, or have
 51 initiated the accreditation process, within 1 year after the
 52 contract is executed. For any plan not accredited within 18
 53 months after executing the contract, the agency shall suspend
 54 automatic assignment under ss. 409.977 and 409.984 ~~or 409.977~~
 55 ~~and 409.984~~.

56 4. By the end of the fourth year of the first contract
 57 term, the agency shall issue a request for information to
 58 determine whether cost savings could be achieved by contracting

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

35-01313A-22

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59 for plan oversight and monitoring, including analysis of
60 encounter data, assessment of performance measures, and
61 compliance with other contractual requirements.

62 Section 2. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

02/08/2022

Meeting Date

1258

Bill Number or Topic

Banking & Insurance

Committee

Amendment Barcode (if applicable)

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State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

AARP

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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1368

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Trusts

DATE: February 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1368 amends trust law to:

- Extend the alternative perpetuities limit on the life of a trust from 360 years to 1,000 years for trusts created on or after the effective date of the bill.
- Allow family trust companies, licensed family trust companies, and foreign licensed family trust companies, to elect a simplified form of periodic accounting, provided that the accounting contains sufficient notice of trust assets, debts, and transactions during the accounting period.
- Allow, for family trust companies, licensed family trust companies, or foreign licensed family trust companies that are trustees of irrevocable trusts, the terms of such trusts to permit the accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary.
- Simplify, for family trust companies, licensed family trust companies, and foreign licensed family trust companies, service of trust notices furnished by e-mail, including waiver of the current law requirement that the recipient annually agree to electronic notice.
- Expand the scope of representation by a parent to include unborn descendants of an unborn child.
- Extend the allowable life of a noncharitable trust to 1,000 years.
- Extend the authority of a trust to reimburse the grantor for certain tax liabilities to apply to a trust formed under the laws of a foreign jurisdiction if the trust has a principal place of administration in the state.

The bill takes effect July 1, 2022.

II. Present Situation:

Trusts - In General

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person. A trust arises as a result of a manifestation of an intention to create it. Except as otherwise provided, the Florida Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust. The Code does not apply to: constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another. The Code does not apply to any land trust under statute except to the extent as otherwise provided by statute.¹

The Trust Code provides a comprehensive administrative framework for operation of a trust. However, the express terms of a trust agreement prevail over a conflicting provision in statute, except for provisions that are deemed mandatory.² The following statutory terms of a trust are mandatory:³

- The requirements for creating a trust.
- The duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
- The requirement that a trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- The periods of limitation for commencing a judicial proceeding.
- The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.
- The requirements for designation of a principal place of administration of the trust and the requirements for the designation of a jurisdiction the law of which determines the meaning and effect of the terms of a trust.
- The jurisdiction and venue provisions.
- The restrictions on the designation of representative.
- The formalities required for the execution of a trust.
- The power of the court to modify or terminate a trust.
- The ability to modify a trust under the requirements for nonjudicial modification of an irrevocable trust, except as provided in the Code for certain trusts created after December 31, 2000.

¹ 55A FLA. JUR. 2D TRUSTS § 1; and s. 736.102, F.S.

² Section 736.0105, F.S.

³ *Id.*

- The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust.
- The trustee's duty to pay expenses and obligations of the settlor's estate.
- The trustee's duty to file a notice of trust at the settlor's death.
- The right of a trustee to decline a trusteeship and the right of a trustee to resign a trusteeship.
- The power of the court to require, dispense with, modify, or terminate a bond.
- The power of the court to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
- The duty of the trustee to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their rights to trust accountings.
- The duty of the trustee to provide a complete copy of the trust instrument and to account to qualified beneficiaries.
- The duty of the trustee to respond to the request of a qualified beneficiary of an irrevocable trust for relevant information about the assets and liabilities of the trust and the particulars relating to trust administration.
- The effect of an exculpatory term.
- The rights of a person other than a trustee or beneficiary.
- The effect of a penalty clause for contesting a trust.

Furthermore, the common law of trusts and principles of equity supplement the Code except to the extent modified by the Code or another law of Florida.⁴

Allowable Lifetime of a Trust

The maximum allowable life of a trust depends on the type of trust. There is no statutory minimum life of a trust and no limit on creation of a trust term of less than the maximum.

Private Trusts and the Rule Against Perpetuities

The legal life of a private trust was until recently governed solely by the common law Rule Against Perpetuities. The rule originated from an English court decision in 1682. The rule provides that a nonvested (also known as contingent) interest⁵ in property or a power of appointment in a trust is invalid unless it can be said, with absolute certainty, that it will either vest or terminate no later than 21 years after the death of an individual alive at the creation of the trust interest. The primary objective of the rule is to prevent perpetual control and unreasonable restraints upon the alienation of property by invalidating, after a specific time, any future nonvested interest created either by a will, deed, or power of appointment.⁶ The meaning of the Rule can be very difficult to decipher.⁷ At common law, the rule also carried with it some

⁴ FLA. JUR, *supra* note 1.

⁵ Contingent remainders, executory interests, vested remainders subject to open (class gifts), options to purchase (not attached to a leasehold), and rights of first refusal are subject to the Rule Against Perpetuities. Vested interests, reversion, possibilities of reverter, charity to charity dispositions, and rights of entry are not subject to the rule.

⁶ A power of appointment is a power delegated to another to exercise prescribed powers on behalf of the person who delegated the powers.

⁷ *Rule Against Perpetuities*, Legal Information Institute: Cornell Law School, https://www.law.cornell.edu/wex/rule_against_perpetuities#:~:text=A%20common%20law%20property%20rule,the%20creation%20of%20the%20interest (last visited Feb. 5, 2022).

arguably absurd legal fictions such as the fertile-octogenarians⁸ and precocious toddlers,⁹ which, essentially said that a person is considered capable of having a child no matter their age or physical condition. Given these issues, many states have modified or abolished the Rule Against Perpetuities.¹⁰

In 1988, the Florida Legislature enacted the Florida Uniform Statutory Rule Against Perpetuities¹¹ which essentially codified the common law Rule Against Perpetuities.¹² However, the uniform act also includes a “wait and see” provision that alternatively allows the valid duration of a trust to be 90 years¹³ from the date of the trust’s creation. Under the 1988 law, a property interest or the power of appointment must vest or terminate within a “life in being plus 21 years” or within the 90-year period in order to be valid. The simplicity of the 90-year rule avoids the often difficult interpretations of the common law rule.

There has been a trend among states¹⁴ to eliminate or limit the rule against perpetuities in order to facilitate the establishment of long-term, multi-generational trusts (sometimes referred to as “dynasty trusts”) and to assist individuals in limiting federal estate and generation-skipping transfer taxes.¹⁵ However, Congress has reacted accordingly. Although it is possible to shield a trust from federal estate and generation-skipping transfer taxes, as long as the interests of the trust are valid for an ascertainable period, there are limits on how much can be placed into these trusts, and taxes may be owed upon transfer at some point or upon termination. Overall, the federal tax laws have been interpreted to mean that if a trust has no limit on its existence and the beneficiary exercises power in such a way to extend the trust forever, the exercise by a beneficiary of a power of appointment could potentially and immediately trigger the gift or estate tax.¹⁶ In 2000, Florida avoided this potential tax issue and addressed the desire to allow longer

⁸ *Fertile-octogenarian Rule*, Legal Information Institute: Cornell Law School, https://www.law.cornell.edu/wex/fertile-octogenarian_rule#:~:text=The%20fertile%20octogenarian%20rule%20means,their%20age%20or%20physical%20condition (last visited Feb. 5, 2022).

⁹ Robert Lynn, *A Practical Guide to the Rule Against Perpetuities*, 2 DUKE LAW JOURNAL 207 (1964), available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1908&context=dlj>.

¹⁰ *Fertile-octogenarian Rule*, *supra* note 8.

¹¹ Thirty-one states (including Florida) have adopted the National Conference of Commissioners on Uniform State Law’s Uniform Statutory Rule Against Perpetuities. <https://www.uniformlaws.org/committees/community-home?CommunityKey=adfd3263-af92-4421-a83c-2ef7bc9a1b94> (last visited Feb. 5, 2022).

¹² Chapter 88-40, Laws of Fla; s. 689.225, F.S.

¹³ The 90-year period was intended to approximate an average time period that would apply in a 21-years plus a life in being situation. See USRAP comments, 8B ULA 342.

¹⁴ E.g., Delaware, Illinois, Kentucky, Ohio, Pennsylvania, Rhode Island, and Virginia. See Patrick Hicks, *A Guide to Dynasty Trusts*, Trust and Will, <https://trustandwill.com/learn/dynasty-trust> (last visited Feb. 5, 2022).

¹⁵ The federal generation-skipping transfer tax was designed to diminish the ability to avoid successive transfer taxes. See s. 2601 et seq. Internal Revenue Code.

¹⁶ For example, Delaware enacted law that allowed trust beneficiaries to avoid federal estate taxes through a manipulation of the rule against perpetuities and essentially create a trust in perpetual existence. As long as the beneficiaries of each generation took the necessary action to extend the period in the rule against perpetuities and the assets remained inside the trust, the trust would not violate the Rule Against Perpetuities. In response, Congress enacted sections 2041(a)(3) and 2514(d) of the Internal Revenue Code, also known as the “Delaware tax trap,” to address the Delaware law. The “Delaware tax trap” states that if a beneficiary exercises a power that allows vesting of the trust property to be postponed “for a period ascertainable without regard to the date of the creation of the [beneficiary’s] power,” the exercise of the beneficiary’s power triggers a gift tax or estate tax.

legacy trusts by extending the allowable length of a private trust from 90 years to 360 years for trusts created after December 31, 2000.¹⁷

Charitable and Noncharitable Trusts

A charitable trust is created for the benefit of one or more charitable purposes such as the relief of poverty; the advancement of arts, sciences, education, or religion; or the promotion of health, governmental, or municipal purposes.¹⁸ A charitable trust is not governed by the Rule Against Perpetuities and thus may have an unlimited life.¹⁹

A noncharitable trust is a trust with a purpose that is not charitable and no individual beneficiaries. Noncharitable trusts are limited to 21 years existence.²⁰

Mandatory Duty to Account to Qualified Beneficiaries

A trustee of an irrevocable trust must provide an accounting to the qualified beneficiaries at least annually and upon termination of the trust or upon a change in trustee.²¹ This duty may not be modified by the trust agreement.²² An accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, and it must adequately disclose:

- All cash and property transactions.
- All significant transactions affecting administration during the accounting period.
- Compensation paid to the trustee and the trustee's agents.
- Gains and losses realized during the accounting period.
- All receipts and disbursements.
- Trust assets on hand at the close of the accounting period, showing the asset acquisition value or carrying value and the estimated current value.
- Known noncontingent liabilities.
- Significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- The allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.²³

A qualified beneficiary may waive the accounting requirement.²⁴

¹⁷ Chapter 2000-245, Laws of Fla.; s. 689.225(2)(f), F.S.

¹⁸ Section 736.0405(1), F.S.

¹⁹ Section 689.225(5)(e), F.S.

²⁰ Section 736.0409(1), F.S.

²¹ Section 736.0813(1)(d), F.S.

²² Section 736.0105(2)(s), F.S.

²³ Section 736.08135, F.S.

²⁴ Section 736.0813(2), F.S.

Notices from a Trust by Electronic Means

Numerous provisions in the Trust Code require that a notice or document be given to a person related to a trust. In general, notice “must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.”²⁵ While still allowing traditional notice by mail or personal delivery, the Trust Code has been modernized to allow notice and delivery by “electronic means” without preference for any specific technology. Where delivery is solely by posting on an electronic account or website, the following requirements must be met:

- The recipient must have signed a written authorization for electronic notice.
- A notice must be provided upon every posting to the online account.
- The recipient must be given an annual notice of his or her legal rights regarding electronic posting, including a notice regarding applicable statutes of limitation.
- The electronic posting must be available for at least 4 years.²⁶

Grantor Trust Reimbursement

If a trust is treated as being owned by a person under the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee’s sole discretion, reimburse the person being treated as the owner for any amount of the person’s personal federal, state, or other income tax liability which is attributable to the inclusion of the trust’s income, capital gains, deductions, or credits in the calculation of the person’s taxable income.²⁷ With limited exceptions, this law applies to all trusts.

Family Trust Companies, Licensed Family Trust Companies, and Foreign Licensed Family Trust Companies

Chapter 662, F.S., also known as the Florida Family Trust Company Act, establishes requirements for licensing family trust companies, regulates persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and establishes the degree of Office of Financial Regulation (OFR) oversight required over such companies. A primary concern of the chapter is to ensure that fiduciary activities performed by a family trust company are restricted to family members and their related interests.²⁸

Section 662.111, F.S. provides the definitions for ch. 662, F.S., and defines a:

- “Family trust company” as a corporation or limited liability company that:
 - Is exclusively owned by one or more family members;
 - Is organized or qualified to do business in Florida;
 - Acts or proposes to act as a fiduciary to serve one or more family members; and
 - Does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of

²⁵ Section 736.0109(1), F.S.

²⁶ Section 736.0109(3), F.S.

²⁷ Section 736.08145(1), F.S.

²⁸ Section 662.102, F.S.

the family trust company or one or more trusts, companies, or other entities that are family members.

- “Licensed family trust company” as a family trust company that operates in accordance with ch. 662, F.S., and has a valid license from the OFR.
- “Foreign licensed family trust company” as a family trust company that:
 - Is licensed by a state in the United States other than Florida, or the District of Columbia.
 - Has its principal place of business in a state in the United States other than Florida, or the District of Columbia.
 - Is operated in accordance with family or private trust company laws of the state in which it is licensed, or of the District of Columbia.
 - Is subject to statutory or regulatory mandated supervision by the state in which the principal place of business is located, or by the District of Columbia.
 - Is not owned by, or a subsidiary of, a corporation, limited liability company, or other business entity that is organized in, or licensed by, any foreign country.

III. Effect of Proposed Changes:

Rule Against Perpetuities (Section 1)

Applicable to a trust created on or after July 1, 2022, the 360 year limit on private trusts is extended to 1,000 years. The 360 year limit applies to trusts created after December 31, 2000, and through June 30, 2022.

Mandatory Duty to Account to Qualified Beneficiaries (Sections 2, 6, and 7)

The bill creates an exception to the mandatory comprehensive annual accounting requirement by allowing family trust companies, licensed family trust companies, or foreign licensed family trust companies that are trustees of irrevocable trusts to, if the terms of such trust permit, to provide an accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary.

In addition, the bill also allows family trust companies, licensed family trust companies, or foreign licensed family trust companies to elect to furnish to the trust’s qualified beneficiaries a summary statement in lieu of the current comprehensive annual accounting. The statement must provide:

- Notice that the trustee has made such an election;
- The name of the trust, the trustee furnishing the accounting, and the time period covered by the accounting;
- If a final accounting, a plan for distribution of the remaining assets; and
- A summary of the other information currently required to be set out in detail, provided that the summary contains sufficient information to put the beneficiary on notice of the trust assets, liabilities, and transactions during the accounting period.

Where a trustee makes this election, the trustee must, upon request of any beneficiary, make available the detailed information that was used in preparation of the summary accounting.

This change applies to any accounting period beginning on or after January 1, 2022. The ability of a trustee to elect simplified accounting created by this bill is not a mandatory requirement of the Trust Code. Accordingly, a grantor can, when creating the terms of the trust, limit or prohibit the trustee from taking this option and thereby compel comprehensive annual accounting.

Notices from a Trust by Electronic Means (Section 3)

The bill clarifies that e-mail may be used as an optional form of notice from a trust to an interested person.

The bill also, for family trust companies, licensed family trust companies, or foreign licensed family trust companies, specifies that the notice can be in an attachment to the e-mail or a hyperlink in the e-mail. Any necessary user name, password, or specific instructions must be furnished to or made available to the person receiving notice by e-mail. Such service would not, under the provisions of the bill, be subject to the electronic service requirements currently provided under 736.109(3), F.S., which include, obtaining written authorization from recipients, providing an annual notice of legal rights and applicable statutes of limitation, and the maintenance of access to the document for 4 years.

Representation of Future Beneficiaries (Section 4)

The bill expands the authority of a parent to represent and bind the parent's minor child and any unborn child to also give parents the authority to represent and bind an unborn child or unborn descendant, but only if a guardian has not been appointed for the child or descendant.

Life of a Noncharitable Trust (Section 5)

The bill provides that a noncharitable trust may exist up to 1,000 years.

Grantor Trust Reimbursement (Section 8)

The bill expands application of the grantor trust reimbursement for income tax liability to add that a trustee of a foreign trust that has a principal place of administration within the state may agree to grantor trust reimbursement.

Effective Date (Section 9)

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

SB 1368 appears to simplify trust administration relating to family trust companies, licensed family trust companies, or foreign licensed family trust companies and thus could lower the costs that these entities incur while operating in Florida. In addition, the extending of the allowable life of trusts in Florida may encourage more trusts to be established in the state.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 689.225, 736.0105, 736.0109, 736.0303, 736.0409, 736.0813, 736.08135, and 736.08145.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 8, 2022:

The committee substitute amended the bill to:

- Revise exceptions created in the bill regarding to the mandatory comprehensive annual accounting requirements and makes such exceptions only apply to family trust companies, licensed family trust companies, or foreign licensed family trust companies;
- Revise requirements for the electronic sending of notices; and
- Make technical changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
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	.	

The Committee on Banking and Insurance (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 153
and insert:
qualified beneficiaries except as otherwise provided in s.
736.0813(1)(d).

Section 3. Present subsections (4), (5), and (6) of section 736.0109, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and subsection (1) and present subsection (4) of



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11 that section are amended, to read:

12 736.0109 Methods and waiver of notice.—

13 (1) Notice to a person under this code or the sending of a
14 document to a person under this code must be accomplished in a
15 manner reasonably suitable under the circumstances and likely to
16 result in receipt of the notice or document. Permissible methods
17 of notice or for sending a document include first-class mail,
18 personal delivery, delivery to the person's last known place of
19 residence or place of business, a properly directed facsimile or
20 other electronic message, including e-mail, or posting on a
21 secure electronic account or website in accordance with
22 subsection (3).

23 (4) Notwithstanding subsection (3), a family trust company,
24 licensed family trust company, or foreign licensed family trust
25 company, as defined in s. 662.111, that is a trustee of a trust
26 may use any permissible method for providing notice or for
27 sending a document specified in subsection (1) or may send a
28 properly directed e-mail that contains an attached notice or
29 document or contains a hyperlink through which the recipient can
30 view the notice or document as a permissible method of providing
31 notice or sending a document. For purposes of this subsection,
32 such notice or document sent by e-mail is deemed to have been
33 sent if any username, password, or other specific instructions
34 needed to access the notice or document are communicated to the
35 recipient beforehand or contemporaneously with the sending of
36 the e-mail message containing the notice, document, or
37 hyperlink, or upon the request of the recipient.

38 (5)~~(4)~~ Notice to a person under this code, or the sending
39 of a document to a person under this code electronically ~~by~~



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40 ~~electronic message~~, is complete when ~~the document is~~ sent.

41 (a) An electronic message is presumed received on the date
42 that the message is sent.

43 (b) If the sender has knowledge that an electronic message
44 did not reach the recipient, the electronic message is deemed to
45 have not been received. The sender has the burden to prove that
46 another copy of the notice or document was sent by electronic
47 message or by other means authorized by this section.

48 Section 4. Subsection (5) of section 736.0303, Florida
49 Statutes, is amended to read:

50 736.0303 Representation by fiduciaries and parents.—To the
51 extent there is no conflict of interest between the
52 representative and the person represented or among those being
53 represented with respect to a particular question or dispute:

54 (5) A parent may represent and bind the parent's unborn
55 child and the unborn descendants of such unborn child, or the
56 parent's minor child and the minor or unborn descendants of such
57 minor child, if a guardian of the property for the unborn child,
58 minor child, or such child's descendants has not been appointed.

59 Section 5. Subsection (1) of section 736.0409, Florida
60 Statutes, is amended to read:

61 736.0409 Noncharitable trust without ascertainable
62 beneficiary.—Except as otherwise provided in s. 736.0408 or by
63 another provision of law, the following rules apply:

64 (1) A trust may be created for a noncharitable purpose
65 without a definite or definitely ascertainable beneficiary or
66 for a noncharitable but otherwise valid purpose to be selected
67 by the trustee. The trust may not be enforced for more than
68 1,000 ~~21~~ years.



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69 Section 6. Paragraph (d) of subsection (1) of section
70 736.0813, Florida Statutes, is amended to read:

71 736.0813 Duty to inform and account.—The trustee shall keep
72 the qualified beneficiaries of the trust reasonably informed of
73 the trust and its administration.

74 (1) The trustee's duty to inform and account includes, but
75 is not limited to, the following:

76 (d) A trustee of an irrevocable trust shall provide a trust
77 accounting, as set forth in s. 736.08135, from the date of the
78 last accounting or, if none, from the date on which the trustee
79 became accountable, to each qualified beneficiary at least
80 annually and on termination of the trust or on change of the
81 trustee. Notwithstanding s. 736.0105 or the duties under this
82 paragraph, if a family trust company, licensed family trust
83 company, or foreign licensed family trust company, as defined in
84 s. 662.111, is a trustee of an irrevocable trust, the terms of
85 the trust may permit for accounting to the qualified
86 beneficiaries only at the termination of the trust; upon the
87 removal, resignation, or other event resulting in a trustee
88 ceasing to serve as a trustee; or upon demand of a qualified
89 beneficiary or the representative of a qualified beneficiary.
90 This paragraph may not be construed to prohibit a trustee that
91 is a family trust company, licensed family trust company, or
92 foreign licensed family trust company from voluntarily
93 accounting to the qualified beneficiaries annually or at other
94 times selected by such trustee.

95
96 Paragraphs (a) and (b) do not apply to an irrevocable trust
97 created before the effective date of this code, or to a



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98 revocable trust that becomes irrevocable before the effective
99 date of this code. Paragraph (a) does not apply to a trustee who
100 accepts a trusteeship before the effective date of this code.

101 Section 7. Present subsection (3) of section 736.08135,
102 Florida Statutes, is redesignated as subsection (4) and amended,
103 and a new subsection (3) is added to that section, to read:

104 736.08135 Trust accountings.—

105 (3) Notwithstanding subsections (1) and (2), if a family
106 trust company, licensed family trust company, or foreign
107 licensed family trust company, as defined in s. 662.111, is a
108 trustee of the trust, such trustee may elect, for any accounting
109 period, to provide the qualified beneficiaries with all of the
110 following information:

111 (a) A notice stating that the trustee has made an election
112 to provide the information described in this subsection.

113 (b) The information required by paragraph (2) (a) and, if
114 applicable, the information required by paragraph (2) (f).

115 (c) A financial statement for the trust which summarizes
116 the information provided pursuant to paragraphs (2) (b)-(e). The
117 financial statement must contain sufficient information to put
118 the beneficiary on notice of the trust's comprehensive assets
119 and liabilities as well as of the transactions occurring during
120 the accounting period. A financial statement that reports a
121 summary of the comprehensive assets and liabilities at the
122 beginning and end of the accounting period and the aggregate
123 amounts of all cash and property transactions, gains, losses,
124 receipts, expenses, disbursements, distributions, accruals, or
125 allowances occurring within the accounting period for each
126 category of assets and liabilities meets the requirements of



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127 this paragraph.

128

129 For the purposes of this chapter, a financial statement that a
130 trustee provides to a beneficiary of a trust under this
131 subsection is deemed to be a trust accounting. Any trustee that
132 makes the election provided in this subsection shall, upon
133 request of any beneficiary made within the limitations period
134 under s. 736.1008, make available the detailed information
135 necessary for preparation of the financial statement to the
136 beneficiary within 30 days after the date of such request,
137 including providing copies of the requested information. A
138 request by a beneficiary for the detailed information necessary
139 for the preparation of the financial statement tolls the running
140 of any applicable limitations period until the detailed
141 information is made available to the beneficiary.

142 (4)~~(3)~~ Subsections (1) and (2) govern the form and content
143 of all trust accountings rendered for any accounting periods
144 beginning on or after January 1, 2003, and all trust accountings
145 rendered on or after July 1, 2018. The election provided in
146 subsection (3) for trusts for which a family trust company,
147 licensed family trust company, or foreign licensed family trust
148 company, as defined in s. 662.111, is a trustee is available for
149 any accounting periods beginning on or after July 1, 2022. This
150 subsection

151

152 ===== T I T L E A M E N D M E N T =====

153 And the title is amended as follows:

154 Delete lines 7 - 19

155 and insert:



503122

156 to account to qualified beneficiaries under certain
157 circumstances; amending s. 736.0109, F.S.; clarifying
158 circumstances under which notice, or the sending of a
159 document, to a person under the Florida Trust Code is
160 deemed satisfied; authorizing certain trust companies
161 that are trustees to use specified methods for
162 providing notice or sending a document; specifying
163 when such notice or document is deemed sent; amending
164 s. 736.0303, F.S.; specifying circumstances under
165 which a parent may represent and bind the unborn
166 descendants of his or her unborn child or the minor or
167 unborn descendants of his or her minor child; amending
168 s. 736.0409, F.S.; revising the timeframe for which
169 certain noncharitable trusts may be enforced; amending
170 s. 736.0813, F.S.; providing that the terms of a trust
171 may permit for accounting to the qualified
172 beneficiaries only under certain circumstances;
173 providing construction; amending s. 736.08135, F.S.;
174 providing an alternate procedure for trust accountings
175 for specified trustees under certain

By Senator Gruters

23-00531C-22

20221368__

A bill to be entitled

An act relating to trusts; amending s. 689.225, F.S.; revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; amending s. 736.0105, F.S.; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries upon termination of the trust; providing construction; amending s. 736.0109, F.S.; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; amending s. 736.0303, F.S.; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending s. 736.08135, F.S.; providing an alternate procedure for trust accountings for trustees under certain circumstances; specifying requirements and applicability; amending s. 736.08145, F.S.; clarifying the application of law governing grantor trust reimbursement; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 689.225, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

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689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

(f) As to any trust created after December 31, 2000, through June 30, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 360 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

(g) As to any trust created on or after July 1, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Section 2. Paragraph (s) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(s) The duty under s. 736.0813(1)(c) and (d) to provide a complete copy of the trust instrument and to account to qualified beneficiaries on termination of the trust. However, this paragraph may not be construed to:

1. Prevent a trustee from voluntarily accounting to qualified beneficiaries of the trust annually or at other times selected by the trustee; or

2. Relieve a trustee from the duty to account to the

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59 qualified beneficiaries annually or at less frequent intervals.

60 Section 3. Subsections (1) and (4) of section 736.0109,
61 Florida Statutes, are amended to read:

62 736.0109 Methods and waiver of notice.—

63 (1) Notice to a person under this code or the sending of a
64 document to a person under this code must be accomplished in a
65 manner reasonably suitable under the circumstances and likely to
66 result in receipt of the notice or document. Permissible methods
67 of notice or for sending a document include first-class mail,
68 personal delivery, delivery to the person's last known place of
69 residence or place of business, a properly directed facsimile or
70 other electronic message including, but not limited to, e-mail,
71 or posting on a secure electronic account or website in
72 accordance with subsection (3). A properly directed e-mail
73 message with an attached notice or document or an included
74 hyperlink through which the recipient can view a notice or
75 document is a permissible method of notice, regardless of
76 whether compliance with subsection (3) is achieved, provided
77 that to the extent access to such attachment or hyperlink
78 requires a username, password, or other specific instructions,
79 the username, password, or other specific instructions are
80 communicated to the recipient of the notice either
81 contemporaneously or upon request.

82 (4) Notice to a person under this code, or the sending of a
83 document to a person under this code by electronic message,
84 including e-mail with an attached notice or document or an
85 included hyperlink through which the recipient can access the
86 notice or document, is complete when the notice or document is
87 sent.

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88 (a) An electronic message is presumed received on the date
89 that the message is sent.

90 (b) If the sender has knowledge that an electronic message
91 did not reach the recipient, the electronic message is deemed to
92 have not been received. The sender has the burden to prove that
93 another copy of the notice or document was sent by electronic
94 message or by other means authorized by this section.

95 Section 4. Subsection (5) of section 736.0303, Florida
96 Statutes, is amended to read:

97 736.0303 Representation by fiduciaries and parents.—To the
98 extent there is no conflict of interest between the
99 representative and the person represented or among those being
100 represented with respect to a particular question or dispute:

101 (5) A parent may represent and bind the parent's unborn
102 child and the unborn descendants of that unborn child, or the
103 parent's minor child and the minor or unborn descendants of the
104 minor child, if a guardian of the property for the unborn child,
105 minor child, or their descendants has not been appointed.

106 Section 5. Subsection (1) of section 736.0409, Florida
107 Statutes, is amended to read:

108 736.0409 Noncharitable trust without ascertainable
109 beneficiary.—Except as otherwise provided in s. 736.0408 or by
110 another provision of law, the following rules apply:

111 (1) A trust may be created for a noncharitable purpose
112 without a definite or definitely ascertainable beneficiary or
113 for a noncharitable but otherwise valid purpose to be selected
114 by the trustee. The trust may not be enforced for more than
115 1,000 ~~21~~ years.

116 Section 6. Present subsection (3) of section 736.08135,

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117 Florida Statutes, is redesignated as subsection (4) and amended,
 118 and a new subsection (3) is added to that section, to read:
 119 736.08135 Trust accountings.—
 120 (3) Notwithstanding subsections (1) and (2), a trustee may
 121 elect, for any accounting period, to provide a statement to any
 122 beneficiary which indicates that the trustee has made such an
 123 election for that period and which includes the following:
 124 (a) The information required by paragraph (2)(a) and, if
 125 applicable, the information required by paragraph (2)(f); and
 126 (b) A financial statement for the trust prepared by a
 127 certified public accountant which summarizes the information
 128 specified in paragraphs (2)(b)-(e), provided that such financial
 129 statement contains sufficient information to put the beneficiary
 130 on notice of the trust's comprehensive assets and liabilities as
 131 well as of the transactions occurring during the accounting
 132 period. For example, the financial statement may report the
 133 aggregate amounts of all cash and property transactions, gains,
 134 losses, receipts, expenses, disbursements, accruals, or
 135 allowances occurring within the accounting period for each such
 136 category rather than report each individual transaction or
 137 accounting item as a separate entry.
 138
 139 For purposes of this chapter, a statement that a trustee
 140 provides to a beneficiary of the trust pursuant to this
 141 subsection is deemed to be a trust accounting that adequately
 142 discloses the information required in subsection (2). Any
 143 trustee that makes the election provided in this subsection
 144 shall, upon request of any beneficiary of the trust within the
 145 limitations period under s. 736.1008, make available the

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146 detailed information necessary for preparation of the statement
 147 to the beneficiary within 30 days after such request.
 148 ~~(4)-(3)~~ Subsections (1) and (2) govern the form and content
 149 of all trust accountings rendered for any accounting periods
 150 beginning on or after January 1, 2003, and all trust accountings
 151 rendered on or after July 1, 2018. The election provided in
 152 subsection (3) for trustees is available for any accounting
 153 periods beginning on or after January 1, 2021. This subsection
 154 does not affect the beginning period from which a trustee is
 155 required to render a trust accounting.
 156 Section 7. Subsection (2) of section 736.08145, Florida
 157 Statutes, is amended to read:
 158 736.08145 Grantor trust reimbursement.—
 159 (2) This section applies to all trusts that are governed by
 160 the laws of this state or that have a principal place of
 161 administration within this state, whether created on, before, or
 162 after July 1, 2020, unless:
 163 (a) The trustee provides written notification that the
 164 trustee intends to irrevocably elect out of the application of
 165 this section, at least 60 days before the effective date of such
 166 election, to the person treated as the owner of all or a portion
 167 of the trust under s. 671 of the Internal Revenue Code or any
 168 similar federal, state, or other tax law and to all persons who
 169 have the ability to remove and replace the trustee.
 170 (b) Applying this section would prevent a contribution to
 171 the trust from qualifying for, or would reduce, a federal tax
 172 benefit, including a federal tax exclusion or deduction, which
 173 was originally claimed or could have been claimed for the
 174 contribution, including:

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- 175 1. An exclusion under s. 2503(b) or s. 2503(c) of the
176 Internal Revenue Code;
- 177 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
178 of the Internal Revenue Code;
- 179 3. A charitable deduction under s. 170(a), s. 642(c), s.
180 2055(a), or s. 2522(a) of the Internal Revenue Code; or
- 181 4. Direct skip treatment under s. 2642(c) of the Internal
182 Revenue Code.
- 183 Section 8. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 3, 2022

I respectfully request that **Senate Bill #1368**, relating to Trusts, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: James Knudson, Staff Director
Lisa Johnson, Deputy Staff Director
Amaura Canty, Committee Administrative Assistant

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1706

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Servicers and Lenders of Residential Mortgage Loans

DATE: February 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	-Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1706 amends several provisions related to the regulation of Florida's residential mortgage industry, mortgage foreclosures, and the Florida Insurance. Specifically, the bill:

- Requires mortgage lenders and mortgage servicers regulated under ch. 494, F.S., to comply with federal law requirements providing periodic statements at each billing cycle;
- Establishes lender-placed insurance requirements for mortgage servicers regulated under ch. 494, F.S.;
- Requires subsequent mortgage servicers subject to ch. 494, F.S., to honor previously executed loan modification agreements and foreclosure prevention alternatives;
- Requires mortgage servicers and mortgage lenders subject to ch. 494, F.S., to meet certain criteria before initiating foreclosure proceedings;
- Establishes requirements when a borrower requests a foreclosure prevention alternative;
- Prohibits insurers and insurance agents from force-placing insurance with an affiliate or making payments to a mortgage lender or servicer;
- Amends ch. 702, F.S., to require certain acts before commencing a foreclosure action.

II. Present Situation:

Federal Regulation of the Residential Mortgage Industry

Most mortgage loans are a federally related mortgage loan¹ and thus subject to the provisions of the federal Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA)². Any mortgage lender making a mortgage loan subject to RESPA and TILA must comply with RESPA and TILA provisions related to mortgage lenders, accordingly. Similarly, any mortgage servicer servicing a mortgage loan subject to RESPA and TILA must comply with RESPA and TILA provisions related to mortgage servicing, with few exceptions.³

RESPA

Enacted by Congress in 1974 in response to abuses in the real estate settlement process, RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures about the nature and costs of the real estate settlement process. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) granted rule-making authority under RESPA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, generally granted authority to CFPB to supervise for and enforce compliance with RESPA and its implementing regulations.⁴

¹ “Federally related mortgage loan” means any loan (other than temporary financing, such as a construction loan): (i) that is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either (A) located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and; (ii) for which one of the following paragraphs applies. The loan: (A) is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government; (b) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way: (1) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or (2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government; (C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors); (D) Is made in whole or in part by a “creditor,” as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. For purposes of this definition, the term “creditor” does not include any agency or instrumentality of any State, and the term “residential real estate loan” means any loan secured by residential real property, including single-family and multifamily residential property; (E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or (F) Is the subject of a home equity conversion mortgage, also frequently called a “reverse mortgage,” issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition. *See* 12 CFR 1042.2(b)(9). Non-depository mortgage lenders originating at least 100 closed-end mortgage loans for the preceding two calendar years are subject to the federal Home Mortgage Disclosure Act (Regulation C) under the authority of the Consumer Finance Protection Bureau, and thus fall under RESPA’s definition of “federally related mortgage loan.” *See* 12 CFR 1003.2(g)(2).

² RESPA exempts business purpose loans, temporary financing, vacant land, assumption without lender approval, loan conversions, and secondary market transactions. *See* 12 CFR 1024.5(b)(3).

³ *See* Consumer Financial Protection Bureau, *Mortgage Servicing Rules: Coverage*, https://files.consumerfinance.gov/f/201407_cfpb_servicing-applicability-comparison-chart-reg-x-and-z.pdf (last visited February 5, 2022)

⁴ Federal Reserve, *Regulation X, Real Estate Settlement Procedures Act*, https://www.federalreserve.gov/supervisionreg/caletters/ca_15-6_attach_reg_x.pdf (last visited February 5, 2022)

RESPA regulations related to the mortgage loan process include:

- Acknowledgements of applications;
- Affiliated business arrangements;
- Applications for mortgage loans;
- Continuity of contact;⁵
- Escrow accounts;
- Force-placed insurance;⁶
- Mortgage loan servicing error resolution and borrower information requests;
- Mortgage loan servicing requirements;
- Mortgage origination and servicing disclosures;
- Loss mitigation and foreclosure prevention alternatives;⁷
- Prohibition on dual tracking;⁸
- Prohibitions on kickbacks and unearned fees;⁹
- Title insurance; and
- Transfer rights¹⁰

TILA

Enacted by Congress in 1968, TILA is intended to protect consumers and ensure competition among financial institutions through the meaningful disclosure of credit terms, allowing consumers to compare standardized credit terms more readily and knowledgeably. The Dodd-Frank Act granted rule-making authority under TILA to the CFPB and, with respect to entities under its jurisdiction, generally granted authority to CFPB to supervise for and enforce compliance with TILA and its implementing regulations.¹¹

⁵ See 12 CFR 1024.40, providing functions of servicer personnel; information about loss mitigation options, procedures, and deadlines; status of any loss mitigation application; complete record of the borrower's payment history; and communication response times.

⁶ See 12 CFR 1024.37, providing bases for changer borrower for force-placed insurance; requirements before charging borrower force-placed insurance; notice requirements; renewing or replacing force-placed insurance; cancellation of force-placed insurance; and limitations on force-placed insurance charges.

⁷ See 12 CFR 1024.41, providing loss mitigation applications; processes and deadlines for reviewing complete and incomplete applications; COVID-19 related loss mitigation options; short-term loss mitigation options; acknowledgment notices; denial of loan modification options; prohibitions on dual tracking; appeal process and timelines; and servicing transfers.

⁸ 12 CFR 1024.41(f)-(h), prohibiting foreclosure referral until more than 120 day delinquent, while a loss mitigation application form is under submission, review, or appeal; and providing timelines.

⁹ See 12 CFR 1024.14, prohibiting in return for referrals any fees, kickbacks, split charging, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation.

¹⁰ See 12 CFR 1024.33, providing, in part, that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

¹¹ Consumer Finance Protection Bureau, *Truth in Lending Act*, https://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf (last visited February 5, 2022).

TILA regulations related to the consumer credit include:

- Annual percentage rates;
- Credit card disclosures;
- Limitations on home equity lines of credit and certain closed-end home mortgages;
- Mortgage loan appraisal requirements;
- Mortgage loan disclosures;
- Mortgage loan servicing requirements; and
- Periodic statements.¹²

Preemption of State Laws

State laws that are inconsistent with RESPA regulations may be preempted by RESPA. State laws that give greater protection to consumers are not inconsistent with, and are not preempted by, RESPA. In addition, nothing in RESPA should be construed to preempt the entire field of regulation covered by RESPA.¹³

State laws that are inconsistent with TILA regulations are preempted to the extent of the inconsistency.¹⁴

Exemption of Reverse Mortgages

A reverse mortgage is nonrecourse consumer credit obligation in which a mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after the consumer dies, the dwelling is transferred, or the consumer ceases to occupy the dwelling as a principal dwelling.¹⁵

RESPA expressly exempts reverse mortgages from certain mortgage servicing regulations, including force-placed insurance.¹⁶

TILA expressly exempts reverse mortgages from its regulations related to periodic statements for residential mortgage loans.¹⁷

Exemption of Small Servicers

A small servicer is a mortgage servicer that servicers, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer or affiliate is the creditor or assignee; is a Housing Finance Agency; or is nonprofit entity that services 5,000 or fewer mortgage loans, including any

¹² See 12 CFR 1026.41, providing timing of the statement; form of the statement; amount due with explanation; past payment breakdown; transaction activity; partial payment information; contact information; account information; and delinquency information.

¹³ 12 CFR 1024.5(c)(1)

¹⁴ See 12 CFR 1026.28

¹⁵ 12 CFR 1026.33(a)

¹⁶ See 12 CFR 1024.30; Reverse mortgages remain subject to RESPA regulations related to continuity of contact, early intervention for certain borrowers, and dual tracking prohibited by loss mitigation procedures.

¹⁷ 12 CFR 1026.41(e)(1)

mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor.¹⁸

RESPA expressly exempts small servicers from certain mortgage servicing regulations, including forced-placed insurance.¹⁹

TILA expressly exempts small servicers from its regulations related to periodic statements for residential mortgage loans.²⁰

State Regulation of Loan Originators, Mortgage Brokers, Mortgage Lenders, and Mortgage Servicers

The Office of Financial Regulation (OFR) licenses and regulates non-depository financial service industries and individuals through its administration and enforcement of ch. 494, F.S.²¹ The OFR has the express authority to deny, suspend, or revoke the license of, and impose administrative fines on, an individual licensed under ch. 494, F.S., found to be in violation of its provisions, including any violation of RESPA and TILA.²²

Notwithstanding agency enforcement authority, failure to comply with ch. 494, F.S., does not affect the validity or enforceability of any mortgage loan, and no person acquiring a mortgage loan, as mortgagee or assignee, is required to ascertain whether or not the provisions of ch. 494, F.S., have been complied with.²³

Further, ch. 494, F.S., does not limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage loan business or the right of the state to punish any person for any violation of any law.²⁴

Regulation of Insurance Agents

In general, insurance agents transact insurance on behalf of an insurer or insurers. The Department of Financial Services (DFS) regulates the education, licensing, and compliance of insurance agents and agencies under ch. 626, F.S., and has statutory authority to refuse, suspend, or revoke the license of an insurance agent or agency in violation of the provisions of ch. 626, F.S.

Under Florida law, insurance agents are prohibited from the following non-exhaustive list of acts:

¹⁸ 12 CFR 1026.41(e)(4)

¹⁹ See 12 CFR 1024.30; Small servicers remain subject to RESPA regulations related to continuity of contact, early intervention for certain borrowers, and dual tracking prohibited by loss mitigation procedures.

²⁰ 12 CFR 1026.41(e)(4)

²¹ Florida Office of Financial Regulation, *Division of Consumer Finance*, <https://www.flofr.gov/sitePages/DivisionOfConsumerFinance.htm> (last visited February 5, 2022).

²² Section 494.00255(m), F.S.

²³ Section 494.0022, F.S.

²⁴ Section 494.002, F.S.

- Entering into agreements whereby commissions are contingent upon savings effected in the adjustment, settlement, and payment of losses covered under an insurance policy;²⁵
- Except as provided for under s. 626.572, F.S., unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commissioner with another;²⁶ and
- Sharing commissions with individuals other than similarly appointed and licensed agents, customer representatives, or insurance agencies.²⁷

Conditions Precedent to Bringing a Foreclosure Action

In general, mortgage foreclosure is based on the provisions of the mortgage contract. In many standard form mortgage contracts, a “right to cure” or “default” notice paragraph, contains several specific requirements giving the mortgagor notice of the default and, sometimes, an opportunity to cure it, as a condition precedent to the mortgagee or assignee bringing a foreclosure action against the mortgagor.

For example, Fannie Mae’s Standard Mortgage Form for Florida provides, in part:

Notice of Default. Lender will give a notice of Default to Borrower prior to acceleration following Borrower’s Default, except that such notice of Default will not be sent when Lender exercises its right under Section 19 unless Applicable Law provides otherwise. The notice will specify, in addition to any other information required by Applicable Law: (i) the Default; (ii) the action required to cure the Default; (iii) a date, not less than 30 days (or as otherwise specified by Applicable Law) from the date the notice is given to Borrower, by which the Default must be cured; (iv) that failure to cure the Default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property; (v) Borrower’s right to reinstate after acceleration; and (vi) Borrower’s right to deny in the foreclosure proceeding the existence of a Default or to assert any other defense of Borrower to acceleration and foreclosure.

Acceleration; Foreclosure; Expenses. If the Default is not cured on or before the date specified in the notice, Lender may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender will be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 26, including, but not limited to: (i) reasonable attorneys’ fees and costs; (ii) property inspection and valuation fees; and (iii) other fees incurred to protect Lender’s interest in the Property and/or rights under this Security Instrument.²⁸

²⁵ Section 626.581(1), F.S.

²⁶ Section 626.611(1)(k), F.S.

²⁷ Section 626.753(2), F.S.

²⁸ Fannie Mae. *Security Instruments, Florida Form 3010* (July 2021)

<https://singlefamily.fanniemae.com/media/document/doc/florida-security-instrument-form-3010-word> (last visited February 6, 2022).

Where there are conditions precedent to filing the foreclosure suit, the mortgagee must prove that it has complied with them.²⁹ Many Florida courts apply a *substantial compliance standard* when determining whether conditions precedent have been met prior to initiating a foreclosure suit. Substantial compliance is “that performance of a contract which, while not full performance, is so nearly equivalent that what was bargained for that it would be unreasonable to deny the [party] the [benefit].”³⁰ In Florida, opinions of the First, Second, Third, Fourth,³¹ and Fifth District Courts of Appeal have determined that “the lender’s default notice to borrower must only substantially comply with the conditions precedent set forth in the mortgage.”³²

Regulation of Lender Placed Insurance

Lender-placed insurance, sometimes referred to as force-placed insurance, is insurance obtained by a lender or servicer when a mortgagor does not maintain valid or sufficient insurance upon mortgage real property as required by the terms of the mortgage agreement. It may be purchased unilaterally by the lender or servicer, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense or damage to collateralized property as a result of fire, theft, collision, or other risks of loss that would either impair a lender, servicer, or investor’s interest, or adversely affect the value of collateral covered by limited dual interest insurance. It is purchased according to the terms of the mortgage agreement as a result of the mortgagor’s failure to provide evidence of required insurance.³³

In addition to compliance with RESPA provisions, lender-placed insurance is subject to several state and federal regulations.

Fannie Mae and Freddie Mac Servicing Guidelines for Lender-Placed Insurance Requirements

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary mortgage market.³⁴ Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages,³⁵ or lender-placed insurance coverage meeting the

²⁹ *Torres v. Deutsche Bank National Trust Company*, 256 So.3d 903, 905 (Fla. 4th DCA 2018).

³⁰ *Ortiz v. PNC Bank, Nat. Ass’n*, 188 So.3d 923, 925 (Fla. 4th DCA 2016)

³¹ *See id.*

³² *Bank of N.Y. Mellon v. Nunez*, 190 So.3d 160, 162-63(Fla. 3rd DCA 2015).

³³ National Association of Insurance Commissioners, *Real Property Lender-Placed Insurance Model Act – 631, 1* (Spring 2021), <https://content.naic.org/sites/default/files/MO631.pdf> (last visited February 4, 2022).

³⁴ Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, <https://www.fhfa.gov/about-fannie-mae-freddie-mac> (last visited January 28, 2022).

³⁵ For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.

For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or

required minimum insurance coverages when the mortgage servicer cannot obtain evidence of acceptable insurance for the property securing the mortgage loan.³⁶

The mortgage servicer has the following responsibilities for obtaining lender-placed insurance meeting the required minimum insurance coverages for the property securing the mortgage loan:

- Only issue lender-placed insurance coverage after it makes unsuccessful attempts to obtain evidence of insurance in accordance with applicable law;
- Not use a lender-placed insurance carrier that is an affiliated entity, as defined below, for a lender-placed insurance policy, including any captive insurance or reinsurance arrangements with an affiliated entity;
- Exclude any lender-placed insurance commissions or payments (including any incentive based compensation regardless of its designation as commission, bonus, fees, or other types of payments from the servicer's lender-placed insurance carrier; for example, underwriting bonuses or other payments based on insurance loss ratios) earned on a lender-placed insurance policy by the servicer, broker, or any affiliated entity from the lender-placed insurance premiums charged to the borrower or submitted for reimbursement from Fannie Mae;
- Provide copies of its lender-placed insurance policy, including any other contractual arrangements between the servicer and a lender-placed insurance carrier, upon Fannie Mae's request;
- Provide any documentation or data relating to its lender-placed insurance activities and lender-placed insurance coverage requested by Fannie Mae within 30 days of Fannie Mae's request;
- Terminate any lender-placed insurance, in compliance with law;
- Refund all lender-placed insurance premiums and fees charged during any period of coverage overlap, in compliance with applicable law.³⁷

State Regulation of Lender-Placed Insurance

The Office of Insurance Regulation (OIR) regulates the business of lender-placed insurance by approving the forms and rates of lender-placed insurers.³⁸

Part I of ch. 627, F.S., is the Rating Law³⁹ governing property, casualty, and surety insurance which covers subjects of insurance resident, located, or to be performed in this state.⁴⁰ The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.⁴¹ Though the terms "rate" and "premium" are often used

- 80 percent of the full replacement cost of the insurable improvements.

³⁶ Fannie Mae, *Servicing Guide: Fannie Mae Single Family* (December 8, 2021), <https://servicing-guide.fanniemae.com/#Servicer.20Responsibilities.20Related.20to.20Lender-Placed.20Insurance> (last visited February 4, 2022); Freddie Mac, *Seller/Servicer Guides: Lender-Placed Insurance* (July 1, 2016), <https://guide.freddiemac.com/app/guide/section/8202.12> (last visited February 4, 2022).

³⁷ Fannie Mae, *Servicing Guide: Fannie Mae Single Family* (December 8, 2021), <https://servicing-guide.fanniemae.com/#Servicer.20Responsibilities.20Related.20to.20Lender-Placed.20Insurance> (last visited February 4, 2022).

³⁸ Section 627.021, F.S.

³⁹ Section 627.011, F.S.

⁴⁰ Section 627.021, F.S.

⁴¹ Section 627.062(1), F.S.

interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁴²

All insurers or rating organizations must file rates with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The office makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience.
- Past and prospective expenses.
- The degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer.
- The reasonableness of the judgment reflected in the rate filing.
- Dividends, savings, or unabsorbed premium deposits returned to policyholders.
- The adequacy of loss reserves.
- The cost of reinsurance.
- Trend factors, including trends in actual losses per insured unit for the insurer.
- Conflagration and catastrophe hazards.
- Projected hurricane losses.
- Projected flood losses, if the policy covers the risk of flood.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

OIR Consent Orders against Lender-Placed Insurers

Between 2013 and 2014, following its review of Florida’s lender-placed insurance market and findings of insurer practices that potentially and practically hurt policyholders, the Office of Insurance Regulation (OIR), issued consent orders to lender-placed insurers American Security Insurance Company⁴³ and Praetorian Insurance Company,⁴⁴ requiring the modification of their business practices related to lender-placed insurance. These two consent order had the effect of instituting new requirements on more than 90 percent of Florida’s lender-placed insurance market.⁴⁵

Lender-placed insurance business reforms required under the consent orders included:

⁴² Section 627.041, F.S.

⁴³ Florida Office of Insurance Regulation, *Consent Order No. 141841-13* (October 7, 2013), <https://www.floir.com/siteDocuments/AmericanSecurity141841-13-CO.pdf> (last visited February 5, 2022).

⁴⁴ Florida Office of Insurance Regulation, *Consent Order No. 141851-13* (April 10, 2014), <https://www.floir.com/siteDocuments/Praetorian141851-13-CO.pdf> (last visited February 5, 2022).

⁴⁵ Florida Office of Insurance Regulation, *Press Release: Office Order Praetorian Insurance Company to Modify its Business Practices for Lender-Placed Insurance in Florida* (April 11, 2014), <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2054> (last visited February 5, 2022).

- Notifying all current borrowers by mail and within 120 days of the execution of the Consent Order to inform them about alternative options available for lender-placed insurance coverage;
- Prohibiting the payment of commissions to a mortgage servicer on lender-placed insurance policies obtained by that servicer;
- Prohibiting the payment of contingent commissions based on underwriting profitability or loss ratios to any servicer or entity affiliated with a servicer;
- Prohibiting the issuance of lender-placed policies on mortgaged property serviced by an affiliate;
- Prohibiting the issuance of reinsurance on lender-placed insurance policies with a captive insurer of any mortgage servicer;
- Prohibiting the provision of free or below-cost outsourced services to a mortgage servicer; and
- Prohibiting the payment of any incentive to a mortgage servicer as an inducement to secure lender-placed insurance business.⁴⁶

Adoption of NAIC Model Act 631

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from 50 states, the District of Columbia, and five U.S. territories.⁴⁷

In Spring 2021, the NAIC adopted the Real Property Lender-Placed Insurance Model Act # 631 (Model Act), governing insurers and insurance producers engaged in any transaction involving lender-placed insurance, for the purpose of promoting the public welfare by regulating lender-placed insurance on real property; creating a legal framework within which lender-placed insurance on real property may be written within a state; help maintain the separation between lenders and servicers from insurers and insurance producers; and minimize the possibilities of unfair competitive practices in the sale, placement, solicitation, and negotiation of lender-placed insurance.⁴⁸

The Model Act provides several reforms related to lender-placed insurance, including:

- Term of insurance policy;
- Calculation of coverage and payment of premiums;
- Prohibited practices;
- Non-circumvention;
- Evidence of coverage;
- Filing, approval, and withdrawal of forms and rates;
- Enforcement;
- Regulatory authority;
- Judicial review; and

⁴⁶ *Id.*

⁴⁷ National Association of Insurance Commissioners, *Our Story*, <https://content.naic.org/about> (last visited February 5, 2022).

⁴⁸ National Association of Insurance Commissioners, *Real Property Lender-Placed Insurance Model Act-631* (Spring 2021), <https://content.naic.org/sites/default/files/MO631.pdf> (last visited February 5, 2022).

- Penalties⁴⁹

Specific to prohibited practices, the Model Act prohibits an insurer or insurance producer from:

- Issuing lender-placed insurance on mortgaged property that the insurer or insurance producer or an affiliate of the insurer or insurance producer owns, performs the servicing for, or owns the servicing rights to the mortgage property;
- Compensating a lender, insurer, investor, or servicer (including through the payment of commissions) on lender-placed insurance policies issued by the insurer;
- Sharing lender-placed insurance premium or risk with the lender, investor, or servicer that obtained the lender-placed insurance;
- Offering contingent commissions, profit sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with lender-placed insurance;
- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer for the purpose of securing lender-placed insurance business or related outsourced services.⁵⁰

The insurer is further prohibited from providing free or below-cost outsourced services to lender, investors, or servicers, and outsourcing its own functions to lenders, insurance producers, investors, or servicers on an above-cost basis.⁵¹

III. Effect of Proposed Changes:

Section 1 amends s. 494.001, F.S., related to definitions under ch. 494, F.S., to define “borrower” may also mean a natural person who is a mortgagor under a residential mortgage loan.

The bill defines “foreclosure prevention alternative” to mean a modification of a residential mortgage loan term.

The bill also defines “mortgage servicer” to mean a person or entity that directly services, or is contracted as a subservicing agent to a master servicer to service, a residential mortgage loan or manages a residential mortgage loan, which services or management may include, but are not limited to, the following responsibilities:

- Interacting with the borrower; managing the borrower’s loan account daily, including, but not limited to, collecting and crediting loan payments that include principals and interests paid, and generating periodic billing and account statements; and managing the borrower’s escrow account, if applicable; or
- Enforcing the note and security instrument as the current owner of the promissory note or as the authorized agent of the current owner of the promissory note.

Section 2 creates s. 494.00163, F.S., which requires mortgage lenders and mortgage servicers to comply with certain federal regulations.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The bill specifies a periodic statement for a residential mortgage loan must comply with 12 CFR s. 1026.41, governing periodic statements for residential mortgage loans. The federal regulation requires that periodic statements specify the amount due, payment due date, any late payment fees, an explanation of the amount due, a breakdown of past payments, transaction activity since the last statement, applicable partial payment information, contact information including at least a telephone number for the consumer to obtain information about the consumer's account, account information including the outstanding principal balance and information regarding interest rates and any prepayment penalties, and, if applicable, information regarding delinquent payments.

The bill specifies a reverse mortgage servicer or a small mortgage servicer is not exempt from 12 CFR s. 1026.41, governing periodic statement for residential mortgage loans. Under the bill, a "small mortgage servicer" means a mortgage servicer that, together with any affiliates, services up to 5,000 residential mortgage loans, all of which have the mortgage servicer or its affiliate as the creditor or assignee.

Section 3 creates s. 494.00164, F.S., which applies the federal force-placed insurance requirements of 12 CFR 1024.37 to mortgage servicers.

This section defines "lender-placed insurance" to mean hazard insurance obtained by a mortgage servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan. The term does not include hazard insurance required by the Flood Disaster Protection Act of 1973, or, if the borrower agrees, hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion.

A mortgage servicer may not assess any premium charge or fees related to lender-placed insurance on a borrower unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance and the requirements of this section are met.

A mortgage servicer may not assess any premium charge or fee related to lender-placed insurance on a borrower unless all of the following occur:

- The mortgage servicer, at least 45 days before assessing on a borrower a charge or fee related to lender-placed insurance, delivers to such borrower written notice containing all of the following:
 - The date of the notice, the mortgage servicer's name and mailing address, the borrower's name and mailing address, and the physical address of the property;
 - In bold type, a statement requesting the borrower to provide hazard insurance information for the borrower's property. The statement must identify the property by its physical address;
 - A statement specifying:
 - The borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable;
 - The mortgage servicer does not have evidence of hazard insurance coverage for the property; and

- If applicable, the type of insurance for which the servicer lacks evidence of coverage;
- In bold type, a statement that hazard insurance is required on the borrower's property, and that the mortgage servicer has purchased or will purchase, as applicable, hazard insurance at the borrower's expenses;
- In bold type, a statement that insurance the mortgage servicer has purchased or purchases may cost significantly more than hazard insurance by the borrower and may provide less coverage than hazard insurance purchased by the borrower;
- A clear and conspicuous statement requesting the borrower to promptly provide the mortgage servicer with evidence of hazard insurance coverage for the property, including a description of the requested insurance information and how the borrower may provide such information;
- The mortgage servicer's telephone number for borrower inquiries; and
- If applicable a statement advising the borrower to review additional information provided in the same transmittal.
- The mortgage servicer, at least 15 days before assessing on a borrower a premium charge or fee related to lender-placed insurance, delivers to the borrower a written notice that:
 - If a mortgage servicer has not received hazard information after delivering the notice required by paragraph (a), includes:
 - The date of the notice;
 - In bold type, a statement that the notice is the second and final notice;
 - The information required for the notice under paragraph (a) except for the date of the notice; and
 - In bold type, the cost of the lender-placed insurance, stated as an annual premium, or, if a servicer does not know the cost of lender-placed insurance, a reasonable estimate of such costs;
 - If a mortgage servicer received hazard insurance information after delivering the notice required under paragraph (a) to the borrower, but has not received evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously, includes:
 - The date of the notice;
 - In bold type, a statement that the notice is the second and final notice;
 - The information required by subparagraphs (a)1., 2., 5., 7, and 8.;
 - In bold type, the cost of the lender-placed insurance, stated as an annual premium, or, if a servicer does not know the cost of lender-placed insurance, a reasonable estimate of such cost;
 - A statement that the mortgage servicer received the hazard insurance information that the borrower provided;
 - A statement that requests the borrower to provide the information that is missing; and
 - A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;
- By the end of the 15-day period beginning on the date the written notice described in paragraph (b) is delivered to the borrower the mortgage service has not received, from the borrower or otherwise, evidence demonstrating that the borrower has continuously had in place hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

A mortgage servicer may not assess any premium charge or fee to renewing or replacing lender-placed insurance on a borrower unless all of the following occur:

- The mortgage servicer, at least 45 days before assessing on a borrower a premium charge or fee related to renewing or replacing lender-placed insurance, delivers to such borrower written notice containing all of the following:
 - The date of the notice, the mortgage servicer's name and mailing address, the borrower's name and mailing address, and the physical address of the property;
 - In bold type, a statement requesting the borrower to update the hazard insurance information for the borrower's property. The statement must identify the property by its physical address;
 - A statement that the mortgage servicer previously purchased insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;
 - A statement specifying:
 - The hazard insurance the mortgage servicer previously purchased is expiring or has expired, as applicable; and
 - In bold type, because hazard insurance is required on the borrower's property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;
 - In bold type, a statement that insurance the servicer has purchased or purchases may cost significantly more than hazard insurance purchased by the borrower, that such insurance may provide less coverage than hazard insurance purchased by the borrower;
 - The cost of the lender-placed insurance, stated as an annual premium, except if a mortgage servicer does not know the cost of the lender-placed insurance, a reasonable estimate shall be provided;
 - A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information;
 - A description of the requested insurance information and how the borrower may provide such information;
 - The mortgage servicer's telephone number for borrower inquiries; and
 - If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

Within 15 days after receiving evidence demonstrating that the borrower has had hazard insurance coverage in place that complies with the loan contract's requirement to maintain hazard insurance, a mortgage servicer must:

- Cancel the lender-placed insurance the servicer purchased to insure the borrower's property; and
- Refund to such borrower all lender-placed insurance premium charges and fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all lender-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

The written notices required by this section must be sent by first-class or express mail.

Section 4 creates s. 494.00225, F.S., which provides for transfer rights for loan modifications and foreclosure prevention alternatives.

Following the written approval of a first lien loan modification, foreclosure prevention alternative, or other loan modification to avoid foreclosure, the assuming mortgage servicer or mortgage lender of bought or transferred mortgage servicing rights must assume all duties and obligations subject to the first lien loan modification, foreclosure prevention alternative or other loan modification.

Section 5 creates s. 494.0027, F.S., which provides a framework governing residential mortgage foreclosure prevention alternatives.

Definitions – Subsection (1) defines “complete application” to mean an application for a foreclosure prevention alternative for which the borrower has provided all documents required by the mortgage servicer or mortgage lender within the reasonable timeframe specified by the mortgage servicer or mortgage lender.

The bill defines “single point of contact” to mean a person who has, or a team of personnel of which each member has, the ability, authority, and responsibility to:

- Communicate the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submission to be considered for the foreclosure prevention alternative.
- Coordinate receipt of all documents associated with the available foreclosure prevention alternatives and notify the borrower of any missing document necessary to complete an application for a foreclosure prevention alternative.
- Have access to current information and sufficient personnel to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative.
- Ensure that the borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer or mortgage lender and for which the borrower is or may be eligible.
- Have access to the person who has the ability and authority to stop the foreclosure process when necessary.

Dual Tracking – Subsection (2) paragraph (a) prohibits the mortgage servicer or mortgage lender from commencing a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan which is not barred under ch. 494, F.S., or ch. 702, F.S.; record a notice of default or a notice of sale, or conduct a foreclosure sale; after a borrower submits a foreclosure prevention alternative application offered by or through the mortgage servicer or mortgage lender unless one of the following has occurred:

- The borrower fails to submit all document or information required to complete the application within the allotted timeframe authorized by the mortgage servicer or mortgage lender, which must be at least 30 calendar days after the date of the initial acknowledgement of receipt of the application sent to the borrower.
- The mortgage servicer or mortgage lender makes written determination that the borrower is not eligible for foreclosure prevention alternative, and any appeal period under subsection 5 has expired.
- The borrower does not accept a written offer for a foreclosure prevention alternative within 30 days after the date of the offer.

- The borrower accepts a written offer for a foreclosure prevention alternative, but defaults on otherwise breaches the obligations under the foreclosure prevention alternative.

Single Point of Contact – Subsection (2) paragraph (b) requires the mortgage servicer or mortgage lender to promptly establish a single point of contact after the borrowers request a foreclosure prevention alternative and provide the borrower with at least one direct means of communication. The single point of contact must remain assigned to the borrower’s account until the mortgage servicer or mortgage lender determines all foreclosure prevention alternative have been exhausted or the borrower’s account becomes current. The single point of contact must refer and transfer the borrower to an appropriate supervisor if requested. The mortgage servicer or mortgage lender is responsible for all single point of contact personnel are knowledgeable about the borrower’s foreclosure prevention alternative status.

Acknowledgement of Application – Subsection (3) requires a mortgage servicer or mortgage lender to provide the borrower written acknowledgement of receipt of a foreclosure prevention application or related document within 7 business days of receipt. The acknowledgment must include:

- A description of the process for considering the application, including, without limitation, an estimate of when a decision on the application will be made and the length of time the borrower will have to consider an offer for a foreclosure prevention alternative.
- A statement of any deadlines that affect the processing of an application for a foreclosure prevention alternative, including, without limitation, the deadline for submitting any missing document.
- A statement of the expiration dates for any document submitted by the borrower.

If the submitted application is incomplete, the acknowledgment must include:

- A statement of any deficiency in the borrower’s application and allow the borrower at least 30 calendar days to submit any missing document or information required to complete the application.
- A description of the process for considering the application, including, without limitation, an estimate of when a decision on the application will be made and the length of time the borrower will have to consider an offer for a foreclosure prevention alternative.
- A statement of any deadlines that affect the processing of an application for a foreclosure prevention alternative, including, without limitation, the deadline for submitting any missing document.
- A statement of the expiration dates for any document submitted by the borrower.

Copies of Documents – Subsection (4) requires the mortgage servicer or mortgage lender to provide the borrower with a copy of complete foreclosure prevention alternative signed by the mortgage lender or its agent or authorized representative.

Notice of Denial – Subsection (5) requires the mortgage servicer or mortgage lender to send the borrower written statement of containing the following items after a completed application is submitted and denied:

- The reason for the denial.
- The length of time the borrower has to request an appeal of the denial.

- Instructions regarding how to appeal the denial, including, without limitation, how to provide evidence that the denial was in error.

The mortgage servicer or mortgage lender must allow the borrower at least 30 calendar days to appeal a denial.

Dual Tracking, Post-Application Denial – Subsection (6) prohibits the mortgage servicer or mortgage lender from commencing a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan which is not barred under ch. 494, F.S., or ch. 702, F.S., record a notice of default or a notice of sale, or conduct a foreclosure sale, after a completed application is denied until the later of:

- 60 calendar days after the borrower is sent the written statement under subsection 5; or
- If the borrower appeals the denial, the later of:
 - 15 calendar days after the denial of the appeal;
 - If the appeal is successful, 14 calendar days after a foreclosure prevention alternative offered after the appeal is declined by the borrower; or
 - If a foreclosure prevention alternative offered after the appeal is accepted, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

Resubmitted Applications – Subsection (7) specifies a mortgage servicer or mortgage lender is not required to evaluate an application from a previous applicant, provided the borrower was evaluated or afforded a fair opportunity to be evaluated, unless there has been a material change in the borrower’s financial circumstance since the date of the borrower’s previous application, which has been documented by the borrower and submitted to the mortgage servicer or mortgage lender.

Restriction on Fees – Section (8) prohibits a mortgage servicer or mortgage lender from charging or collecting an application fee, processing fee, or other fee for a foreclosure prevention alternative, or late fee for periods during which:

- A foreclosure prevention alternative is under consideration or a denial is being appealed;
- The borrower is making timely payment under a foreclosure prevention alternative; or
- A foreclosure prevention alternative is being evaluated or exercised.

Section 6 creates s. 627.4055, F.S., “Lender-placed insurance for residential mortgage loan guaranty”, which prohibits certain acts by an insurer or insurance agents related to lender-placed insurance.

This section defines:

- “Affiliate” to have the same meaning as defined in s. 624.10, F.S.
- “Lender-placed insurance” to mean insurance obtained by a mortgage servicer or mortgage lender when a borrower of a residential mortgage loan does not maintain valid or sufficient insurance upon the mortgaged real property as required by the terms of the mortgage agreement.
- “Mortgage servicer” to have the same meaning as defined in s. 494.001, F.S.

- “Person affiliated” to mean an affiliate or affiliated person as defined in s. 624.10, F.S.

The bill prohibits an insurer or insurance agent from issuing lender-placed insurance on a mortgage property if the insurer or insurance agent or an affiliate of the insurer or insurance agents owns, performs the servicing for, or owns the servicing right to, the mortgage property.

The bill prohibits an insurer or insurance agent from:

- Compensating a mortgage lender, insurer, investor, or mortgage servicer, including, but not limited to, through payment of commissions, on a lender-placed insurance policy issued by the insurer or insurance agent.
- Making any payment, including, but not limited to, payment of expenses, to any mortgage lender, insurer, investor, or mortgage servicer for the purpose of securing lender-placed insurance business or related outsourced services.
- Share lender-placed insurance premium or risk with the mortgage lender, investor, or mortgage servicer that obtained the lender-placed insurance.
- Offering contingent commissions, profit sharing, or other payments depending on profitability or loss ratios to any person affiliated with lender-placed insurance.

The bill prohibits an insurer or insurance agent from providing free or below-cost outsourced services to mortgage lender, insurance producer, investor, or mortgage servicer or outsource its own functions to a mortgage lender, insurance producer, investor, or mortgage servicer on an above-cost basis.

Section 7 creates s. 635.0215, F.S., which prohibits certain acts by an insurer or insurance agents related to lender-placed insurance.

This section defines:

- “Affiliate” to have the same meaning as defined in s. 624.10, F.S.
- “Lender-placed insurance” to have the same meaning as defined in s. 627.4055(1), F.S.
- “Mortgage servicer” to have the same meaning as defined in s. 494.001, F.S.
- “Person affiliated” to mean an affiliate or affiliated person as defined in s. 624.10, F.S.

The bill prohibits an insurer or insurance agent from issuing lender-placed insurance on a mortgage property if the insurer or insurance agent or an affiliate of the insurer or insurance agents owns, performs the servicing for, or owns the servicing right to, the mortgage property.

The bill prohibits an insurer or insurance agent from:

- Compensating a mortgage lender, insurer, investor, or mortgage servicer, including, but not limited to, through payment of commissions, on a lender-placed insurance policy issued by the insurer or insurance agent.
- Making any payment, including, but not limited to, payment of expenses, to any mortgage lender, insurer, investor, or mortgage servicer for the purpose of securing lender-placed insurance business or related outsourced services.

- Share lender-placed insurance premium or risk with the mortgage lender, investor, or mortgage servicer that obtained the lender-placed insurance.
- Offering contingent commissions, profit sharing, or other payments depending on profitability or loss ratios to any person affiliated with lender-placed insurance.

The bill prohibits an insurer or insurance agent from providing free or below-cost outsourced services to mortgage lender, insurance producer, investor, or mortgage servicer or outsource its own functions to a mortgage lender, insurance producer, investor, or mortgage servicer on an above-cost basis.

Section 8 creates s. 702.013, F.S., which provides a framework governing residential mortgage foreclosure prevention alternatives.

Definitions – Subsection (1) defines:

- “Complete application” to have the same meaning as defined in s. 494.001, F.S.
- “Foreclosure prevention alternative” to have the same meaning as defined in s. 494.001, F.S.
- “Mortgage servicer” to have the same meaning as defined in s. 494.001, F.S.
- “Single point of contact” to have the same meaning as defined in s. 494.0027(1), F.S.
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Dual Tracking – Subsection (2) paragraph (a) prohibits the mortgage servicer or mortgage lender from commencing a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan which is not barred under ch. 494, F.S., or ch. 702, F.S., recording a notice of default or a notice of sale, or conducting a foreclosure sale, after a borrower submits a foreclosure prevention alternative application offered by or through the mortgage servicer or mortgage lender unless:

- The borrower fails to submit all document or information required to complete the application within the allotted timeframe authorized by the mortgage servicer or mortgage lender, which must be at least 30 calendar days after the date of the initial acknowledgement of receipt of the application sent to the borrower.
- The mortgage servicer or mortgage lender makes written determination that the borrower is not eligible for foreclosure prevention alternative, and any appeal period under subsection 5 has expired.
- The borrower does not accept a written offer for a foreclosure prevention alternative within 30 days after the date of the offer.
- The borrower accepts a written offer for a foreclosure prevention alternative, but defaults on otherwise breaches the obligations under the foreclosure prevention alternative.

Single Point of Contact – Subsection (2) paragraph (b) requires the mortgage servicer or mortgage lender to promptly establish a single point of contact after the borrowers request a foreclosure prevention alternative and provide the borrower with at least one direct means of communication. The single point of contact must remain assigned to the borrower’s account until the mortgage servicer or mortgage lender determines all foreclosure prevention alternative have been exhausted or the borrower’s account becomes current. The single point of contact must refer and transfer the borrower to an appropriate supervisor if requested. The mortgage servicer

or mortgage lender is responsible for all single point of contact personnel are knowledgeable about the borrower's foreclosure prevention alternative status.

Acknowledgement of Application – Subsection (3) requires a mortgage servicer or mortgage lender to provide the borrower written acknowledgement of receipt of a foreclosure prevention application or related document within 7 business days of receipt. The acknowledgment must include:

- A description of the process for considering the application, including, without limitation, an estimate of when a decision on the application will be made and the length of time the borrower will have to consider an offer for a foreclosure prevention alternative.
- A statement of any deadlines that affect the processing of an application for a foreclosure prevention alternative, including, without limitation, the deadline for submitting any missing document.
- A statement of the expiration dates for any document submitted by the borrower.

If the submitted application is incomplete, the acknowledgment must include:

- A statement of any deficiency in the borrower's application and allow the borrower at least 30 calendar days to submit any missing document or information required to complete the application.
- A description of the process for considering the application, including, without limitation, an estimate of when a decision on the application will be made and the length of time the borrower will have to consider an offer for a foreclosure prevention alternative.
- A statement of any deadlines that affect the processing of an application for a foreclosure prevention alternative, including, without limitation, the deadline for submitting any missing document.
- A statement of the expiration dates for any document submitted by the borrower.

Copies of Documents – Subsection (4) requires the mortgage servicer or mortgage lender to provide the borrower with a copy of complete foreclosure prevention alternative signed by the mortgage lender or its agent or authorized representative.

Notice of Denial – Subsection (5) requires the mortgage servicer or mortgage lender to send the borrower written statement of containing the following items after a completed application is submitted and denied:

- The reason for the denial.
- The length of time the borrower has to request an appeal of the denial.
- Instructions regarding how to appeal the denial, including, without limitation, how to provide evidence that the denial was in error.

The mortgage servicer or mortgage lender must allow the borrower at least 30 calendar days to appeal a denial.

Dual Tracking, Post-Application Denial – Subsection (6) prohibits the mortgage servicer or mortgage lender from commencing a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan which is not barred under ch. 494,

F.S., or ch. 702, F.S., record a notice of default or a notice of sale, or conduct a foreclosure sale, after a completed application is denied until the later of:

- 60 calendar days after the borrower is sent the written statement under subsection 5; or
- If the borrower appeals the denial, the later of:
 - 15 calendar days after the denial of the appeal;
 - If the appeal is successful, 14 calendar days after a foreclosure prevention alternative offered after the appeal is declined by the borrower; or
 - If a foreclosure prevention alternative offered after the appeal is accepted, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

Resubmitted Applications – Subsection (7) specifies a mortgage servicer or mortgage lender is not required to evaluate an application from a previous applicant, provided the borrower was evaluated or afforded a fair opportunity to be evaluated, unless there has been a material change in the borrower’s financial circumstance since the date of the borrower’s previous application, which has been documented by the borrower and submitted to the mortgage servicer or mortgage lender.

Restriction on Fees – Section (8) prohibits a mortgage servicer or mortgage lender from charging or collecting an application fee, processing fee, or other fee for a foreclosure prevention alternative, or late fee for periods during which:

- A foreclosure prevention alternative is under consideration or a denial is being appealed;
- The borrower is making timely payment under a foreclosure prevention alternative; or
- A foreclosure prevention alternative is being evaluated or exercised.

Section 9 amends s. 494.00115, F.S., related to exemptions under ch. 494, F.S., to update cross references to the definition of “mortgage lender” in s. 494.001, F.S., to reflect renumbering as necessitated by Section 1 of the bill.

Section 10 amends s. 494.0025, F.S., related to prohibited loan originator, mortgage broker, and mortgage lender practices, to update a cross reference to the definition of “residential mortgage loan” in s. 494.001, F.S., to reflect renumbering as necessitated by Section 1 of the bill.

Section 11 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁵² However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.⁵³ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁵⁴ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁵⁵ However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁵⁶ Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁵⁷

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁵⁸ The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁵⁹

For mortgage loans, the bill creates a foreclosure prevention alternative framework which may impair the default notice provisions of current mortgage contracts and the right of the mortgagee to initiate foreclosure preceding under the contract terms. Whether this framework implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

⁵² U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁵³ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁵⁴ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁵⁵ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

⁵⁶ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁵⁷ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

⁵⁸ U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁵⁹ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); see, e.g., *Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

Access to Courts

In *Kluger v. White*,⁶⁰ the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim . . ."

The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.⁶¹
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.⁶²
- Abolish a cause of action if the Legislature either:
 - Provides a reasonable commensurate benefit in exchange;⁶³ or
 - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."⁶⁴

For mortgage loans, the bill creates a foreclosure prevention alternative framework which may impair the default notice provisions of current mortgage contracts and the right of the mortgagee to initiate foreclosure preceding under the contract terms. Whether this framework implicates the mortgagee's access to courts, is for the courts to decide.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁶⁰ *Kluger*, 281 So. 2d 1 (Fla. 1973).

⁶¹ *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

⁶² *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

⁶³ *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).

⁶⁴ *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

B. Private Sector Impact:

Currently, mortgage lenders, mortgage servicers, insurers, and insurance agents must comply with federal regulations related to the residential mortgage industry and lender-placed insurance. To the extent the provisions of the bill lack specificity in contrast to current federal rules, the provisions of the bill may cause confusion for individuals already in compliance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 1 of the bill provides a definition of “foreclosure prevention alternative” which is functionally identical to the definition of “loan modification” under s. 494.001(16), F.S., possibly subjecting foreclosure prevention alternatives to the loan modification and fee provisions of s. 494.00296, F.S. The definition of “mortgage servicer” created by the bill conflicts with the current definitions of “mortgage lender” under s. 494.001(24), F.S., which includes servicing a mortgage loan, and “servicing a mortgage loan” under s. 494.001(36), F.S. This could lead to confusion about the applicability of subsequent provisions of the bill to mortgage servicers.

Section 2 of the bill subjects reverse mortgage servicers to the periodic statement requirements of 12 CFR 1026.41. However, current Florida statutes do not provide a definition of a “reverse mortgage” or “servicer of a reverse mortgage”. In the alternative, ch. 494, F.S., does not provide a definition of the technical term “home equity conversion mortgage.” This could lead to compliance and enforceability issues.

The OFR would enforce Section 5 of the bill amending ch. 494, F.S. OFR, however the agency, does not have statutory authority to prevent mortgage foreclosures and ch. 494, F.S., does not limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage loan business or right of the state to punish any person for any violation of any law.⁶⁵

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.00115, and 494.0025.

This bill creates the following sections of the Florida Statutes: 494.00163, 494.00225, 494.0027, 627.4055, 635.0215, and 702.013.

⁶⁵ Section 494.002, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 8, 2022:

The committee substitute:

- Removes the provision of s. 494.00163, F.S., requiring a servicer of a reverse mortgage or small mortgage servicer to comply with the federal force-placed insurance requirements of 12 CFR 1024.73, as contemplated in the underlying bill;
- Creates s. 494.00164, F.S., to apply the federal force-placed insurance requirements of 12 CFR 1024.37 to mortgage servicers. Newly created s. 494.00164, F.S., provides:
 - A definition of lender-placed insurance, with exceptions to the definition;
 - Bases for charging the borrower for lender-placed insurance;
 - Requirements and timelines before charging borrowers for lender-placed insurance;
 - Notice requirements;
 - Reminder notices;
 - Procedures and timelines for renewing or replacing lender-placed insurance;
 - Mailing of notices; and
 - Procedures and timelines for cancelling lender-placed insurance;
- Removes the burden on insurers and insurance agents from ensuring the mortgage lender or mortgage servicer's compliance with the federal force-placed insurance requirements of 12 CFR 1024.37 before issuing a force-placed insurance policy, as contemplated in ss. 627.4055 and 635.0215, F.S., respectively.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 110 - 371

and insert:

494.00163 Residential mortgage loans; periodic statements.-

(1) Periodic statements for residential mortgage loans in the state must follow all the provisions set forth in 12 C.F.R. s. 1026.41.

(2) A servicer of a reverse mortgage or a small mortgage servicer is not exempt from the requirements of 12 C.F.R. s.



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11 1026.41. As used in this section, the term "small mortgage
12 servicer" means a mortgage servicer that, together with any
13 affiliates, services up to 5,000 residential mortgage loans, all
14 of which have the mortgage servicer or its affiliate as the
15 creditor or assignee.

16 Section 3. Section 494.00164, Florida Statutes, is created
17 to read:

18 494.00164 Lender-placed insurance.—

19 (1) A mortgage servicer may not assess any premium charge
20 or fee related to lender-placed insurance on a borrower unless
21 the servicer has a reasonable basis to believe that the borrower
22 has failed to comply with the mortgage loan contract's
23 requirement to maintain hazard insurance and the requirements of
24 this section are met. As used in this section, the term "lender-
25 placed insurance" means hazard insurance obtained by a mortgage
26 servicer on behalf of the owner or assignee of a mortgage loan
27 that insures the property securing such loan. The term "lender-
28 placed insurance" does not include hazard insurance required by
29 the Flood Disaster Protection Act of 1973, or, if the borrower
30 agrees, hazard insurance obtained by a borrower but renewed by
31 the borrower's servicer at its discretion.

32 (2) A mortgage servicer may not assesses any premium charge
33 or fee related to lender-placed insurance on a borrower unless
34 all of the following occur:

35 (a) The mortgage servicer, at least 45 days before
36 assessing on a borrower a charge or fee related to lender-placed
37 insurance, delivers to such borrower written notice containing
38 all of the following:

39 1. The date of the notice, the mortgage servicer's name and



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40 mailing address, the borrower's name and mailing address, and
41 the physical address of the property.

42 2. In bold type, a statement requesting the borrower to
43 provide hazard insurance information for the borrower's
44 property. The statement must identify the property by its
45 physical address.

46 3. A statement specifying:

47 a. The borrower's hazard insurance is expiring, has
48 expired, or provides insufficient coverage, as applicable;

49 b. The mortgage servicer does not have evidence of hazard
50 insurance coverage for the property; and

51 c. If applicable, the type of insurance for which the
52 servicer lacks evidence of coverage.

53 4. In bold type, a statement that hazard insurance is
54 required on the borrower's property, and that the mortgage
55 servicer has purchased or will purchase, as applicable, hazard
56 insurance at the borrower's expense.

57 5. In bold type, a statement that insurance the mortgage
58 servicer has purchased or purchases may cost significantly more
59 than hazard insurance purchased by the borrower and may provide
60 less coverage than hazard insurance purchased by the borrower.

61 6. A clear and conspicuous statement requesting the
62 borrower to promptly provide the mortgage servicer with evidence
63 of hazard insurance coverage for the property, including a
64 description of the requested insurance information and how the
65 borrower may provide such information.

66 7. The mortgage servicer's telephone number for borrower
67 inquiries.

68 8. If applicable, a statement advising the borrower to



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69 review additional information provided in the same transmittal.
70 (b) The mortgage servicer, at least 15 days before
71 assessing on a borrower a premium charge or fee related to
72 lender-placed insurance, delivers to the borrower a written
73 notice that:
74 1. If a mortgage servicer has not received hazard
75 information after delivering the notice required by paragraph
76 (a), includes:
77 a. The date of the notice;
78 b. In bold type, a statement that the notice is the second
79 and final notice;
80 c. The information required for the notice under paragraph
81 (a), except for the date of that notice; and
82 d. In bold type, the cost of the lender-placed insurance,
83 stated as an annual premium, or, if a servicer does not know the
84 cost of lender-placed insurance, a reasonable estimate of such
85 cost.
86 2. If a mortgage servicer received hazard insurance
87 information after delivering the notice required under paragraph
88 (a) to the borrower, but has not received evidence demonstrating
89 that the borrower has had sufficient hazard insurance coverage
90 in place continuously, includes:
91 a. The date of the notice;
92 b. In bold type, a statement that the notice is the second
93 and final notice;
94 c. The information required by subparagraphs (a)1., 2., 5.,
95 7., and 8.;
96 d. In bold type, the cost of the lender-placed insurance,
97 stated as an annual premium, or, if a servicer does not know the



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98 cost of lender-placed insurance, a reasonable estimate of such
99 cost;

100 e. A statement that the mortgage servicer received the
101 hazard insurance information that the borrower provided;

102 f. A statement that requests the borrower to provide the
103 information that is missing; and

104 g. A statement that the borrower will be charged for
105 insurance the servicer has purchased or purchases for the period
106 of time during which the servicer is unable to verify coverage.

107 (c) By the end of the 15-day period beginning on the date
108 the written notice described in paragraph (b) is delivered to
109 the borrower the mortgage servicer has not received, from the
110 borrower or otherwise, evidence demonstrating that the borrower
111 has continuously had in place hazard insurance coverage that
112 complies with the loan contract's requirements to maintain
113 hazard insurance.

114 (3) A mortgage servicer may not assesses any premium charge
115 or fee related to renewing or replacing lender-placed insurance
116 on a borrower unless all of the following occur:

117 (a) The mortgage servicer, at least 45 days before
118 assessing on a borrower a premium charge or fee related to
119 renewing or replacing lender-placed insurance, delivers to such
120 borrower written notice containing all of the following:

121 1. The date of the notice, the mortgage servicer's name and
122 mailing address, the borrower's name and mailing address, and
123 the physical address of the property;

124 2. In bold type, a statement requesting the borrower to
125 update the hazard insurance information for the borrower's
126 property. The statement must identify the property by its



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127 physical address;

128 3. A statement that the mortgage servicer previously
129 purchased insurance on the borrower's property and assessed the
130 cost of the insurance to the borrower because the servicer did
131 not have evidence that the borrower had hazard insurance
132 coverage for the property;

133 4. A statement specifying:

134 a. The hazard insurance the mortgage servicer previously
135 purchased is expiring or has expired, as applicable; and

136 b. In bold type, because hazard insurance is required on
137 the borrower's property, the servicer intends to maintain
138 insurance on the property by renewing or replacing the insurance
139 it previously purchased;

140 5. In bold type, a statement that insurance the servicer
141 has purchased or purchases may cost significantly more than
142 hazard insurance purchased by the borrower, that such insurance
143 may provide less coverage than hazard insurance purchased by the
144 borrower;

145 6. The cost of the lender-placed insurance, stated as an
146 annual premium, except if a mortgage servicer does not know the
147 cost of the lender-placed insurance, a reasonable estimate shall
148 be provided;

149 7. A statement that if the borrower purchases hazard
150 insurance, the borrower should promptly provide the servicer
151 with insurance information;

152 8. A description of the requested insurance information and
153 how the borrower may provide such information;

154 9. The mortgage servicer's telephone number for borrower
155 inquiries; and



156 10. If applicable, a statement advising the borrower to
157 review additional information provided in the same transmittal.

158 (4) Within 15 days after receiving evidence demonstrating
159 that the borrower has had hazard insurance coverage in place
160 that complies with the loan contract's requirements to maintain
161 hazard insurance, a mortgage servicer must:

162 (a) Cancel the lender-placed insurance the servicer
163 purchased to insure the borrower's property; and

164 (b) Refund to such borrower all lender-placed insurance
165 premium charges and fees paid by such borrower for any period of
166 overlapping insurance coverage and remove from the borrower's
167 account all lender-placed insurance charges and related fees for
168 such period that the servicer has assessed to the borrower.

169 (5) The written notices required by this section must be
170 sent by first-class or express mail.

171 Section 4. Section 494.00225, Florida Statutes, is created
172 to read:

173 494.00225 Residential mortgage loan modifications to avoid
174 foreclosure; transfers of duties and obligations of mortgage
175 servicers and mortgage lenders.—If a borrower of a residential
176 mortgage loan has been approved in writing for a first lien loan
177 modification, a foreclosure prevention alternative under s.
178 494.0027, or other loan modification to avoid foreclosure and if
179 the servicing of the borrower's mortgage loan is transferred or
180 sold, the mortgage servicer or mortgage lender to whom the
181 mortgage loan is transferred or sold shall assume all duties and
182 obligations related to such previously approved first lien loan
183 modification, foreclosure prevention alternative, or other loan
184 modification.



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185 Section 5. Section 494.0027, Florida Statutes, is created
186 to read:

187 494.0027 Foreclosure prevention alternatives for
188 residential mortgage loans.-

189 (1) As used in this section, the term:

190 (a) "Complete application" means an application for a
191 foreclosure prevention alternative for which the borrower has
192 provided all documents required by the mortgage servicer or
193 mortgage lender within the reasonable timeframe specified by the
194 mortgage servicer or mortgage lender.

195 (b) "Single point of contact" means a person who has, or a
196 team of personnel of which each member has, the ability,
197 authority, and responsibility to:

198 1. Communicate the process by which a borrower may apply
199 for an available foreclosure prevention alternative and the
200 deadline for any required submission to be considered for the
201 foreclosure prevention alternative.

202 2. Coordinate receipt of all documents associated with the
203 available foreclosure prevention alternatives and notify the
204 borrower of any missing document necessary to complete an
205 application for a foreclosure prevention alternative.

206 3. Have access to current information and sufficient
207 personnel to timely, accurately, and adequately inform the
208 borrower of the current status of the foreclosure prevention
209 alternative.

210 4. Ensure that the borrower is considered for all
211 foreclosure prevention alternatives offered by, or through, the
212 mortgage servicer or mortgage lender and for which the borrower
213 is or may be eligible.



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214 5. Have access to the person who has the ability and
215 authority to stop the foreclosure process when necessary.

216 (2) (a) A mortgage servicer or mortgage lender may not
217 commence a civil action for the recovery of any debt, or for the
218 enforcement of any right, under a residential mortgage loan
219 which is not barred by this chapter or chapter 702 or any other
220 provision of law, record a notice of default or a notice of
221 sale, or conduct a foreclosure sale if a borrower submits an
222 application for a foreclosure prevention alternative offered by
223 or through the borrower's mortgage servicer or mortgage lender,
224 unless one of the following has occurred:

225 1. The borrower fails to submit all documents or
226 information required to complete the application within the
227 allotted timeframe authorized by the mortgage servicer or
228 mortgage lender, which must be at least 30 calendar days after
229 the date of the initial acknowledgment of receipt of the
230 application sent to the borrower.

231 2. The mortgage servicer or mortgage lender makes a written
232 determination that the borrower is not eligible for a
233 foreclosure prevention alternative, and any appeal period under
234 subsection (5) has expired.

235 3. The borrower does not accept a written offer for a
236 foreclosure prevention alternative within 30 calendar days after
237 the date of the offer.

238 4. The borrower accepts a written offer for a foreclosure
239 prevention alternative, but defaults on or otherwise breaches
240 the borrower's obligations under the foreclosure prevention
241 alternative.

242 (b)1. If a borrower requests a foreclosure prevention



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243 alternative, the mortgage servicer or mortgage lender shall
244 promptly establish a single point of contact and provide to the
245 borrower one or more direct means of communication with the
246 single point of contact.

247 2. A single point of contact must remain assigned to the
248 borrower's account until the mortgage servicer or mortgage
249 lender determines that all foreclosure prevention alternatives
250 offered by, or through, the mortgage servicer or mortgage lender
251 have been exhausted or the borrower's account becomes current.

252 3. The mortgage servicer or mortgage lender shall ensure
253 that a single point of contact refers and transfers the borrower
254 to an appropriate supervisor upon the borrower's request, if the
255 single point of contact has a supervisor.

256 4. If the responsibilities of a single point of contact are
257 performed by a team of personnel, the mortgage servicer or
258 mortgage lender shall ensure that each member of the team is
259 knowledgeable about the borrower's situation and current status
260 in the process of seeking a foreclosure prevention alternative.

261 (3) Within 7 business days after receiving an application
262 for a foreclosure prevention alternative or any document in
263 connection with a foreclosure prevention alternative application
264 for a residential mortgage loan, a mortgage servicer or mortgage
265 lender shall send to the borrower, by first-class mail or, if an
266 electronic mail address is provided, by electronic mail, written
267 acknowledgment of the receipt of the application or document.

268 (a) Upon receipt of an application for a foreclosure
269 prevention alternative, the mortgage servicer or mortgage lender
270 shall include in the initial acknowledgment of receipt of the
271 application:



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272 1. A description of the process for considering the
273 application, including, without limitation, an estimate of when
274 a decision on the application will be made and the length of
275 time the borrower will have to consider an offer for a
276 foreclosure prevention alternative.

277 2. A statement of any deadlines that affect the processing
278 of an application for a foreclosure prevention alternative,
279 including, without limitation, the deadline for submitting any
280 missing document.

281 3. A statement of the expiration dates for any documents
282 submitted by the borrower.

283 (b) If a borrower submits an application for a foreclosure
284 prevention alternative but does not initially submit all the
285 documents or information required to complete the application,
286 the mortgage servicer or mortgage lender shall include in the
287 initial acknowledgment of receipt of the application:

288 1. A statement of any deficiency in the borrower's
289 application and allow the borrower at least 30 calendar days to
290 submit any missing document or information required to complete
291 the application.

292 2. All the information required under subparagraphs (a)1.,
293 2., and 3.

294 (4) If a borrower accepts an offer for a foreclosure
295 prevention alternative for a residential mortgage loan, the
296 mortgage servicer or mortgage lender shall provide the borrower
297 with a copy of the complete agreement of the foreclosure
298 prevention alternative signed by the mortgage lender or an agent
299 or authorized representative of the mortgage lender.

300 (5) If a borrower submits a complete application for a



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301 foreclosure prevention alternative for a residential mortgage
302 loan and the borrower's application is denied, the mortgage
303 servicer or mortgage lender shall send to the borrower a written
304 statement of:

305 (a) The reason for the denial.

306 (b) The length of time the borrower has to request an
307 appeal of the denial, which must be at least 30 calendar days.

308 (c) Instructions regarding how to appeal the denial,
309 including, without limitation, how to provide evidence that the
310 denial was in error.

311 (6) If a borrower of a residential mortgage loan submits a
312 complete application for a foreclosure prevention alternative
313 and the borrower's application is denied, the mortgage servicer
314 or mortgage lender may not commence a civil action for the
315 recovery of any debt, or for the enforcement of any right, under
316 a residential mortgage loan which is not barred by this chapter
317 or chapter 702 or any other provision of law, record a notice of
318 default or a notice of sale, or conduct a foreclosure sale until
319 the later of:

320 (a) Sixty calendar days after the borrower is sent the
321 written statement required by subsection (5); or

322 (b) If the borrower appeals the denial, the later of:

323 1. Fifteen calendar days after the denial of the appeal;

324 2. If the appeal is successful, 14 calendar days after a
325 foreclosure prevention alternative offered after the appeal is
326 declined by the borrower; or

327 3. If a foreclosure prevention alternative offered after
328 the appeal is accepted, the date on which the borrower fails to
329 timely submit the first payment or otherwise breaches the terms



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330 of the offer.

331 (7) A mortgage servicer or mortgage lender is not required
332 to evaluate a foreclosure prevention alternative application
333 from a borrower of a residential mortgage loan who has already
334 been evaluated or afforded a fair opportunity to be evaluated
335 for a foreclosure prevention alternative or who has been
336 evaluated or afforded a fair opportunity to be evaluated
337 consistent with the requirements of this section, unless:

338 (a) There has been a material change in the borrower's
339 financial circumstances since the date of the borrower's
340 previous application.

341 (b) The change in paragraph (a) is documented by the
342 borrower and submitted to the mortgage servicer or mortgage
343 lender.

344 (8) A mortgage servicer or mortgage lender may not charge
345 or collect:

346 (a) An application fee, processing fee, or other fee for a
347 foreclosure prevention alternative; or

348 (b) Late fees for periods during which:

349 1. A foreclosure prevention alternative is under
350 consideration or a denial is being appealed;

351 2. The borrower is making timely payments under a
352 foreclosure prevention alternative; or

353 3. A foreclosure prevention alternative is being evaluated
354 or exercised.

355 Section 6. Section 627.4055, Florida Statutes, is created
356 to read:

357 627.4055 Lender-placed insurance for residential mortgage
358 loan guaranty.-



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359 (1) As used in this section, the term:
360 (a) "Affiliate" has the same meaning as in s. 624.10.
361 (b) "Lender-placed insurance" means insurance obtained by a
362 mortgage servicer or mortgage lender when a borrower of a
363 residential mortgage loan does not maintain valid or sufficient
364 insurance upon the mortgaged real property as required by the
365 terms of the mortgage agreement.
366 (c) "Mortgage servicer" has the same meaning as in s.
367 494.001.
368 (d) "Person affiliated" means an affiliate or affiliated
369 person, as those terms are defined in s. 624.10.
370 (2) (a) An insurer or insurance agent may not:
371 1. Issue lender-placed insurance on a mortgaged property if
372 the insurer or insurance agent or an affiliate of the insurer or
373 insurance agent owns, performs the servicing for, or owns the
374 servicing right to, the mortgaged property.
375 2. Except for payment to a mortgage lender for any loss
376 resulting from a mortgage default or property foreclosure:
377 a. Compensate any mortgage lender, insurer, investor, or
378 mortgage servicer, including, but not limited to, through
379 payment of commissions, on a lender-placed insurance policy
380 issued by the insurer or insurance agent.
381 b. Make any payment, including, but not limited to, payment
382 of expenses, to any mortgage lender, insurer, investor, or
383 mortgage servicer for the purpose of securing lender-placed
384 insurance business or related outsourced services.
385 c. Share lender-placed insurance premium or risk with the
386 mortgage lender, investor, or mortgage servicer that obtained
387 the lender-placed insurance.



388 d. Offer contingent commissions, profit sharing, or other
389 payments dependent on profitability or loss ratios to any person
390 affiliated with lender-placed insurance.

391 (b) An insurer or insurance agent may not provide free or
392 below-cost outsourced services to a mortgage lender, insurance
393 producer, investor, or mortgage servicer or outsource its own
394 functions to a mortgage lender, insurance producer, investor, or
395 mortgage servicer on an above-cost basis.

396 Section 7. Section 635.0215, Florida Statutes, is created
397 to read:

398 635.0215 Lender-placed insurance for residential mortgage
399 loan guaranty.-

400 (1) As used in this section, the term:

401 (a) "Affiliate" has the same meaning as in s. 624.10.

402 (b) "Lender-placed insurance" has the same meaning as in s.
403 627.4055(1).

404 (c) "Mortgage servicer" has the same meaning as in s.
405 494.001.

406 (d) "Person affiliated" means an affiliate or affiliated
407 person, as those terms are defined in s. 624.10.

408 (2) (a) An insurer or insurance agent may not:

409 1. Issue lender-placed insurance on a mortgaged property if
410 the insurer or insurance agent or an affiliate of the insurer or
411 insurance agent owns, performs the servicing for, or owns the
412 servicing right to, the mortgaged property.

414 ===== T I T L E A M E N D M E N T =====

415 And the title is amended as follows:

416 Delete lines 5 - 11



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417 and insert:
418 494.00163, F.S.; requiring that periodic statements
419 for residential mortgage loans follow specified laws;
420 specifying that certain entities are not exempt from
421 such laws; defining the term "small mortgage
422 servicer"; creating s. 494.00164, F.S.; prohibiting a
423 mortgage servicer from assessing certain charges or
424 fees relating to lender-placed insurance on a borrower
425 unless specified requirements are met; defining the
426 term "lender-placed insurance"; providing notice
427 requirements relating to such assessment; requiring
428 mortgage servicers to take specified actions after
429 receiving certain evidence relating to hazard
430 insurance coverage; requiring certain written notices
431 to be sent by first-class mail; creating s. 494.00225,
432 F.S.; requiring

By Senator Garcia

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1 A bill to be entitled
 2 An act relating to servicers and lenders of
 3 residential mortgage loans; amending s. 494.001, F.S.;
 4 revising and providing definitions; creating s.
 5 494.00163, F.S.; requiring mortgage lenders and
 6 mortgage servicers to comply with specified federal
 7 law; requiring that periodic statements for
 8 residential mortgage loans follow specified laws;
 9 specifying that certain entities are not exempt from
 10 such laws; defining the term "small mortgage
 11 servicer"; creating s. 494.00225, F.S.; requiring
 12 mortgage servicers and mortgage lenders to assume
 13 duties and obligations relating to previously approved
 14 first lien loan modifications, foreclosure prevention
 15 alternatives, and other loan modifications under
 16 certain circumstances; creating s. 494.0027, F.S.;
 17 defining terms; prohibiting mortgage servicers and
 18 mortgage lenders from commencing certain civil
 19 actions, recording specified notices, or conducting
 20 foreclosure sales unless specified conditions are met;
 21 requiring mortgage servicers and mortgage lenders to
 22 establish single points of contact and provide to
 23 borrowers direct means of communication with the
 24 single points of contact upon request; providing
 25 requirements and duties for single points of contact
 26 and for mortgage servicers and mortgage lenders
 27 relating to single points of contact; requiring
 28 mortgage servicers and mortgage lenders to send
 29 written acknowledgment of application receipt to

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30 foreclosure prevention alternative applicants in
 31 specified manners within a specified timeframe;
 32 providing requirements for statements, documents, and
 33 information that mortgage servicers and mortgage
 34 lenders must send to applicants under various
 35 circumstances; providing timelines for mortgage
 36 servicers and mortgage lenders to commence civil
 37 actions against residential mortgage loan borrowers;
 38 providing that mortgage servicers and mortgage lenders
 39 are not required to evaluate foreclosure prevention
 40 alternative applications under certain circumstances;
 41 providing an exception; prohibiting mortgage servicers
 42 and mortgage lenders from charging specified fees;
 43 creating ss. 627.4055 and 635.0215, F.S.; defining
 44 terms; prohibiting insurers and insurance agents from
 45 engaging in certain acts relating to lender-placed
 46 insurance for residential mortgage loan guaranty;
 47 creating s. 702.013, F.S.; defining terms; prohibiting
 48 mortgage servicers and mortgage lenders from
 49 commencing certain civil actions, recording specified
 50 notices, or conducting foreclosure sales unless
 51 specified conditions are met; providing an exception;
 52 requiring mortgage servicers and mortgage lenders to
 53 establish single points of contact and to provide to
 54 borrowers direct means of communication with the
 55 single points of contact upon request; providing
 56 requirements and duties for single points of contact
 57 and for mortgage servicers and mortgage lenders
 58 relating to single points of contact; requiring

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59 mortgage servicers and mortgage lenders to send
 60 written acknowledgment of application receipt to
 61 foreclosure prevention alternative applicants in
 62 specified manners within a specified timeframe;
 63 providing requirements for statements, documents, and
 64 information that mortgage servicers and mortgage
 65 lenders must send to applicants under various
 66 circumstances; providing timelines for mortgage
 67 servicers and mortgage lenders to commence civil
 68 actions against residential mortgage loan borrowers;
 69 providing that mortgage servicers and mortgage lenders
 70 are not required to evaluate foreclosure prevention
 71 alternative applications under certain circumstances;
 72 providing an exception; prohibiting mortgage servicers
 73 and mortgage lenders from charging specified fees;
 74 amending ss. 494.00115 and 494.0025, F.S.; conforming
 75 cross-references; providing an effective date.

76
 77 Be It Enacted by the Legislature of the State of Florida:

78
 79 Section 1. Present subsections (12) through (26) and (27)
 80 through (38) of section 494.001, Florida Statutes, are
 81 redesignated as subsections (13) through (27) and subsections
 82 (29) through (40), respectively, new subsections (12) and (28)
 83 are added to that section, and subsection (1) of that section is
 84 amended, to read:

85 494.001 Definitions.—As used in this chapter, the term:

86 (1) "Borrower" means:

87 (a) A person obligated to repay a mortgage loan and

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88 includes, but is not limited to, a coborrower or cosignor; or
 89 (b) A natural person who is a mortgagor under a residential
 90 mortgage loan.

91 (12) "Foreclosure prevention alternative" means a
 92 modification of a residential mortgage loan term.

93 (28) "Mortgage servicer" means a person or entity that
 94 directly services, or is contracted as a subservicing agent to a
 95 master servicer to service, a residential mortgage loan or
 96 manages a residential mortgage loan, which services or
 97 management may include, but is not limited to, the following
 98 responsibilities:

99 (a) Interacting with the borrower; managing the borrower's
 100 loan account daily, including, but not limited to, collecting
 101 and crediting loan payments that include principals and
 102 interests paid, and generating periodic billing and account
 103 statements; and managing the borrower's escrow account, if
 104 applicable; or

105 (b) Enforcing the note and security instrument as the
 106 current owner of the promissory note or as the authorized agent
 107 of the current owner of the promissory note.

108 Section 2. Section 494.00163, Florida Statutes, is created
 109 to read:

110 494.00163 Residential mortgage loans; lender-placed
 111 insurance; periodic statements.—

112 (1) A mortgage lender or mortgage servicer must comply with
 113 12 C.F.R. s. 1024.37.

114 (2) Periodic statements for residential mortgage loans in
 115 the state must follow all the provisions set forth in 12 C.F.R.
 116 s. 1026.41.

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117 (3) A servicer of a reverse mortgage or a small mortgage
 118 servicer is not exempt from the requirements of 12 C.F.R. s.
 119 1024.37 and 12 C.F.R. s. 1026.41. As used in this section, the
 120 term "small mortgage servicer" means a mortgage servicer that,
 121 together with any affiliates, services up to 5,000 residential
 122 mortgage loans, all of which have the mortgage servicer or its
 123 affiliate as the creditor or assignee.

124 Section 3. Section 494.00225, Florida Statutes, is created
 125 to read:

126 494.00225 Residential mortgage loan modifications to avoid
 127 foreclosure; transfers of duties and obligations of mortgage
 128 servicers and mortgage lenders.—If a borrower of a residential
 129 mortgage loan has been approved in writing for a first lien loan
 130 modification, a foreclosure prevention alternative under s.
 131 494.0027, or other loan modification to avoid foreclosure and if
 132 the servicing of the borrower's mortgage loan is transferred or
 133 sold, the mortgage servicer or mortgage lender to whom the
 134 mortgage loan is transferred or sold shall assume all duties and
 135 obligations related to such previously approved first lien loan
 136 modification, foreclosure prevention alternative, or other loan
 137 modification.

138 Section 4. Section 494.0027, Florida Statutes, is created
 139 to read:

140 494.0027 Foreclosure prevention alternatives for
 141 residential mortgage loans.—

142 (1) As used in this section, the term:

143 (a) "Complete application" means an application for a
 144 foreclosure prevention alternative for which the borrower has
 145 provided all documents required by the mortgage servicer or

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146 mortgage lender within the reasonable timeframe specified by the
 147 mortgage servicer or mortgage lender.

148 (b) "Single point of contact" means a person who has, or a
 149 team of personnel of which each member has, the ability,
 150 authority, and responsibility to:

151 1. Communicate the process by which a borrower may apply
 152 for an available foreclosure prevention alternative and the
 153 deadline for any required submission to be considered for the
 154 foreclosure prevention alternative.

155 2. Coordinate receipt of all documents associated with the
 156 available foreclosure prevention alternatives and notify the
 157 borrower of any missing document necessary to complete an
 158 application for a foreclosure prevention alternative.

159 3. Have access to current information and sufficient
 160 personnel to timely, accurately, and adequately inform the
 161 borrower of the current status of the foreclosure prevention
 162 alternative.

163 4. Ensure that the borrower is considered for all
 164 foreclosure prevention alternatives offered by, or through, the
 165 mortgage servicer or mortgage lender and for which the borrower
 166 is or may be eligible.

167 5. Have access to the person who has the ability and
 168 authority to stop the foreclosure process when necessary.

169 (2) (a) A mortgage servicer or mortgage lender may not
 170 commence a civil action for the recovery of any debt, or for the
 171 enforcement of any right, under a residential mortgage loan
 172 which is not barred by this chapter or chapter 702 or any other
 173 provision of law, record a notice of default or a notice of
 174 sale, or conduct a foreclosure sale, if a borrower submits an

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175 application for a foreclosure prevention alternative offered by,
 176 or through, the borrower's mortgage servicer or mortgage lender,
 177 unless one of the following has occurred:

178 1. The borrower fails to submit all documents or
 179 information required to complete the application within the
 180 allotted timeframe authorized by the mortgage servicer or
 181 mortgage lender, which must be at least 30 calendar days after
 182 the date of the initial acknowledgment of receipt of the
 183 application sent to the borrower.

184 2. The mortgage servicer or mortgage lender makes a written
 185 determination that the borrower is not eligible for a
 186 foreclosure prevention alternative, and any appeal period under
 187 subsection (5) has expired.

188 3. The borrower does not accept a written offer for a
 189 foreclosure prevention alternative within 30 calendar days after
 190 the date of the offer.

191 4. The borrower accepts a written offer for a foreclosure
 192 prevention alternative, but defaults on or otherwise breaches
 193 the borrower's obligations under the foreclosure prevention
 194 alternative.

195 (b)1. If a borrower requests a foreclosure prevention
 196 alternative, the mortgage servicer or mortgage lender shall
 197 promptly establish a single point of contact and provide to the
 198 borrower one or more direct means of communication with the
 199 single point of contact.

200 2. A single point of contact must remain assigned to the
 201 borrower's account until the mortgage servicer or mortgage
 202 lender determines that all foreclosure prevention alternatives
 203 offered by, or through, the mortgage servicer or mortgage lender

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204 have been exhausted or the borrower's account becomes current.
 205 3. The mortgage servicer or mortgage lender shall ensure
 206 that a single point of contact refers and transfers the borrower
 207 to an appropriate supervisor upon the borrower's request, if the
 208 single point of contact has a supervisor.

209 4. If the responsibilities of a single point of contact are
 210 performed by a team of personnel, the mortgage servicer or
 211 mortgage lender shall ensure that each member of the team is
 212 knowledgeable about the borrower's situation and current status
 213 in the process of seeking a foreclosure prevention alternative.

214 (3) Within 7 business days after receiving an application
 215 for a foreclosure prevention alternative or any document in
 216 connection with a foreclosure prevention alternative application
 217 for a residential mortgage loan, a mortgage servicer or mortgage
 218 lender shall send to the borrower, by first-class mail or, if an
 219 electronic mail address is provided, by electronic mail, written
 220 acknowledgment of the receipt of the application or document.

221 (a) Upon receipt of an application for a foreclosure
 222 prevention alternative, the mortgage servicer or mortgage lender
 223 shall include in the initial acknowledgment of receipt of the
 224 application:

225 1. A description of the process for considering the
 226 application, including, without limitation, an estimate of when
 227 a decision on the application will be made and the length of
 228 time the borrower will have to consider an offer for a
 229 foreclosure prevention alternative.

230 2. A statement of any deadlines that affect the processing
 231 of an application for a foreclosure prevention alternative,
 232 including, without limitation, the deadline for submitting any

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233 missing document.

234 3. A statement of the expiration dates for any documents
 235 submitted by the borrower.

236 (b) If a borrower submits an application for a foreclosure
 237 prevention alternative but does not initially submit all the
 238 documents or information required to complete the application,
 239 the mortgage servicer or mortgage lender shall include in the
 240 initial acknowledgment of receipt of the application:

241 1. A statement of any deficiency in the borrower's
 242 application and allow the borrower at least 30 calendar days to
 243 submit any missing document or information required to complete
 244 the application.

245 2. All the information required under subparagraphs (a)1.,
 246 2., and 3.

247 (4) If a borrower accepts an offer for a foreclosure
 248 prevention alternative for a residential mortgage loan, the
 249 mortgage servicer or mortgage lender shall provide the borrower
 250 with a copy of the complete agreement of the foreclosure
 251 prevention alternative signed by the mortgage lender or an agent
 252 or authorized representative of the mortgage lender.

253 (5) If a borrower submits a complete application for a
 254 foreclosure prevention alternative for a residential mortgage
 255 loan and the borrower's application is denied, the mortgage
 256 servicer or mortgage lender shall send to the borrower a written
 257 statement of:

258 (a) The reason for the denial.

259 (b) The length of time the borrower has to request an
 260 appeal of the denial, which must be at least 30 calendar days.

261 (c) Instructions regarding how to appeal the denial,

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262 including, without limitation, how to provide evidence that the
 263 denial was in error.

264 (6) If a borrower of a residential mortgage loan submits a
 265 complete application for a foreclosure prevention alternative
 266 and the borrower's application is denied, the mortgage servicer
 267 or mortgage lender may not commence a civil action for the
 268 recovery of any debt, or for the enforcement of any right, under
 269 a residential mortgage loan which is not barred by this chapter
 270 or chapter 702 or any other provision of law, record a notice of
 271 default or a notice of sale, or conduct a foreclosure sale until
 272 the later of:

273 (a) Sixty calendar days after the borrower is sent the
 274 written statement required by subsection (5); or

275 (b) If the borrower appeals the denial, the later of:

276 1. Fifteen calendar days after the denial of the appeal; or

277 2. If the appeal is successful, 14 calendar days after a
 278 foreclosure prevention alternative offered after the appeal is
 279 declined by the borrower; or

280 3. If a foreclosure prevention alternative offered after
 281 the appeal is accepted, the date on which the borrower fails to
 282 timely submit the first payment or otherwise breaches the terms
 283 of the offer.

284 (7) A mortgage servicer or mortgage lender is not required
 285 to evaluate a foreclosure prevention alternative application
 286 from a borrower of a residential mortgage loan who has already
 287 been evaluated or afforded a fair opportunity to be evaluated
 288 for a foreclosure prevention alternative or who has been
 289 evaluated or afforded a fair opportunity to be evaluated
 290 consistent with the requirements of this section, unless:

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291 (a) There has been a material change in the borrower's
 292 financial circumstances since the date of the borrower's
 293 previous application.
 294 (b) The change in paragraph (a) is documented by the
 295 borrower and submitted to the mortgage servicer or mortgage
 296 lender.
 297 (8) A mortgage servicer or mortgage lender may not charge
 298 or collect:
 299 (a) An application fee, processing fee, or other fee for a
 300 foreclosure prevention alternative; or
 301 (b) Late fees for periods during which:
 302 1. A foreclosure prevention alternative is under
 303 consideration or a denial is being appealed;
 304 2. The borrower is making timely payments under a
 305 foreclosure prevention alternative; or
 306 3. A foreclosure prevention alternative is being evaluated
 307 or exercised.
 308 Section 5. Section 627.4055, Florida Statutes, is created
 309 to read:
 310 627.4055 Lender-placed insurance for residential mortgage
 311 loan guaranty.—
 312 (1) As used in this section, the term:
 313 (a) "Affiliate" has the same meaning as in s. 624.10.
 314 (b) "Lender-placed insurance" means insurance obtained by a
 315 mortgage servicer or mortgage lender when a borrower of a
 316 residential mortgage loan does not maintain valid or sufficient
 317 insurance upon the mortgaged real property as required by the
 318 terms of the mortgage agreement.
 319 (c) "Mortgage servicer" has the same meaning as in s.

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320 494.001.
 321 (d) "Person affiliated" means an affiliate or affiliated
 322 person, as those terms are defined in s. 624.10.
 323 (2) (a) An insurer or insurance agent may not:
 324 1. Issue lender-placed insurance on a mortgaged property
 325 if:
 326 a. The insurer or insurance agent or an affiliate of the
 327 insurer or insurance agent owns, performs the servicing for, or
 328 owns the servicing right to, the mortgaged property; or
 329 b. The mortgage servicer or mortgage lender has not
 330 complied with 12 C.F.R. s. 1024.37.
 331 2. Except for payment to a mortgage lender for any loss
 332 resulting from a mortgage default or property foreclosure:
 333 a. Compensate any mortgage lender, insurer, investor, or
 334 mortgage servicer, including, but not limited to, through
 335 payment of commissions, on a lender-placed insurance policy
 336 issued by the insurer or insurance agent.
 337 b. Make any payment, including, but not limited to, payment
 338 of expenses, to any mortgage lender, insurer, investor, or
 339 mortgage servicer for the purpose of securing lender-placed
 340 insurance business or related outsourced services.
 341 c. Share lender-placed insurance premium or risk with the
 342 mortgage lender, investor, or mortgage servicer that obtained
 343 the lender-placed insurance.
 344 d. Offer contingent commissions, profit sharing, or other
 345 payments dependent on profitability or loss ratios to any person
 346 affiliated with lender-placed insurance.
 347 (b) An insurer or insurance agent may not provide free or
 348 below-cost outsourced services to a mortgage lender, insurance

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349 producer, investor, or mortgage servicer or outsource its own
 350 functions to a mortgage lender, insurance producer, investor, or
 351 mortgage servicer on an above-cost basis.
 352 Section 6. Section 635.0215, Florida Statutes, is created
 353 to read:
 354 635.0215 Lender-placed insurance for residential mortgage
 355 loan guaranty.—
 356 (1) As used in this section, the term:
 357 (a) "Affiliate" has the same meaning as in s. 624.10.
 358 (b) "Lender-placed insurance" has the same meaning as in s.
 359 627.4055(1).
 360 (c) "Mortgage servicer" has the same meaning as in s.
 361 494.001.
 362 (d) "Person affiliated" means an affiliate or affiliated
 363 person, as those terms are defined in s. 624.10.
 364 (2) (a) An insurer or insurance agent may not:
 365 1. Issue lender-placed insurance on a mortgaged property
 366 if:
 367 a. The insurer or insurance agent or an affiliate of the
 368 insurer or insurance agent owns, performs the servicing for, or
 369 owns the servicing right to, the mortgaged property; or
 370 b. The mortgage servicer or mortgage lender has not
 371 complied with 12 C.F.R. s. 1024.37.
 372 2. Except for payment to a mortgage lender for any loss
 373 resulting from a mortgage default or property foreclosure:
 374 a. Compensate any mortgage lender, insurer, investor, or
 375 mortgage servicer, including, but not limited to, through
 376 payment of commissions, on a lender-placed insurance policy
 377 issued by the insurer or insurance agent.

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378 b. Make any payment, including, but not limited to, payment
 379 of expenses, to any mortgage lender, insurer, investor, or
 380 mortgage servicer for the purpose of securing lender-placed
 381 insurance business or related outsourced services.
 382 c. Share lender-placed insurance premium or risk with the
 383 mortgage lender, investor, or mortgage servicer that obtained
 384 the lender-placed insurance.
 385 d. Offer contingent commissions, profit sharing, or other
 386 payments dependent on profitability or loss ratios to any person
 387 affiliated with lender-placed insurance.
 388 (b) An insurer or insurance agent may not provide free or
 389 below-cost outsourced services to a mortgage lender, insurance
 390 producer, investor, or mortgage servicer or outsource its own
 391 functions to a mortgage lender, insurance producer, investor, or
 392 mortgage servicer on an above-cost basis.
 393 Section 7. Section 702.013, Florida Statutes, is created to
 394 read:
 395 702.013 Foreclosure prevention alternatives for residential
 396 mortgage loans.—
 397 (1) As used in this section, the term:
 398 (a) "Complete application" has the same meaning as in s.
 399 494.0027(1).
 400 (b) "Foreclosure prevention alternative" has the same
 401 meaning as in s. 494.001.
 402 (c) "Mortgage servicer" has the same meaning as in s.
 403 494.001.
 404 (d) "Single point of contact" has the same meaning as in s.
 405 494.0027(1).
 406 (2) (a) A mortgage servicer or mortgage lender may not

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407 commence a civil action for the recovery of any debt, or for the
 408 enforcement of any right, under a residential mortgage loan
 409 which is not barred by this chapter or chapter 494 or any other
 410 provision of law, record a notice of default or a notice of
 411 sale, or conduct a foreclosure sale, if a borrower submits an
 412 application for a foreclosure prevention alternative offered by,
 413 or through, the borrower's mortgage servicer or mortgage lender,
 414 unless one of the following has occurred:

415 1. The borrower fails to submit all documents or
 416 information required to complete the application within the
 417 allotted timeframe authorized by the mortgage servicer or
 418 mortgage lender, which must be at least 30 calendar days after
 419 the date of the initial acknowledgment of receipt of the
 420 application sent to the borrower.

421 2. The mortgage servicer or mortgage lender makes a written
 422 determination that the borrower is not eligible for a
 423 foreclosure prevention alternative, and any appeal period under
 424 subsection (5) has expired.

425 3. The borrower does not accept a written offer for a
 426 foreclosure prevention alternative within 30 calendar days after
 427 the date of the offer.

428 4. The borrower accepts a written offer for a foreclosure
 429 prevention alternative, but defaults on or otherwise breaches
 430 the borrower's obligations under the foreclosure prevention
 431 alternative.

432 (b)1. If a borrower requests a foreclosure prevention
 433 alternative, the mortgage servicer or mortgage lender shall
 434 promptly establish a single point of contact and provide to the
 435 borrower one or more direct means of communication with the

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436 single point of contact.

437 2. A single point of contact must remain assigned to the
 438 borrower's account until the mortgage servicer or mortgage
 439 lender determines that all foreclosure prevention alternatives
 440 offered by, or through, the mortgage servicer or mortgage lender
 441 have been exhausted or the borrower's account becomes current.

442 3. The mortgage servicer or mortgage lender shall ensure
 443 that a single point of contact refers and transfers the borrower
 444 to an appropriate supervisor upon the borrower's request, if the
 445 single point of contact has a supervisor.

446 4. If the responsibilities of a single point of contact are
 447 performed by a team of personnel, the mortgage servicer or
 448 mortgage lender shall ensure that each member of the team is
 449 knowledgeable about the borrower's situation and current status
 450 in the process of seeking a foreclosure prevention alternative.

451 (3) Within 7 business days after receiving an application
 452 for a foreclosure prevention alternative or any document in
 453 connection with a foreclosure prevention alternative application
 454 for a residential mortgage loan, a mortgage servicer or mortgage
 455 lender shall send to the borrower, by first-class mail or, if an
 456 electronic mail address is provided, by electronic mail, written
 457 acknowledgment of the receipt of the application or document.

458 (a) Upon receipt of an application for a foreclosure
 459 prevention alternative, the mortgage servicer or mortgage lender
 460 shall include in the initial acknowledgment of receipt of the
 461 application:

462 1. A description of the process for considering the
 463 application, including, without limitation, an estimate of when
 464 a decision on the application will be made and the length of

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465 time the borrower will have to consider an offer for a
 466 foreclosure prevention alternative.
 467 2. A statement of any deadlines that affect the processing
 468 of an application for a foreclosure prevention alternative,
 469 including, without limitation, the deadline for submitting any
 470 missing document.
 471 3. A statement of the expiration dates for any documents
 472 submitted by the borrower.
 473 (b) If a borrower submits an application for a foreclosure
 474 prevention alternative but does not initially submit all the
 475 documents or information required to complete the application,
 476 the mortgage servicer or mortgage lender shall include in the
 477 initial acknowledgment of receipt of the application:
 478 1. A statement of any deficiency in the borrower's
 479 application and allow the borrower at least 30 calendar days to
 480 submit any document or information required to complete the
 481 application.
 482 2. All the information required under subparagraphs (a)1.,
 483 2., and 3.
 484 (4) If a borrower accepts an offer for a foreclosure
 485 prevention alternative for a residential mortgage loan, the
 486 mortgage servicer or mortgage lender shall provide the borrower
 487 with a copy of the complete agreement of the foreclosure
 488 prevention alternative signed by the mortgage lender or an agent
 489 or authorized representative of the mortgage lender.
 490 (5) If a borrower submits a complete application for a
 491 foreclosure prevention alternative for a residential mortgage
 492 loan and the borrower's application is denied, the mortgage
 493 servicer or mortgage lender shall send to the borrower a written

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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494 statement of:
 495 (a) The reason for the denial.
 496 (b) The length of time the borrower has to request an
 497 appeal of the denial, which must be at least 30 calendar days.
 498 (c) Instructions regarding how to appeal the denial,
 499 including, without limitation, how to provide evidence that the
 500 denial was in error.
 501 (6) If a borrower of a residential mortgage loan submits a
 502 complete application for a foreclosure prevention alternative
 503 and the borrower's application is denied, the mortgage servicer
 504 or mortgage lender may not commence a civil action for the
 505 recovery of any debt, or for the enforcement of any right, under
 506 a residential mortgage loan which is not barred by this chapter
 507 or chapter 494 or any other provision of law, record a notice of
 508 default or a notice of sale, or conduct a foreclosure sale until
 509 the later of:
 510 (a) Sixty calendar days after the borrower is sent the
 511 written statement required by subsection (5); or
 512 (b) If the borrower appeals the denial, the later of:
 513 1. Fifteen calendar days after the denial of the appeal; or
 514 2. If the appeal is successful, 14 calendar days after a
 515 foreclosure prevention alternative offered after the appeal is
 516 declined by the borrower; or
 517 3. If a foreclosure prevention alternative offered after
 518 the appeal is accepted, the date on which the borrower fails to
 519 timely submit the first payment or otherwise breaches the terms
 520 of the offer.
 521 (7) A mortgage servicer or mortgage lender is not required
 522 to evaluate a foreclosure prevention alternative application

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523 from a borrower of a residential mortgage loan who has already
 524 been evaluated or afforded a fair opportunity to be evaluated
 525 for a foreclosure prevention alternative or who has been
 526 evaluated or afforded a fair opportunity to be evaluated
 527 consistent with the requirements of this section, unless:

528 (a) There has been a material change in the borrower's
 529 financial circumstances since the date of the borrower's
 530 previous application.

531 (b) The change in paragraph (a) is documented by the
 532 borrower and submitted to the mortgage servicer or mortgage
 533 lender.

534 (8) A mortgage servicer or mortgage lender may not charge
 535 or collect:

536 (a) Application fees, processing fees, or other fees for a
 537 foreclosure prevention alternative; or

538 (b) Late fees for periods during which:

539 1. A foreclosure prevention alternative is under
 540 consideration or a denial is being appealed;

541 2. The borrower is making timely payments under a
 542 foreclosure prevention alternative; or

543 3. A foreclosure prevention alternative is being evaluated
 544 or exercised.

545 Section 8. Paragraphs (a), (b), and (c) of subsection (5)
 546 of section 494.00115, Florida Statutes, are amended to read:
 547 494.00115 Exemptions.—

548 (5) As used in this section, the term "hold himself or
 549 herself out to the public as being in the mortgage lending
 550 business" includes any of the following:

551 (a) Representing to the public, through advertising or

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552 other means of communicating or providing information, including
 553 the use of business cards, stationery, brochures, signs, rate
 554 lists, or promotional items, by any method, that such individual
 555 can or will perform the activities described in s. 494.001(25)
 556 ~~s. 494.001(24).~~

557 (b) Soliciting in a manner that would lead the intended
 558 audience to reasonably believe that such individual is in the
 559 business of performing the activities described in s.
 560 494.001(25) ~~s. 494.001(24).~~

561 (c) Maintaining a commercial business establishment at
 562 which, or premises from which, such individual regularly
 563 performs the activities described in s. 494.001(25) ~~s.~~
 564 ~~494.001(24)~~ or regularly meets with current or prospective
 565 mortgage borrowers.

566 Section 9. Paragraph (d) of subsection (4) of section
 567 494.0025, Florida Statutes, is amended to read:

568 494.0025 Prohibited practices.—It is unlawful for any
 569 person:

570 (4) In any practice or transaction or course of business
 571 relating to the sale, purchase, negotiation, promotion,
 572 advertisement, or hypothecation of mortgage loan transactions,
 573 directly or indirectly:

574 (d) To misrepresent a residential mortgage loan, as
 575 described in s. 494.001(26)(a) ~~s. 494.001(25)(a)~~, as a business
 576 purpose loan.

577 Section 10. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/8/2022

Meeting Date

S.B. 1706

Bill Number or Topic

Banking + Insurance

Committee

Amendment Barcode (if applicable)

Name Christopher Richmond, Floridians for Honest Lending

Phone 202-577-6157

Address 5 Island Ave, Apt 4H

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Email christopher.richmond@gmail.com

Miami Beach FL 33139

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[x] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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2/8/22

Meeting Date

B&T

Committee

1706

Bill Number or Topic

Name

Anthony DiMarco

Amendment Barcode (if applicable)

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Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Bankers Assoc

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 37
Caption: Senate Banking and Insurance Committee

Case No.:

Type:
Judge:

Started: 2/8/2022 3:01:05 PM
Ends: 2/8/2022 3:28:52 PM **Length:** 00:27:48

3:01:03 PM Meeting called to order, roll call
3:01:33 PM Pre-Meeting comments by Chair Boyd
3:01:57 PM Tab 4 - SB 1706, Servicers and Lenders of Residential Mortgage Loans
3:02:06 PM Senator Garcia explains the bill
3:04:33 PM Question by Senator Broxson
3:04:50 PM Response by Senator Garcia
3:05:44 PM Question by Senator Broxson
3:05:52 PM Response by Senator Garcia
3:06:53 PM Question by Senator Brandes
3:07:04 PM Response by Senator Garcia
3:07:24 PM Question by Senator Brandes
3:07:29 PM Response by Senator Garcia
3:09:08 PM Late-filed amendment 453068 by Senator Garcia
3:09:49 PM Amendment 453068 is adopted
3:10:17 PM Christopher Richmond, Floridians for Honest Lending, waives in support
3:10:52 PM Anthony DiMarco, Florida Bankers Assoc., speaks on the bill
3:11:57 PM Senator Burgess in debate
3:12:25 PM Senator Brandes in debate
3:13:06 PM Chair Boyd in debate
3:14:24 PM Senator Garcia closes on the bill
3:15:43 PM Roll call on CS/SB 1706
3:15:47 PM CS/SB 1706 reported favorably
3:15:57 PM Tab 2 - 1258, Managed Care Plan Performance
3:16:00 PM Senator Jones explains the bill
3:17:22 PM Public Testimony
3:17:24 PM Ivonne Fernandez, AARP, waives in support
3:17:41 PM Senator Jones waives close
3:17:50 PM Roll call on SB 1258
3:17:56 PM SB 1258 is reported favorably
3:18:34 PM Tab 1 - SB 1016, Mortgage Payoff Letters
3:18:43 PM Senator Burgess explains the bill
3:20:22 PM Amendment 184796 delete-all by Senator Burgess
3:21:16 PM Warren Husband, Attorneys' Title Fund Services, LLC waives, in support on the amendment
3:21:31 PM Amendment 184796 is adopted
3:21:46 PM Question by Senator Passidomo
3:22:04 PM Response by Senator Burgess
3:22:31 PM Comments by Senator Broxson
3:22:49 PM Kari Hebrank, Southern Title, waives in support
3:22:56 PM Shelley Stewart, Southern Title, waives in support
3:23:14 PM Ashley Kalifeh, Old Republic Title, waives in support
3:23:24 PM Senator Burgess comments
3:23:44 PM Senator Burgess waives close
3:23:50 PM Roll call on CS/SB 1016
3:24:01 PM CS/SB 1016 is reported favorably
3:24:18 PM Tab 3 - SB 1368, Trusts
3:24:26 PM Senator Gruters explains the bill
3:25:06 PM Amendment 503122 by Senator Gruters
3:25:59 PM Amendment 503122 is adopted
3:26:18 PM Senator Gruters closes on the bill
3:26:37 PM Roll call on CS/SB 1368
3:26:47 PM CS/SB 1368 is reported favorably
3:27:10 PM Comments by Chair Boyd

3:28:23 PM Comments by Senator Burgess
3:28:38 PM Senator Passidomo moves to adjourn