

By Senator Detert

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

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

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

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

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

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

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

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

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

46 494.00331 Loan originator employment.—

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

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

58 (a) The receipt, collection, distribution, and analysis of

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59 information common for the processing or underwriting of a
60 residential mortgage loan; or

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

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

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

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

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

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

86 494.0038 Loan origination and mortgage broker fees and
87 disclosures.-

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

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

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

106 2. At the time a ~~The~~ good faith estimate is provided to the
107 borrower, the loan originator must identify in writing the
108 recipient of all payments charged the borrower, which ~~and~~,
109 except for all fees to be received by the mortgage broker, may
110 be disclosed in generic terms, such as, but not limited to, paid
111 to lender, appraiser, officials, title company, or any other
112 third-party service provider. This requirement does not supplant
113 or is not a substitute for the written mortgage broker agreement
114 described in subsection (1). The disclosure required under this
115 subparagraph must be signed and dated by the borrower.

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