

CHAPTER 2010-67

Committee Substitute for House Bill No. 1281

An act relating to loan origination; amending s. 494.00255, F.S.; reenacting a reference to certain federal laws for purposes of incorporating rules adopted under such laws; specifying application of disciplinary procedures to principal loan originators for actions of loan originators; amending s. 494.00331, F.S.; specifying nonapplication of certain limitations to licensed loan originators operating solely as loan processors; providing a definition; prohibiting acting as a loan processor unless licensed as a loan originator; requiring a declaration of intent to engage solely in loan processing; authorizing withdrawal of a declaration of intent; authorizing payment of a loan processor's fee without violating certain restrictions; amending s. 494.0038, F.S.; revising requirements relating to a good faith estimate by a loan originator; requiring a disclosure document to be signed and dated by the borrower; amending s. 494.0067, F.S.; deleting a requirement for licensure application prior to certain purchases or acquisitions under certain conditions; providing an effective date.

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

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

494.00255 Administrative penalties and fines; license violations.—

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

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

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

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

494.00331 Loan originator employment.—

(1) An individual may not act as a loan originator unless he or she is an employee of, or an independent contractor for, a mortgage broker or a

mortgage lender, and may not be employed by or contract with more than one mortgage broker or mortgage lender, or either simultaneously. However, this provision does not apply to any licensed loan originator who acts solely as a loan processor and contracts with more than one mortgage broker or mortgage lender, or either simultaneously.

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

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

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

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

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

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

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

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

494.0038 Loan origination and mortgage broker fees and disclosures.—

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

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

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

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

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

494.0067 Requirements of mortgage lenders.—

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

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

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

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

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.