

By Representative Bendross-Mindingall

1 A bill to be entitled
2 An act relating to the Florida Home Loan
3 Protection Act; providing a short title;
4 providing legislative findings; providing
5 purposes; providing definitions; specifying
6 certain prohibited acts and practices relating
7 to creditors making home loans under certain
8 circumstances; providing limitations and
9 prohibiting certain activities or conditions
10 relating to creditors making high-cost home
11 loans; providing a right to reinstate a loan
12 under certain circumstances; specifying grounds
13 for reinstatement; proscribing certain fees,
14 charges, or penalties under certain
15 circumstances; prohibiting foreclosure
16 proceedings under certain circumstances;
17 providing for preservation and enforcement of
18 certain claims and defenses by borrowers;
19 providing for liability of assignees and other
20 holders under certain circumstances;
21 proscribing subterfuge; providing for civil and
22 criminal enforcement; providing penalties;
23 providing for damages, costs, and attorney's
24 fees; specifying certain loan agreements as
25 void and unenforceable under certain
26 circumstances; providing for a right of
27 recission under certain circumstances;
28 protecting borrowers' remedies; providing
29 exceptions for corrections and unintentional
30 violations; providing criteria; specifying
31 certain rights and remedies as cumulative;

1 providing application; providing severability;
2 providing an effective date.

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

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6 Section 1. Short title; purposes.--

7 (1) This act may be cited as the "Florida Home Loan
8 Protection Act."

9 (2)(a) The Legislature finds that abusive mortgage
10 lending has become an increasing problem in this state,
11 exacerbating the loss of equity in homes and causing the
12 number of foreclosures to increase in recent years. One of the
13 most common forms of abusive lending is the making of loans
14 that are equity-based rather than income-based. The financing
15 of points and fees in these loans provides immediate income to
16 the originator and encourages lenders to repeatedly refinance
17 home loans. The lender's ability to sell loans reduces the
18 incentive to ensure that the homeowner can afford the payments
19 of the loan. As long as there is sufficient equity in the
20 home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. The
22 financing of high points and fees causes the loss of precious
23 equity in each refinancing and often leads to foreclosure.

24 (b) Abusive lending has threatened the viability of
25 many communities and caused decreases in home ownership. While
26 the marketplace appears to operate effectively for
27 conventional mortgages, too many homeowners find themselves
28 victims of overreaching lenders who provide loans with
29 unnecessarily high costs and terms that are unnecessary to
30 secure repayment of the loan. The Legislature finds that as
31 competition and self-regulation have not eliminated the

1 abusive terms from home-secured loans, the consumer protection
2 provisions of this act are necessary to encourage lending at
3 reasonable rates with reasonable terms.

4 Section 2. Definitions.--For purposes of this act:

5 (1) "Benchmark rate" means the interest rate which the
6 borrower can reduce by paying bona fide discount points. Such
7 rate shall not exceed the weekly average yield of United
8 States Treasury securities having a maturity of 5 years, on
9 the fifteenth day of the month immediately preceding the month
10 in which the loan is made, plus 4 percentage points.

11 (2) "Bona fide discount points" means loan discount
12 points which are:

13 (a) Knowingly paid by the borrower.

14 (b) Paid for the express purpose of lowering the
15 benchmark rate.

16 (c) In fact reducing the interest rate or time-price
17 differential applicable to the loan from an interest rate
18 which does not exceed the benchmark rate.

19 (d) Recouped within the first 4 years after the
20 scheduled loan payments.

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22 For purposes of assessing compliance with paragraph (d), loan
23 discount points will be considered to be recouped within the
24 first 4 years after the scheduled loan payments if the
25 reduction in the interest rate that is achieved by the payment
26 of the loan discount points reduces the interest charged on
27 the scheduled payments such that the borrower's dollar amount
28 of savings in interest over the first 4 years is equal to or
29 exceeds the dollar amount of loan discount points paid by the
30 borrower.

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1 (3) "Borrower" means any natural person obligated to
2 repay the loan, including, but not limited to, a coborrower,
3 cosigner, or guarantor.

4 (4) "Creditor" means a person who extends consumer
5 credit that is subject to a finance charge or is payable by
6 written agreement in more than four installments, and to whom
7 the obligation is payable at any time.

8 (5) "High-cost home loan" means a home loan the terms
9 of which meet or exceed one or more of the thresholds defined
10 in subsection (9).

11 (6) "Home loan" means a loan, including an open-ended
12 credit plan, other than a reverse mortgage transaction, where
13 the loan is secured by:

14 (a) A mortgage or deed of trust on real estate in this
15 state upon which there is located or there is to be located a
16 structure or structures designed principally for occupancy of
17 from one to four families which is or will be occupied by a
18 borrower as the borrower's principal dwelling; or

19 (b) A security interest on a manufactured home which
20 is or will be occupied by a borrower as the borrower's
21 principal dwelling,

22
23 and where the loan refinances an existing home loan or is a
24 subordinate lien following one or more existing loans, or
25 where the property securing the mortgage was, prior to the new
26 mortgage, owned free and clear by the borrower.

27 (7) "Points and fees" means:

28 (a)1. All items listed in 15 U.S.C. s. 1605(a)(1)
29 through (4), except interest or the time-price differential;
30 or

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1 2. All items required to be disclosed under s.
2 226.4(a) and (b) of Title 12 of the Code of Federal
3 Regulations, as amended from time to time, except interest or
4 the time-price differential.
5 (b)1. All charges listed in 15 U.S.C. s. 1605(e); or
6 2. All charges for items listed under s. 226.4(c)(7)
7 of Title 12 of the Code of Federal Regulations, as amended
8 from time to time, but only if the lender receives direct or
9 indirect compensation in connection with the charge or the
10 charge is paid to an affiliate of the lender. Otherwise, the
11 charges are not included within the meaning of the term
12 "points and fees."
13 (c) All compensation paid directly or indirectly to a
14 mortgage broker, including a broker that originates a loan in
15 its own name in a table-funded transaction.
16 (d) The cost of all premiums financed by the creditor,
17 directly or indirectly, for any credit life, credit
18 disability, credit unemployment, or credit property insurance,
19 or any other life or health insurance, or any payments
20 financed by the creditor directly or indirectly for any debt
21 cancellation or suspension agreement or contract, except that
22 insurance premiums calculated and paid on a monthly basis
23 shall not be considered financed by the creditor.
24 (e) The maximum prepayment fees and penalties that may
25 be charged or collected under the terms of the loan documents.
26 (f) All prepayment fees or penalties that are charged
27 the borrower if the loan refinances a previous loan made by
28 the same creditor or an affiliate of the creditor.
29 (g) For open-ended loans, the sum of the total fees
30 charged at closing plus the maximum additional fees which can
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1 be charged pursuant to the loan documents during the term of
2 the loan.

3 (8) "Rate" means the interest rate charged on the home
4 loan based on an annual simple interest yield.

5 (9) "Threshold" means:

6 (a)1. "Rate threshold," which means:

7 a. For a first lien mortgage loan, the trigger rate
8 equals or exceeds 6 percentage points more than the weekly
9 average yield on 5-year United States Treasury securities; or

10 b. For a subordinate mortgage lien or a mortgage
11 secured solely by a security interest in a manufactured home,
12 the trigger rate equals or exceeds 8 percentage points more
13 than the weekly average yield on 5-year United States Treasury
14 securities.

15 2. The trigger rate is calculated as follows:

16 a. For fixed-rate loans in which the interest rate
17 will not vary during the term of the loan, the trigger rate is
18 the rate as of the date of closing.

19 b. For loans in which the interest rate varies
20 according to an index, the trigger rate is the sum of the
21 index rate as of the date of loan closing plus the maximum
22 margin permitted at any time under the loan agreement.

23 c. For all other loans in which the interest rate may
24 vary at any time during the term of the loan, the trigger rate
25 is the maximum rate that may be charged during the term of the
26 loan.

27 (b) "Total points and fees threshold," which means,
28 excluding up to two bona fide discount points:

29 1. For loans in which the total loan amount is \$30,000
30 or more, the total points and fees on the loan, paid by the
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1 borrower at or before closing, exceed 3 percent of the total
2 loan amount; or

3 2. For loans in which the total loan amount is less
4 than \$30,000, the total points and fees on the loan, paid by
5 the borrower at or before closing, exceed the lesser of \$900
6 or 6 percent of the total loan amount.

7 (c) "Prepayment penalty threshold," which means the
8 home loan agreement permits the lender to charge or collect
9 payment penalties or penalties more than 30 months after the
10 loan closing or which exceed, in the aggregate, more than 2
11 percent of the amount prepaid.

12 (10) "Total loan amount" means the principal of the
13 loan minus those points and fees as defined in subsection (7)
14 that are included in the principal amount of the loan. For
15 open-ended loans, the total loan amount shall be calculated
16 using the total line of credit allowed under the home loan.

17 Section 3. Prohibited acts and practices for home
18 loans.--

19 (1) INSURANCE AND DEBT CANCELLATION AGREEMENTS.--No
20 creditor making a home loan shall finance, directly or
21 indirectly, any credit life, credit disability, credit
22 unemployment, or credit property insurance, or any other life
23 or health insurance, or any payments directly or indirectly
24 for any debt cancellation or suspension agreement or contract,
25 except that insurance premiums or debt cancellation or
26 suspension fees calculated and paid on a monthly basis shall
27 not be considered financed by the creditor.

28 (2) RECOMMENDATION OF DEFAULT.--No creditor shall
29 recommend or encourage default on an existing loan or other
30 debt prior to and in connection with the closing or planned
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1 closing of a home loan that refinances all or any portion of
2 such existing loan or debt.

3 (3) LATE PAYMENT FEES.--No creditor may charge a late
4 payment fee except as provided in this subsection:

5 (a) A late payment fee may not be in excess of 4
6 percent of the amount of the payment past due.

7 (b) A late payment fee may only be assessed for a
8 payment past due for 15 days or more.

9 (c) A late payment fee may not be charged more than
10 once with respect to a single late payment. If a late payment
11 fee is deducted from a payment made on the loan and such
12 deduction causes a subsequent default on a subsequent payment,
13 no late payment fee may be imposed for such default. If a
14 late payment fee has been imposed once with respect to a
15 particular late payment, no such fee shall be imposed with
16 respect to any future payment which would have been timely and
17 sufficient, but for the previous default.

18 (d) A late payment fee may not be charged unless the
19 creditor notifies the borrower within 45 days following the
20 date the payment was due that a late payment fee has been
21 imposed for a particular late payment. No late payment fee may
22 be collected from any borrower if the borrower informs the
23 creditor that nonpayment of an installment is in dispute and
24 presents proof of payment within 45 days after receipt of the
25 creditor's notice of the late payment fee.

26 (e) A creditor shall treat each and every payment as
27 posted on the same date as it was received by the creditor,
28 servicer, or creditor's agent, or at the address provided to
29 the borrower by the creditor, servicer, or the creditor's
30 agent for making payments.

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1 (4) CALL PROVISION.--No home loan may contain a
2 provision that permits the creditor, in its sole discretion,
3 to call or accelerate the indebtedness. This provision does
4 not prohibit acceleration of the loan in good faith due to the
5 borrower's failure to abide by the material terms of the loan.

6 (5) FEE FOR BALANCE.--No creditor may charge a fee for
7 informing or transmitting to any person the balance due to pay
8 off a home loan or to provide a release upon prepayment.
9 Payoff balances shall be provided within a reasonable time but
10 in any event no more than 7 business days after the request.

11 Section 4. Limitations and prohibited acts and
12 practices for high-cost home loans.--A high-cost home loan
13 shall be subject to the following additional limitations and
14 prohibited acts and practices:

15 (1) FINANCING OF FEES OR CHARGES.--No creditor making
16 a high-cost home loan shall directly or indirectly finance any
17 points or fees.

18 (2) PREPAYMENT PENALTIES LIMITED.--No prepayment fees
19 or penalties shall be included in the loan documents for a
20 high-cost home loan or charged the borrower which exceed in
21 the aggregate:

22 (a) In the first 12 months after the loan closing,
23 more than 2 percent of the amount prepaid; or

24 (b) In the second 12 months after the loan closing,
25 more than 1 percent of the amount prepaid.

26
27 No prepayment penalty shall be contracted for after the second
28 year following the loan closing.

29 (3) BALLOON PAYMENT.--No high-cost home loan may
30 contain a scheduled payment that is more than twice as large
31 as the average of earlier scheduled payments. This provision

1 does not apply when the payment schedule is adjusted to the
2 seasonal or irregular income of the borrower.

3 (4) NEGATIVE AMORTIZATION.--No high-cost home loan may
4 include payment terms under which the outstanding principal
5 balance will increase at any time over the course of the loan
6 because the regular periodic payments do not cover the full
7 amount of interest due.

8 (5) INCREASED INTEREST RATE.--No high-cost home loan
9 may contain a provision that increases the interest rate after
10 default. This provision does not apply to interest rate
11 changes in a variable rate loan otherwise consistent with the
12 provisions of the loan documents, provided the change in the
13 interest rate is not triggered by the event of default or the
14 acceleration of the indebtedness.

15 (6) ADVANCE PAYMENTS.--No high-cost home loan may
16 include terms under which more than two periodic payments
17 required under the loan are consolidated and paid in advance
18 from the loan proceeds provided to the borrower.

19 (7) MANDATORY ARBITRATION CLAUSE.--No high-cost home
20 loan may be subject to a mandatory arbitration clause that
21 limits in any way the right of the borrower to seek relief
22 through the judicial process for any claims and defenses the
23 borrower may have against the creditor, broker, or other party
24 involved in the loan transaction.

25 (8) LENDING WITHOUT HOMEOWNERSHIP COUNSELING.--A
26 creditor may not make a high-cost home loan without first
27 receiving certification from a counselor approved by the
28 United States Department of Housing and Urban Development, a
29 state housing financing agency, or the regulatory agency which
30 has jurisdiction over the creditor that the borrower has

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1 received counseling on the advisability of the loan
2 transaction.

3 (9) LENDING WITHOUT DUE REGARD TO REPAYMENT
4 ABILITY.--A creditor may not make a high-cost home loan
5 without due regard to repayment ability. A creditor who
6 follows the debt-to-income ratio listed in 38 C.F.R. s.
7 36.4337(c)(1) and as defined in 38 C.F.R. s. 36.4337(d) and
8 follows the residual income guidelines established in 38
9 C.F.R. s. 36.4337(e) and VA Form 26-6393 shall benefit from a
10 rebuttable presumption that the creditor made the loan with
11 due regard to repayment ability.

12 (10) HOME IMPROVEMENT CONTRACTS.--A creditor may not
13 pay a contractor under a home improvement contract from the
14 proceeds of a high-cost home loan unless:

15 (a) The creditor is presented with a signed and dated
16 completion certificate showing that the home improvements have
17 been completed.

18 (b) The instrument is payable to the borrower or
19 jointly to the borrower and the contractor or, at the election
20 of the borrower, through a third-party escrow agent in
21 accordance with terms established in a written agreement
22 signed by the borrower, the creditor, and the contractor prior
23 to the disbursement.

24 (11) MODIFICATION OR DEFERRAL FEES.--A creditor may
25 not charge a borrower any fees or other charges to modify,
26 renew, extend, or amend a high-cost home loan or to defer any
27 payment due under the terms of a high-cost home loan.

28 (12) JUDICIAL FORECLOSURE OR DETERMINATION.--Any
29 creditor making a high-cost home loan that has the legal right
30 to foreclose shall use the judicial foreclosure procedures of
31 the state in which the property securing the loan is located.

1 The borrower shall have the right to assert in such proceeding
2 the nonexistence of a default and any other claim or defense
3 to acceleration and foreclosure, including any based on any
4 violations of this act, though no such claim or defense shall
5 be deemed a compulsory counterclaim.

6 (13) FLIPPING.--No creditor may engage in flipping a
7 high-cost home loan. The term "flipping" means making a home
8 loan to a borrower that refinances an existing home loan when
9 the new loan does not have reasonable, tangible, net benefits
10 to the borrower considering all of the circumstances,
11 including, but not limited to, the terms of both the new and
12 refinanced loans, the cost of the new loan, and the borrower's
13 circumstances. In addition, the following home loan
14 refinancing conditions shall be presumed to be flipping:

15 (a) The primary tangible benefit to the borrower is an
16 interest rate lower than any interest rate on debts satisfied
17 or refinanced in connection with the home loan and it will
18 take more than 4 years for the borrower to recoup the costs of
19 the points and fees and other closing costs through savings
20 resulting from the lower interest rate.

21 (b) The new loan refinances an existing home loan that
22 is a special mortgage which is originated, subsidized, or
23 guaranteed by or through a state, tribal, or local government,
24 or nonprofit organization, which bears a below-market interest
25 rate at the time the loan was originated or has nonstandard
26 payment terms beneficial to the borrower, such as payments
27 that vary with income or are limited to a percentage of
28 income, or where no payments are required under specified
29 conditions and where, as a result of the refinancing, the
30 borrower will lose one or more of the benefits of the special
31 mortgage.

1 Section 5. Right to cure.--
2 (1) RIGHT TO REINSTATE.--If a creditor asserts that
3 grounds for acceleration exist and requires the payment in
4 full of all sums secured by the security instrument, the
5 borrower, or anyone authorized to act on the borrower's
6 behalf, shall have the right at any time, up to the time title
7 is transferred by means of foreclosure, by judicial proceeding
8 and sale or otherwise, to cure the default and reinstate the
9 home loan by tendering the amount or performance as specified
10 in this section. Cure of default as provided in this section
11 shall reinstate the borrower to the same position as if the
12 default had not occurred and shall nullify, as of the date of
13 the cure, any acceleration of any obligation under the
14 security instrument or note arising from the default.
15 (2) GROUNDS FOR REINSTATEMENT.--Before any action
16 filed to foreclose upon the home or other action is taken to
17 seize or transfer ownership of the home, a notice of the right
18 to cure the default must be delivered to the borrower
19 informing the borrower:
20 (a) Of the nature of default claimed on the home loan
21 and of the borrower's right to cure the default by paying the
22 sum of money required to cure the default, provided a creditor
23 or servicer may not refuse to accept any partial payment made
24 or tendered in response to such notice. If the amount
25 necessary to cure the default will change during the 30-day
26 period after the effective date of the notice due to the
27 application of a daily interest rate or the addition of late
28 payment fees, as allowed by this act, the notice shall give
29 sufficient information to enable the borrower to calculate the
30 amount at any point during the 30-day period.
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1 (b) Of the date by which the borrower shall cure the
2 default to avoid acceleration and initiation of foreclosure or
3 other action to seize the home, which date shall not be less
4 than 30 days after the date the notice is effective, and the
5 name and address and telephone number of a person to whom the
6 payment or tender shall be made.

7 (c) That if the borrower does not cure the default by
8 the date specified, the creditor may take steps to terminate
9 the borrower's ownership of the property by requiring payment
10 in full of the home loan and commencing a foreclosure
11 proceeding or other action to seize the home.

12 (d) Of the name and address of the creditor and the
13 telephone number of a representative of the creditor who the
14 borrower may contact if the borrower disagrees with the
15 creditor's assertion that a default has occurred or the
16 correctness of the creditor's calculation of the amount
17 required to cure the default.

18 (3) FEES.--To cure a default under this section, a
19 borrower shall not be required to pay any charge, fee, or
20 penalty attributable to the exercise of the right to cure a
21 default as provided for in this section, other than the fees
22 specifically allowed by this section. The borrower shall not
23 be liable for any attorney fees relating to the borrower's
24 default that are incurred by the lender prior to or during the
25 30-day period set forth in paragraph (2)(b), nor for any such
26 fees in excess of \$100 that are incurred by the lender after
27 the expiration of the 30-day period but prior to the time the
28 lender files a foreclosure action or takes other action to
29 seize or transfer ownership of the home. After the lender
30 files a foreclosure action or takes other action to seize or
31 transfer ownership of the home, the borrower shall only be

1 liable for attorney fees that are reasonable and actually
2 incurred by the lender, based on a reasonable hourly rate and
3 a reasonable number of hours.

4 (4) ENFORCEMENT OF SECURITY INSTRUMENT.--If a default
5 is cured prior to the initiation of any action to foreclose or
6 to seize the home, the creditor shall not institute the
7 foreclosure proceeding or other action for that default. If a
8 default is cured after the initiation of any action to
9 foreclose, the creditor shall take such steps as are necessary
10 to terminate the foreclosure proceeding or other action. Any
11 creditor making a home loan who has the legal right to
12 foreclose must use the judicial foreclosure procedures of the
13 state wherein the property securing the loan is located. The
14 borrower shall have the right to assert in a judicial
15 foreclosure proceeding or other action the nonexistence of a
16 default and any other claim or defense to acceleration and
17 foreclosure, including any based on violations of this act,
18 though no such claim or defense shall be deemed a compulsory
19 counterclaim.

20 Section 6. Preservation and enforcement of claims and
21 defenses; subterfuge.--

22 (1) CLAIMS AGAINST SELLERS.--Notwithstanding any other
23 provision of law, if a home loan has been made, arranged, or
24 assigned by a person selling a manufactured home or home
25 improvements to the dwelling of a borrower, the borrower may
26 assert all affirmative claims and any defenses that the
27 borrower may have against the seller or home improvement
28 contractor against the lender or any assignee, holder, or
29 servicer in any capacity.

30 (2) LIABILITY OF ASSIGNEES AND OTHER HOLDERS IN
31 HIGH-COST HOME LOANS.--Notwithstanding any other provision of

1 law, the remedies provided in this section apply to the
2 creditor and any director, officer, employee, or controlling
3 stockholder of, or agent for, a creditor who personally
4 participates in the making or approving of a high-cost home
5 loan and to any other persons to whom this act applies and who
6 violate any requirement of this act. Any person who purchases
7 or is otherwise assigned a high-cost home loan shall be
8 subject to all affirmative claims and any defenses with
9 respect to the loan that the borrower could assert against the
10 original creditor or broker of the loan.

11 (3) LIABILITY OF ASSIGNEES IN FORECLOSURE
12 ACTION.--Notwithstanding any other provision of law, a
13 borrower in default more than 60 days or in foreclosure may
14 assert a violation of this act by way of offset:

15 (a) As an original action;

16 (b) As a defense or counterclaim to an action to
17 collect amounts owed; or

18 (c) To obtain possession of the home secured by the
19 home loan.

20 (4) SUBTERFUGE.--Any person who in bad faith attempts
21 to avoid the application of this act by:

22 (a) Dividing any loan transaction into separate parts
23 for such purpose; or

24 (b) Any other such subterfuge with the intent of
25 evading the provisions of this act

26
27 commits a violation of this act.

28 Section 7. Enforcement.--

29 (1) CIVIL.--
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1 (a) Any violation of this act is a deceptive and
2 unfair trade practice and constitutes a violation of part II
3 of chapter 501, Florida Statutes.

4 (b) Any person found by a preponderance of the
5 evidence to have violated any provision of this act shall be
6 liable to the borrower for:

7 1. Actual damages, including consequential and
8 incidental damages; however, the borrower shall not be
9 required to demonstrate reliance in order to receive actual
10 damages.

11 2. Statutory damages equal to the finance charges
12 agreed to in the home loan agreement, plus 10 percent of the
13 amount financed.

14 3. Punitive damages, when the violation was malicious
15 or reckless.

16 4. Costs and reasonable attorney's fees.

17 (c) A borrower may be granted injunctive, declaratory,
18 and such other equitable relief as the court deems appropriate
19 in an action to enforce compliance with this act.

20 (d) Any intentional violation of this act or any rule
21 adopted under this act renders the home loan agreement void,
22 and the creditor shall have no right to collect, receive, or
23 retain any principal, interest, or other charges whatsoever
24 with respect to the loan and the borrower may recover any
25 payments made under the agreement.

26 (e) The right of rescission granted under 15 U.S.C.
27 ss. 1601 et seq. for violations of that law and all other
28 remedies provided under this act shall be available to a
29 borrower at any time during the term of the home loan by way
30 of recoupment against a party foreclosing on the loan or
31 collecting on the loan.

1 (f) The remedies provided in this section are not
2 intended to be the exclusive remedies available to a borrower,
3 nor must the borrower exhaust any administrative remedies
4 provided under this act or any other applicable law before
5 proceeding under this section.

6 (2) CRIMINAL.--Any person, including a member, an
7 officer, and a director of the creditor, who knowingly
8 violates this act commits a misdemeanor of the first degree,
9 punishable as provided in s. 775.082 or s. 775.083, Florida
10 Statutes.

11 (3) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.--A
12 creditor in a home loan who, when acting in good faith, fails
13 to comply with the provisions of this act shall not be deemed
14 to have violated this act if the creditor establishes that:

15 (a) Within 30 days after the loan closing, and prior
16 to receiving any notice from the borrower of the compliance
17 failure, the creditor has made appropriate restitution to the
18 borrower and appropriate adjustments are made to the loan; or

19 (b) Within 60 days after the loan closing and prior to
20 receiving any notice from the borrower of the compliance
21 failure, which compliance failure was not intentional and
22 resulted from a bona fide error notwithstanding the
23 maintenance of procedures reasonably adapted to avoid such
24 errors, the borrower has been notified of the compliance
25 failure, appropriate restitution has been made to the
26 borrower, and appropriate adjustments are made to the loan.

27 Bona fide errors shall include, but not be limited to,
28 clerical, calculation, computer malfunction and programming,
29 and printing errors. An error of legal judgment with respect
30 to a person's obligations under this section is not a bona
31 fide error.

