

HB 1281

2010

1                   A bill to be entitled  
2           An act relating to loan origination; amending s.  
3           494.00255, F.S.; reenacting a reference to certain federal  
4           laws for purposes of incorporating rules adopted under  
5           such laws; specifying application of disciplinary  
6           procedures to principal loan originators for actions of  
7           loan originators; amending s. 494.00331, F.S.; specifying  
8           nonapplication of certain limitations to licensed loan  
9           originators operating solely as loan processors; providing  
10          a definition; prohibiting acting as a loan processor  
11          unless licensed as a loan originator; requiring a  
12          declaration of intent to engage solely in loan processing;  
13          authorizing withdrawal of a declaration of intent;  
14          authorizing payment of a loan processor's fee without  
15          violating certain restrictions; amending s. 494.0038,  
16          F.S.; revising requirements relating to a good faith  
17          estimate by a loan originator; requiring a disclosure  
18          document to be signed and dated by the borrower; providing  
19          an effective date.

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

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23           Section 1. Paragraph (m) of subsection (1) of section  
24           494.00255, Florida Statutes, is reenacted, and subsection (5) of  
25           that section is amended, to read:

26           494.00255 Administrative penalties and fines; license  
27           violations.—

28           (1) Each of the following acts constitutes a ground for

29 | which the disciplinary actions specified in subsection (2) may  
 30 | be taken against a person licensed or required to be licensed  
 31 | under part II or part III of this chapter:

32 |       (m) In any mortgage transaction, violating any provision  
 33 | of the federal Real Estate Settlement Procedures Act, as  
 34 | amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in  
 35 | Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any  
 36 | regulations adopted under such acts.

37 |       (5) A principal loan originator of a mortgage lender is  
 38 | subject to the disciplinary actions specified in subsection (2)  
 39 | for violations of subsection (1) by a loan originator ~~an~~  
 40 | ~~associate of a mortgage lender~~ if there is a pattern of repeated  
 41 | violations by the loan originator ~~associate~~ or if the principal  
 42 | loan originator has knowledge of the violations.

43 |       Section 2. Section 494.00331, Florida Statutes, as amended  
 44 | by chapter 2009-241, Laws of Florida, is amended to read:

45 |       494.00331 Loan originator employment.—

46 |       (1) An individual may not act as a loan originator unless  
 47 | he or she is an employee of, or an independent contractor for, a  
 48 | mortgage broker or a mortgage lender, and may not be employed by  
 49 | or contract with more than one mortgage broker or mortgage  
 50 | lender, or either simultaneously. However, this provision does  
 51 | not apply to any licensed loan originator who acts solely as a  
 52 | loan processor and contracts with more than one mortgage broker  
 53 | or mortgage lender, or either simultaneously.

54 |       (2) For purposes of this section, the term "loan  
 55 | processor" means an individual who is licensed as a loan  
 56 | originator who engages only in:

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57 (a) The receipt, collection, distribution, and analysis of  
58 information common for the processing or underwriting of a  
59 residential mortgage loan; or

60 (b) Communication with consumers to obtain the information  
61 necessary for the processing or underwriting of a loan, to the  
62 extent that such communication does not include offering or  
63 negotiating loan rates or terms or does not include counseling  
64 consumers about residential mortgage loan rates or terms.

65 (3) A person may not act as a loan processor unless the  
66 person is licensed as a loan originator under this chapter and  
67 has on file with the office a declaration of intent to engage  
68 solely in loan processing. The declaration of intent must be on  
69 such form as prescribed by the commission by rule.

70 (4) A loan originator that currently has a declaration of  
71 intent to engage solely in loan processing on file with the  
72 office may withdraw his or her declaration of intent to engage  
73 solely in loan processing. The withdrawal of declaration of  
74 intent must on such form as prescribed by commission rule.

75 (5) A declaration of intent or a withdrawal of declaration  
76 of intent is effective upon receipt by the office.

77 (6) The fee earned by a loan processor may be paid to the  
78 company that employs the loan processor without violating the  
79 restriction in s. 494.0025(7) requiring fees or commissions to  
80 be paid to a licensed mortgage broker or mortgage lender or a  
81 person exempt from licensure under this chapter.

82 Section 3. Paragraph (c) of subsection (3) of section  
83 494.0038, Florida Statutes, as amended by chapter 2009-241, Laws  
84 of Florida, is amended to read:

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85 494.0038 Loan origination and mortgage broker fees and  
 86 disclosures.—

87 (3) At the time a written mortgage broker agreement is  
 88 signed by the borrower or forwarded to the borrower for  
 89 signature, or at the time the mortgage broker business accepts  
 90 an application fee, credit report fee, property appraisal fee,  
 91 or any other third-party fee, but at least 3 business days  
 92 before execution of the closing or settlement statement, the  
 93 mortgage broker shall disclose in writing to any applicant for a  
 94 mortgage loan the following information:

95 (c) A good faith estimate, signed and dated by the  
 96 borrower, which discloses the total amount of each of the fees  
 97 the borrower may reasonably expect to pay if the loan is closed,  
 98 including, but not limited to, fees earned by the mortgage  
 99 broker, lender fees, third-party fees, and official fees,  
 100 together with the terms and conditions for obtaining a refund of  
 101 such fees, if any.

102 1. Any amount collected in excess of the actual cost shall  
 103 be returned within 60 days after rejection, withdrawal, or  
 104 closing.

105 2. ~~At the time a~~ The good faith estimate is provided to  
 106 the borrower, the loan originator must identify in writing the  
 107 recipient of all payments charged the borrower, which ~~and~~,  
 108 except for all fees to be received by the mortgage broker, may  
 109 be disclosed in generic terms, such as, but not limited to, paid  
 110 to lender, appraiser, officials, title company, or any other  
 111 third-party service provider. This requirement does not supplant  
 112 or is not a substitute for the written mortgage broker agreement

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113 | described in subsection (1). The disclosure required under this  
114 | subparagraph must be signed and dated by the borrower.

115 |       Section 4. This act shall take effect October 1, 2010.