

CHAPTER 2018-61

Committee Substitute for House Bill No. 935

An act relating to mortgage regulation; amending s. 494.001, F.S.; defining the term “business purpose loan”; amending s. 494.00115, F.S.; defining the term “hold himself or herself out to the public as being in the mortgage lending business”; amending s. 494.0025, F.S.; prohibiting the misrepresentation of a residential mortgage loan as a business purpose loan; reenacting s. 494.0018, F.S., relating to penalties, to incorporate the amendment made to s. 494.0025, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present subsections (4) through (37) of section 494.001, Florida Statutes, are redesignated as subsections (5) through (38), respectively, and a new subsection (4) is added to that section, to read:

494.001 Definitions.—As used in this chapter, the term:

(4) “Business purpose loan” means a mortgage loan, the proceeds of which the borrower intends to use primarily for a business purpose and not primarily for a personal, family, or household purpose. In determining if the loan is for a business purpose, a person must refer to the official interpretation by the Consumer Financial Protection Bureau of 12 C.F.R. s. 1026.3(a).

Section 2. Subsection (4) is added to section 494.00115, Florida Statutes, to read:

494.00115 Exemptions.—

(4) As used in this section, the term “hold himself or herself out to the public as being in the mortgage lending business” includes any of the following:

(a) Representing to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or promotional items, by any method, that such individual can or will perform the activities described in s. 494.001(24).

(b) Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(24).

(c) Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities

described in s. 494.001(24) or regularly meets with current or prospective mortgage borrowers.

(d) Advertising, soliciting, or conducting business through the use of a name, trademark, service mark, trade name, Internet address, or logo that indicates or reasonably implies that the business being advertised, solicited, or conducted is of the kind or character of business transacted or conducted by a licensed mortgage lender or is likely to lead any person to believe that such business is that of a licensed mortgage lender.

Section 3. Subsection (4) of section 494.0025, Florida Statutes, is amended to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(4) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage loan transactions, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud;

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan; ~~or~~

(c) To obtain property by fraud, willful misrepresentation of a future act, or false promise; or

(d) To misrepresent a residential mortgage loan, as described in s. 494.001(25)(a), as a business purpose loan.

Section 4. For the purpose of incorporating the amendment made by this act to section 494.0025, Florida Statutes, in a reference thereto, section 494.0018, Florida Statutes, is reenacted to read:

494.0018 Penalties.—

(1) Whoever knowingly violates any provision of s. 494.0025(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4), or (5), except as provided in subsection (2) of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each such violation constitutes a separate offense.

(2) Any person who violates any provision of this chapter, in which the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. This act shall take effect July 1, 2019.

Approved by the Governor March 21, 2018.

Filed in Office Secretary of State March 21, 2018.