

CHAPTER 2011-71

Committee Substitute for Committee Substitute for Senate Bill No. 1316

An act relating to loan processing; amending s. 494.001, F.S.; creating and revising definitions; deleting a redundant definition; amending s. 494.0011, F.S.; specifying rulemaking powers of the Financial Services Commission; amending s. 494.00115, F.S.; providing an exemption from regulation under ch. 494, F.S., for certain persons regulated under ch. 475, F.S.; amending s. 494.00255, F.S.; including in-house loan processors in disciplinary provisions; amending s. 494.00331, F.S.; providing that specified provisions do not apply to a licensed contract loan processor who has on file with the office a declaration of intent to act solely as a contract loan processor; deleting a definition; providing restrictions on employment of persons licensed as in-house loan processors; amending s. 494.0035, F.S.; clarifying provisions concerning the operation of mortgage brokers; amending s. 494.0038, F.S.; revising provisions relating to disclosure of settlement charges and loan terms; amending s. 494.00421, F.S.; revising an agency reference in the mortgage broker agreement; providing that a borrower may contact the Office of Financial Regulation rather than the Department of Financial Services regarding any complaints against a loan originator; amending s. 494.00612, F.S.; requiring that in order to renew a mortgage lender license a mortgage lender must authorize the Nationwide Mortgage Licensing System and Registry to obtain an independent credit report on each of the mortgage lender's control persons; amending s. 494.0067, F.S.; requiring each mortgage lender to submit certain reports to the registry as may be required; providing an effective date.

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

Section 1. Subsections (1), (14), (25), and (26) of section 494.001, Florida Statutes, are amended, new subsections (5), (11), and (17) are added to that section, present subsections (5) through (9) are renumbered as subsections (6) through (10), respectively, present subsections (10) through (14) are renumbered as subsections (12) through (16), respectively, present subsections (15) through (24) are renumbered as subsections (18) through (27), respectively, and present subsections (26) through (34) are renumbered as subsections (28) through (36), respectively, to read:

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

(1) “Borrower” means a person obligated to repay a mortgage loan and includes, but is not limited to, a coborrower or, cosignor, ~~or guarantor~~.

(5) “Contract loan processor” means an individual who is licensed under part II of this chapter as a loan originator, who is an independent contractor

for a mortgage broker or mortgage lender, and who engages only in loan processing.

(11) “In-house loan processor” means an individual who is an employee of a mortgage broker or a mortgage lender who engages only in loan processing.

~~(16)~~(14) “Loan originator” means an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, processes a mortgage loan application, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the activities of a loan originator as that term is defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an individual acting as a loan originator pursuant to that definition is acting as a loan originator for purposes of this definition. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to who performs only administrative or clerical tasks, including quoting available interest rates, physically handling a completed application form, or transmitting a completed application form to a lender on behalf of a prospective borrower.

(17) “Loan processing” means:

(a) Receiving, collecting, distributing, and analyzing information common for the processing of a mortgage loan; or

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

~~(25) “Person” has the same meaning as in s. 1.01.~~

~~(28)~~(26) “Principal loan originator” means the licensed loan originator in charge of, and responsible for, the operation of a mortgage lender or mortgage broker, including all of the activities of the mortgage lender’s or mortgage broker’s loan originators, in-house loan processors, and branch managers, whether employees or independent contractors.

Section 2. Subsection (2) of section 494.0011, Florida Statutes, is amended to read:

494.0011 Powers and duties of the commission and office.—

(2) ~~To administer ss. 494.001-494.0077,~~ The commission may adopt rules to administer parts I, II, and III of this chapter, including rules:

(a) Requiring electronic submission of any forms, documents, or fees required by this act.

(b) Relating to compliance with the S.A.F.E. Mortgage Licensing Act of 2008, including rules to:

1. Require loan originators, mortgage brokers, mortgage lenders, and branch offices to register through the registry.

2. Require the use of uniform forms that have been approved by the registry, and any subsequent amendments to such forms if the forms are substantially in compliance with the provisions of this chapter. Uniform forms that the commission may adopt include, but are not limited to:

a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

b. Uniform Mortgage Biographical Statement & Consent Form, MU2.

c. Uniform Mortgage Branch Office Form, MU3.

d. Uniform Individual Mortgage License/Registration & Consent Form, MU4.

3. Require the filing of forms, documents, and fees in accordance with the requirements of the registry.

4. Prescribe requirements for amending or surrendering a license or other activities as the commission deems necessary for the office's participation in the registry.

5. Prescribe procedures that allow a licensee to challenge information contained in the registry.

6. Prescribe procedures for reporting violations of this chapter and disciplinary actions on licensees to the registry.

(c) Establishing time periods during which a loan originator, mortgage broker, or mortgage lender license applicant under part II or part III is barred from licensure due to prior criminal convictions of, or guilty or nolo contendere pleas by, any of the applicant's control persons, regardless of adjudication.

1. The rules must provide:

a. Permanent bars for felonies involving fraud, dishonesty, breach of trust, or money laundering;

b. A 15-year disqualifying period for felonies involving moral turpitude;

c. A 7-year disqualifying period for all other felonies; and

d. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

2. The rules may provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant's criminal history.

3. The rules may provide for mitigating factors for crimes identified in sub-subparagraph 1.b. However, the mitigation may not result in a period of disqualification less than 7 years. The rule may not mitigate the disqualifying periods in sub-subparagraphs 1.a., 1.c., and 1.d.

4. An applicant is not eligible for licensure until the expiration of the disqualifying period set by rule.

5. Section 112.011 is not applicable to eligibility for licensure under this part.

Section 3. Paragraph (f) is added to subsection (1) of section 494.00115, Florida Statutes, to read:

494.00115 Exemptions.—

(1) The following are exempt from regulation under this part and parts II and III of this chapter.

(f) A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of chapter 475, unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator. The term “real estate brokerage activity” has the same meaning as in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Section 4. Subsections (3), (4), (5), and (6) of section 494.00255, Florida Statutes, are amended, and paragraph (m) of subsection (1) of that section is reenacted, 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.

(3) A mortgage broker or mortgage lender, as applicable, is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by:

- (a) A control person of the mortgage broker or mortgage lender; ~~or~~
- (b) A loan originator employed by or contracting with the mortgage broker or mortgage lender; or
- (c) An in-house loan processor who is an employee of the mortgage broker or mortgage lender.
- (4) A principal loan originator of a mortgage broker is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.
- (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 or an in-house loan processor in the course of an association with a mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.
- (6) A branch manager is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker or mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the branch manager has knowledge of the violations.

Section 5. Section 494.00331, Florida Statutes, is amended to read:

494.00331 Loan originator and loan processor employment.—

(1) LOAN ORIGINATORS.—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.

~~(2) CONTRACT LOAN PROCESSORS.~~—~~Subsection (1) However, this provision does not apply to a contract loan processor who has a declaration of intent to act solely as a contract loan processor on file with the office. The declaration of intent must be on a form as prescribed by commission rule 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.~~

~~(a)(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 be on such form as prescribed by commission rule.~~

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

~~(c)(6) The fee earned by a contract 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.~~

(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as an in-house loan processor unless he or she is an employee of a mortgage broker or a mortgage lender and may not be employed by more than one mortgage broker or mortgage lender, or either, simultaneously. An in-house loan processor must work at the direction of and be subject to the supervision and instruction of a loan originator licensed under this part.

Section 6. Subsection (1) of section 494.0035, Florida Statutes, is amended to read:

494.0035 Principal loan originator and branch manager for mortgage broker.—

(1) Each mortgage broker must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage broker business. The principal loan originator must have been licensed as a loan originator for at least 1 year before being designated as the principal loan originator, or must demonstrate to the satisfaction of the office that he or she has been actively engaged in a mortgage-related mortgage broker-related business for at least 1 year before being designated as a principal loan originator. Each mortgage broker must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule.

If the designation is inaccurate, the mortgage broker business shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity. A loan originator may not be a principal loan originator for more than one mortgage broker at any given time.

Section 7. Paragraph (c) of subsection (3) of section 494.0038, Florida Statutes, 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 that discloses settlement charges and loan terms, ~~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 good faith estimate is provided to the borrower, the loan originator must identify in writing an itemized list that provides the recipient of all payments charged the borrower, which, 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 8. Paragraph (a) of subsection (7) of section 494.00421, Florida Statutes, is amended to read:

494.00421 Fees earned upon obtaining a bona fide commitment.— Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage broker which contracts to receive a loan origination fee from a borrower upon obtaining a bona fide commitment shall accurately disclose in the mortgage broker agreement:

(7)(a) The following statement, in at least 12-point boldface type immediately above the signature lines for the borrowers:

“You are entering into a contract with a mortgage broker to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage broker obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the loan origination fees even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the loan origination fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Office of Financial Regulation Department of Financial Services, Tallahassee, Florida, regarding any complaints that the borrower may have against the loan originator. The telephone number of the office department is: ...(insert telephone number)...”

Section 9. Paragraph (e) of subsection (1) of section 494.00612, Florida Statutes, is amended to read:

494.00612 Mortgage lender license renewal.—

(1) In order to renew a mortgage lender license, a mortgage lender must:

(e) Authorize the registry to obtain an independent credit report on each of the mortgage lender's control persons ~~lender~~ from a consumer reporting agency, and transmit or provide access to the report to the office. The cost of the credit report shall be borne by the licensee.

Section 10. Subsection (13) is added to section 494.0067, Florida Statutes, to read:

494.0067 Requirements of mortgage lenders.—

(13) Each mortgage lender shall submit to the registry reports of condition which are in a form and which contain such information as the registry may require.

Section 11. This act shall take effect July 1, 2011.

Approved by the Governor May 31, 2011.

Filed in Office Secretary of State May 31, 2011.