

By the Committee on Banking and Insurance; and Senator Bennett

597-2468-07

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A bill to be entitled

An act relating to mortgage lenders; amending s. 494.006, F.S.; exempting from licensure requirements certain persons who are under exclusive contract with a licensed mortgage lender; establishing requirements for such persons, including obtaining an undertaking of responsibility and a surety bond; providing an effective date.

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

Section 1. Subsection (2) of section 494.006, Florida Statutes, is amended to read:

494.006 Exemptions.--

(2)(a) A natural person employed by a mortgage lender or correspondent mortgage lender licensed under ss. 494.001-494.0077 is exempt from the licensure requirements of ss. 494.001-494.0077 when acting within the scope of employment with the licensee.

(b) A corporation that is in existence on October 1, 1991, and that is a wholly owned subsidiary of a consumer finance company licensed pursuant to chapter 516 on October 1, 1991, is not required to be licensed under ss. 494.006-494.0077 in order to act as a mortgage lender or a correspondent mortgage lender.

(c) A natural person who is under exclusive contract with a licensee under ss. 494.006-494.0077 to perform services that require licensure pursuant to this chapter is exempt from the licensure requirements of ss. 494.003-494.0043 when acting within the scope of the exclusive contract, if the licensee:

1 1. Originates or brokers mortgage loans only with
2 mortgage lenders affiliated with the licensee through ultimate
3 common ownership;

4 2. Has provided the office with an undertaking of
5 accountability in substantially the following form:

6
7 The undersigned entity assumes full and direct
8 financial responsibility for all acts as a loan
9 originator or acts as a mortgage broker
10 regulated pursuant to ss. 494.001-494.0077,
11 Florida Statutes, and any rules adopted under
12 those provisions by its representatives under
13 exclusive contract. It is fully understood and
14 agreed that the Florida Office of Financial
15 Regulation may take regulatory action against
16 the undersigned corporate licensee for unlawful
17 acts as loan originators or acts as mortgage
18 brokers of such representatives, which acts are
19 not in compliance with ss. 494.001-494.0077,
20 Florida Statutes, and any rules adopted under
21 those provisions.

22
23 [Corporate Name]

24 By: _____

25 [Name and title of person signing on behalf of
26 corporation]

27 Date: _____

28
29 3. Has provided a surety bond in the amount of \$5
30 million to guarantee the obligations under subparagraph 2.
31 This subparagraph is not a limitation on any recovery against

1 the licensee based on the mortgage brokerage or lending
2 activities conducted by any person exempted by this section.

3 a. The surety bond must be in a form satisfactory to
4 the office and shall run to the state for the benefit of any
5 claimant in this state against the licensee or any person
6 exempted by this section. A claimant may bring suit directly
7 on the surety bond, or the office may bring suit on behalf of
8 the claimant, in one action or successive actions, after the
9 claimant has secured a judgment against the licensee which the
10 licensee has not satisfied.

11 b. A corporate surety bond filed with the office to
12 comply with this paragraph may not be cancelled by the
13 licensee or the corporate surety except upon written notice to
14 the office by registered or certified mail with return receipt
15 requested. A cancellation may not take effect less than 30
16 days after the office receives such written notice.

17 c. The corporate surety shall, within 10 days after it
18 pays a claim to any claimant, give written notice of such
19 payment to the office by registered or certified mail, along
20 with details that are sufficient to identify the claimant and
21 the claim or judgment paid.

22 d. If the principal sum of the bond is reduced by any
23 recoveries or payments, the licensee must furnish a new or
24 additional bond so that the total or aggregate principal sum
25 of the bond equals the amount required by this paragraph.
26 Alternatively, a licensee may furnish an endorsement executed
27 by the corporate surety reinstating the bond to the required
28 principal sum.

29 e. A licensee shall maintain the bond in the amount
30 prescribed by this paragraph. If the office reasonably
31 determines that the bond is deficient in amount, or exhausted

1 in whole or in part, the office may, by written order, require
2 the filing of a new or supplemental bond.

3 f. The bond shall remain in place for 5 years after
4 the licensee ceases operations in this state;

5 4. Has implemented a business plan. The business plan
6 must:

7 a. Provide for the initial and continuing education of
8 the natural persons exempted by this paragraph which is
9 commensurate with their duties and responsibilities and shall,
10 as appropriate, cover such topics as:

11 (I) The Equal Credit Opportunity Act;

12 (II) The federal and Florida Fair Housing Acts;

13 (III) The Home Mortgage Disclosure Act of 1975;

14 (IV) The Community Reinvestment Act;

15 (V) The Americans with Disabilities Act;

16 (VI) The Real Estate Settlement Procedures Act of
17 1974;

18 (VII) The Truth-In-Lending Act;

19 (VIII) Regulation Z of the Board of Governors of the
20 Federal Reserve System;

21 (IX) Florida and company fair lending laws and
22 policies;

23 (X) Federal and Florida laws and company policies with
24 respect to consumer privacy protection;

25 (XI) Federal and Florida laws and company policies
26 with respect to information security;

27 (XII) Federal and Florida laws and company policies
28 with respect to recordkeeping requirements;

29 (XIII) Florida laws with respect to prohibited
30 practices;

31 (XIV) Complaint handling procedures;

- 1 (XV) Disclosures;
2 (XVI) Advertising;
3 (XVII) Background checks;
4 (XVIII) Examinations;
5 (XIX) Violations and enforcement; and
6 (XX) Mortgage fraud recognition and prevention.
7 b. Provide for the handling of consumer complaints
8 related to the natural persons exempted by this paragraph.
9 c. Provide for the supervision of the mortgage-related
10 activities of the natural persons exempted by this paragraph.
11 d. Be reasonably designed to ensure that the natural
12 persons exempted by this paragraph deliver all disclosures
13 required by federal and Florida law.
14 e. Be reasonably designed to prevent and detect
15 violations of this chapter; and
16 5. Has conducted a national background check for each
17 person exempted by this section and, based on such background
18 check, the subsidiary or affiliate may not, without the prior
19 written consent of the office, contract with any person to act
20 as an exclusive agent who has been subject to an action
21 specified in s. 494.0041(2)(a), (t), and (u).

22 Section 2. This act shall take effect July 1, 2007.

23
24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 Senate Bill 2526

27 The committee substitute provides the following change:

28 Expands the initial and continuing education requirements
29 for independent contractors in order to be exempt from
30 licensure as a mortgage broker.
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