

By the Committee on Banking and Insurance; and 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 amending s. 494.0067, F.S.; removing the requirement
21 for licensure application under certain conditions;
22 providing an effective date.

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

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

29 494.00255 Administrative penalties and fines; license

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30 violations.-

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

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

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

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

48 494.00331 Loan originator employment.-

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

57 (2) For purposes of this section, the term "loan processor"
58 means an individual who is licensed as a loan originator who

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59 engages only in:

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

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

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

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

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

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

85 Section 3. Paragraph (c) of subsection (3) of section
86 494.0038, Florida Statutes, as amended by chapter 2009-241, Laws
87 of Florida, is amended to read:

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88 494.0038 Loan origination and mortgage broker fees and
89 disclosures.-

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

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

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

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

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117 subparagraph must be signed and dated by the borrower.

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

121 494.0067 Requirements of mortgage lenders.—

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

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

134 ~~(b)~~ Any addition of a control person who has not
135 previously filed a Uniform Mortgage Biographical Statement &
136 Consent Form, MU2, or has not previously complied with the
137 fingerprinting and credit report requirements of s. 494.00611 is
138 subject to the provisions of this section. If, after the
139 addition of a control person, the office determines that the
140 licensee does not continue to meet licensure requirements, the
141 office may bring administrative action in accordance with s.
142 494.00255 to enforce this section.

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