

Bill No. CS for SB 1824

Barcode 893740

CHAMBER ACTION

Senate

House

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The Committee on Commerce (Saunders) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 3, line 13, through  
page 16, line 23, delete those lines

and insert: compensation to be received by a mortgage  
brokerage business for acting as a mortgage broker.

(34) "Business day" means any calendar day except  
Sunday or a legal holiday.

Section 2. Section 494.0014, Florida Statutes, is  
amended to read:

494.0014 Cease and desist orders; administrative  
fines; refund orders.--

(1) The office has the power to issue and serve upon  
any person an order to cease and desist and to take corrective  
action whenever it has reason to believe the person is  
violating, has violated, or is about to violate any provision  
of ss. 494.001-494.0077, any rule or order issued under ss.  
494.001-494.0077, or any written agreement between the person

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1 and the office. All procedural matters relating to issuance  
2 and enforcement of such a cease and desist order are governed  
3 by the Administrative Procedure Act.

4 (2) The office has the power to order the refund of  
5 any fee directly or indirectly assessed and charged on a  
6 mortgage loan transaction which is unauthorized or exceeds the  
7 maximum fee specifically authorized in ss. 494.001-494.0077.

8 (3) The office may prohibit the association by a  
9 mortgage broker business, or the employment by a mortgage  
10 lender or correspondent mortgage lender, of any person who has  
11 engaged in a pattern of misconduct while an associate of a  
12 mortgage brokerage business or an employee of a mortgage  
13 lender or correspondent mortgage lender. For the purpose of  
14 this subsection, the term "pattern of misconduct" means the  
15 commission of three or more violations of ss. 494.001-494.0077  
16 or the provisions of chapter 494 in effect prior to October 1,  
17 1991, during any 1-year period or any criminal conviction for  
18 violating ss. 494.001-494.0077 or the provisions of chapter  
19 494 in effect prior to October 1, 1991.

20 (4) The office may impose upon any person who makes or  
21 brokers a loan, or any mortgage business school, a fine for  
22 violations of any provision of ss. 494.001-494.00295 or any  
23 rule or order issued under ss. 494.001-494.00295 in an amount  
24 not exceeding \$5,000 for each separate count or offense.

25 Section 3. Paragraph (f) is added to subsection (1)  
26 and paragraphs (g) and (h) are added to subsection (2) of  
27 section 494.0029, Florida Statutes, to read:

28 494.0029 Mortgage business schools.--

29 (1)

30 (f) In addition to the remedies set forth in s.  
31 494.0014, the office may revoke, suspend, or place on

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1 probation the permit of any mortgage business school that  
2 fails to meet the requirements of this section, subject to all  
3 reasonable conditions that the office specifies.

4 (2)

5 (g) A school permitted under this section must conduct  
6 classes on the basis of a 50-minute classroom hour in  
7 accordance with the requirements of this chapter and  
8 commission rules.

9 (h) Each school permitted under this section is  
10 responsible for developing procedures to confirm, and for  
11 actually confirming, the identity of each student attending  
12 any course offering.

13 Section 4. Section 494.00295, Florida Statutes, is  
14 amended to read:

15 494.00295 Professional continuing education.--

16 (1) Mortgage brokers, and the principal  
17 representatives and loan originators of a mortgage lender,  
18 correspondent mortgage lender, or mortgage lender pursuant to  
19 s. 494.0065, must successfully complete at least 14 hours of  
20 professional continuing education covering primary and  
21 subordinate mortgage financing transactions and the provisions  
22 of this chapter during the 2-year period immediately preceding  
23 the renewal deadline for a mortgage broker, mortgage lender,  
24 correspondent mortgage lender, or mortgage lender pursuant to  
25 s. 494.0065. A minimum of 4 hours shall cover the provisions  
26 of this chapter and the rules adopted under this chapter. At  
27 the time of license renewal, a licensee must certify to the  
28 office that the professional continuing education requirements  
29 of this section have been met. Licensees shall maintain  
30 records documenting compliance with this subsection for a  
31 period of 4 years. The requirements for professional

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1 continuing education are waived for the license renewal of a  
 2 mortgage broker who has completed the 24-hour prelicensing  
 3 classroom education requirement of s. 494.0033(3) within 90  
 4 days of ~~for~~ the biennial license period immediately following  
 5 the period in which the person became licensed as a mortgage  
 6 broker. The requirements for professional continuing education  
 7 for a principal representative are waived for the license  
 8 renewal of a mortgage lender, correspondent mortgage lender,  
 9 or mortgage lender pursuant to s. 494.0065 for the biennial  
 10 license period immediately following the period in which the  
 11 principal representative completed the 24 hours of classroom  
 12 education and passed a written test in order to qualify to be  
 13 a principal representative.

14 (2) Professional continuing education programs must  
 15 contribute directly to the professional competency of the  
 16 participants, may only be offered by permitted mortgage  
 17 business schools, the office, or entities specifically  
 18 exempted from permitting as mortgage business schools, and may  
 19 include electronically transmitted or distance education  
 20 courses.

21 (3)(a) All electronically transmitted courses shall  
 22 require that the time spent attending electronically  
 23 transmitted professional education courses is equal to the  
 24 number of qualifying hours awarded to participants for course  
 25 attendance. Before allowing a course participant to complete a  
 26 course and receive a certificate of course completion, the  
 27 course provider shall ensure that the course participant has:

28 1. Logged the required number of hours for the  
 29 particular timed module.

30 2. Completed a test that comprehensively covers the  
 31 course content for the particular timed module.

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1           3. Correctly answered all test questions for the  
2 particular timed module.

3           (b) All distance education course participants shall  
4 successfully complete a test that comprehensively covers  
5 course content in order to receive a certificate of course  
6 completion. Distance education providers shall not provide  
7 answers to test questions to course participants and shall not  
8 issue a certificate of course completion to any course  
9 participant who has failed to correctly answer at least 75  
10 percent of the total test questions. The test must consist of  
11 at least 100 questions.

12           ~~(4)(3)~~ The commission shall adopt rules pursuant to  
13 ss. 120.536(1) and 120.54 necessary to administer this  
14 section, including rules governing qualifying hours for  
15 professional continuing education programs and standards for  
16 electronically transmitted or distance education courses,  
17 including course completion requirements.

18           Section 5. Paragraphs (a) and (b) of subsection (2) of  
19 section 494.0033, Florida Statutes, are amended to read:

20           494.0033 Mortgage broker's license.--

21           (2) Each initial application for a mortgage broker's  
22 license must be in the form prescribed by rule of the  
23 commission. The commission may require each applicant to  
24 provide any information reasonably necessary to make a  
25 determination of the applicant's eligibility for licensure.  
26 The office shall issue an initial license to any natural  
27 person who:

28           (a) Is at least 18 years of age and has a high school  
29 diploma or its equivalent.

30           (b) Has passed a written test adopted and administered  
31 by the office, or has passed an electronic test adopted and

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1 administered by the office or a third party approved by the  
2 office, which is designed to determine competency in primary  
3 and subordinate mortgage financing transactions as well as to  
4 test knowledge of ss. 494.001-494.0077 and the rules adopted  
5 pursuant thereto. The commission may prescribe by rule an  
6 additional fee that may not exceed \$100 for the electronic  
7 version of the mortgage broker test. The commission may waive  
8 by rule the examination requirement for any person who has  
9 passed a test approved by the Conference of State Bank  
10 Supervisors, the American Association of Residential Mortgage  
11 Regulators, or the United States Department of Housing and  
12 Urban Development if the test covers primary and subordinate  
13 mortgage financing transactions. The commission may adopt  
14 rules prescribing an additional fee that may not exceed \$50  
15 for an applicant to review his or her completed and graded  
16 mortgage broker test. The commission may adopt rules regarding  
17 the administration of the testing process, including, but not  
18 limited to, procedures relating to pretest registration, test  
19 security, scoring, content, result notification, retest  
20 procedures and fees, postexamination review, and challenge  
21 provisions.

22  
23 The commission may require by rule information concerning any  
24 such applicant or person, including, but not limited to, his  
25 or her full name and any other names by which he or she may  
26 have been known, age, social security number, qualifications  
27 and educational and business history, and disciplinary and  
28 criminal history.

29 Section 6. Section 494.0038, Florida Statutes, is  
30 amended to read:

31 494.0038 Mortgage broker disclosures.--

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1           (1)(a)1. A person may not receive a mortgage brokerage  
 2 fee for acting as a mortgage brokerage business except  
 3 pursuant to a written mortgage brokerage agreement between the  
 4 mortgage brokerage business and the borrower which is signed  
 5 and dated by the business and the borrower.

6           2. The written mortgage brokerage agreement must  
 7 describe the services to be provided by the mortgage brokerage  
 8 business and specify the amount and terms of the mortgage  
 9 brokerage fee that the mortgage brokerage business is to  
 10 receive. The written mortgage brokerage agreement must be  
 11 executed within 3 business days after a mortgage loan  
 12 application is accepted if the borrower is present when the  
 13 application is accepted. If the borrower is not present when  
 14 such an application is accepted, the licensee shall forward  
 15 the written mortgage brokerage agreement to the borrower  
 16 within 3 business days after the licensee's acceptance of the  
 17 application and the licensee bears the burden of proving that  
 18 the borrower received and approved the written mortgage  
 19 brokerage agreement.

20           (b)1. If the mortgage brokerage business is to receive  
 21 any payment of any kind from the lender, the maximum total  
 22 dollar amount of the payment must be disclosed to the borrower  
 23 in the written mortgage brokerage agreement as described in  
 24 paragraph (a). The commission may prescribe by rule an  
 25 acceptable form for disclosure of brokerage fees received from  
 26 the lender. The mortgage brokerage agreement must state the  
 27 nature of the relationship with the lender, describe how  
 28 compensation is paid by the lender, and describe how the  
 29 mortgage interest rate affects the compensation paid to the  
 30 mortgage brokerage business. If any of the rates, points,  
 31 fees, and other terms quoted by or on behalf of the lender are

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1 ~~to be received by the mortgage brokerage business, such fact~~  
2 ~~shall be specifically disclosed to the borrower.~~

3       2. The exact amount of any payment of any kind by the  
4 lender to the mortgage brokerage business must be disclosed in  
5 writing to the borrower within 3 business days after the  
6 mortgage brokerage business is made aware of the exact amount  
7 of the payment from the lender but not less than 3 business  
8 days before the execution of the closing or settlement  
9 statement. The licensee bears the burden of proving such  
10 notification was provided to the borrower. ~~If the mortgage~~  
11 ~~brokerage fee is for brokering a loan for a particular program~~  
12 ~~under which the brokerage fee varies according to the terms of~~  
13 ~~the loan, the brokerage fee may be disclosed as a range of~~  
14 ~~fees at the time of application. The mortgage broker shall, in~~  
15 ~~such instance, disclose the nature of the fee arrangement to~~  
16 ~~the borrower, and the exact amount of the fee must be~~  
17 ~~disclosed at settlement or closing.~~

18       (c) The commission may prescribe by rule the form of  
19 disclosure of brokerage fees.

20       (2) At the time a written mortgage brokerage agreement  
21 is executed by the borrower or forwarded to the borrower for  
22 execution, or at the time the mortgage brokerage business  
23 accepts an application fee, credit report fee, property  
24 appraisal fee, or any other third-party fee, but not less than  
25 3 business days before execution of the closing or settlement  
26 statement, the mortgage brokerage business shall disclose in  
27 writing to any applicant for a mortgage loan the following  
28 information:

29       (a) That such mortgage brokerage business may not make  
30 mortgage loans or commitments. The mortgage brokerage business  
31 may make a commitment and may furnish a lock-in of the rate



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1 and program on behalf of the lender when the mortgage  
 2 brokerage business has obtained a written commitment or  
 3 lock-in for the loan from the lender on behalf of the borrower  
 4 for the loan. The commitment must be in the same form and  
 5 substance as issued by the lender.

6 (b) That such mortgage brokerage business cannot  
 7 guarantee acceptance into any particular loan program or  
 8 promise any specific loan terms or conditions.

9 (c) A good faith estimate, signed and dated by the  
 10 borrower, which discloses of the total amount of each of the  
 11 fees which the borrower may reasonably expect to pay if the  
 12 loan is closed, including, but not limited to, fees earned by  
 13 the mortgage brokerage business, lender fees, third-party  
 14 fees, and official fees, together with credit report fee,  
 15 property appraisal fee, or any other third-party fee and the  
 16 terms and conditions for obtaining a refund of such fees, if  
 17 any. Any amount collected in excess of the actual cost shall  
 18 be returned within 60 days after rejection, withdrawal, or  
 19 closing. The good faith estimate must identify the recipient  
 20 of all payments charged the borrower and, except for all fees  
 21 to be received by the mortgage brokerage business, may be  
 22 disclosed in generic terms, such as, but not limited to, paid  
 23 to lender, appraiser, officials, title company, or any other  
 24 third-party service provider. This requirement does not  
 25 supplant or is not a substitute for the written mortgage  
 26 brokerage agreement described in subsection (1).

27 (3) The disclosures required by this subsection must  
 28 be furnished in writing at the time an adjustable rate  
 29 mortgage loan is offered to the borrower and whenever the  
 30 terms of the adjustable rate mortgage loan offered materially  
 31 change prior to closing. The broker shall furnish the

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1 disclosures relating to adjustable rate mortgages in a format  
 2 prescribed by ss. 226.18 and 226.19 of Regulation Z of the  
 3 Board of Governors of the Federal Reserve System, as amended,  
 4 its commentary, as amended, and the federal Truth in Lending  
 5 Act, 15 U.S.C. ss. 1601 et seq., as amended, together with the  
 6 Consumer Handbook on Adjustable Rate Mortgages, as amended,  
 7 published by the Federal Reserve Board and the Federal Home  
 8 Loan Bank Board. The licensee bears the burden of proving such  
 9 disclosures were provided to the borrower.

10       ~~(4)~~(3) If the mortgage brokerage agreement includes a  
 11 nonrefundable application fee, the following requirements are  
 12 applicable:

13           (a) The amount of the application fee, which must be  
 14 clearly denominated as such, shall be clearly disclosed.

15           (b) The specific services that will be performed in  
 16 consideration for the application fee shall be disclosed.

17           (c) The application fee must be reasonably related to  
 18 the services to be performed and may not be based upon a  
 19 percentage of the principal amount of the loan or the amount  
 20 financed.

21       ~~(5)~~(4) A mortgage brokerage business may not accept  
 22 any fee in connection with a mortgage loan other than an  
 23 application fee, credit report fee, property appraisal fee, or  
 24 other third-party fee prior to obtaining a written commitment  
 25 from a qualified lender.

26       ~~(6)~~(5) Any third-party fee entrusted to a mortgage  
 27 brokerage business shall immediately, upon receipt, be placed  
 28 into a segregated account with a financial institution located  
 29 in the state the accounts of which are insured by the Federal  
 30 Government. Such funds shall be held in trust for the payor  
 31 and shall be kept in the account until disbursement. Such

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1 funds may be placed in one account if adequate accounting  
2 measures are taken to identify the source of the funds.

3 ~~(7)(6)~~ All mortgage brokerage fees shall be paid to a  
4 mortgage brokerage business licensee.

5 ~~(8)(7)~~ This section does not prohibit a mortgage  
6 brokerage business from offering products and services, in  
7 addition to those offered in conjunction with the loan  
8 origination process, for a fee or commission.

9 Section 7. Subsection (8) is added to section 494.004,  
10 Florida Statutes, to read:

11 494.004 Requirements of licensees.--

12 (8)(a) In every mortgage loan transaction, each  
13 licensee under ss. 494.003-494.0043 shall notify a borrower of  
14 any material changes in the terms of a mortgage loan  
15 previously offered to the borrower within 3 business days  
16 after being made aware of such changes by the lender but not  
17 less than 3 business days before the signing of the settlement  
18 or closing statement. The licensee bears the burden of proving  
19 such notification was provided and accepted by the borrower.

20 (b) A borrower may waive the right to receive notice  
21 of a material change that is granted under paragraph (a) if  
22 the borrower determines that the extension of credit is needed  
23 to meet a bona fide personal financial emergency and the right  
24 to receive notice would delay the closing of the mortgage  
25 loan. The imminent sale of the borrower's home at foreclosure  
26 during the 3-day period before the signing of settlement or  
27 closing statement constitutes an example of a bona fide  
28 personal financial emergency. In order to waive the borrower's  
29 right to receive notice not less than 3 business days before  
30 the signing of the settlement or closing statement of any such  
31 material change, the borrower must provide the licensee with a

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1 dated written statement that describes the personal financial  
 2 emergency, waives the right to receive the notice, bears the  
 3 borrower's signature, and is not on a printed form prepared by  
 4 the licensee for the purpose of such a waiver.

5 Section 8. Paragraph (v) is added to subsection (2) of  
 6 section 494.0041, Florida Statutes, to read:

7 494.0041 Administrative penalties and fines; license  
 8 violations.--

9 (2) Each of the following acts constitutes a ground  
 10 for which the disciplinary actions specified in subsection (1)  
 11 may be taken:

12 (v) In any mortgage transaction, violating any  
 13 provision of the federal Real Estate Settlement Procedure Act,  
 14 as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In  
 15 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any  
 16 regulations adopted under such acts.

17 Section 9. Subsection (1) of section 494.0064, Florida  
 18 Statutes, is amended to read:

19 494.0064 Renewal of mortgage lender's license; branch  
 20 office license renewal.--

21 (1)~~(a)~~ The office shall renew a mortgage lender  
 22 license upon receipt of a completed renewal form,  
 23 certification from the licensee that the licensee currently  
 24 meets the minimum net worth requirements of s. 494.0061 or s.  
 25 494.0065, certification from the licensee that during the  
 26 preceding 2 years the licensee's principal representative and  
 27 loan originators have completed the professional continuing  
 28 education requirements of s. 494.00295, and the nonrefundable  
 29 renewal fee of \$575. The office shall renew a correspondent  
 30 lender license upon receipt of a completed renewal form,  
 31 certification from the licensee that the licensee currently

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1 meets the minimum net worth requirements of s. 494.0062,  
2 certification from the licensee that during the preceding 2  
3 years the licensee's principal representative and loan  
4 originators have completed the professional continuing  
5 education requirements of s. 494.00295, and a nonrefundable  
6 renewal fee of \$475. Each licensee shall pay at the time of  
7 renewal a nonrefundable fee of \$325 for the renewal of each  
8 branch office license.

9 ~~(b) A licensee shall also submit, as part of the~~  
10 ~~renewal form, certification that during the preceding 2 years~~  
11 ~~the licensee's principal representative and loan originators~~  
12 ~~have completed the professional continuing education~~  
13 ~~requirements of s. 494.00295.~~

14 Section 10. Subsection (8) and paragraph (a) of  
15 subsection (10) of section 494.0067, Florida Statutes, are  
16 amended, and subsections (11) and (12) are added to that  
17 section, to read:

18 494.0067 Requirements of licensees under ss.  
19 494.006-494.0077.--

20 (8) Each licensee under ss. 494.006-494.0077 shall  
21 provide an applicant for a mortgage loan a good faith estimate  
22 of the costs the applicant can reasonably expect to pay in  
23 obtaining a mortgage loan. The good faith estimate of costs  
24 shall be mailed or delivered to the applicant within a  
25 reasonable time after the licensee receives a written loan  
26 application from the applicant. The estimate of costs may be  
27 provided to the applicant by a person other than the licensee  
28 making the loan. The good faith estimate must identify the  
29 recipient of all payments charged to the borrower and, except  
30 for all fees to be received by the mortgage brokerage business  
31 and the mortgage lender or correspondent mortgage lender, may

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1 be disclosed in generic terms, such as, but not limited to,  
 2 paid to appraiser, officials, title company, or any other  
 3 third-party service provider. The licensee bears the burden of  
 4 proving such disclosures were provided to the borrower. The  
 5 commission may adopt rules that set forth the disclosure  
 6 requirements of this section.

7 (10)(a) Each mortgage lender or correspondent mortgage  
 8 lender licensee shall require the principal representative and  
 9 all loan originators, not currently licensed as mortgage  
 10 brokers pursuant to s. 494.0033, who perform services for the  
 11 licensee to complete 14 hours of professional continuing  
 12 education during each biennial license period. The education  
 13 shall cover primary and subordinate mortgage financing  
 14 transactions and the provisions of this chapter and the rules  
 15 adopted under this chapter.

16 (11) The disclosures in this subsection must be  
 17 furnished in writing at the time an adjustable rate mortgage  
 18 loan is offered to the borrower and whenever the terms of the  
 19 adjustable rate mortgage loan offered have a material change  
 20 prior to closing. The lender shall furnish the disclosures  
 21 relating to adjustable rate mortgages in a format prescribed  
 22 by ss. 226.18 and 226.19 of Regulation Z of the Board of  
 23 Governors of the Federal Reserve System, as amended, its  
 24 commentary, as amended, and the federal Truth in Lending Act,  
 25 15 U.S.C. ss. 1601 et seq., as amended, together with the  
 26 Consumer Handbook on Adjustable Rate Mortgages, as amended,  
 27 published by the Federal Reserve Board and the Federal Home  
 28 Loan Bank Board. The licensee bears the burden of proving such  
 29 disclosures were provided to the borrower.

30 (12)(a) In every mortgage loan transaction, each  
 31 licensee under ss. 494.006-494.0077 shall notify a borrower of

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1 any material changes in the terms of a mortgage loan  
 2 previously offered to the borrower within 3 business days  
 3 after being made aware of such changes by the lender but not  
 4 less than 3 business days before the signing of the settlement  
 5 or closing statement. The licensee bears the burden of proving  
 6 such notification was provided and accepted by the borrower.

7       (b) A borrower may waive the right to receive notice  
 8 of a material change which is granted under paragraph (a) if  
 9 the borrower determines that the extension of credit is needed  
 10 to meet a bona fide personal financial emergency and the right  
 11 to receive notice would delay the closing of the mortgage  
 12 loan. The imminent sale of the borrower's home at foreclosure  
 13 during the 3-day period before the signing of settlement or  
 14 closing statement constitutes an example of a bona fide  
 15 personal financial emergency. In order to waive the borrower's  
 16 right to receive notice not less than 3 business days before  
 17 the signing of the settlement or closing statement of any such  
 18 material change, the borrower must provide the licensee with a  
 19 dated written statement that describes the personal financial  
 20 emergency, waives the right to receive the notice, bears the  
 21 borrower's signature, and is not on a printed form prepared by  
 22 the licensee for the purpose of such a waiver.

23  
 24

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

26 And the title is amended as follows:

27           On page 1, line 26, through  
 28           page 2, line 4, delete those lines

29

30 and insert:

31           authorizing a borrower to waive notification

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1 under certain circumstances; providing waiver  
2 requirements; amending s. 494.0041, F.S.;  
3 specifying additional acts constituting grounds  
4 for certain disciplinary actions; providing for  
5 fines and penalties; amending s. 494.0064,  
6 F.S.; providing additional requirements for  
7 renewals of mortgage lender's licenses;  
8 amending s. 494.0067, F.S.; providing  
9 additional requirements for mortgage lender  
10 licensees; providing disclosure and  
11 notification requirements; authorizing a  
12 borrower to waive notification under certain  
13 circumstances; providing waiver requirements;

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