

HB 327

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1 A bill to be entitled
2 An act relating to fraud; amending s. 494.001, F.S.;
3 revising the definition of the term "mortgage loan
4 application" to conform to changes made by the act;
5 amending s. 494.0068, F.S.; moving language stating
6 that a mortgage loan application may be in writing or
7 electronically submitted; requiring that a mortgage
8 loan application contain fingerprints of the loan
9 originator and the borrower; requiring that the
10 borrower certify the accuracy of the information, that
11 an oral application be audio recorded, and that if the
12 primary language of the borrower is Spanish, the
13 application be on a specified application form;
14 amending s. 817.545, F.S.; revising classification of
15 certain offenses relating to mortgage fraud; providing
16 a period of limitation for commencing actions;
17 authorizing certain extensions of the limitation
18 period; specifying when the limitation period does not
19 run; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (24) of section 494.001, Florida
24 Statutes, is amended to read:

25 494.001 Definitions.—As used in ss. 494.001-494.0077, the
26 term:

27 (24) "Mortgage loan application" means the submission of a
28 borrower's financial information in anticipation of a credit

29 decision, which includes the borrower's name, the borrower's
 30 monthly income, the borrower's social security number to obtain
 31 a credit report, the property address, an estimate of the value
 32 of the property, the mortgage loan amount sought, and any other
 33 information deemed necessary by the loan originator. ~~An~~
 34 ~~application may be in writing or electronically submitted,~~
 35 ~~including a written record of an oral application.~~

36 Section 2. Subsection (6) is added to section 494.0068,
 37 Florida Statutes, to read:

38 494.0068 Loan application process.—

39 (6) (a) A mortgage loan application may be in writing or
 40 electronically submitted, including a written record of an oral
 41 application.

42 (b) The application shall include an area where the loan
 43 originator and the borrower certify the accuracy of the
 44 application along with a legible fingerprint of the loan
 45 originator and the borrower.

46 (c) If the application is a written record of an oral
 47 application to a mortgage lender, then the mortgage lender shall
 48 inform the borrower that the oral application will be audio
 49 recorded and shall record the oral application.

50 (d) If the primary language of the borrower is Spanish,
 51 the application, made either in writing or orally, shall be
 52 completed using the uniform residential loan application of the
 53 Federal National Mortgage Association, Form 1003s or a successor
 54 form, or the Federal Home Loan Mortgage Corporation, Form 65s or
 55 a successor form.

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56 Section 3. Section 817.545, Florida Statutes, is amended
57 to read:

58 817.545 Mortgage fraud.—

59 (1) For the purposes of the section, the term "mortgage
60 lending process" means the process through which a person seeks
61 or obtains a residential mortgage loan, including, but not
62 limited to, the solicitation, application or origination,
63 negotiation of terms, third-party provider services,
64 underwriting, signing and closing, and funding of the loan.
65 Documents involved in the mortgage lending process include, but
66 are not limited to, mortgages, deeds, surveys, inspection
67 reports, uniform residential loan applications, or other loan
68 applications; appraisal reports; HUD-1 settlement statements;
69 supporting personal documentation for loan applications such as
70 W-2 forms, verifications of income and employment, credit
71 reports, bank statements, tax returns, and payroll stubs; and
72 any required disclosures.

73 (2) A person commits the offense of mortgage fraud if,
74 with the intent to defraud, the person knowingly:

75 (a) Makes any material misstatement, misrepresentation, or
76 omission during the mortgage lending process with the intention
77 that the misstatement, misrepresentation, or omission will be
78 relied on by a mortgage lender, borrower, or any other person or
79 entity involved in the mortgage lending process; however,
80 omissions on a loan application regarding employment, income, or
81 assets for a loan which does not require this information are
82 not considered a material omission for purposes of this
83 subsection.

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84 (b) Uses or facilitates the use of any material
85 misstatement, misrepresentation, or omission during the mortgage
86 lending process with the intention that the material
87 misstatement, misrepresentation, or omission will be relied on
88 by a mortgage lender, borrower, or any other person or entity
89 involved in the mortgage lending process; however, omissions on
90 a loan application regarding employment, income, or assets for a
91 loan which does not require this information are not considered
92 a material omission for purposes of this subsection.

93 (c) Receives any proceeds or any other funds in connection
94 with the mortgage lending process that the person knew resulted
95 from a violation of paragraph (a) or paragraph (b).

96 (d) Files or causes to be filed with the clerk of the
97 circuit court for any county of this state a document involved
98 in the mortgage lending process which contains a material
99 misstatement, misrepresentation, or omission.

100 (3) An offense of mortgage fraud may not be predicated
101 solely upon information lawfully disclosed under federal
102 disclosure laws, regulations, or interpretations related to the
103 mortgage lending process.

104 (4) For the purpose of venue under this section, any
105 violation of this section is considered to have been committed:

106 (a) In the county in which the real property is located;
107 or

108 (b) In any county in which a material act was performed in
109 furtherance of the violation.

110 (5) ~~(a)~~ Any person who violates subsection (2), and the
111 loan value stated on documents used in the mortgage lending

112 process is:

113 (a) Less than \$20,000, commits a felony of the third
 114 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 115 775.084.

116 (b) Equal to or more than \$20,000 but less than ~~Any person~~
 117 ~~who violates subsection (2), and the loan value stated on~~
 118 ~~documents used in the mortgage lending process exceeds \$100,000,~~
 119 commits a felony of the second degree, punishable as provided in
 120 s. 775.082, s. 775.083, or s. 775.084.

121 (c) Equal to or more than \$100,000, commits a felony of
 122 the first degree, punishable as provided in s. 775.082, s.
 123 775.083, or s. 775.084.

124 (6) (a) Notwithstanding any other provision of law, a
 125 prosecution under this section may be commenced at any time
 126 within 5 years after the offense is committed. However, this
 127 time period may be extended for 1 year after discovery of the
 128 offense by an aggrieved party or by a person who has a legal
 129 duty to represent an aggrieved party and who is himself or
 130 herself not a party to the offense. In no case may this
 131 paragraph extend the period of limitation by more than 3 years
 132 beyond what is otherwise provided by law.

133 (b) The period of limitation does not run during any time
 134 when the defendant is continuously absent from the state or is
 135 without a reasonably ascertainable place of abode or work within
 136 the state, but this shall not extend the period of limitation
 137 otherwise applicable by more than 1 year. This paragraph does
 138 not limit the prosecution of a defendant who has been timely
 139 charged by indictment or information or other charging document

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140 | and who has not been arrested due to his or her absence from
141 | this state or has not been extradited for prosecution from
142 | another state.

143 | Section 4. This act shall take effect October 1, 2012.