

By Senator Lee

23-707-99

See HB

1 A bill to be entitled
2 An act relating to mortgage brokers and
3 lenders; amending s. 494.001, F.S.; revising
4 definitions; amending s. 494.0012, F.S.;
5 requiring the Department of Banking and Finance
6 to charge a fee for certain examinations;
7 deleting a limitation on aggregate amount of
8 examination fees; requiring the department to
9 conduct certain examinations in this state;
10 providing an exception; revising travel expense
11 and per diem subsistence requirements for
12 licensees; amending s. 494.00125, F.S.;
13 deleting references to registrations and
14 permits; amending s. 494.0016, F.S.; specifying
15 department prescription by rule of certain
16 required information; creating s. 494.00165,
17 F.S.; prohibiting certain advertising
18 activities; requiring a record of certain
19 advertisements; amending s. 494.0025, F.S.;
20 deleting certain prohibited advertising
21 activities; prohibiting payment of a mortgage
22 transaction fee or commission to other than
23 certain actively licensed persons; amending s.
24 494.0031, F.S.; providing for licensure of
25 mortgage brokerage business branches;
26 increasing license fees; deleting references to
27 registrations and permits; amending s.
28 494.0032, F.S.; providing for renewal of branch
29 licenses; increasing license renewal fees;
30 providing for reversion of licenses to inactive
31 status under certain circumstances; providing

1 for reactivation of licenses; providing for a
2 reactivation fee; amending s. 494.0033, F.S.;
3 specifying an application fee; clarifying
4 provisions; amending s. 494.00331, F.S.;
5 prohibiting simultaneous multiple licensures;
6 amending s. 494.0034, F.S.; deleting an
7 automatic license expiration provision;
8 clarifying provisions; amending s. 494.0036,
9 F.S.; requiring a license to operate a mortgage
10 brokerage business branch office; requiring
11 display of licenses; amending s. 494.0038,
12 F.S.; clarifying the timing of certain
13 disclosures; amending s. 494.0039, F.S.;
14 revising mortgage brokerage business principal
15 place of business requirements; amending s.
16 494.0038, F.S.; amending s. 494.004, F.S.;
17 including pleas of nolo contendere to certain
18 crimes within certain licensee reporting
19 requirements; requiring licensees to report
20 conviction or pleas of nolo contendere to
21 felonies; requiring licensees to provide the
22 department with certain information relating to
23 associated mortgage brokers; requiring the
24 department to adopt certain rules; amending s.
25 494.0041, F.S.; revising the list of acts
26 constituting grounds for disciplinary action;
27 amending s. 494.0061, F.S.; providing for
28 mortgage lender branch office licenses;
29 increasing a license fee; clarifying
30 provisions; amending s. 494.0062, F.S.;
31 providing for correspondent mortgage lender

1 branch office licenses; increasing a license
2 fee; clarifying provisions; amending s.
3 494.0064, F.S.; providing for renewal of
4 certain licenses; increasing license renewal
5 fees; providing for reversion of licenses to
6 inactive status; deleting an automatic license
7 expiration provision; amending s. 494.0066,
8 F.S.; requiring mortgage lender and
9 correspondent mortgage lender branch office
10 licenses; increasing license fees; amending s.
11 494.0067, F.S.; requiring display of certain
12 licenses; requiring registration of loan
13 originators; requiring certain information
14 relating to loan originators; amending s.
15 494.0072, F.S.; revising a list of certain acts
16 constituting grounds for disciplinary action;
17 clarifying application of certain disciplinary
18 actions; amending s. 494.0073, F.S.; providing
19 for mortgage lenders or correspondent mortgage
20 lenders to act as mortgage brokerage
21 businesses; repealing s. 494.0037, F.S.,
22 relating to books, accounts, and records;
23 providing effective dates.

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

Section 1. Section 494.001, Florida Statutes, is amended to read:

494.001 Definitions.--As used in ss. 494.001-494.0077, the term:

1 (1) "Act as a correspondent mortgage lender" means to
2 make a mortgage loan.

3 (2) "Act as a loan originator" means being employed by
4 a mortgage lender or correspondent mortgage lender, for
5 compensation or gain or in the expectation of compensation or
6 gain, to negotiate or offer to negotiate the making of a
7 mortgage loan. A person whose activities are ministerial and
8 clerical, which may include quoting available interest rates
9 or loan terms and conditions, is not acting as a loan
10 originator.

11 (3)~~(2)~~ "Act as a mortgage broker" means, for
12 compensation or gain, or in the expectation of compensation or
13 gain, either directly or indirectly, accepting or offering to
14 accept an application for a mortgage loan, soliciting or
15 offering to solicit a mortgage loan on behalf of a borrower,
16 negotiating or offering to negotiate the terms or conditions
17 of a mortgage loan on behalf of a lender, or negotiating or
18 offering to negotiate the sale of an existing mortgage loan to
19 a noninstitutional investor.

20 (4)~~(3)~~ "Act as a mortgage lender" means to make a
21 mortgage loan or to service a mortgage loan for others or, for
22 compensation or gain, or in the expectation of compensation or
23 gain, either directly or indirectly, to sell or offer to sell
24 a mortgage loan to a noninstitutional investor.

25 (5)~~(4)~~ "Associate" means ~~for the purposes of ss.~~
26 ~~494.003-494.0043 solely,~~ a person required to be licensed as a
27 mortgage broker under this chapter who is employed by or
28 acting as an independent contractor for a mortgage brokerage
29 business or a person acting as an independent contractor for a
30 mortgage lender or correspondent mortgage lender. The use of
31 the term associate, in contexts other than in the

1 administration of ss. 494.003-494.0077 ~~ss. 494.003-494.0043~~,
2 shall not be construed to impose or effect the common-law or
3 statutory liability of the employer.

4 (6)(5) "Branch broker" means the licensee in charge
5 of, and responsible for, the operation of a branch office of a
6 mortgage brokerage business.

7 (7) "Branch office" means a location, other than a
8 licensee's principal place of business:

9 (a) The address of which appears on business cards,
10 stationery, or advertising used by the licensee in connection
11 with business conducted under this chapter;

12 (b) At which the licensee's name, advertising or
13 promotional materials, or signage suggest that mortgage loans
14 are originated, negotiated, funded, or serviced; or

15 (c) Which, due to the actions of any employee or
16 associate of the licensee, may be construed by the public as a
17 branch office of the licensee where mortgage loans are
18 originated, negotiated, funded, or serviced.

19 (8)(6) "Department" means the Department of Banking
20 and Finance.

21 (9) "Employed" means engaged in the service of another
22 for salary or wages subject to withholding, FICA, or other
23 lawful deductions by the employer as a condition of
24 employment. An "employee" is a natural person who is employed
25 and who is subject to the right of the employer to direct and
26 control the actions of the employee.

27 (10)(7) "Good standing" means that the registrant or
28 licensee, or a subsidiary or affiliate thereof, is not, at the
29 time of application, being penalized for one or more of the
30 following disciplinary actions by a licensing authority of any
31 state, territory, or country:

- 1 (a) Revocation of a license or registration.
2 (b) Suspension of a license or registration.
3 (c) Probation of a license or registration for an
4 offense involving fraud, dishonest dealing, or an act of moral
5 turpitude.

6 (11)~~(8)~~ "Institutional investor" means a state or
7 national bank, state or federal savings and loan association
8 or savings bank, real estate investment trust, insurance
9 company, real estate company, accredited investor as defined
10 in 17 C.F.R. ss. 230.501 et seq., business licensed under ss.
11 494.001-494.0077, or other business entity that invests in
12 mortgage loans, including a secondary mortgage market
13 institution including, without limitation, the Federal
14 National Mortgage Association, the Federal Home Loan Mortgage
15 Corporation, and the Government National Mortgage Association,
16 conduits, investment bankers, and any subsidiary of such
17 entities.

18 (12)~~(9)~~ "Loan commitment" or "commitment" means a
19 statement by the lender setting forth the terms and conditions
20 upon which the lender is willing to make a particular mortgage
21 loan to a particular borrower.

22 (13)~~(10)~~ "Lock-in agreement" means an agreement
23 whereby the lender guarantees for a specified number of days
24 or until a specified date the availability of a specified rate
25 of interest or specified formula by which the rate of interest
26 will be determined and/or specific number of discount points,
27 if the loan is approved and closed within the stated period of
28 time.

29 (14)~~(11)~~ "Make a mortgage loan" means to close a
30 mortgage loan in a person's name or to advance funds, offer to
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1 advance funds, or make a commitment to advance funds to an
2 applicant for a mortgage loan.
3 (15)~~(12)~~ "Mortgage brokerage ~~broker~~ fee" means a fee
4 received for acting as a mortgage broker.
5 (16)~~(13)~~ "Mortgage brokerage business" means a person
6 acting as a mortgage broker.
7 (17) "Mortgage loan" means any:
8 (a) Residential mortgage loan;
9 (b) Loan on commercial real property if the borrower
10 is a natural person or the lender is a noninstitutional
11 investor; or
12 (c) Loan on improved real property consisting of 5 or
13 more dwelling units if the borrower is a natural person or the
14 lender is a noninstitutional investor.
15 (18)~~(14)~~ "Net worth" means total assets minus total
16 liabilities pursuant to generally accepted accounting
17 principles.
18 (19)~~(15)~~ "Noninstitutional investor" means an investor
19 other than an institutional investor.
20 (20)~~(16)~~ "Nonresidential mortgage loan" means a
21 mortgage loan other than a residential mortgage loan.
22 (21)~~(17)~~ "Person" means an individual, partnership,
23 corporation, association, or other group, however organized.
24 (22)~~(18)~~ "Principal broker" means a licensee in charge
25 of, and responsible for, the operation of the principal place
26 of business and all branch brokers.
27 (23) "Principal place of business" means a licensee's
28 primary business office the street address or physical
29 location of which is designated on the application for
30 licensure or any amendment to such application.
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1 ~~(24)(19)~~ "Residential mortgage loan" means any
2 mortgage or other security instrument secured by improved real
3 property consisting of no more than four dwelling units.

4 ~~(25)(20)~~ "Service a mortgage loan" means to receive or
5 cause to be received or transferred for another installment
6 payments of principal, interest, or other payments pursuant to
7 a mortgage loan.

8 ~~(26)(21)~~ "Substantial fault of the borrower" means
9 that the borrower:

10 (a) Failed to provide information or documentation
11 required by the lender or broker in a timely manner;

12 (b) Provided information, in the application or
13 subsequently, which upon verification proved to be
14 significantly inaccurate, causing the need for review or
15 further investigation by the lender or broker;

16 (c) Failed to produce no later than the date specified
17 by the lender all documentation specified in the commitment or
18 closing instructions as being required for closing; or

19 (d) Failed to be ready, willing, or able to close the
20 loan no later than the date specified by the lender or broker.

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22 For purposes of this definition, a borrower is considered to
23 have provided information or documentation in a timely manner
24 if such information and documentation was received by the
25 lender within 7 days after the borrower received a request for
26 same, and information is considered significantly inaccurate
27 if the correct information materially affects the eligibility
28 of the borrower for the loan for which application is made.

29 ~~(26)(22)~~ "Ultimate equitable owner" means a natural
30 person who, directly or indirectly, owns or controls an
31 ownership interest in a corporation, a foreign corporation, an

1 alien business organization, or any other form of business
2 organization, regardless of whether such natural person owns
3 or controls such ownership interest through one or more
4 natural persons or one or more proxies, powers of attorney,
5 nominees, corporations, associations, partnerships, trusts,
6 joint stock companies, or other entities or devices, or any
7 combination thereof.

8 Section 2. Effective September 1, 2000, subsection (3)
9 of section 494.0012, Florida Statutes, is amended to read:

10 494.0012 Investigations; complaints; examinations.--

11 (3)(a) The department may, at intermittent periods,
12 conduct examinations of any licensee or other person under the
13 provisions of ss. 494.001-494.0077. ~~The department may charge~~
14 ~~an examination fee prescribed by rule, but such fee may not~~
15 ~~exceed \$300 per 8-hour day for each examiner. Such~~
16 ~~examination fee shall be calculated on an hourly basis and~~
17 ~~shall be rounded to the nearest hour.~~

18 (b) The department shall conduct all examinations at a
19 convenient location in this state unless the department
20 determines that it is more effective or cost-efficient to
21 perform an examination at the licensee's out-of-state
22 location. For an examination performed at the licensee's
23 out-of-state location travel, the licensee shall also pay the
24 travel expense and per diem subsistence at the rate provided
25 by law for up to 30 8-hour days per year for each department
26 examiner who participates in such an examination. However, if
27 the examination involves or reveals possible fraudulent
28 conduct by the licensee, the licensee shall pay the travel
29 expense and per diem subsistence provided by law, without
30 limitation, for each participating examiner allowance provided
31 ~~for state employees under s. 112.061. The department may not~~

1 ~~charge more than \$500 in examination fees per biennial period~~
2 ~~to any one mortgage brokerage business, mortgage lender, or~~
3 ~~correspondent mortgage lender.~~

4 Section 3. Paragraph (a) of subsection (1) of section
5 494.00125, Florida Statutes, is amended to read:

6 494.00125 Confidentiality of information relating to
7 investigations and examinations.--

8 (1)(a) Except as otherwise provided by this section,
9 information relative to an investigation or examination by the
10 department pursuant to this chapter, including any consumer
11 complaint, is confidential and exempt from s. 119.07(1) until
12 the investigation or examination is completed or ceases to be
13 active. The information compiled by the department in such an
14 investigation or examination shall remain confidential and
15 exempt from s. 119.07(1) after the department's investigation
16 or examination is completed or ceases to be active if the
17 department submits the information to any law enforcement or
18 administrative agency for further investigation. Such
19 information shall remain confidential and exempt from s.
20 119.07(1) until that agency's investigation is completed or
21 ceases to be active. For purposes of this section, an
22 investigation or examination shall be considered "active" so
23 long as the department or any law enforcement or
24 administrative agency is proceeding with reasonable dispatch
25 and has a reasonable good faith belief that the investigation
26 or examination may lead to the filing of an administrative,
27 civil, or criminal proceeding or to the denial or conditional
28 grant of a license, ~~registration, or permit~~. This section
29 shall not be construed to prohibit disclosure of information
30 which is required by law to be filed with the department and
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1 which, but for the investigation or examination, would be
2 subject to s. 119.07(1).

3 Section 4. Subsection (4) of section 494.0016, Florida
4 Statutes, is amended to read:

5 494.0016 Books, accounts, and records; maintenance;
6 examinations by the department.--

7 (4) The department may prescribe by rule the minimum
8 information to be shown in the books, accounts, records, and
9 documents of licensees so that such records will enable the
10 department to determine the licensee's compliance with ss.
11 494.001-494.0077.

12 Section 5. Section 494.00165, Florida Statutes, is
13 created to read:

14 494.00165 Prohibited advertising; record
15 requirements.--

16 (1) It is a violation of this chapter for any person
17 to:

18 (a) Advertise that an applicant will have unqualified
19 access to credit without disclosing what material limitations
20 on the availability of credit exist. Such material limitations
21 include, but are not limited to, the percentage of down
22 payment required, the fact that a higher rate or points could
23 be required, or the fact that restrictions as to the maximum
24 principal amount of the loan offered could apply.

25 (b) Advertise a mortgage loan at an expressed interest
26 rate unless the advertisement specifically states that the
27 expressed rate could change or not be available at commitment
28 or closing.

29 (c) Advertise mortgage loans, including rates,
30 margins, discounts, points, fees, commissions, or other
31 material information, including material limitations on such

1 loans, unless such person is able to make such mortgage loans
2 available to a reasonable number of qualified applicants.

3 (d) Falsely advertise or misuse names indicating a
4 federal agency pursuant to 18 U.S.C. s. 709.

5 (2) Each person who is required to be licensed under
6 this chapter shall maintain a record of samples of each of its
7 advertisements, including commercial scripts of each radio or
8 television broadcast, for examination by the department for a
9 period of 2 years after the date of publication or broadcast.

10 Section 6. Present subsections (6), (7), (8), and (11)
11 of section 494.0025, Florida Statutes, are amended, present
12 subsections (9), (10), and (12) of that section are renumbered
13 as subsections (6), (7), and (8), respectively, and a new
14 subsection (9) is added to that section, to read:

15 494.0025 Prohibited practices.--It is unlawful for any
16 person:

17 ~~(6) To advertise that an applicant will have~~
18 ~~unqualified access to credit without disclosing what material~~
19 ~~limitations on the availability of credit exist, such as the~~
20 ~~percentage of down payment required, that a higher rate or~~
21 ~~points could be required, or that restrictions as to the~~
22 ~~maximum principal amount of the loan offered could apply.~~

23 ~~(7) To advertise a mortgage loan where a prevailing~~
24 ~~rate is indicated in the advertisement, unless the~~
25 ~~advertisement specifically states that the expressed rate~~
26 ~~could change or not be available at commitment or closing.~~

27 ~~(8) To advertise mortgage loans, including rates,~~
28 ~~margins, discounts, points, fees, commissions, or other~~
29 ~~material information, including material limitations on such~~
30 ~~loans, unless such person is able to make such mortgage loans~~
31 ~~available to a reasonable number of qualified applicants.~~

1 ~~(11) Who is required to be licensed under ss.~~
2 ~~494.001-494.0077, to falsely advertise or misuse names~~
3 ~~indicating a federal agency pursuant to 18 U.S.C. s. 709.~~
4 (9) To pay a fee or commission in any mortgage loan
5 transaction to any person or entity other than a mortgage
6 brokerage business, mortgage lender, or correspondent mortgage
7 lender operating under an active license or to a person exempt
8 from licensure under this chapter.
9 Section 7. Subsections (1), (4), and (5) of section
10 494.0031, Florida Statutes, are amended to read:
11 494.0031 Licensure as a mortgage brokerage business.--
12 (1) The department shall issue a mortgage brokerage
13 business license to each person who:
14 (a) Has submitted a completed application form and a
15 nonrefundable application fee of \$425 ~~in an amount that may~~
16 ~~not exceed \$350; and~~
17 (b) Has a qualified principal broker pursuant to s.
18 494.0035.
19 (4) A mortgage brokerage business or branch office
20 ~~license, permit, or registration~~ may be canceled if it was
21 issued through mistake or inadvertence of the department. A
22 notice of cancellation must be issued by the department within
23 90 days after the issuance of the license. A notice of
24 cancellation shall be effective upon receipt. The notice of
25 cancellation shall provide the applicant with notification of
26 the right to request a hearing within 21 days after the
27 applicant's receipt of the notice of cancellation. A license,
28 ~~permit, or registration~~ shall be reinstated if the applicant
29 can demonstrate that the requirements for obtaining the
30 ~~license, permit, or registration~~ pursuant to this chapter ~~ss.~~
31 ~~494.001-494.0077~~ have been satisfied.

1 (5) If an initial mortgage brokerage business or
2 branch office license, permit, or registration has been issued
3 but the check upon which the license, ~~permit, or registration~~
4 is based is returned due to insufficient funds, the license,
5 ~~permit, or registration~~ shall be deemed canceled. A license,
6 ~~permit, or registration~~ deemed canceled pursuant to this
7 subsection shall be reinstated if the department receives a
8 certified check for the appropriate amount within 30 days
9 after the date the check was returned due to insufficient
10 funds.

11 Section 8. Section 494.0032, Florida Statutes, is
12 amended to read:

13 494.0032 Renewal of mortgage brokerage business
14 license; ~~permit~~ renewal of mortgage brokerage business branch
15 office license.--

16 (1) The department shall renew a mortgage brokerage
17 business license upon receipt of a completed renewal form and
18 payment of a renewal fee of \$375 ~~that may not exceed \$300~~.
19 Each licensee shall pay at the time of renewal a fee of \$225
20 ~~that may not exceed \$150~~ for the renewal of each branch office
21 license ~~permit~~.

22 (2) The department shall adopt rules establishing a
23 procedure for the biennial renewal of mortgage brokerage
24 business licenses and branch office licenses ~~permits~~. The
25 department may prescribe the form for renewal and may require
26 an update of all information provided in the licensee's
27 initial application.

28 (3) A mortgage brokerage business or branch office
29 license that is not renewed by the end of the biennium
30 established by the department shall revert from active to
31 inactive status. An inactive license may be reactivated

1 within 6 months after becoming inactive by filing a completed
2 reactivation form with the department, payment of the renewal
3 fee, and payment of a reactivation fee of \$100. ~~The~~
4 ~~department may set by rule a late renewal fee in an amount~~
5 ~~that may not exceed \$100.~~

6 (4) A license that is not renewed within 6 months
7 after the end of the biennial period automatically expires.

8 Section 9. Subsections (2), (6), and (7) of section
9 494.0033, Florida Statutes, are amended to read:

10 494.0033 Mortgage broker's license.--

11 (2) Each initial application for a mortgage broker's
12 license must be in written form as prescribed by the
13 department. The department may require each applicant to
14 provide any information reasonably necessary to make a
15 determination of the applicant's eligibility for licensure.
16 The department shall issue an initial license to any natural
17 person who:

18 (a) Is at least 18 years of age;

19 (b) Has passed a written test adopted by the
20 department which is designed to determine competency in
21 primary and subordinate mortgage financing transactions as
22 well as to test knowledge of ss. 494.001-494.0077 and the
23 rules adopted pursuant thereto;

24 (c) Has submitted a completed application and a
25 nonrefundable application fee of ~~that may not exceed~~ \$200.

26 The department may set by rule an additional fee for a retake
27 of the examination; and

28 (d) Has filed a complete set of fingerprints, taken by
29 an authorized law enforcement officer, for submission by the
30 department to the Department of Law Enforcement or the Federal
31 Bureau of Investigation for processing.

1 (6) A mortgage broker license, ~~permit, or registration~~
2 may be canceled if it was issued through mistake or
3 inadvertence of the department. A notice of cancellation must
4 be issued by the department within 90 days after the issuance
5 of the license. A notice of cancellation shall be effective
6 upon receipt. The notice of cancellation shall provide the
7 applicant with notification of the right to request a hearing
8 within 21 days after the applicant's receipt of the notice of
9 cancellation. A license, ~~permit, or registration~~ shall be
10 reinstated if the applicant can demonstrate that the
11 requirements for obtaining the license, ~~permit, or~~
12 ~~registration~~ pursuant to this chapter ~~ss. 494.001-494.0077~~
13 have been satisfied.

14 (7) If an initial mortgage broker license, ~~permit, or~~
15 ~~registration~~ has been issued but the check upon which the
16 license, ~~permit, or registration~~ is based is returned due to
17 insufficient funds, the license, ~~permit, or registration~~ shall
18 be deemed canceled. A license, ~~permit, or registration~~ deemed
19 canceled pursuant to this subsection shall be reinstated if
20 the department receives a certified check for the appropriate
21 amount within 30 days after the date the check was returned
22 due to insufficient funds.

23 Section 10. Section 494.00331, Florida Statutes, is
24 amended to read:

25 494.00331 Mortgage broker association.--No person
26 required to be licensed ~~acting~~ as a mortgage broker under this
27 chapter shall be simultaneously an associate of more than one
28 licensed ~~a single~~ mortgage brokerage business, licensed
29 mortgage lender, or licensed correspondent mortgage lender.

30 Section 11. Subsections (1), (3), and (4) of section
31 494.0034, Florida Statutes, are amended to read:

1 494.0034 Renewal of mortgage broker's license.--

2 (1) The department shall renew a mortgage broker
3 ~~broker's~~ license upon receipt of the completed renewal form
4 and payment of a renewal fee of ~~that may not exceed~~ \$150.

5 (3) A license that is not renewed by the end of the
6 biennium prescribed by the department shall revert from active
7 ~~automatically reverts~~ to inactive status. An inactive license
8 may be reactivated within 2 years after becoming inactive by
9 ~~the filing of~~ a completed reactivation form application with
10 the department, payment of the renewal fee, and payment of a
11 reactivation fee of \$100.

12 ~~(4)~~ A license that is not renewed within 2 years after
13 becoming inactive automatically expires.

14 Section 12. Section 494.0036, Florida Statutes, is
15 amended to read:

16 494.0036 Mortgage brokerage business branch offices--

17 (1) A mortgage brokerage business branch office
18 license permit is required for each branch office maintained
19 by a mortgage brokerage business licensee.

20 (2) The department shall issue a mortgage brokerage
21 business branch office license permit upon receipt of a
22 completed application in a form as prescribed by ~~the~~
23 department rule and payment of an initial branch office
24 license permit fee of \$225 ~~that may not exceed~~ \$150. Branch
25 office licenses permits must be renewed in conjunction with
26 the renewal of the mortgage brokerage business license. The
27 branch office license permit shall be issued in the name of
28 the mortgage brokerage business that maintains the branch
29 office.

30 (3) Each branch office must prominently display the
31 license issued for such branch office. Each person licensed as

1 a mortgage broker must prominently display his or her license
2 in the office where such person acts as a mortgage broker.

3 Section 13. Subsection (2) of section 494.0038,
4 Florida Statutes, is amended to read:

5 494.0038 Mortgage broker disclosures.--

6 (2) At the time ~~Prior to entering into~~ a written
7 agreement is executed by the borrower or at the time the
8 mortgage brokerage business accepts ~~accepting~~ an application,
9 an application fee, credit report fee, property appraisal fee,
10 or any other third-party fee, the ~~a~~ mortgage brokerage
11 business shall ~~must~~ disclose in writing to any applicant for a
12 mortgage loan the following information:

13 (a) That such mortgage brokerage business may not make
14 mortgage loans or commitments. The mortgage brokerage
15 business may make a commitment and may furnish a lock-in of
16 the rate and program on behalf of the lender when the mortgage
17 brokerage business has obtained a written commitment or
18 lock-in for the loan from the lender on behalf of the borrower
19 for the loan. The commitment must be in the same form and
20 substance as issued by the lender.

21 (b) That such mortgage brokerage business cannot
22 guarantee acceptance into any particular loan program or
23 promise any specific loan terms or conditions.

24 (c) A good faith estimate of the credit report fee,
25 property appraisal fee, or any other third-party fee and the
26 terms and conditions for obtaining a refund of such fees, if
27 any. Any amount collected in excess of the actual cost shall
28 be returned within 60 days after rejection, withdrawal, or
29 closing.

30 Section 14. Subsections (1) and (3) of section
31 494.0039, Florida Statutes, are amended to read:

1 494.0039 Principal place of business requirements.--

2 (1) Each mortgage brokerage business licensee shall
3 maintain and transact business from a principal place of
4 business ~~in the state. A principal place of business or~~
5 ~~branch office must consist of at least one enclosed room or~~
6 ~~building of stationary construction in which negotiations of~~
7 ~~mortgage loan transactions of others may be conducted and~~
8 ~~carried on in privacy and in which all of the books, records,~~
9 ~~and files pertaining to mortgage loan transactions of others~~
10 ~~are maintained, and:~~

11 ~~(a) Must be in compliance with local zoning ordinances~~
12 ~~and must have posted any occupational licenses required by~~
13 ~~local government agencies. It is the responsibility of the~~
14 ~~licensee to meet local zoning ordinances and obtain the~~
15 ~~required occupational licenses; and~~

16 ~~(b) Must maintain a sign that is publicly displayed.~~
17 ~~Such sign must contain the name of the licensee under ss.~~
18 ~~494.003-494.0043 and the words "Licensed Mortgage Brokerage~~
19 ~~Business."~~

20 (3) Each mortgage brokerage business must prominently
21 display its license at the principal place of business. ~~Each~~
22 ~~branch office must prominently display its branch office~~
23 ~~permit. Each person licensed mortgage broker pursuant to s.~~
24 ~~494.0033 must prominently display his or her license in the~~
25 office where such person acts as a mortgage broker.

26 Section 15. Subsection (1) of section 494.004, Florida
27 Statutes, is amended, present subsections (2), (3), and (4) of
28 that section are renumbered as subsections (3), (4), and (5),
29 respectively, and a new subsection (2) is added to that
30 section, to read:

31 494.004 Requirements of licensees.--

1 (1) Each licensee under ss. 494.003-494.0043 shall
2 report, in writing, any conviction of, or plea of nolo
3 contendere to, regardless of adjudication, any crime or
4 administrative violation that involves fraud, dishonest
5 dealing, or any other act of moral turpitude, in any
6 jurisdiction, by the licensee or any natural person named in,
7 ~~pursuant to~~ s. 494.0031(3), not later than 30 days after the
8 date of conviction, entry of a plea of nolo contendere, or
9 final administrative action.

10 (2) Each licensee under ss. 494.003-494.0043 shall
11 report, in writing, any conviction of, or plea of nolo
12 contendere to, regardless of whether adjudication is withheld,
13 any felony committed by the licensee or any natural person
14 named in s. 494.0031(3), not later than 30 days after the date
15 of conviction or the date the plea of nolo contendere is
16 entered.

17 Section 16. Effective January 1, 2000, subsection (6)
18 is added to section 494.004, Florida Statutes, as amended by
19 this act, to read:

20 494.004 Requirements of licensees.--

21 (6) On or before April 30, 2000, each mortgage
22 brokerage business shall file an initial report stating the
23 name, social security number, date of birth, mortgage broker
24 license number, date of hire and, if applicable, date of
25 termination for each person who was an associate of the
26 mortgage brokerage business during the immediate preceding
27 quarter. Thereafter, a mortgage brokerage business shall file
28 a quarterly report only if a person became an associate or
29 ceased to be an associate of the mortgage brokerage business
30 during the immediate preceding quarter. Such report shall be
31 filed within 30 days after the last day of each calendar

1 quarter and shall contain the name, social security number,
2 date of birth, mortgage broker license number, date of hire
3 and, if applicable, the date of termination of each person who
4 became or ceased to be an associate of the mortgage brokerage
5 business during the immediate preceding quarter. The
6 department shall prescribe, by rule, the procedures for filing
7 reports required by this subsection.

8 Section 17. Paragraph (a) of subsection (2) of section
9 494.0041, Florida Statutes, is amended, and paragraph (r) is
10 added to that subsection, to read:

11 494.0041 Administrative penalties and fines; license
12 violations.--

13 (2) Each of the following acts constitutes a ground
14 for which the disciplinary actions specified in subsection (1)
15 may be taken:

16 (a) Pleading nolo contendere to, or having been ~~Being~~
17 convicted or found guilty of, regardless of whether
18 adjudication is withheld, of a crime involving in any
19 ~~jurisdiction which involves~~ fraud, dishonest dealing, or any
20 ~~other~~ act of moral turpitude.

21 (r) Failure to timely pay any fee, charge, or fine
22 imposed or assessed pursuant to this chapter or rules adopted
23 under this chapter.

24 Section 18. Subsections (1), (6), and (7) of section
25 494.0061, Florida Statutes, are amended to read:

26 494.0061 Mortgage lender's license requirements.--

27 (1) The department may require each applicant for a
28 mortgage lender ~~lender's~~ license to provide any information
29 reasonably necessary to make a determination of the
30 applicant's eligibility for licensure. The department shall

31

1 issue an initial mortgage lender ~~lender's~~ license to any
2 person that submits:
3 (a) A completed application form;
4 (b) A nonrefundable fee of \$575 ~~set by rule of the~~
5 ~~department in an amount that may not exceed \$500;~~
6 (c) Audited financial statements, which documents
7 disclose that the applicant has a bona fide and verifiable net
8 worth, pursuant to generally accepted accounting principles,
9 of at least \$250,000, which must be continuously maintained as
10 a condition of licensure;
11 (d) A surety bond in the amount of \$10,000, payable to
12 the state and conditioned upon compliance with ss.
13 494.001-494.0077, which inures to the department and which
14 must be continuously maintained thereafter in full force; and
15 (e) Documentation that the applicant is duly
16 incorporated, registered, or otherwise formed as a general
17 partnership, limited partnership, limited liability company,
18 or other lawful entity under the laws of this state or another
19 state of the United States.
20 (6) A mortgage lender or branch office license,
21 ~~permit, or registration~~ may be canceled if it was issued
22 through mistake or inadvertence of the department. A notice of
23 cancellation must be issued by the department within 90 days
24 after the issuance of the license. A notice of cancellation
25 shall be effective upon receipt. The notice of cancellation
26 shall provide the applicant with notification of the right to
27 request a hearing within 21 days after the applicant's receipt
28 of the notice of cancellation. A license, ~~permit, or~~
29 ~~registration~~ shall be reinstated if the applicant can
30 demonstrate that the requirements for obtaining the license,
31

1 ~~permit, or registration~~ pursuant to this chapter ~~ss.~~
2 ~~494.001-494.0077~~ have been satisfied.

3 (7) If an initial mortgage lender or branch office
4 ~~license, permit, or registration~~ has been issued but the check
5 upon which the ~~license, permit, or registration~~ is based is
6 returned due to insufficient funds, the ~~license, permit, or~~
7 ~~registration~~ shall be deemed canceled. A ~~license, permit, or~~
8 ~~registration~~ deemed canceled pursuant to this subsection shall
9 be reinstated if the department receives a certified check for
10 the appropriate amount within 30 days after the date the check
11 was returned due to insufficient funds.

12 Section 19. Subsections (1), (9), and (10) of section
13 494.0062, Florida Statutes, are amended to read:

14 494.0062 Correspondent mortgage lender's license
15 requirements.--

16 (1) The department shall issue an initial
17 correspondent mortgage lender ~~lender's~~ license to any person
18 who submits:

19 (a) A completed application form;
20 (b) A nonrefundable fee of \$500 ~~set by rule of the~~
21 ~~department in an amount that may not exceed \$400;~~

22 (c) Audited financial statements, which document that
23 the application has a bona fide and verifiable net worth
24 pursuant to generally accepted accounting principles of
25 \$25,000 or more, which must be continuously maintained as a
26 condition of licensure;

27 (d) A surety bond in the amount of \$10,000, payable to
28 the State of Florida and conditioned upon compliance with ~~ss.~~
29 ~~494.001-494.0077~~, which inures to the department and which
30 must be continuously maintained, thereafter, in full force;
31 and

1 (e) Documentation that the applicant is duly
2 incorporated, registered, or otherwise formed as a general
3 partnership, limited partnership, limited liability company,
4 or other lawful entity under the laws of this state or another
5 state of the United States.

6 (9) A correspondent mortgage lender or branch office
7 ~~license, permit, or registration~~ may be canceled if it was
8 issued through mistake or inadvertence of the department. A
9 notice of cancellation must be issued by the department within
10 90 days after the issuance of the license. A notice of
11 cancellation shall be effective upon receipt. The notice of
12 cancellation shall provide the applicant with notification of
13 the right to request a hearing within 21 days after the
14 applicant's receipt of the notice of cancellation. A ~~license,~~
15 ~~permit, or registration~~ shall be reinstated if the applicant
16 can demonstrate that the requirements for obtaining the
17 ~~license, permit, or registration~~ pursuant to this chapter ss.
18 ~~494.001-494.0077~~ have been satisfied.

19 (10) If an initial correspondent mortgage lender or
20 branch office ~~license, permit, or registration~~ has been issued
21 but the check upon which the ~~license, permit, or registration~~
22 is based is returned due to insufficient funds, the ~~license,~~
23 ~~permit, or registration~~ shall be deemed canceled. A ~~license,~~
24 ~~permit, or registration~~ deemed canceled pursuant to this
25 subsection shall be reinstated if the department receives a
26 certified check for the appropriate amount within 30 days
27 after the date the check was returned due to insufficient
28 funds.

29 Section 20. Subsections (1), (3), and (4) of section
30 494.0064, Florida Statutes, are amended to read:

31

1 494.0064 Renewal of mortgage lender's license; branch
2 office permit renewal.--

3 (1) The department shall renew a mortgage lender
4 ~~lender's license or correspondent lender's license~~ upon
5 receipt of a completed renewal form and the renewal fee of
6 \$575, in an amount not exceeding \$500. The department shall
7 renew a correspondent lender license upon receipt of a
8 completed renewal form and a renewal fee of \$475. Each
9 licensee shall pay at the time of renewal a fee of \$325 ~~that~~
10 ~~may not exceed \$250~~ for the renewal of each branch office
11 license permit.

12 (3) The license of a mortgage lender, correspondent
13 mortgage lender, or branch office which is not renewed by the
14 end of the biennium prescribed by the department automatically
15 reverts to inactive status. An inactive license may be
16 reactivated within 6 months after becoming inactive by filing
17 a completed reactivation form with the department, payment of
18 the appropriate renewal fee, and payment of a reactivation fee
19 of \$100. ~~A fee of \$100 shall be charged for late renewal.~~

20 ~~(4)~~ A license that is not renewed within 6 months
21 after the end of the biennial period automatically expires.

22 Section 21. Subsections (1) and (2) of section
23 494.0066, Florida Statutes, are amended to read:

24 494.0066 Branch offices.--

25 (1) A branch office license ~~permit~~ is required for
26 each branch office maintained by a licensee under ss.
27 494.006-494.0077.

28 (2) The department shall issue a branch office license
29 ~~permit~~ upon receipt of a completed application form as
30 prescribed by the department and an initial branch office
31 license permit fee of \$325 ~~set by rule of the department in an~~

1 ~~amount that may not exceed \$250.~~ The branch office
2 application must include the name and license number of the
3 licensee under ss. 494.006-494.0077, the name of the
4 licensee's employee in charge of the branch office, and the
5 address of the branch office. The branch office license
6 ~~permit~~ shall be issued in the name of the licensee under ss.
7 494.006-494.0077 and must be renewed in conjunction with the
8 license renewal.

9 Section 22. Subsections (1), (2), (3), and (9) of
10 section 494.0067, Florida Statutes, are amended to read:

11 494.0067 Requirements of licensees under ss.
12 494.006-494.0077.--

13 (1) Each license of a mortgage lender, correspondent
14 mortgage lender, or branch office ~~permit~~ shall be prominently
15 displayed in the office for which it is issued.

16 (2) Each licensee under ss. 494.006-494.0077 which
17 makes mortgage loans on real estate in this state shall
18 transact business from a principal place of business ~~in the~~
19 ~~state.~~ Each principal place of business and each branch
20 office shall be operated under the full charge, control, and
21 supervision of the licensee under ss. 494.006-494.0077.

22 (3) A license ~~or branch office permit~~ issued under ss.
23 494.006-494.0077 is not transferable or assignable.

24 ~~(9) Each licensee under ss. 494.006-494.0077, or~~
25 ~~person not required to be licensed under those sections, shall~~
26 ~~maintain a record of samples of each of its advertisements,~~
27 ~~including commercial scripts of each radio or television~~
28 ~~broadcast, for examination by the department for a period of 2~~
29 ~~years after the date of publication or broadcast.~~

30 Section 23. Effective January 1, 2000, subsection (10)
31 is added to section 494.0067, Florida Statutes, to read:

1 494.0067 Requirements of licensees under ss.
2 494.006-494.0077.--

3 (10) On or before April 30, 2000, each mortgage lender
4 or correspondent mortgage lender shall file an initial report
5 stating the full legal name, residential address, social
6 security number, date of birth, mortgage broker license
7 number, date of hire, and, if applicable, date of termination
8 for each person who acted as a loan originator or an associate
9 of the mortgage lender or correspondent mortgage lender during
10 the immediate preceding quarter. Thereafter, a mortgage lender
11 or correspondent mortgage lender shall file a report only if a
12 person became or ceased to be a loan originator or an
13 associate of the mortgage lender or correspondent mortgage
14 lender during the immediate preceding quarter. Such report
15 shall be filed within 30 days after the last day of each
16 calendar quarter and shall contain the full legal name,
17 residential address, social security number, date of birth,
18 date of hire and, if applicable, the mortgage broker license
19 number and date of termination of each person who became or
20 ceased to be a loan originator or an associate of the mortgage
21 lender or correspondent mortgage lender during the immediate
22 preceding quarter. The department shall prescribe, by rule,
23 the procedures for filing reports required by this subsection.

24 Section 24. Paragraph (a) of subsection (2) and
25 subsections (3) and (4) of section 494.0072, Florida Statutes,
26 are amended, and paragraph (r) is added to subsection (2) of
27 that section, to read:

28 494.0072 Administrative penalties and fines; license
29 violations.--

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1 (2) Each of the following acts constitutes a ground
2 for which the disciplinary actions specified in subsection (1)
3 may be taken:

4 (a) Pleading nolo contendere to, or having been ~~Being~~
5 convicted or found guilty of, regardless of whether
6 adjudication is withheld, ~~of~~ a crime involving in any
7 ~~jurisdiction which involves~~ fraud, dishonest dealing, or any
8 ~~other~~ act of moral turpitude.

9 (r) Failure to timely pay any fee, charge, or fine
10 imposed or assessed pursuant to this chapter or rules adopted
11 under this chapter.

12 (3) A mortgage lender or correspondent mortgage lender
13 is subject to the disciplinary actions specified ~~in subsection~~
14 ~~(1) for a violation of subsection (2) by~~ any officer,
15 director, or ultimate equitable owner of a 10-percent or
16 greater interest in the mortgage lender or correspondent
17 mortgage lender, associate, or employee of the mortgage lender
18 or correspondent mortgage lender violates any provision of
19 subsection (2) licensee.

20 (4) A natural person who is an associate of or
21 employed by a mortgage lender or correspondent mortgage lender
22 is subject to the disciplinary actions specified in subsection
23 (1) if such person violates any provision ~~for a violation of~~
24 subsection (2) ~~regarding any action for which such person was~~
25 ~~involved.~~

26 Section 25. Section 494.0073, Florida Statutes, is
27 amended to read:

28 494.0073 Mortgage lender or correspondent mortgage
29 lender when acting as a mortgage brokerage business
30 ~~broker.~~--Sections 494.006-494.0077 do not prohibit a mortgage
31 lender or correspondent mortgage lender from acting as a

1 mortgage brokerage business ~~broker~~. However, in mortgage
2 transactions in which a mortgage lender or correspondent
3 mortgage lender acts as a mortgage brokerage business ~~broker~~,
4 the provisions of ss. 494.0038, 494.0042, and 494.0043(1),
5 (2), and (3) apply.

6 Section 26. Section 494.0037, Florida Statutes, is
7 repealed.

8 Section 27. Except as otherwise provided in this act,
9 this act shall take effect October 1, 1999.

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LEGISLATIVE SUMMARY

Revises and clarifies provisions relating to mortgage
brokers, mortgage lenders, correspondent mortgage
lenders, mortgage brokerage businesses, branch offices,
licensure, license fees, license renewals, grounds for
disciplinary action, criminal convictions or pleadings,
and loan originators. (See bill for details.)