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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 110 - 371

and insert:

494.00163 Residential mortgage loans; periodic statements.-

(1) Periodic statements for residential mortgage loans in the state must follow all the provisions set forth in 12 C.F.R. s. 1026.41.

(2) A servicer of a reverse mortgage or a small mortgage servicer is not exempt from the requirements of 12 C.F.R. s.



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11 1026.41. As used in this section, the term "small mortgage
12 servicer" means a mortgage servicer that, together with any
13 affiliates, services up to 5,000 residential mortgage loans, all
14 of which have the mortgage servicer or its affiliate as the
15 creditor or assignee.

16 Section 3. Section 494.00164, Florida Statutes, is created
17 to read:

18 494.00164 Lender-placed insurance.—

19 (1) A mortgage servicer may not assess any premium charge
20 or fee related to lender-placed insurance on a borrower unless
21 the servicer has a reasonable basis to believe that the borrower
22 has failed to comply with the mortgage loan contract's
23 requirement to maintain hazard insurance and the requirements of
24 this section are met. As used in this section, the term "lender-
25 placed insurance" means hazard insurance obtained by a mortgage
26 servicer on behalf of the owner or assignee of a mortgage loan
27 that insures the property securing such loan. The term "lender-
28 placed insurance" does not include hazard insurance required by
29 the Flood Disaster Protection Act of 1973, or, if the borrower
30 agrees, hazard insurance obtained by a borrower but renewed by
31 the borrower's servicer at its discretion.

32 (2) A mortgage servicer may not assesses any premium charge
33 or fee related to lender-placed insurance on a borrower unless
34 all of the following occur:

35 (a) The mortgage servicer, at least 45 days before
36 assessing on a borrower a charge or fee related to lender-placed
37 insurance, delivers to such borrower written notice containing
38 all of the following:

39 1. The date of the notice, the mortgage servicer's name and



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40 mailing address, the borrower's name and mailing address, and
41 the physical address of the property.

42 2. In bold type, a statement requesting the borrower to
43 provide hazard insurance information for the borrower's
44 property. The statement must identify the property by its
45 physical address.

46 3. A statement specifying:

47 a. The borrower's hazard insurance is expiring, has
48 expired, or provides insufficient coverage, as applicable;

49 b. The mortgage servicer does not have evidence of hazard
50 insurance coverage for the property; and

51 c. If applicable, the type of insurance for which the
52 servicer lacks evidence of coverage.

53 4. In bold type, a statement that hazard insurance is
54 required on the borrower's property, and that the mortgage
55 servicer has purchased or will purchase, as applicable, hazard
56 insurance at the borrower's expense.

57 5. In bold type, a statement that insurance the mortgage
58 servicer has purchased or purchases may cost significantly more
59 than hazard insurance purchased by the borrower and may provide
60 less coverage than hazard insurance purchased by the borrower.

61 6. A clear and conspicuous statement requesting the
62 borrower to promptly provide the mortgage servicer with evidence
63 of hazard insurance coverage for the property, including a
64 description of the requested insurance information and how the
65 borrower may provide such information.

66 7. The mortgage servicer's telephone number for borrower
67 inquiries.

68 8. If applicable, a statement advising the borrower to



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69 review additional information provided in the same transmittal.

70 (b) The mortgage servicer, at least 15 days before
71 assessing on a borrower a premium charge or fee related to
72 lender-placed insurance, delivers to the borrower a written
73 notice that:

74 1. If a mortgage servicer has not received hazard
75 information after delivering the notice required by paragraph
76 (a), includes:

77 a. The date of the notice;

78 b. In bold type, a statement that the notice is the second
79 and final notice;

80 c. The information required for the notice under paragraph
81 (a), except for the date of that notice; and

82 d. In bold type, the cost of the lender-placed insurance,
83 stated as an annual premium, or, if a servicer does not know the
84 cost of lender-placed insurance, a reasonable estimate of such
85 cost.

86 2. If a mortgage servicer received hazard insurance
87 information after delivering the notice required under paragraph
88 (a) to the borrower, but has not received evidence demonstrating
89 that the borrower has had sufficient hazard insurance coverage
90 in place continuously, includes:

91 a. The date of the notice;

92 b. In bold type, a statement that the notice is the second
93 and final notice;

94 c. The information required by subparagraphs (a)1., 2., 5.,
95 7., and 8.;

96 d. In bold type, the cost of the lender-placed insurance,
97 stated as an annual premium, or, if a servicer does not know the



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98 cost of lender-placed insurance, a reasonable estimate of such
99 cost;

100 e. A statement that the mortgage servicer received the
101 hazard insurance information that the borrower provided;

102 f. A statement that requests the borrower to provide the
103 information that is missing; and

104 g. A statement that the borrower will be charged for
105 insurance the servicer has purchased or purchases for the period
106 of time during which the servicer is unable to verify coverage.

107 (c) By the end of the 15-day period beginning on the date
108 the written notice described in paragraph (b) is delivered to
109 the borrower the mortgage servicer has not received, from the
110 borrower or otherwise, evidence demonstrating that the borrower
111 has continuously had in place hazard insurance coverage that
112 complies with the loan contract's requirements to maintain
113 hazard insurance.

114 (3) A mortgage servicer may not assesses any premium charge
115 or fee related to renewing or replacing lender-placed insurance
116 on a borrower unless all of the following occur:

117 (a) The mortgage servicer, at least 45 days before
118 assessing on a borrower a premium charge or fee related to
119 renewing or replacing lender-placed insurance, delivers to such
120 borrower written notice containing all of the following:

121 1. The date of the notice, the mortgage servicer's name and
122 mailing address, the borrower's name and mailing address, and
123 the physical address of the property;

124 2. In bold type, a statement requesting the borrower to
125 update the hazard insurance information for the borrower's
126 property. The statement must identify the property by its



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127 physical address;

128 3. A statement that the mortgage servicer previously
129 purchased insurance on the borrower's property and assessed the
130 cost of the insurance to the borrower because the servicer did
131 not have evidence that the borrower had hazard insurance
132 coverage for the property;

133 4. A statement specifying:

134 a. The hazard insurance the mortgage servicer previously
135 purchased is expiring or has expired, as applicable; and

136 b. In bold type, because hazard insurance is required on
137 the borrower's property, the servicer intends to maintain
138 insurance on the property by renewing or replacing the insurance
139 it previously purchased;

140 5. In bold type, a statement that insurance the servicer
141 has purchased or purchases may cost significantly more than
142 hazard insurance purchased by the borrower, that such insurance
143 may provide less coverage than hazard insurance purchased by the
144 borrower;

145 6. The cost of the lender-placed insurance, stated as an
146 annual premium, except if a mortgage servicer does not know the
147 cost of the lender-placed insurance, a reasonable estimate shall
148 be provided;

149 7. A statement that if the borrower purchases hazard
150 insurance, the borrower should promptly provide the servicer
151 with insurance information;

152 8. A description of the requested insurance information and
153 how the borrower may provide such information;

154 9. The mortgage servicer's telephone number for borrower
155 inquiries; and



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156 10. If applicable, a statement advising the borrower to
157 review additional information provided in the same transmittal.

158 (4) Within 15 days after receiving evidence demonstrating
159 that the borrower has had hazard insurance coverage in place
160 that complies with the loan contract's requirements to maintain
161 hazard insurance, a mortgage servicer must:

162 (a) Cancel the lender-placed insurance the servicer
163 purchased to insure the borrower's property; and

164 (b) Refund to such borrower all lender-placed insurance
165 premium charges and fees paid by such borrower for any period of
166 overlapping insurance coverage and remove from the borrower's
167 account all lender-placed insurance charges and related fees for
168 such period that the servicer has assessed to the borrower.

169 (5) The written notices required by this section must be
170 sent by first-class or express mail.

171 Section 4. Section 494.00225, Florida Statutes, is created
172 to read:

173 494.00225 Residential mortgage loan modifications to avoid
174 foreclosure; transfers of duties and obligations of mortgage
175 servicers and mortgage lenders.—If a borrower of a residential
176 mortgage loan has been approved in writing for a first lien loan
177 modification, a foreclosure prevention alternative under s.
178 494.0027, or other loan modification to avoid foreclosure and if
179 the servicing of the borrower's mortgage loan is transferred or
180 sold, the mortgage servicer or mortgage lender to whom the
181 mortgage loan is transferred or sold shall assume all duties and
182 obligations related to such previously approved first lien loan
183 modification, foreclosure prevention alternative, or other loan
184 modification.



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185 Section 5. Section 494.0027, Florida Statutes, is created
186 to read:

187 494.0027 Foreclosure prevention alternatives for
188 residential mortgage loans.-

189 (1) As used in this section, the term:

190 (a) "Complete application" means an application for a
191 foreclosure prevention alternative for which the borrower has
192 provided all documents required by the mortgage servicer or
193 mortgage lender within the reasonable timeframe specified by the
194 mortgage servicer or mortgage lender.

195 (b) "Single point of contact" means a person who has, or a
196 team of personnel of which each member has, the ability,
197 authority, and responsibility to:

198 1. Communicate the process by which a borrower may apply
199 for an available foreclosure prevention alternative and the
200 deadline for any required submission to be considered for the
201 foreclosure prevention alternative.

202 2. Coordinate receipt of all documents associated with the
203 available foreclosure prevention alternatives and notify the
204 borrower of any missing document necessary to complete an
205 application for a foreclosure prevention alternative.

206 3. Have access to current information and sufficient
207 personnel to timely, accurately, and adequately inform the
208 borrower of the current status of the foreclosure prevention
209 alternative.

210 4. Ensure that the borrower is considered for all
211 foreclosure prevention alternatives offered by, or through, the
212 mortgage servicer or mortgage lender and for which the borrower
213 is or may be eligible.



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214 5. Have access to the person who has the ability and
215 authority to stop the foreclosure process when necessary.

216 (2) (a) A mortgage servicer or mortgage lender may not
217 commence a civil action for the recovery of any debt, or for the
218 enforcement of any right, under a residential mortgage loan
219 which is not barred by this chapter or chapter 702 or any other
220 provision of law, record a notice of default or a notice of
221 sale, or conduct a foreclosure sale if a borrower submits an
222 application for a foreclosure prevention alternative offered by
223 or through the borrower's mortgage servicer or mortgage lender,
224 unless one of the following has occurred:

225 1. The borrower fails to submit all documents or
226 information required to complete the application within the
227 allotted timeframe authorized by the mortgage servicer or
228 mortgage lender, which must be at least 30 calendar days after
229 the date of the initial acknowledgment of receipt of the
230 application sent to the borrower.

231 2. The mortgage servicer or mortgage lender makes a written
232 determination that the borrower is not eligible for a
233 foreclosure prevention alternative, and any appeal period under
234 subsection (5) has expired.

235 3. The borrower does not accept a written offer for a
236 foreclosure prevention alternative within 30 calendar days after
237 the date of the offer.

238 4. The borrower accepts a written offer for a foreclosure
239 prevention alternative, but defaults on or otherwise breaches
240 the borrower's obligations under the foreclosure prevention
241 alternative.

242 (b)1. If a borrower requests a foreclosure prevention



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243 alternative, the mortgage servicer or mortgage lender shall
244 promptly establish a single point of contact and provide to the
245 borrower one or more direct means of communication with the
246 single point of contact.

247 2. A single point of contact must remain assigned to the
248 borrower's account until the mortgage servicer or mortgage
249 lender determines that all foreclosure prevention alternatives
250 offered by, or through, the mortgage servicer or mortgage lender
251 have been exhausted or the borrower's account becomes current.

252 3. The mortgage servicer or mortgage lender shall ensure
253 that a single point of contact refers and transfers the borrower
254 to an appropriate supervisor upon the borrower's request, if the
255 single point of contact has a supervisor.

256 4. If the responsibilities of a single point of contact are
257 performed by a team of personnel, the mortgage servicer or
258 mortgage lender shall ensure that each member of the team is
259 knowledgeable about the borrower's situation and current status
260 in the process of seeking a foreclosure prevention alternative.

261 (3) Within 7 business days after receiving an application
262 for a foreclosure prevention alternative or any document in
263 connection with a foreclosure prevention alternative application
264 for a residential mortgage loan, a mortgage servicer or mortgage
265 lender shall send to the borrower, by first-class mail or, if an
266 electronic mail address is provided, by electronic mail, written
267 acknowledgment of the receipt of the application or document.

268 (a) Upon receipt of an application for a foreclosure
269 prevention alternative, the mortgage servicer or mortgage lender
270 shall include in the initial acknowledgment of receipt of the
271 application:



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272 1. A description of the process for considering the
273 application, including, without limitation, an estimate of when
274 a decision on the application will be made and the length of
275 time the borrower will have to consider an offer for a
276 foreclosure prevention alternative.

277 2. A statement of any deadlines that affect the processing
278 of an application for a foreclosure prevention alternative,
279 including, without limitation, the deadline for submitting any
280 missing document.

281 3. A statement of the expiration dates for any documents
282 submitted by the borrower.

283 (b) If a borrower submits an application for a foreclosure
284 prevention alternative but does not initially submit all the
285 documents or information required to complete the application,
286 the mortgage servicer or mortgage lender shall include in the
287 initial acknowledgment of receipt of the application:

288 1. A statement of any deficiency in the borrower's
289 application and allow the borrower at least 30 calendar days to
290 submit any missing document or information required to complete
291 the application.

292 2. All the information required under subparagraphs (a)1.,
293 2., and 3.

294 (4) If a borrower accepts an offer for a foreclosure
295 prevention alternative for a residential mortgage loan, the
296 mortgage servicer or mortgage lender shall provide the borrower
297 with a copy of the complete agreement of the foreclosure
298 prevention alternative signed by the mortgage lender or an agent
299 or authorized representative of the mortgage lender.

300 (5) If a borrower submits a complete application for a



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301 foreclosure prevention alternative for a residential mortgage
302 loan and the borrower's application is denied, the mortgage
303 servicer or mortgage lender shall send to the borrower a written
304 statement of:

305 (a) The reason for the denial.

306 (b) The length of time the borrower has to request an
307 appeal of the denial, which must be at least 30 calendar days.

308 (c) Instructions regarding how to appeal the denial,
309 including, without limitation, how to provide evidence that the
310 denial was in error.

311 (6) If a borrower of a residential mortgage loan submits a
312 complete application for a foreclosure prevention alternative
313 and the borrower's application is denied, the mortgage servicer
314 or mortgage lender may not commence a civil action for the
315 recovery of any debt, or for the enforcement of any right, under
316 a residential mortgage loan which is not barred by this chapter
317 or chapter 702 or any other provision of law, record a notice of
318 default or a notice of sale, or conduct a foreclosure sale until
319 the later of:

320 (a) Sixty calendar days after the borrower is sent the
321 written statement required by subsection (5); or

322 (b) If the borrower appeals the denial, the later of:

323 1. Fifteen calendar days after the denial of the appeal;

324 2. If the appeal is successful, 14 calendar days after a
325 foreclosure prevention alternative offered after the appeal is
326 declined by the borrower; or

327 3. If a foreclosure prevention alternative offered after
328 the appeal is accepted, the date on which the borrower fails to
329 timely submit the first payment or otherwise breaches the terms



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330 of the offer.

331 (7) A mortgage servicer or mortgage lender is not required
332 to evaluate a foreclosure prevention alternative application
333 from a borrower of a residential mortgage loan who has already
334 been evaluated or afforded a fair opportunity to be evaluated
335 for a foreclosure prevention alternative or who has been
336 evaluated or afforded a fair opportunity to be evaluated
337 consistent with the requirements of this section, unless:

338 (a) There has been a material change in the borrower's
339 financial circumstances since the date of the borrower's
340 previous application.

341 (b) The change in paragraph (a) is documented by the
342 borrower and submitted to the mortgage servicer or mortgage
343 lender.

344 (8) A mortgage servicer or mortgage lender may not charge
345 or collect:

346 (a) An application fee, processing fee, or other fee for a
347 foreclosure prevention alternative; or

348 (b) Late fees for periods during which:

349 1. A foreclosure prevention alternative is under
350 consideration or a denial is being appealed;

351 2. The borrower is making timely payments under a
352 foreclosure prevention alternative; or

353 3. A foreclosure prevention alternative is being evaluated
354 or exercised.

355 Section 6. Section 627.4055, Florida Statutes, is created
356 to read:

357 627.4055 Lender-placed insurance for residential mortgage
358 loan guaranty.-



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359 (1) As used in this section, the term:
360 (a) "Affiliate" has the same meaning as in s. 624.10.
361 (b) "Lender-placed insurance" means insurance obtained by a
362 mortgage servicer or mortgage lender when a borrower of a
363 residential mortgage loan does not maintain valid or sufficient
364 insurance upon the mortgaged real property as required by the
365 terms of the mortgage agreement.
366 (c) "Mortgage servicer" has the same meaning as in s.
367 494.001.
368 (d) "Person affiliated" means an affiliate or affiliated
369 person, as those terms are defined in s. 624.10.
370 (2) (a) An insurer or insurance agent may not:
371 1. Issue lender-placed insurance on a mortgaged property if
372 the insurer or insurance agent or an affiliate of the insurer or
373 insurance agent owns, performs the servicing for, or owns the
374 servicing right to, the mortgaged property.
375 2. Except for payment to a mortgage lender for any loss
376 resulting from a mortgage default or property foreclosure:
377 a. Compensate any mortgage lender, insurer, investor, or
378 mortgage servicer, including, but not limited to, through
379 payment of commissions, on a lender-placed insurance policy
380 issued by the insurer or insurance agent.
381 b. Make any payment, including, but not limited to, payment
382 of expenses, to any mortgage lender, insurer, investor, or
383 mortgage servicer for the purpose of securing lender-placed
384 insurance business or related outsourced services.
385 c. Share lender-placed insurance premium or risk with the
386 mortgage lender, investor, or mortgage servicer that obtained
387 the lender-placed insurance.



388 d. Offer contingent commissions, profit sharing, or other
389 payments dependent on profitability or loss ratios to any person
390 affiliated with lender-placed insurance.

391 (b) An insurer or insurance agent may not provide free or
392 below-cost outsourced services to a mortgage lender, insurance
393 producer, investor, or mortgage servicer or outsource its own
394 functions to a mortgage lender, insurance producer, investor, or
395 mortgage servicer on an above-cost basis.

396 Section 7. Section 635.0215, Florida Statutes, is created
397 to read:

398 635.0215 Lender-placed insurance for residential mortgage
399 loan guaranty.-

400 (1) As used in this section, the term:

401 (a) "Affiliate" has the same meaning as in s. 624.10.

402 (b) "Lender-placed insurance" has the same meaning as in s.
403 627.4055(1).

404 (c) "Mortgage servicer" has the same meaning as in s.
405 494.001.

406 (d) "Person affiliated" means an affiliate or affiliated
407 person, as those terms are defined in s. 624.10.

408 (2) (a) An insurer or insurance agent may not:

409 1. Issue lender-placed insurance on a mortgaged property if
410 the insurer or insurance agent or an affiliate of the insurer or
411 insurance agent owns, performs the servicing for, or owns the
412 servicing right to, the mortgaged property.

414 ===== T I T L E A M E N D M E N T =====

415 And the title is amended as follows:

416 Delete lines 5 - 11



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417 and insert:
418 494.00163, F.S.; requiring that periodic statements
419 for residential mortgage loans follow specified laws;
420 specifying that certain entities are not exempt from
421 such laws; defining the term "small mortgage
422 servicer"; creating s. 494.00164, F.S.; prohibiting a
423 mortgage servicer from assessing certain charges or
424 fees relating to lender-placed insurance on a borrower
425 unless specified requirements are met; defining the
426 term "lender-placed insurance"; providing notice
427 requirements relating to such assessment; requiring
428 mortgage servicers to take specified actions after
429 receiving certain evidence relating to hazard
430 insurance coverage; requiring certain written notices
431 to be sent by first-class mail; creating s. 494.00225,
432 F.S.; requiring