

By Senator Norman

12-00322-12

2012636__

1 A bill to be entitled
2 An act relating to loan modification services;
3 amending s. 494.00296, F.S.; prohibiting entities
4 providing loan modification services from encouraging
5 borrowers to cease making their mortgage payments
6 under certain circumstances; providing a criminal
7 penalty and fine for violations of the loan
8 modification prohibitions; providing an effective
9 date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 494.00296, Florida Statutes, is amended
14 to read:

15 494.00296 Loan modification.—

16 (1) PROHIBITED ACTS.—When offering or providing loan
17 modification services, a loan originator, mortgage broker, or
18 mortgage lender may not:

19 (a) Suggest, recommend, or direct the borrower, orally or
20 by written agreement, to cease making payment on any loans as a
21 strategy for obtaining loan modifications from the lender
22 without fully informing the borrower of the risks and
23 consequences of such strategy;

24 (b) ~~(a)~~ Engage in or initiate loan modification services
25 without first executing a written agreement for loan
26 modification services with the borrower;

27 (c) ~~(b)~~ Execute a loan modification without the consent of
28 the borrower after the borrower is made aware of each modified
29 term; or

12-00322-12

2012636

30 (d)~~(e)~~ Solicit, charge, receive, or attempt to collect or
31 secure payment, directly or indirectly, for loan modification
32 services before completing or performing all services included
33 in the agreement for loan modification services. A fee may be
34 charged only if the loan modification results in a material
35 benefit to the borrower. The commission may adopt rules to
36 provide guidance on what constitutes a material benefit to the
37 borrower.

38 (2) LOAN MODIFICATION AGREEMENT.—

39 (a) The written agreement for loan modification services
40 must be printed in at least 12-point uppercase type and signed
41 by both parties. The agreement must include the name and address
42 of the person providing loan modification services, the exact
43 nature and specific detail of each service to be provided, the
44 total amount and terms of charges to be paid by the borrower for
45 the services, and the date of the agreement. The date of the
46 agreement may not be earlier than the date the borrower signed
47 the agreement. The mortgage broker or mortgage lender must give
48 the borrower a copy of the agreement to review at least 1
49 business day before the borrower is to sign the agreement.

50 (b) The borrower has the right to cancel the written
51 agreement without any penalty or obligation if the borrower
52 cancels the agreement within 3 business days after signing the
53 agreement. The right to cancel may not be waived by the borrower
54 or limited in any manner by the loan originator, mortgage
55 broker, or mortgage lender. If the borrower cancels the
56 agreement, any payments made must be returned to the borrower
57 within 10 business days after receipt of the notice of
58 cancellation.

12-00322-12

2012636__

59 (c) An agreement for loan modification services must
 60 contain, immediately above the signature line, a statement in at
 61 least 12-point uppercase type which substantially complies with
 62 the following:

63
 64 BORROWER'S RIGHT OF CANCELLATION

65
 66 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
 67 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS
 68 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

69 THE LOAN ORIGINATOR, MORTGAGE BROKER, OR MORTGAGE LENDER IS
 70 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER
 71 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN
 72 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE
 73 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
 74 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION
 75 NOTICE.

76 PLEASE NOTE THAT ANY LOAN MODIFICATION STRATEGY THAT
 77 ENCOURAGES YOU TO NOT MAKE YOUR MORTGAGE PAYMENTS MAY RESULT IN
 78 YOUR LOSING YOUR PROPERTY AND DAMAGING YOUR CREDIT RATING.

79 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
 80 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
 81 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO
 82 LATER THAN MIDNIGHT OF ... (DATE)

83 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE
 84 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR
 85 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
 86 A RESTRUCTURING WITH YOU FREE OF CHARGE.

87

12-00322-12

2012636__

88 (d) The inclusion of the statement does not prohibit a loan
89 originator, mortgage broker, or mortgage lender from giving the
90 homeowner more time to cancel the agreement than is set forth in
91 the statement if all other requirements of this subsection are
92 met.

93 (e) The person offering or providing the loan modification
94 services must give the borrower a copy of the signed agreement
95 within 3 hours after the borrower signs the agreement.

96 (3) REMEDIES.—

97 (a) Any person who knowingly violates any provision of
98 subsection (1) commits a felony of the third degree, punishable
99 as provided under s. 775.082, s. 775.083, or s. 775.084, and is
100 subject to a fine of up to \$10,000 per violation.

101 (b)-(a) Without regard to any other remedy or relief to
102 which a person is entitled, anyone aggrieved by a violation of
103 this section may bring an action to obtain a declaratory
104 judgment that an act or practice violates this section and to
105 enjoin a person who has violated, is violating, or is otherwise
106 likely to violate this section.

107 (c)-(b) In any action brought by a person who has suffered a
108 loss as a result of a violation of this section, such person may
109 recover actual damages, plus attorney ~~attorney's~~ fees and court
110 costs, as follows:

111 1. In any action brought under this section, upon motion of
112 the party against whom such action is filed alleging that the
113 action is frivolous, without legal or factual merit, or brought
114 for the purpose of harassment, the court may, after hearing
115 evidence as to the necessity therefor, require the party
116 instituting the action to post a bond in the amount that the

12-00322-12

2012636__

117 court finds reasonable to indemnify the defendant for any
118 damages incurred, including reasonable attorney ~~attorney's~~ fees.

119 2. In any civil litigation resulting from an act or
120 practice involving a violation of this section, the prevailing
121 party, after judgment in the trial court and exhaustion of all
122 appeals, if any, may receive reasonable attorney ~~attorney's~~ fees
123 and costs from the nonprevailing party.

124 3. The attorney for the prevailing party shall submit a
125 sworn affidavit of time spent on the case and costs incurred for
126 all the motions, hearings, and appeals to the trial judge who
127 presided over the civil case.

128 4. The trial judge may award the prevailing party the sum
129 of reasonable costs incurred in the action plus a reasonable
130 legal fee for the hours actually spent on the case as sworn to
131 in an affidavit.

132 5. Any award of attorney ~~attorney's~~ fees or costs becomes
133 part of the judgment and is subject to execution as the law
134 allows.

135 (d) ~~(e)~~ The provisions of this subsection do not apply to
136 any action initiated by the enforcing authority.

137 Section 2. This act shall take effect July 1, 2012.