



212376

LEGISLATIVE ACTION

Senate

House

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Floor: 3/AD/2R

04/28/2009 11:48 AM

Senator Richter moved the following:

Senate Amendment

Delete lines 1462 - 1578

and insert:

(4) DEFINITIONS.—As used in this section, the term:

(a) "Borrower" means a person who is obligated to repay a mortgage loan and includes, but is not limited to, a coborrower, cosignor, or guarantor.

(b) "Loan modification" means a modification to an existing loan. The term does not include a refinancing transaction.

Section 19. Subsection (1), (2), and (4) of section 494.00296, Florida Statutes, as created by this act, are amended



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13 to read:

14 494.00296 Loan modification.—

15 (1) PROHIBITED ACTS.—When offering or providing loan
16 modification services, a loan originator, mortgage broker,
17 ~~mortgage brokerage business, mortgage lender, or correspondent~~
18 ~~mortgage lender licensed or required to be licensed under ss.~~
19 ~~494.001-494.0077~~ may not:

20 (a) Engage in or initiate loan modification services
21 without first executing a written agreement for loan
22 modification services with the borrower;

23 (b) Execute a loan modification without the consent of the
24 borrower after the borrower is made aware of each modified term;
25 or

26 (c) Solicit, charge, receive, or attempt to collect or
27 secure payment, directly or indirectly, for loan modification
28 services before completing or performing all services included
29 in the agreement for loan modification services. A fee may be
30 charged only if the loan modification results in a material
31 benefit to the borrower. The commission may adopt rules to
32 provide guidance on what constitutes a material benefit to the
33 borrower

34 (2) LOAN MODIFICATION AGREEMENT.—

35 (a) The written agreement for loan modification services
36 must be printed in at least 12-point uppercase type and signed
37 by both parties. The agreement must include the name and address
38 of the person providing loan modification services, the exact
39 nature and specific detail of each service to be provided, the
40 total amount and terms of charges to be paid by the borrower for
41 the services, and the date of the agreement. The date of the



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42 agreement may not be earlier than the date the borrower signed
43 the agreement. The mortgage broker or brokerage business,
44 ~~mortgage lender, or correspondent~~ mortgage lender must give the
45 borrower a copy of the agreement to review at least 1 business
46 day before the borrower is to sign the agreement.

47 (b) The borrower has the right to cancel the written
48 agreement without any penalty or obligation if the borrower
49 cancels the agreement within 3 business days after signing the
50 agreement. The right to cancel may not be waived by the borrower
51 or limited in any manner by the loan originator, mortgage
52 broker, ~~mortgage brokerage business, mortgage lender, or~~
53 ~~correspondent~~ mortgage lender. If the borrower cancels the
54 agreement, any payments made must be returned to the borrower
55 within 10 business days after receipt of the notice of
56 cancellation.

57 (c) An agreement for loan modification services must
58 contain, immediately above the signature line, a statement in at
59 least 12-point uppercase type which substantially complies with
60 the following:

61 BORROWER'S RIGHT OF CANCELLATION

62
63 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
64 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS
65 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

66 THE LOAN ORIGINATOR, MORTGAGE BROKER, ~~MORTGAGE-BROKERAGE~~
67 ~~BUSINESS, MORTGAGE LENDER, OR CORRESPONDENT~~ MORTGAGE LENDER IS
68 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER
69 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN
70 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE



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71 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
72 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION
73 NOTICE.

74 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
75 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
76 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO
77 LATER THAN MIDNIGHT OF ... (DATE)

78 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE
79 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR
80 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
81 A RESTRUCTURING WITH YOU FREE OF CHARGE.

82
83 (d) The inclusion of the statement does not prohibit a loan
84 originator, mortgage broker, ~~mortgage brokerage business,~~
85 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender from giving
86 the homeowner more time to cancel the agreement than is set
87 forth in the statement if all other requirements of this
88 subsection are met.

89 (e) The person offering or providing the loan modification
90 services must give the borrower a copy of the signed agreement
91 within 3 hours after the borrower signs the agreement.

92 ~~(4) DEFINITIONS. As used in this section, the term:~~

93 ~~(a) "Borrower" means a person obligated to repay a mortgage~~
94 ~~loan and includes, but is not limited to, a coborrower,~~
95 ~~cosignor, or guarantor.~~

96 ~~(b) "Loan modification" means a modification to an existing~~
97 ~~loan. The term does not include a refinancing transaction.~~