

ENROLLED

CS/CS/HB 747, Engrossed 1

2017 Legislature

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An act relating to mortgage regulation; amending s. 494.001, F.S.; revising the definition of the term "mortgage loan"; amending s. 494.00115, F.S.; providing an exemption from regulation under parts I and II of ch. 494, F.S., for certain securities dealers, investment advisers, and associated persons; providing requirements for certain solicitations and referrals; providing a definition for the term "hold himself or herself out to the public as being in the mortgage lending business"; providing an effective date.

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

Section 1. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

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

(24) "Mortgage loan" means any:

(a) Residential loan that ~~primarily for personal, family, or household use which~~ is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;

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26 (b) Loan on commercial real property if the borrower is an
 27 individual or the lender is a noninstitutional investor; or

28 (c) Loan on improved real property consisting of five or
 29 more dwelling units if the borrower is an individual or the
 30 lender is a noninstitutional investor.

31 Section 2. Present subsections (2) and (3) of section
 32 494.00115, Florida Statutes, are redesignated as subsections (3)
 33 and (4), respectively, and new subsections (2) and (5) are added
 34 to that section, to read:

35 494.00115 Exemptions.—

36 (2) (a) A securities dealer, an investment adviser, or an
 37 associated person registered under s. 517.12 is exempt from
 38 regulation under this part and part II of this chapter if such
 39 person, in the normal course of conducting securities business
 40 with a corporate or an individual client:

41 1. Solicits or offers to solicit a mortgage loan from a
 42 securities client or refers a securities client to an entity
 43 exempt under paragraph (1) (b), a licensed mortgage broker, a
 44 licensed mortgage lender, or a registered loan originator; and

45 2. Does not accept or offer to accept an application for a
 46 mortgage loan, negotiate or offer to negotiate the terms or
 47 conditions of a new or existing mortgage loan on behalf of a
 48 borrower or lender, or negotiate or offer to negotiate the sale
 49 of an existing mortgage loan to a noninstitutional investor for
 50 compensation or gain.

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51 (b) Any solicitation or referral made pursuant to this
 52 subsection must comply with chapter 517; the federal Real Estate
 53 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; and any
 54 applicable federal law or general law of this state.

55 (5) As used in this section, the term "hold himself or
 56 herself out to the public as being in the mortgage lending
 57 business" includes any of the following:

58 (a) Representing to the public, through advertising or
 59 other means of communicating or providing information (including
 60 the use of business cards, stationery, brochures, signs, rate
 61 lists, or promotional items), by any medium whatsoever, that
 62 such individual can or will perform the activities described in
 63 s. 494.001(23).

64 (b) Soliciting in a manner that would lead the intended
 65 audience to reasonably believe that such individual is in the
 66 business of performing the activities described in s.
 67 494.001(23).

68 (c) Maintaining a commercial business establishment at
 69 which, or premises from which, such individual regularly
 70 performs the activities described in s. 494.001(23) or regularly
 71 meets with current or prospective borrowers.

72 (d) Advertising, soliciting, or conducting business
 73 through use of a name, trademark, service mark, trade name,
 74 Internet address, or logo which indicates or reasonably implies
 75 that the business being advertised, solicited, or conducted is

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76 | the kind or character of business transacted or conducted by a
77 | licensed mortgage lender or which is likely to lead any person
78 | to believe that such business is that of a licensed mortgage
79 | lender.

80 | (e) Using any form promulgated by the Federal National
81 | Mortgage Association, the Federal Home Loan Mortgage
82 | Corporation, the United States Department of Housing and Urban
83 | Development, or the Consumer Financial Protection Bureau in
84 | performing the activities described in s. 494.001(23).

85 | Section 3. This act shall take effect July 1, 2017.