

By Representative Goode

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 language; 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 language; 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 language;
30 amending s. 494.0062, F.S.; providing for
31 correspondent mortgage lender branch office

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

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 494.001, Florida Statutes, is
27 amended to read:

28 494.001 Definitions.--As used in ss. 494.001-494.0077,
29 the term:

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

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

9 (3)~~(2)~~ "Act as a mortgage broker" means, for
10 compensation or gain, or in the expectation of compensation or
11 gain, either directly or indirectly, accepting or offering to
12 accept an application for a mortgage loan, soliciting or
13 offering to solicit a mortgage loan on behalf of a borrower,
14 negotiating or offering to negotiate the terms or conditions
15 of a mortgage loan on behalf of a lender, or negotiating or
16 offering to negotiate the sale of an existing mortgage loan to
17 a noninstitutional investor.

18 (4)~~(3)~~ "Act as a mortgage lender" means to make a
19 mortgage loan or to service a mortgage loan for others or, for
20 compensation or gain, or in the expectation of compensation or
21 gain, either directly or indirectly, to sell or offer to sell
22 a mortgage loan to a noninstitutional investor.

23 (5)~~(4)~~ "Associate" means ~~for the purposes of ss.~~
24 ~~494.003-494.0043 solely,~~ a person required to be licensed as a
25 mortgage broker under this chapter who is employed by or
26 acting as an independent contractor for a mortgage brokerage
27 business or a person acting as an independent contractor for a
28 mortgage lender or correspondent mortgage lender. The use of
29 the term associate, in contexts other than in the
30 administration of ss. 494.003-494.0077~~494.003-494.0043~~, shall
31

1 not be construed to impose or effect the common-law or
2 statutory liability of the employer.

3 ~~(6)~~~~(5)~~ "Branch broker" means the licensee in charge
4 of, and responsible for, the operation of a branch office of a
5 mortgage brokerage business.

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

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

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

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

18 ~~(8)~~~~(6)~~ "Department" means the Department of Banking
19 and Finance.

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

26 ~~(10)~~~~(7)~~ "Good standing" means that the registrant or
27 licensee, or a subsidiary or affiliate thereof, is not, at the
28 time of application, being penalized for one or more of the
29 following disciplinary actions by a licensing authority of any
30 state, territory, or country:

31 (a) Revocation of a license or registration.

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

5 (11)~~(8)~~ "Institutional investor" means a state or
6 national bank, state or federal savings and loan association
7 or savings bank, real estate investment trust, insurance
8 company, real estate company, accredited investor as defined
9 in 17 C.F.R. ss. 230.501 et seq., business licensed under ss.
10 494.001-494.0077, or other business entity that invests in
11 mortgage loans, including a secondary mortgage market
12 institution including, without limitation, the Federal
13 National Mortgage Association, the Federal Home Loan Mortgage
14 Corporation, and the Government National Mortgage Association,
15 conduits, investment bankers, and any subsidiary of such
16 entities.

17 (12)~~(9)~~ "Loan commitment" or "commitment" means a
18 statement by the lender setting forth the terms and conditions
19 upon which the lender is willing to make a particular mortgage
20 loan to a particular borrower.

21 (13)~~(10)~~ "Lock-in agreement" means an agreement
22 whereby the lender guarantees for a specified number of days
23 or until a specified date the availability of a specified rate
24 of interest or specified formula by which the rate of interest
25 will be determined and/or specific number of discount points,
26 if the loan is approved and closed within the stated period of
27 time.

28 (14)~~(11)~~ "Make a mortgage loan" means to close a
29 mortgage loan in a person's name or to advance funds, offer to
30 advance funds, or make a commitment to advance funds to an
31 applicant for a mortgage loan.

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

1 ~~(25)~~(20) "Service a mortgage loan" means to receive or
2 cause to be received or transferred for another installment
3 payments of principal, interest, or other payments pursuant to
4 a mortgage loan.

5 ~~(26)~~(21) "Substantial fault of the borrower" means
6 that the borrower:

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

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

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

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

18
19 For purposes of this definition, a borrower is considered to
20 have provided information or documentation in a timely manner
21 if such information and documentation was received by the
22 lender within 7 days after the borrower received a request for
23 same, and information is considered significantly inaccurate
24 if the correct information materially affects the eligibility
25 of the borrower for the loan for which application is made.

26 ~~(26)~~(22) "Ultimate equitable owner" means a natural
27 person who, directly or indirectly, owns or controls an
28 ownership interest in a corporation, a foreign corporation, an
29 alien business organization, or any other form of business
30 organization, regardless of whether such natural person owns
31 or controls such ownership interest through one or more

1 natural persons or one or more proxies, powers of attorney,
2 nominees, corporations, associations, partnerships, trusts,
3 joint stock companies, or other entities or devices, or any
4 combination thereof.

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

7 494.0012 Investigations; complaints; examinations.--

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

15 (b) The department shall conduct all examinations at a
16 convenient location in this state unless the department
17 determines that it is more effective or cost-efficient to
18 perform an examination at the licensee's out of state
19 location. For an examination performed at the licensee's
20 out-of-state location travel, the licensee shall also pay the
21 travel expense and per diem subsistence at the rate provided
22 by law for up to 30 8-hour days per year for each department
23 examiner who participates in such an examination. However, if
24 the examination involves or reveals possible fraudulent
25 conduct by the licensee, the licensee shall pay the travel
26 expense and per diem subsistence provided by law, without
27 limitation, for each participating examiner allowance provided
28 ~~for state employees under s. 112.061. The department may not~~
29 ~~charge more than \$500 in examination fees per biennial period~~
30 ~~to any one mortgage brokerage business, mortgage lender, or~~
31 ~~correspondent mortgage lender.~~

1 Section 3. Paragraph (a) of subsection (1) of section
2 494.00125, Florida Statutes, is amended to read:

3 494.00125 Confidentiality of information relating to
4 investigations and examinations.--

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

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

1 494.0016 Books, accounts, and records; maintenance;
2 examinations by the department.--

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

8 Section 5. Section 494.00165, Florida Statutes, is
9 created to read:

10 494.00165 Prohibited advertising; record
11 requirements.--

12 (1) It is a violation of this chapter for any person
13 to:

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

21 (b) Advertise a mortgage loan at an expressed interest
22 rate unless the advertisement specifically states that the
23 expressed rate could change or not be available at commitment
24 or closing.

25 (c) Advertise mortgage loans, including rates,
26 margins, discounts, points, fees, commissions, or other
27 material information, including material limitations on such
28 loans, unless such person is able to make such mortgage loans
29 available to a reasonable number of qualified applicants.

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

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

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

11 494.0025 Prohibited practices.--It is unlawful for any
12 person:

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

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

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

28 ~~(11) Who is required to be licensed under ss.~~
29 ~~494.001-494.0077, to falsely advertise or misuse names~~
30 ~~indicating a federal agency pursuant to 18 U.S.C. s. 709.~~

31

1 (9) To pay a fee or commission in any mortgage loan
2 transaction to any person or entity other than a mortgage
3 brokerage business, mortgage lender, or correspondent mortgage
4 lender, operating under an active license, or a person exempt
5 from licensure under this chapter.

6 Section 7. Subsections (1), (4), and (5) of section
7 494.0031, Florida Statutes, are amended to read:

8 494.0031 Licensure as a mortgage brokerage business;
9 mortgage brokerage business branch licenses.--

10 (1) The department shall issue a mortgage brokerage
11 business license to each person who:

12 (a) Has submitted a completed application form and a
13 nonrefundable application fee of \$425 ~~in an amount that may~~
14 ~~not exceed \$350~~; and

15 (b) Has a qualified principal broker pursuant to s.
16 494.0035.

17 (4) A mortgage brokerage business or branch office
18 ~~license, permit, or registration~~ may be canceled if it was
19 issued through mistake or inadvertence of the department. A
20 notice of cancellation must be issued by the department within
21 90 days after the issuance of the license. A notice of
22 cancellation shall be effective upon receipt. The notice of
23 cancellation shall provide the applicant with notification of
24 the right to request a hearing within 21 days after the
25 applicant's receipt of the notice of cancellation. A license,
26 ~~permit, or registration~~ shall be reinstated if the applicant
27 can demonstrate that the requirements for obtaining the
28 ~~license, permit, or registration~~ pursuant to this chapter ~~ss.~~
29 ~~494.001-494.0077~~ have been satisfied.

30 (5) If an initial mortgage brokerage business or
31 branch office license, permit, or registration has been issued

1 but the check upon which the license, ~~permit, or registration~~
2 is based is returned due to insufficient funds, the license,
3 ~~permit, or registration~~ shall be deemed canceled. A license,
4 ~~permit, or registration~~ deemed canceled pursuant to this
5 subsection shall be reinstated if the department receives a
6 certified check for the appropriate amount within 30 days
7 after the date the check was returned due to insufficient
8 funds.

9 Section 8. Section 494.0032, Florida Statutes, is
10 amended to read:

11 494.0032 Renewal of mortgage brokerage business
12 license; ~~permit~~ renewal of mortgage brokerage business branch
13 office license.--

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

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

26 (3) A mortgage brokerage business or branch office
27 license that is not renewed by the end of the biennium
28 established by the department shall revert from active to
29 inactive status. An inactive license may be reactivated
30 within 6 months after becoming inactive by filing a completed
31 reactivation form with the department, payment of the renewal

1 fee, and payment of a reactivation fee of \$100. ~~The~~
2 ~~department may set by rule a late renewal fee in an amount~~
3 ~~that may not exceed \$100.~~

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

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

9 494.0033 Mortgage broker's license.--

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

17 (c) Has submitted a completed application and a
18 nonrefundable application fee of ~~that may not exceed~~ \$200.
19 The department may set by rule an additional fee for a retake
20 of the examination; and

21 (6) A mortgage broker license, ~~permit, or registration~~
22 may be canceled if it was issued through mistake or
23 inadvertence of the department. A notice of cancellation must
24 be issued by the department within 90 days after the issuance
25 of the license. A notice of cancellation shall be effective
26 upon receipt. The notice of cancellation shall provide the
27 applicant with notification of the right to request a hearing
28 within 21 days after the applicant's receipt of the notice of
29 cancellation. A license, ~~permit, or registration~~ shall be
30 reinstated if the applicant can demonstrate that the
31 requirements for obtaining the license, ~~permit, or~~

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

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

12 Section 10. Section 494.00331, Florida Statutes, is
13 amended to read:

14 494.00331 Mortgage broker association.--No person
15 required to be licensed ~~acting~~ as a mortgage broker under this
16 chapter shall be simultaneously an associate of more than one
17 licensed ~~a single~~ mortgage brokerage business, licensed
18 mortgage lender, or licensed correspondent mortgage lender.

19 Section 11. Subsections (1), (3), and (4) of section
20 494.0034, Florida Statutes, are amended to read:

21 494.0034 Renewal of mortgage broker's license.--

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

25 (3) A license that is not renewed by the end of the
26 biennium prescribed by the department shall revert from active
27 ~~automatically reverts~~ to inactive status. An inactive license
28 may be reactivated within 2 years after becoming inactive by
29 ~~the filing of~~ a completed reactivation form application with
30 the department, payment of the renewal fee, and payment of a
31 reactivation fee of \$100.

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

3 Section 12. Section 494.0036, Florida Statutes, is
4 amended to read:

5 494.0036 Mortgage brokerage business branch offices.--

6 (1) A mortgage brokerage business branch office
7 license permit is required for each branch office maintained
8 by a mortgage brokerage business licensee.

9 (2) The department shall issue a mortgage brokerage
10 business branch office license permit upon receipt of a
11 completed application in a form as prescribed by ~~the~~
12 department rule and payment of an initial branch office
13 license permit fee of \$225 that may not exceed \$150. Branch
14 office licenses permits must be renewed in conjunction with
15 the renewal of the mortgage brokerage business license. The
16 branch office license permit shall be issued in the name of
17 the mortgage brokerage business that maintains the branch
18 office.

19 (3) Each branch office must prominently display the
20 license issued for such branch office. Each person licensed as
21 a mortgage broker must prominently display his or her license
22 in the office where such person acts as a mortgage broker.

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

25 494.0038 Mortgage broker disclosures.--

26 (2) At the time ~~Prior to entering into~~ a written
27 agreement is executed by the borrower or at the time the
28 mortgage brokerage business accepts ~~accepting~~ an application,
29 an application fee, credit report fee, property appraisal fee,
30 or any other third-party fee, the ~~a~~ mortgage brokerage
31

1 business shall ~~must~~ disclose in writing to any applicant for a
2 mortgage loan the following information:

3 (a) That such mortgage brokerage business may not make
4 mortgage loans or commitments. The mortgage brokerage
5 business may make a commitment and may furnish a lock-in of
6 the rate and program on behalf of the lender when the mortgage
7 brokerage business has obtained a written commitment or
8 lock-in for the loan from the lender on behalf of the borrower
9 for the loan. The commitment must be in the same form and
10 substance as issued by the lender.

11 (b) That such mortgage brokerage business cannot
12 guarantee acceptance into any particular loan program or
13 promise any specific loan terms or conditions.

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

20 Section 14. Subsections (1) and (3) of section
21 494.0039, Florida Statutes, are amended to read:

22 494.0039 Mortgage brokerage business principal place
23 of business requirements.--

24 (1) Each mortgage brokerage business licensee shall
25 maintain and transact business from a principal place of
26 business ~~in the state. A principal place of business or~~
27 ~~branch office must consist of at least one enclosed room or~~
28 ~~building of stationary construction in which negotiations of~~
29 ~~mortgage loan transactions of others may be conducted and~~
30 ~~carried on in privacy and in which all of the books, records,~~
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1 ~~and files pertaining to mortgage loan transactions of others~~
2 ~~are maintained, and:~~

3 ~~(a) Must be in compliance with local zoning ordinances~~
4 ~~and must have posted any occupational licenses required by~~
5 ~~local government agencies. It is the responsibility of the~~
6 ~~licensee to meet local zoning ordinances and obtain the~~
7 ~~required occupational licenses; and~~

8 ~~(b) Must maintain a sign that is publicly displayed.~~
9 ~~Such sign must contain the name of the licensee under ss.~~
10 ~~494.003-494.0043 and the words "Licensed Mortgage Brokerage~~
11 ~~Business."~~

12 (3) Each mortgage brokerage business must prominently
13 display its license at the principal place of business. ~~Each~~
14 ~~branch office must prominently display its branch office~~
15 ~~permit.~~Each person licensed mortgage broker pursuant to s.
16 ~~494.0033~~ must prominently display his or her license in the
17 office where such person acts as a mortgage broker.

18 Section 15. Subsection (1) of section 494.004, Florida
19 Statutes, is amended, subsections (2), (3), and (4) of said
20 section are renumbered as subsections (3), (4), and (5),
21 respectively, and new subsection (2) is added to said section,
22 to read:

23 494.004 Requirements of licensees.--

24 (1) Each licensee under ss. 494.003-494.0043 shall
25 report, in writing, any conviction of, or plea of nolo
26 contendere to, regardless of adjudication, any crime or
27 administrative violation that involves fraud, dishonest
28 dealing, or any other act of moral turpitude, in any
29 jurisdiction, by the licensee or any natural person named in
30 ~~pursuant to~~ s. 494.0031(3), not later than 30 days after the
31

1 date of conviction, entry of a plea of nolo contendere, or
2 final administrative action.

3 (2) Each licensee under ss. 494.003-494.0043 shall
4 report, in writing, any conviction of, or plea of nolo
5 contendere to, regardless of whether adjudication is withheld,
6 any felony committed by the licensee or any natural person
7 named in s. 494.0031(3), not later than 30 days after the date
8 of conviction or the date the plea of nolo contendere is
9 entered.

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

13 (6) On or before April 30, 2000, each mortgage
14 brokerage business shall file an initial report stating the
15 name, social security number, date of birth, mortgage broker
16 license number, date of hire and, if applicable, date of
17 termination for each person who was an associate of the
18 mortgage brokerage business during the immediate preceding
19 quarter. Thereafter, a mortgage brokerage business shall file
20 a quarterly report only if a person became an associate or
21 ceased to be an associate of the mortgage brokerage business
22 during the immediate preceding quarter. Such report shall be
23 filed within 30 days after the last day of each calendar
24 quarter and shall contain the name, social security number,
25 date of birth, mortgage broker license number, date of hire
26 and, if applicable, the date of termination of each person who
27 became or ceased to be an associate of the mortgage brokerage
28 business during the immediate preceding quarter. The
29 department shall prescribe, by rule, the procedures for filing
30 reports required by this subsection.

31

1 Section 17. Paragraph (a) of subsection (2) of section
2 494.0041, Florida Statutes, is amended, and paragraph (r) is
3 added to said subsection, to read:

4 494.0041 Administrative penalties and fines; license
5 violations.--

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

9 (a) Pleading nolo contendere to, or having been ~~Being~~
10 convicted or found guilty of, regardless of whether
11 adjudication is withheld, of a crime involving in any
12 ~~jurisdiction which involves~~ fraud, dishonest dealing, or any
13 ~~other~~ act of moral turpitude.

14 (r) Failure to timely pay any fee, charge, or fine
15 imposed or assessed pursuant to this chapter or rules adopted
16 under this chapter.

17 Section 18. Paragraph (b) of subsection (1) and
18 subsections (6) and (7) of section 494.0061, Florida Statutes,
19 are amended to read:

20 494.0061 Mortgage lender ~~lender's~~ license
21 requirements; mortgage lender branch office licenses.--

22 (1) The department may require each applicant for a
23 mortgage lender ~~lender's~~ license to provide any information
24 reasonably necessary to make a determination of the
25 applicant's eligibility for licensure. The department shall
26 issue an initial mortgage lender ~~lender's~~ license to any
27 person that submits:

28 (b) A nonrefundable fee of \$575 ~~set by rule of the~~
29 ~~department in an amount that may not exceed \$500;~~

30 (6) A mortgage lender or branch office license,
31 ~~permit, or registration~~ may be canceled if it was issued

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

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

21 Section 19. Subsections (1), (9), and (10) of section
22 494.0062, Florida Statutes, are amended to read:

23 494.0062 Correspondent mortgage lender ~~lender's~~
24 license requirements, correspondent mortgage lender branch
25 office licenses.--

26 (1) The department shall issue an initial
27 correspondent mortgage lender ~~lender's~~ license to any person
28 who submits:

29 (a) A completed application form;

30 (b) A nonrefundable fee of \$500 ~~set by rule of the~~
31 ~~department in an amount that may not exceed \$400;~~

1 (c) Audited financial statements, which document that
2 the application has a bona fide and verifiable net worth
3 pursuant to generally accepted accounting principles of
4 \$25,000 or more, which must be continuously maintained as a
5 condition of licensure;

6 (d) A surety bond in the amount of \$10,000, payable to
7 the State of Florida and conditioned upon compliance with ss.
8 494.001-494.0077, which inures to the department and which
9 must be continuously maintained, thereafter, in full force;
10 and

11 (e) Documentation that the applicant is duly
12 incorporated, registered, or otherwise formed as a general
13 partnership, limited partnership, limited liability company,
14 or other lawful entity under the laws of this state or another
15 state of the United States.

16 (9) A correspondent mortgage lender or branch office
17 ~~license, permit, or registration~~ may be canceled if it was
18 issued through mistake or inadvertence of the department. A
19 notice of cancellation must be issued by the department within
20 90 days after the issuance of the license. A notice of
21 cancellation shall be effective upon receipt. The notice of
22 cancellation shall provide the applicant with notification of
23 the right to request a hearing within 21 days after the
24 applicant's receipt of the notice of cancellation. A license,
25 ~~permit, or registration~~ shall be reinstated if the applicant
26 can demonstrate that the requirements for obtaining the
27 ~~license, permit, or registration~~ pursuant to this chapter ss.
28 ~~494.001-494.0077~~ have been satisfied.

29 (10) If an initial correspondent mortgage lender or
30 branch office ~~license, permit, or registration~~ has been issued
31 but the check upon which the ~~license, permit, or registration~~

1 is based is returned due to insufficient funds, the license,
2 ~~permit, or registration~~ shall be deemed canceled. A license,
3 ~~permit, or registration~~ deemed canceled pursuant to this
4 subsection shall be reinstated if the department receives a
5 certified check for the appropriate amount within 30 days
6 after the date the check was returned due to insufficient
7 funds.

8 Section 20. Subsections (1), (3), and (4) of section
9 494.0064, Florida Statutes, are amended to read:

10 494.0064 Renewal of mortgage lender or correspondent
11 mortgage lender ~~lender's~~ license; branch office license ~~permit~~
12 renewal.--

13 (1) The department shall renew a mortgage lender
14 ~~lender's~~ license ~~or correspondent lender's~~ license upon
15 receipt of a completed renewal form and the renewal fee of \$
16 575, ~~in an amount not exceeding \$500.~~ The department shall
17 renew a correspondent lender license upon receipt of a
18 completed renewal form and a renewal fee of \$475. Each
19 licensee shall pay at the time of renewal a fee of \$325 ~~that~~
20 ~~may not exceed \$250~~ for the renewal of each branch office
21 license ~~permit~~.

22 (3) The license of a mortgage lender, correspondent
23 mortgage lender, or branch office that is not renewed by the
24 end of the biennium prescribed by the department automatically
25 reverts to inactive status. An inactive license may be
26 reactivated within 6 months after becoming inactive by filing
27 a completed reactivation form with the department, payment of
28 the appropriate renewal fee, and payment of a reactivation fee
29 of \$100. A fee of \$100 shall be charged for late renewal.

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

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

3 494.0066 Mortgage lender and correspondent mortgage
4 lender branch offices.--

5 (1) A branch office license ~~permit~~ is required for
6 each branch office maintained by a licensee under ss.
7 494.006-494.0077.

8 (2) The department shall issue a branch office license
9 ~~permit~~ upon receipt of a completed application form as
10 prescribed by the department and an initial branch office
11 license permit fee of \$325 ~~set by rule of the department in an~~
12 ~~amount that may not exceed \$250.~~ The branch office
13 application must include the name and license number of the
14 licensee under ss. 494.006-494.0077, the name of the
15 licensee's employee in charge of the branch office, and the
16 address of the branch office. The branch office license
17 ~~permit~~ shall be issued in the name of the licensee under ss.
18 494.006-494.0077 and must be renewed in conjunction with the
19 license renewal.

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

22 494.0067 Requirements of licensees under ss.
23 494.006-494.0077.--

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

27 (2) Each licensee under ss. 494.006-494.0077 which
28 makes mortgage loans on real estate in this state shall
29 transact business from a principal place of business ~~in the~~
30 ~~state.~~ Each principal place of business and each branch
31

1 office shall be operated under the full charge, control, and
2 supervision of the licensee under ss. 494.006-494.0077.

3 (3) A license ~~or branch office permit~~ issued under ss.
4 494.006-494.0077 is not transferable or assignable.

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

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

13 494.0067 Requirements of licensees under ss.
14 494.006-494.0077.--

15 (10) On or before April 30, 2000, each mortgage lender
16 or correspondent mortgage lender shall file an initial report
17 stating the full legal name, residential address, social
18 security number, date of birth, mortgage broker license
19 number, date of hire, and, if applicable, date of termination
20 for each person who acted as a loan originator or an associate
21 of the mortgage lender or correspondent mortgage lender during
22 the immediate preceding quarter. Thereafter, a mortgage
23 lender or correspondent mortgage lender shall file a report
24 only if a person became or ceased to be a loan originator or
25 an associate of the mortgage lender or correspondent mortgage
26 lender during the immediate preceding quarter. Such report
27 shall be filed within 30 days after the last day of each
28 calendar quarter and shall contain the full legal name,
29 residential address, social security number, date of birth,
30 date of hire and, if applicable, the mortgage broker license
31 number and date of termination of each person who became or

1 ceased to be a loan originator or an associate of the mortgage
2 lender or correspondent mortgage lender during the immediate
3 preceding quarter. The department shall prescribe, by rule,
4 the procedures for filing reports required by this subsection.

5 Section 24. Paragraph (a) of subsection (2) and
6 subsections (3) and (4) of section 494.0072, Florida Statutes,
7 are amended, and paragraph (r) is added to subsection (2), to
8 read:

9 494.0072 Administrative penalties and fines; license
10 violations.--

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

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

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

22 (3) A mortgage lender or correspondent mortgage lender
23 is subject to the disciplinary actions specified ~~in subsection~~
24 ~~(1) for a violation of subsection (2) by~~ any officer,
25 director, or ultimate equitable owner of a 10-percent or
26 greater interest in the mortgage lender or correspondent
27 mortgage lender, associate, or employee of the mortgage lender
28 or correspondent mortgage lender violates any provision of
29 subsection (2) licensee.

30 (4) A natural person who is an associate of or
31 employed by a mortgage lender or correspondent mortgage lender

1 is subject to the disciplinary actions specified in subsection
2 (1) if such person violates any provision for a violation of
3 subsection (2) ~~regarding any action for which such person was~~
4 ~~involved.~~

5 Section 25. Section 494.0073, Florida Statutes, is
6 amended to read:

7 494.0073 Mortgage lender or correspondent mortgage
8 lender when acting as a mortgage brokerage business
9 ~~broker.~~--Sections 494.006-494.0077 do not prohibit a mortgage
10 lender or correspondent mortgage lender from acting as a
11 mortgage brokerage business broker. However, in mortgage
12 transactions in which a mortgage lender or correspondent
13 mortgage lender acts as a mortgage brokerage business broker,
14 the provisions of ss. 494.0038, 494.0042, and 494.0043(1),
15 (2), and (3) apply.

16 Section 26. Section 494.0037, Florida Statutes, is
17 repealed.

18 Section 27. Except as otherwise provided herein, this
19 act shall take effect October 1, 1999.

20

21 *****

22 HOUSE SUMMARY

23

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

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