

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; creating s. 494.00335,
16 F.S.; exempting certain mobile home dealers licensed under
17 ch. 494 and ch. 320, F.S., from licensure under ch. 520,
18 F.S.; providing that certain mobile home dealer employees
19 are not loan originators; amending s. 494.0038, F.S.;
20 revising requirements relating to a good faith estimate by
21 a loan originator; requiring a disclosure document to be
22 signed and dated by the borrower; amending s. 494.0067,
23 F.S.; deleting a requirement for licensure application
24 prior to certain purchases or acquisitions under certain
25 conditions; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (m) of subsection (1) of section
 30 494.00255, Florida Statutes, is reenacted, and subsection (5) of
 31 that section is amended, to read:

32 494.00255 Administrative penalties and fines; license
 33 violations.—

34 (1) Each of the following acts constitutes a ground for
 35 which the disciplinary actions specified in subsection (2) may
 36 be taken against a person licensed or required to be licensed
 37 under part II or part III of this chapter:

38 (m) In any mortgage transaction, violating any provision
 39 of the federal Real Estate Settlement Procedures Act, as
 40 amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in
 41 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any
 42 regulations adopted under such acts.

43 (5) A principal loan originator of a mortgage lender is
 44 subject to the disciplinary actions specified in subsection (2)
 45 for violations of subsection (1) by a loan originator ~~an~~
 46 ~~associate of a mortgage lender~~ if there is a pattern of repeated
 47 violations by the loan originator ~~associate~~ or if the principal
 48 loan originator has knowledge of the violations.

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

51 494.00331 Loan originator employment.—

52 (1) An individual may not act as a loan originator unless
 53 he or she is an employee of, or an independent contractor for, a
 54 mortgage broker or a mortgage lender, and may not be employed by
 55 or contract with more than one mortgage broker or mortgage
 56 lender, or either simultaneously. However, this provision does

57 not apply to any licensed loan originator who acts solely as a
58 loan processor and contracts with more than one mortgage broker
59 or mortgage lender, or either simultaneously.

60 (2) For purposes of this section, the term "loan
61 processor" means an individual who is licensed as a loan
62 originator who engages only in:

63 (a) The receipt, collection, distribution, and analysis of
64 information common for the processing or underwriting of a
65 residential mortgage loan; or

66 (b) Communication with consumers to obtain the information
67 necessary for the processing or underwriting of a loan, to the
68 extent that such communication does not include offering or
69 negotiating loan rates or terms or does not include counseling
70 consumers about residential mortgage loan rates or terms.

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

76 (4) A loan originator that currently has a declaration of
77 intent to engage solely in loan processing on file with the
78 office may withdraw his or her declaration of intent to engage
79 solely in loan processing. The withdrawal of declaration of
80 intent must on such form as prescribed by commission rule.

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

83 (6) The fee earned by a loan processor may be paid to the
84 company that employs the loan processor without violating the

85 restriction in s. 494.0025(7) requiring fees or commissions to
 86 be paid to a licensed mortgage broker or mortgage lender or a
 87 person exempt from licensure under this chapter.

88 Section 3. Section 494.00335, Florida Statutes, is created
 89 to read:

90 494.00335 Mobile home dealers.-

91 (1) A dealer, as defined in s. 320.77, is exempt from the
 92 licensure requirements under s. 520.03 if the dealer holds a
 93 mortgage broker or mortgage lender license issued under this
 94 chapter and a dealer license issued under chapter 320 and
 95 engages only in the sale of tangible personal property
 96 dwellings.

97 (2) An employee of a dealer licensed as a mortgage broker
 98 or mortgage lender who performs only administrative or clerical
 99 tasks as described in s. 494.001(14) is not included in the
 100 definition of the term "loan originator."

101 Section 4. Paragraph (c) of subsection (3) of section
 102 494.0038, Florida Statutes, as amended by chapter 2009-241, Laws
 103 of Florida, is amended to read:

104 494.0038 Loan origination and mortgage broker fees and
 105 disclosures.-

106 (3) At the time a written mortgage broker agreement is
 107 signed by the borrower or forwarded to the borrower for
 108 signature, or at the time the mortgage broker business accepts
 109 an application fee, credit report fee, property appraisal fee,
 110 or any other third-party fee, but at least 3 business days
 111 before execution of the closing or settlement statement, the
 112 mortgage broker shall disclose in writing to any applicant for a

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113 mortgage loan the following information:

114 (c) A good faith estimate, signed and dated by the
115 borrower, which discloses the total amount of each of the fees
116 the borrower may reasonably expect to pay if the loan is closed,
117 including, but not limited to, fees earned by the mortgage
118 broker, lender fees, third-party fees, and official fees,
119 together with the terms and conditions for obtaining a refund of
120 such fees, if any.

121 1. Any amount collected in excess of the actual cost shall
122 be returned within 60 days after rejection, withdrawal, or
123 closing.

124 2. At the time a ~~The~~ good faith estimate is provided to
125 the borrower, the loan originator must identify in writing the
126 recipient of all payments charged the borrower, which and,
127 except for all fees to be received by the mortgage broker, may
128 be disclosed in generic terms, such as, but not limited to, paid
129 to lender, appraiser, officials, title company, or any other
130 third-party service provider. This requirement does not supplant
131 or is not a substitute for the written mortgage broker agreement
132 described in subsection (1). The disclosure required under this
133 subparagraph must be signed and dated by the borrower.

134 Section 5. Subsection (4) of section 494.0067, Florida
135 Statutes, as amended by chapter 2009-241, Laws of Florida, is
136 amended to read:

137 494.0067 Requirements of mortgage lenders.—

138 (4) A mortgage lender shall report any changes in the
139 principal loan originator, any addition or subtraction of a
140 control person, or any change in the form of business

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141 organization by written amendment in such form and at such time
142 that the commission specifies by rule.

143 ~~(a) In any case in which a person or a group of persons,~~
144 ~~directly or indirectly or acting by or through one or more~~
145 ~~persons, proposes to purchase or acquire a controlling interest~~
146 ~~in a licensee, such person or group must submit an initial~~
147 ~~application for licensure as a mortgage lender before such~~
148 ~~purchase or acquisition and at the time and in the form~~
149 ~~prescribed by the commission by rule.~~

150 (b) Any addition of a control person who has not
151 previously filed a Uniform Mortgage Biographical Statement &
152 Consent Form, MU2, or has not previously complied with the
153 fingerprinting and credit report requirements of s. 494.00611 is
154 subject to the provisions of this section. If, after the
155 addition of a control person, the office determines that the
156 licensee does not continue to meet licensure requirements, the
157 office may bring administrative action in accordance with s.
158 494.00255 to enforce this section.

159 Section 6. This act shall take effect October 1, 2010.