

2015 -- H 5769

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- COMMUNITY OBLIGATIONS AND
BANKING OFFENSES

Introduced By: Representative Robert B. Jacquard

Date Introduced: February 26, 2015

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 19-9 of the General Laws entitled "Community Obligations and
2 Banking Offenses" is hereby amended by adding thereto the following section:

3 **19-9-35. Consumer privacy in mortgage applications.** – (a) For purposes of this
4 section, "mortgage trigger lead" means a consumer report obtained pursuant to section
5 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b, where the issuance of
6 the report is triggered by an inquiry made with a consumer reporting agency in response to an
7 application for credit. "Mortgage trigger lead" does not include a consumer report obtained by a
8 lender or servicer that holds or services existing indebtedness of the applicant who is the subject
9 of the report.

10 (b) With regard to a solicitation of a consumer for a residential mortgage loan, as defined
11 in § 19-14.10-3, which solicitation is based, in whole or in part, on information contained in a
12 mortgage trigger lead, the following shall be deemed to be a prohibited act or practice for
13 purposes of §§ 19-4-12, 19-14-26 and 19-14.10-17:

14 (1) The failure to clearly and conspicuously state in the initial phase of the solicitation
15 that the solicitor is not affiliated with the lender or broker with which the consumer initially
16 applied;

17 (2) The failure to clearly and conspicuously state in the initial phase of the solicitation
18 that the solicitation is based on personal information about the consumer that was purchased,

1 directly or indirectly, from a consumer reporting agency without the knowledge or permission of
2 the lender or broker with which the consumer initially applied;

3 (3) The failure in the initial solicitation to comply with the provisions of the federal Fair
4 Credit Reporting Act relating to prescreening solicitations that use consumer reports, including
5 the requirement to make a firm offer of credit to the consumer; or

6 (4) Knowingly or negligently using information from a mortgage trigger lead:

7 (i) To solicit consumers who have opted out of prescreened offers of credit under the
8 federal Fair Credit Reporting Act; or

9 (ii) To place telephone calls to consumers who have placed their contact information on a
10 federal or state "do not call" list.

11 (c) In addition to any other remedy provided by law, any lender or broker aggrieved by a
12 prohibited act or practice under this section may bring an action in the superior court in which
13 venue the lender or broker has an office to enjoin an act in violation of this section and recover
14 damages. The court shall award damages in the amount of actual damages or one thousand dollars
15 (\$1,000) per violation whichever is greater. In any successful action for injunctive relief or for
16 damages, the court shall award the lender or broker attorneys' fees and costs, including court
17 costs.

18 (d) The director or the director's designee may adopt reasonable rules and regulations for
19 the implementation of the provisions of this section.

20 SECTION 2. Section 19-14.10-3 of the General Laws in Chapter 19-14.10 entitled "An
21 Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2009" is
22 hereby amended to read as follows:

23 **19-14.10-3. Definitions.** -- For purposes of this chapter, the following definitions shall
24 apply:

25 (1) "Depository institution" has the same meaning as in section 3 of the Federal Deposit
26 Insurance Act, and includes any credit union.

27 (2) "Federal banking agencies" means the Board of Governors of the Federal Reserve
28 System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the
29 National Credit Union Administration, and the Federal Deposit Insurance Corporation.

30 (3) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or
31 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

32 (4) "Individual" means a natural person.

33 (5) (i) "Loan processor or underwriter" means an individual who performs clerical or
34 support duties as an employee at the direction of and subject to the supervision and instruction of

1 a person licensed as a lender or as a loan broker, or exempt from licensing under chapters 19-14,
2 or 19-14.1.

3 (ii) For purposes of subsection (5)(i), "clerical or support duties" may include subsequent
4 to the receipt of an application:

5 (A) The receipt, collection, distribution, and analysis of information common for the
6 processing or underwriting of a residential mortgage loan; and

7 (B) Communicating with a consumer to obtain the information necessary for the
8 processing or underwriting of a loan, to the extent that such communication does not include
9 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
10 loan rates or terms.

11 (iii) An individual engaging solely in loan processor or underwriter activities, shall not
12 represent to the public, through advertising or other means of communicating or providing
13 information including the use of business cards, stationery, brochures, signs, rate lists, or other
14 promotional items, that such individual can or will perform any of the activities of a mortgage
15 loan originator.

16 (6) (i) "Mortgage loan originator" means:

17 (A) An individual who, for compensation or gain or in the expectation of compensation
18 or gain:

19 (I) Takes a residential mortgage loan application; or

20 (II) Offers or negotiates terms of a residential mortgage loan;

21 (B) Does not include an individual engaged solely as a loan processor or underwriter
22 except as otherwise provided in subsection 19-14.10-4(c);

23 (C) Does not include a person or entity that only performs real estate brokerage activities
24 and is licensed or registered in accordance with Rhode Island law, unless the person or entity is
25 compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of
26 such lender, mortgage broker, or other mortgage loan originator;

27 (D) Does not include a person or entity solely involved in extensions of credit relating to
28 timeshare plans, as that term is defined in § 101(53D) of title 11, United States Code, as
29 amended; and

30 (E) Does not include a person (or its employees) engaged in servicing mortgage loans.
31 For purposes of this exclusion, "servicing mortgage loans" means, on behalf of the note holder,
32 collecting and receiving payments, including payments of principal, interest, escrow amounts,
33 and other sums due, on obligations due and owing to the note holder pursuant to a residential
34 mortgage loan, and, when the borrower is in default, or in reasonably foreseeable likelihood of

1 default, working with the borrower on behalf of the note holder and pursuant to the contract
2 between the person servicing mortgage loans and the note holder, to modify but not refinance,
3 either temporarily or permanently, the obligations, or otherwise finalizing collection of the
4 obligation through the foreclosure process.

5 (ii) "Real estate brokerage activity" means any activity that involves offering or
6 providing real estate brokerage services to the public, including:

7 (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
8 of real property;

9 (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange
10 of real property;

11 (C) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
12 purchase, lease, rental, or exchange of real property (other than in connection with providing
13 financing with respect to any such transaction);

14 (D) Engaging in any activity for which a person engaged in the activity is required to be
15 registered or licensed as a real estate agent or real estate broker under any applicable law; and

16 (E) Offering to engage in any activity, or act in any capacity, described in subparagraphs
17 (A), (B), (C), or (D) of this section.

18 (7) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
19 system developed and maintained by the conference of state bank supervisors and the American
20 association of residential mortgage regulators for the licensing and registration of licensed
21 mortgage loan originators.

22 (8) "Nontraditional mortgage product" means any mortgage product other than a thirty
23 (30) year fixed rate mortgage.

24 (9) "Person" means a natural person, corporation, company, limited liability company,
25 partnership, association, or any other entity however organized.

26 (10) "Registered mortgage loan originator" means any individual who:

27 (i) Meets the definition of mortgage loan originator and is an employee of:

28 (A) A depository institution;

29 (B) A subsidiary that is:

30 (1) Owned and controlled by a depository institution; and

31 (2) Regulated by a Federal banking agency; or

32 (C) An institution regulated by the farm credit administration; and

33 (ii) Is registered with, and maintains a unique identifier through, the nationwide
34 mortgage licensing system and registry.

1 (11) "Residential mortgage loan" means any loan primarily for personal, family, or
2 household use that is secured by a mortgage, deed of trust, or other equivalent consensual security
3 interest on a dwelling (as defined in § 103(+) of the Truth in Lending Act) or residential real
4 estate upon which is constructed or intended to be constructed a dwelling (as so defined).

5 (12) "Residential real estate" means any real property located in Rhode Island, upon
6 which is constructed or intended to be constructed a dwelling.

7 (13) "SAFE Act" means the Secure and Fair Enforcement for Mortgage Licensing Act,
8 comprising §§ 1501-1517 of the Housing and Economic Recovery Act of 2008, Public Laws 110-
9 289.

10 (14) "Unique identifier" means a number or other identifier assigned by protocols
11 established by the nationwide mortgage licensing system and registry.

12 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- COMMUNITY OBLIGATIONS AND
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1 This act would define a mortgage trigger lead with regard to consumer privacy in
2 mortgage applications, and would specify prohibited acts or practices which may result from
3 solicitations based upon information contained in a mortgage trigger lead.

4 This act would take effect upon passage.

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