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CS/HB 1281, Engrossed 1

2010 Legislature

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; amending
19 s. 494.0067, F.S.; deleting a requirement for licensure
20 application prior to certain purchases or acquisitions
21 under certain conditions; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (m) of subsection (1) of section
26 494.00255, Florida Statutes, is reenacted, and subsection (5) of
27 that section is amended, to read:

28 494.00255 Administrative penalties and fines; license

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29 | violations.-

30 | (1) Each of the following acts constitutes a ground for
 31 | which the disciplinary actions specified in subsection (2) may
 32 | be taken against a person licensed or required to be licensed
 33 | under part II or part III of this chapter:

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

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

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

47 | 494.00331 Loan originator employment.-

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

56 | (2) For purposes of this section, the term "loan

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57 processor" means an individual who is licensed as a loan
 58 originator who engages only in:

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

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

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

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

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

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

84 Section 3. Paragraph (c) of subsection (3) of section

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85 494.0038, Florida Statutes, as amended by chapter 2009-241, Laws
86 of Florida, is amended to read:

87 494.0038 Loan origination and mortgage broker fees and
88 disclosures.—

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

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

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

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

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113 | third-party service provider. This requirement does not supplant
 114 | or is not a substitute for the written mortgage broker agreement
 115 | described in subsection (1). The disclosure required under this
 116 | subparagraph must be signed and dated by the borrower.

117 | Section 4. Subsection (4) of section 494.0067, Florida
 118 | Statutes, as amended by chapter 2009-241, Laws of Florida, is
 119 | amended to read:

120 | 494.0067 Requirements of mortgage lenders.—

121 | (4) A mortgage lender shall report any changes in the
 122 | principal loan originator, any addition or subtraction of a
 123 | control person, or any change in the form of business
 124 | organization by written amendment in such form and at such time
 125 | that the commission specifies by rule.

126 | ~~(a) In any case in which a person or a group of persons,~~
 127 | ~~directly or indirectly or acting by or through one or more~~
 128 | ~~persons, proposes to purchase or acquire a controlling interest~~
 129 | ~~in a licensee, such person or group must submit an initial~~
 130 | ~~application for licensure as a mortgage lender before such~~
 131 | ~~purchase or acquisition and at the time and in the form~~
 132 | ~~prescribed by the commission by rule.~~

133 | ~~(b)~~ Any addition of a control person who has not
 134 | previously filed a Uniform Mortgage Biographical Statement &
 135 | Consent Form, MU2, or has not previously complied with the
 136 | fingerprinting and credit report requirements of s. 494.00611 is
 137 | subject to the provisions of this section. If, after the
 138 | addition of a control person, the office determines that the
 139 | licensee does not continue to meet licensure requirements, the
 140 | office may bring administrative action in accordance with s.

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141 | 494.00255 to enforce this section.

142 | Section 5. This act shall take effect October 1, 2010.