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## Florida Mortgage Laws and Regulations

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### Introduction

LegalEase was asked to review and summarize any legislation since January of 2007 (including pending legislation) affecting the mortgage industry in Florida in the following areas:

#### **I. MORTGAGE ORIGINATION**

##### **1. Pending legislation since January of 2007**

i) 2008 Bill Tracking FL H.B. 979

DATED OF INTRODUCTION: February 18, 2008  
LAST ACTION: March 11, 2008;  
STATUS: To House Committee on Financial Institutions.

**SUMMARY:** This bill relates to the terms of a sub-prime loan agreement, prepayment penalties, balloon payments, borrower's ability to pay, variable rate loans, open-ended loans, modification or deferral fees, mandatory arbitration clauses, providing payoff balances, lenders financing of certain insurance and debt cancellation agreements, fees and charges, charging points and fees, disclosure of fixed rate loans available to borrower before closing an adjustable rate loan, the right of rescission, and lender notices of default.

- Adds definition of Bona fide loan discount points as “loan discount points actually paid by the borrower to the lender for the purpose of reducing and which, in fact, result in a bona fide reduction of the interest rate applicable to the loan by a minimum of 25 basis points per discount point.”
- Deletes the definition “Bridge Loan”
- Adds definition of “Fully indexed rate” which equals the index rate prevailing at the time a residential mortgage loan is originated plus the margin that will apply after the expiration of an introductory interest rate.
- Deletes the definition “High Cost Home Loan.”

- Adds the definition "Home loan" which is "a loan, including an open-end credit plan, other than a reverse mortgage transaction, in which: (a) The debt is incurred primarily for personal, family, or household purposes; and (b) The loan is secured by either a security interest on a manufactured home or a mortgage deed of trust on real estate in this state upon which there is located or there is to be located a structure or structures:
  1. Designed principally for occupancy by one to four families; and
  2. That is or will be occupied by a borrower as the borrower's principal dwelling.

- The term "Lender" has been modified to include subprime home loan.

- Adds definition of term Subprime loan:

“(a) For an adjustable rate loan secured by a first lien on a dwelling that can increase in interest rate but not decrease in interest rate below the fully indexed rate at the time of origination, a loan for which the annual percentage rate (APR) is greater than 2 percentage points above the weekly average yield on 5-year United States Treasury securities as of the 15th day of the month immediately preceding the loan closing.

(b) For all other loans secured by a first lien on a dwelling, a loan for which the APR is greater than 3 percentage points above the weekly average yield on 5-year United States Treasury securities as of the 15th day of the month immediately preceding the loan closing.

(c) For loans secured by a subordinate lien on a dwelling or a mortgage secured solely by a security interest in a manufactured home, a loan for which the APR is greater than 5 percentage points above the weekly average yield on 5-year United States Treasury securities as of the 15th day of the month immediately preceding the loan closing.

(d) For all loans in which the total loan amount is \$30,000 or more, the total points and fees on the loan, excluding up to 2 bona fide discount points, paid by the borrower at or before the closing exceed 3 percent of the total loan amount; and for all loans in which the total loan amount is less than \$30,000, the total points and fees on the loan, excluding up to 2 bona fide discount points, paid by the borrower at or before closing exceed the lesser of \$900 or 6 percent of the total loan amount.”

- Prevents lender from making a subprime loan without verifying a borrower's ability to pay the scheduled payments. The bill provides that a statement to the lender by the borrower regarding borrower's income and resources is not sufficient to establish borrower's ability to pay.
- Provides that no subprime home loan may be subject to any mandatory arbitration clause which limits the borrower's right to seek relief through courts.
- The bill provides borrower the right to rescind the subprime home loan until midnight of the 3rd business day after consummation, delivery of the rescission notice, or delivery of all material disclosures, whichever occurs last.

## 2. Legislation since January of 2007

Under Chapter 494: Mortgage Brokerage and Mortgage Lending, the definition “Act as a loan originator” of under Fla. Stat. § 494.001, was amended to read as follows:

(2) "Act as a loan originator" means being employed by a mortgage lender or correspondent mortgage lender, for compensation or gain or in the expectation of compensation or gain, to negotiate, offer to negotiate, or assist any licensed or exempt entity in negotiating the making of a mortgage loan, including, but not limited to, working with a licensed or exempt entity to structure a loan or discussing terms and conditions necessary for the delivery of a loan product. A natural person whose activities are ministerial and clerical, which may include quoting available interest rates, is not acting as a loan originator.

Also, Fla. Stat. § 494.001 was amended to add these definitions:

(32) "Mortgage loan application" means a submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan.

(33) "Mortgage brokerage fee" means the total compensation to be received by a mortgage brokerage business for acting as a mortgage broker.

(34) "Business day" means any calendar day except Sunday or a legal holiday.

## II. MORTGAGE LICENSING

### 1. Pending legislation since January of 2007

i) 2008 Bill Text FL H.B. 5049:

DATED OF INTRODUCTION: March 27, 2008

LAST ACTION: April 17, 2008;

STATUS: In House.

SUMMARY: Revises requirements for mortgage broker license tests (under Section 494.0033 of the Florida Statute); revises fee requirements; requires applicants to bear specified costs.

- Provides for electronic version of the Mortgage Broker Test to be made available no later than December 31, 2008.

- Also provides that “any applicant who wishes to review his or her completed and graded mortgage broker test shall bear only the actual cost of the review; however, the applicant's cost of the review may not exceed \$ 35.”
- Reduces non-refundable application fee from \$200 to \$190.

**ii) 2007 Bill Text FL H.B. 1125:**

DATE OF INTRODUCTION: April 20, 2007

LAST ACTION: April 30, 2007;

STATUS: In House

**SUMMARY:** This bill relates to mortgage brokering and lending; provides additional requirements for renewals of mortgage lender's license.

Renewal of mortgage lenders license: subsection (1) of Section 494.0064, Florida Statute is amended to read:

“The branch office shall renew a mortgage lender license upon receipt of a completed renewal form, certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0061 or s. 494.0065, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and the nonrefundable renewal fee of \$ 575.”

“The office shall renew a correspondent lender license upon receipt of a completed renewal form certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0062, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and a nonrefundable renewal fee of \$ 475. Each licensee shall pay at the time of renewal a nonrefundable fee of \$ 325 for the renewal of each branch office license.”

**2. Legislation since January of 2007**

Fla. Stat. § 494.0033, pertaining to mortgage broker’s license, has been amended by 2007 Fl. ALS 182. The amendments include:

Paragraph (a) now provides that a license shall be issued to any natural person who is at least 18 years of age and has a high school diploma or its equivalent.

Paragraph (b) now provides that “the commission may adopt rules prescribing an additional fee that may not exceed \$50 for an applicant to review his or her completed and graded mortgage broker test. The commission may adopt rules regarding the administration of the testing process, including, but not limited to, procedures relating to pretest registration, test security, scoring, content, result notification, retest procedures and fees, post examination review, and challenge provisions.”

Fla. Stat. § 494.004, pertaining to the requirements of licensees, has been amended to include:

(8) (a) In every mortgage loan transaction, each licensee under ss. 494.003-494.0043 shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but not less than 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower.

(b) A borrower may waive the right to receive notice of a material change that is granted under paragraph (a) if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice not less than 3 business days before the signing of the settlement or closing statement of any such material change, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

Fla. Stat. § 494.0064, pertaining to renewal of mortgage lender's license; branch office license renewal, has been amended to rewrite section (1) as follows:

(1) The office shall renew a mortgage lender license upon receipt of a completed renewal form, certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0061 or s 494.0065, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and the nonrefundable renewal fee of \$ 575. The office shall renew a correspondent lender license upon receipt of a completed renewal form, certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0062, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and a nonrefundable renewal fee of \$ 475. Each licensee shall pay at the time of renewal a nonrefundable fee of \$ 325 for the renewal of each branch office license.

### **III. MORTGAGE FEES AND CHARGES:**

#### **1. Pending legislation since January of 2007**

i) 2008 Bill Tracking FL S.B. 2846:

DATE OF INTRODUCTION: March 4, 2008

LAST ACTION: April 15, 2008;

STATUS: From Senate Committee on Banking and Insurance

SUMMARY: The bill expands the number and type of loans subject to the provisions of the Florida Fair Lending Act by applying these provisions to subprime loans rather than high cost loans. The bill revises the Florida Fair Lending Act by:

- (1) Lowering the rates and fee thresholds on what is considered a subprime loan subject to the act so that many loans originated for a purchase or refinance of a one to four family residence would be considered subprime loans.
- (2) Adding prohibited practices for subprime loans in Florida.
- (3) Making any violation of this Act a violation under part II of ch. 501, F.S. (Florida Deceptive and Unfair Trade Practices Act).

The bill substantially amends the following sections of the Florida Statutes: 494.0078, 494.0079, 494.00791, 494.00792, 494.00794, 494.00796, and 494.00798.

- Under the bill, the Florida Fair Lending Act would apply to “subprime home loans,” rather than “high-cost” loans.” The term “high-cost home loan” is deleted, and new definitions for the terms “home loan” and “subprime loan” are added to the act.
- The bill provides the following prohibited practices for subprime loans:
  - (1) Prepayment penalties
  - (2) Increased interest rate upon default. This is prohibited under current law.
  - (3) Balloon payments during life of loan.
  - (4) Negative amortization loans
  - (5) Extension of credit without regard to the payment ability of the borrower (based on fully indexed interest rate on adjustable rate loans).
  - (6) Lack of verification of the borrower’s income and financial resources.
  - (7) Refinancing of subprime loans to same borrower without reasonable financial benefit to the borrower.
  - (8) Payments to home improvement contractors until the work have been completed.
  - (9) Mandatory arbitration clauses.
  - (10) Charge fees for payoff information.
  - (11) Modification of deferral fees.
  - (12) Financing any credit life, credit liability, etc. types of insurance.
  - (13) Financing any of the fees charged as part of the loan.
  - (14) Mortgage broker and/or lender collecting any points or fees when refinancing a subprime loan into another subprime loan with the same lender.

- The bill revises enforcement provisions in s. 494.00796, F.S. A lender acting in good faith that fails to comply with this act would not be deemed to have violated the act if the lender provides restitution to the borrower and appropriate adjustments to the loan within 30-60 days after the loan closing and prior to the receiving any notice from the borrower of the compliance failure.

## **2. Legislation since January of 2007**

Fla. Stat. § 494.0038, pertaining to mortgage broker disclosures, has been amended. The amendments include:

- Amendment of section 1(a) 1. “A person may not receive a mortgage brokerage fee except pursuant to a written mortgage brokerage agreement between the mortgage brokerage business and the borrower which is signed and dated by the business and the borrower.”
- Amendment to section 1(a) 2. Inclusion of the condition that “the written mortgage brokerage agreement must be executed within 3 business days after a mortgage loan application is accepted if the borrower is present when the application is accepted. If the borrower is not present when such an application is accepted, the licensee shall forward the written mortgage brokerage agreement to the borrower within 3 business days after the licensee's acceptance of the application and the licensee bears the burden of proving that the borrower received and approved the written mortgage brokerage agreement.”
- Section 1(b) 1 is amended to read “if the mortgage brokerage business is to receive any payment of any kind from the lender, the maximum total dollar amount of the payment must be disclosed to the borrower in the written mortgage brokerage agreement as described in paragraph (a). The commission may prescribe by rule an acceptable form for disclosure of brokerage fees received from the lender. The mortgage brokerage agreement must state the nature of the relationship with the lender, describe how compensation is paid by the lender, and describe how the mortgage interest rate affects the compensation paid to the mortgage brokerage business.”
- Amendment of section 1(b) 2 to read “the exact amount of any payment of any kind by the lender to the mortgage brokerage business must be disclosed in writing to the borrower within 3 business days after the mortgage brokerage business is made aware of the exact amount of the payment from the lender but not less than 3 business days before the execution of the closing or settlement statement. The licensee bears the burden of proving such notification was provided to the borrower.”
- Amendment to subsection (c) of section 2 which reads: “[t]he good faith estimate must identify the recipient of all payments charged the borrower and, except for all fees to be received by the mortgage brokerage business, 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 brokerage agreement described in subsection (1).”

- Addition of section (3) which reads: “[t]he disclosures required by this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing. The broker shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of regulation Z of the board of governors of the federal reserve system, as amended, its commentary, as amended, and the federal truth in lending act, 15 U.S.C. SS. 1601 et seq., as amended, together with the consumer handbook on adjustable rate mortgages, as amended, published by the federal reserve board and the federal home loan bank board. The licensee bears the burden of proving such disclosures were provided to the borrower.

#### **IV. CONTINUING EDUCATION FOR MORTGAGE INDUSTRY PROFESSIONALS:**

##### **1. Pending legislation since January of 2007**

###### **i) 2007 Bill Text FL H.B. 1125**

DATE OF INTRODUCTION: April 20, 2007

LAST ACTION: April 30, 2007;

STATUS: In House

**SUMMARY:** Relates to mortgage brokering and lending; authorizes Financial Regulation Office to impose fines; authorizes office to take certain adverse actions on permits of certain mortgage business schools; specifies requirements for electronically transmitted and distance education courses; provides additional disclosure requirements for mortgage brokerage businesses; provides additional requirements for renewals of mortgage lender's license.

This bill would require that:

- Mortgage schools must conduct classes on the basis of a 50 minute class room hour.
- Each Mortgage business school must develop procedures to confirm the identity of each student attending any course offering.
- Mortgage brokers, principal representatives and loan originators of a mortgage lender must successfully complete at least 14 hours of professional continuing education.
- In case of electronically transmitted courses, the time spent attending such courses shall be equal to the number of qualifying hours awarded to participants for attendance.

- Before completion of the course, the provider shall ensure that participant has (a) logged the required number of hours for the particular timed module, (b) completed a test that comprehensively covers the course content for the particular timed module, and (c) correctly answered all test questions for the particular timed module.
- All distance education course participants shall successfully complete a test that comprehensively covers course content in order to receive a certificate of course completion.
- Distance education providers shall not provide answers to test questions to course participants and shall not issue a certificate of course completion to any course participant who has failed to correctly answer at least 75 percent of the total test questions. The test must consist of at least 100 questions.

## **2. Legislation since January of 2007**

Fla. Stat. § 494.00295, regarding professional continuing education, has been amended. The amendments include:

- Amendment to section (1) regarding “professional continuing education”. Addition of the sentence “[a] minimum of 4 hours shall cover the provisions of this chapter and the rules adopted under this chapter.”
- Insertion of provisions waiving requirements for professional continuing education for the license renewal of mortgage brokers who have completed the 24-hour pre-licensing classroom education requirement of s. 494.0033(3) within 90 days of the biennial license period immediately following the period in which they became licensed as mortgage brokers.
- Addition of section 3(A): “all electronically transmitted courses shall require that the time spent attending electronically transmitted professional education courses is equal to the number of qualifying hours awarded to participants for course attendance.” “Before allowing a course participant to complete a course and receive a certificate of course completion, the course provider shall ensure that the course participant has: (1) logged the required number of hours for the particular timed module. (2) Completed a test that comprehensively covers the course content for the particular timed module. (3) Correctly answered all test questions for the particular timed module.”
- Addition of section 3 (B): “all distance education course participants shall successfully complete a test that comprehensively covers course content in order to receive a certificate of course completion. Distance education providers shall not provide answers to test questions to course participants and shall not issue a certificate of course completion to any course participant who has failed to correctly answer at least 75 percent of the total test questions. The test must consist of at least 100 questions.”

- Amendment of section 4 which provides that the commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 in order to administer this section, including rules governing qualifying hours for professional continuing education programs and standards for electronically transmitted or distance education courses, including course completion requirements.

Fla. Stat. § 494.0067, requirements of licensees under ss. 494.006-494.0077, has been amended to include:

- Amendment of paragraph (a), subsection (10) of section 494.0067, regarding completion of professional continuing education during the license period. There is also the addition of subsection 11 regarding written disclosures and the addition of subsection 12 (A) and (B) regarding notice of material changes by licensee and its waiver by the borrower.

## **V. OTHER SIGNIFICANT STATUTORY OR REGULATORY EFFECT ON THE MORTGAGE INDUSTRY:**

### **1. Pending legislation since January of 2007**

i) 2008 Bill Tracking FL S.B. 2404

DATED OF INTRODUCTION: March 13, 2008

LAST ACTION: - March 13, 2008;

STATUS: Senate introduced and referred to Banking and Insurance; Commerce; Judiciary

**SUMMARY:** This bill provides a timeframe, of not less than 110 days or more than 125 days after the date of final judgment or order, for the sale of property under an order or judgment when the property was secured through a subprime loan. The Bill also requires a mortgagor to establish a prima facie case in the motion or pleading and provides requirements with respect to such pleadings.

Such pleadings must establish that:

1. The mortgagor is the owner of the property subject to foreclosure;
2. The real property subject to foreclosure is the principal residence of the mortgagor;
3. The mortgagor owns no other real estate;
4. The real property is a residential building containing less than six dwelling units; and
5. The real property is subject to a mortgage, second mortgage, or home equity loan which is, or is likely to become, the subject of foreclosure.

### **2. Legislation since January of 2007**

Fla. Stat. § 494.0014, pertaining to cease and desist orders; administrative fines; refund orders, has been amended by 2007 Fl. ALS 182. The amendments include:

- Subsection (4) has been added to the statute including provision for the imposing of fines upon persons or mortgage business schools for violations of any rules provided under SS. 494.001-494.00295.

Fla. Stat. § 494.0029, pertaining to mortgage business schools, has been amended by 2007 Fl. ALS 182. The amendments include:

- Paragraph (f) is added to subsection (1) of section 494.0029 to include provisions that in addition to remedies available in section 494.0014, the office may also revoke, suspend or place on probation the permit of any mortgage business school that fails to meet the requirements of the section.
- Addition of paragraph (g) to subsection (2) of section 494.0029, which provides for mortgage business schools to conduct classes on the basis of 50 minute classroom hours.
- Addition of paragraph (h) which makes each school permitted under the section responsible for developing procedures to confirm the identity of students attending any of the courses offered.

Fla. Stat. § 494.0041, pertaining to administrative penalties and fines; license violations, has been amended by 2007 Fl. ALS 182. The amendments include:

- Addition of paragraph (v) to subsection (2) of section 494.0041, which enumerates acts that constitute a ground for which disciplinary action can be taken.

Fla. Stat. § 494.0072, pertaining to administrative penalties and fines; license violations, has been amended by 2007 Fl. ALS 182. The amendments include:

- Addition of paragraph (v) to subsection (2) of section 494.0072 regarding administrative penalties and fines.
- Addition of subsection (5) to section 494.0072 regarding disciplinary actions against a principal representative of a mortgage lender or correspondent mortgage lender.

Fla. Stat. § 701.041, pertaining to title insurer; mortgage release certificate, has been amended by 2007 Fl. ALS 44. The amendments include:

- Addition to subsection (1) of section 701.041 including the definition of “estoppel letter.”
- Amendments to paragraphs (b), (e), and (f) of subsection (3), regarding the contents of a certificate of release.

- Amendments to paragraphs (a) and (c) of subsection (6), regarding liability of title insurer and title insurance agent.
- Amendments to subsection (8) of section 701.041, regarding application of the section.
- Deletion of subsection (9) of section 701.041, dealing with premium charge.

Fla. Stat. § 817.545, pertaining to mortgage fraud, is created by section 13 of 2007 FL. ALS 182. Subsection (1) defines the term “mortgage lending process”. Subsection (2) deals with when a person commits the offence of Mortgage Fraud.

The statutes states:

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

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

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

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

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

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

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

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

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

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

(5) Any person who violates subsection (2) commits a felony of the third degree,