

1 A bill to be entitled
2 An act relating to mortgages; amending s. 494.001, F.S.;
3 revising definitions; amending s. 494.0014, F.S.;
4 authorizing the Office of Financial Regulation to impose
5 fines; amending s. 494.0029, F.S.; authorizing the office
6 to take certain adverse actions on permits of certain
7 mortgage business schools; providing additional
8 requirements for such schools; amending s. 494.00295,
9 F.S.; providing an additional professional continuing
10 education requirement; authorizing the office to offer
11 professional continuing education programs; specifying
12 requirements for electronically transmitted and distance
13 education courses; amending s. 494.0033, F.S.; revising
14 mortgage broker license applicant requirements;
15 authorizing an additional fee for reviewing mortgage
16 broker's license tests; providing for review of the
17 testing process; amending s. 494.0038, F.S.; providing
18 additional disclosure requirements for mortgage brokerage
19 businesses; amending s. 494.004, F.S.; specifying an
20 additional notification requirement for mortgage broker
21 licensees; providing disclosure requirements; authorizing
22 a borrower to waive notification under certain
23 circumstances; providing waiver requirements; amending s.
24 494.0041, F.S.; specifying additional acts constituting
25 grounds for certain disciplinary actions; providing for
26 fines and penalties; amending s. 494.0064, F.S.; providing
27 additional requirements for renewals of mortgage lender's
28 licenses; amending s. 494.0067, F.S.; providing additional

29 requirements for mortgage lender licenses; providing
 30 disclosure and notification requirements; authorizing a
 31 borrower to waive notification under certain
 32 circumstances; providing waiver requirements; amending s.
 33 494.0072, F.S.; specifying additional acts constituting
 34 grounds for certain disciplinary actions; providing fines
 35 and penalties; amending s. 494.0073, F.S.; providing for
 36 application of certain provisions to mortgage brokerage
 37 businesses; providing for adoption of rules by the
 38 Financial Services Commission; creating s. 817.545, F.S.;
 39 providing a definition; specifying criteria for committing
 40 the offense of mortgage fraud; providing for venue with
 41 respect to the committed offense; providing a criminal
 42 penalty; providing an effective date.

43

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

45

46 Section 1. Subsection (2) of section 494.001, Florida
 47 Statutes, is amended, and subsections (32), (33), and (34) are
 48 added to that section, to read:

49 494.001 Definitions.--As used in ss. 494.001-494.0077, the
 50 term:

51 (2) "Act as a loan originator" means being employed by a
 52 mortgage lender or correspondent mortgage lender, for
 53 compensation or gain or in the expectation of compensation or
 54 gain, to negotiate, ~~or~~ offer to negotiate, or assist any
 55 licensed or exempt entity in negotiating the making of a
 56 mortgage loan, including, but not limited to, working with a

57 licensed or exempt entity to structure a loan or discussing
58 terms and conditions necessary for the delivery of a loan
59 product. A natural person whose activities are ministerial and
60 clerical, which may include quoting available interest rates or
61 loan terms and conditions, is not acting as a loan originator.

62 (32) "Mortgage loan application" means a submission of a
63 borrower's financial information in anticipation of a credit
64 decision, whether written or computer-generated, relating to a
65 mortgage loan. If the submission does not state or identify a
66 specific property, the submission is an application for a
67 prequalification and not an application for a mortgage loan
68 under this part. The subsequent addition of an identified
69 property to the submission converts the submission to an
70 application for a mortgage loan.

71 (33) "Mortgage brokerage fee" means the total compensation
72 to be received by a mortgage brokerage business for acting as a
73 mortgage broker.

74 (34) "Business day" means any calendar day except Sunday
75 or a legal holiday.

76 Section 2. Subsection (4) is added to section 494.0014,
77 Florida Statutes, to read:

78 494.0014 Cease and desist orders; administrative fines;
79 refund orders.--

80 (4) The office may impose upon any person who makes or
81 brokers a loan, or any mortgage business school, a fine for
82 violations of any provision of ss. 494.001-494.00295 or any rule
83 or order issued under ss. 494.001-494.00295 in an amount not
84 exceeding \$5,000 for each separate count or offense.

85 Section 3. Paragraph (f) is added to subsection (1), and
 86 paragraphs (g) and (h) are added to subsection (2) of section
 87 494.0029, Florida Statutes, to read:

88 494.0029 Mortgage business schools.--

89 (1)

90 (f) In addition to the remedies set forth in s. 494.0014,
 91 the office may revoke, suspend, or place on probation the permit
 92 of any mortgage business school that fails to meet the
 93 requirements of this section, subject to all reasonable
 94 conditions that the office specifies.

95 (2)

96 (g) A school permitted under this section must conduct
 97 classes on the basis of a 50-minute classroom hour in accordance
 98 with the requirements of this chapter and commission rules.

99 (h) Each school permitted under this section is
 100 responsible for developing procedures to confirm, and for
 101 actually confirming, the identity of each student attending any
 102 course offering.

103 Section 4. Section 494.00295, Florida Statutes, is amended
 104 to read:

105 494.00295 Professional continuing education.--

106 (1) Mortgage brokers, and the principal representatives
 107 and loan originators of a mortgage lender, correspondent
 108 mortgage lender, or mortgage lender pursuant to s. 494.0065,
 109 must successfully complete at least 14 hours of professional
 110 continuing education covering primary and subordinate mortgage
 111 financing transactions and the provisions of this chapter during
 112 the 2-year period immediately preceding the renewal deadline for

CS/CS/HB 1125

2007

113 a mortgage broker, mortgage lender, correspondent mortgage
114 lender, or mortgage lender pursuant to s. 494.0065. A minimum of
115 4 hours shall cover the provisions of this chapter and the rules
116 adopted under this chapter. At the time of license renewal, a
117 licensee must certify to the office that the professional
118 continuing education requirements of this section have been met.
119 Licensees shall maintain records documenting compliance with
120 this subsection for a period of 4 years. The requirements for
121 professional continuing education are waived for the license
122 renewal of a mortgage broker who has completed the 24-hour
123 prelicensing classroom education requirement of s. 494.0033(3)
124 within 90 days of ~~for~~ the biennial license period immediately
125 following the period in which the person became licensed as a
126 mortgage broker. The requirements for professional continuing
127 education for a principal representative are waived for the
128 license renewal of a mortgage lender, correspondent mortgage
129 lender, or mortgage lender pursuant to s. 494.0065 for the
130 biennial license period immediately following the period in
131 which the principal representative completed the 24 hours of
132 classroom education and passed a written test in order to
133 qualify to be a principal representative.

134 (2) Professional continuing education programs must
135 contribute directly to the professional competency of the
136 participants, may only be offered by permitted mortgage business
137 schools, the office, or entities specifically exempted from
138 permitting as mortgage business schools, and may include
139 electronically transmitted or distance education courses.

140 (3) (a) All electronically transmitted courses shall
141 require that the time spent attending electronically transmitted
142 professional education courses is equal to the number of
143 qualifying hours awarded to participants for course attendance.
144 Before allowing a course participant to complete a course and
145 receive a certificate of course completion, the course provider
146 shall ensure that the course participant has:

147 1. Logged the required number of hours for the particular
148 timed module.

149 2. Completed a test that comprehensively covers the course
150 content for the particular timed module.

151 3. Correctly answered all test questions for the
152 particular timed module.

153 (b) All distance education course participants shall
154 successfully complete a test that comprehensively covers course
155 content in order to receive a certificate of course completion.
156 Distance education providers shall not provide answers to test
157 questions to course participants and shall not issue a
158 certificate of course completion to any course participant who
159 has failed to correctly answer at least 75 percent of the total
160 test questions. The test must consist of at least 100 questions.

161 (4) ~~(3)~~ The commission shall adopt rules pursuant to ss.
162 120.536(1) and 120.54 necessary to administer this section,
163 including rules governing qualifying hours for professional
164 continuing education programs and standards for electronically
165 transmitted or distance education courses, including course
166 completion requirements.

167 Section 5. Paragraphs (a) and (b) of subsection (2) of
 168 section 494.0033, Florida Statutes, are amended to read:

169 494.0033 Mortgage broker's license.--

170 (2) Each initial application for a mortgage broker's
 171 license must be in the form prescribed by rule of the
 172 commission. The commission may require each applicant to provide
 173 any information reasonably necessary to make a determination of
 174 the applicant's eligibility for licensure. The office shall
 175 issue an initial license to any natural person who:

176 (a) Is at least 18 years of age and has a high school
 177 diploma or its equivalent.

178 (b) Has passed a written test adopted and administered by
 179 the office, or has passed an electronic test adopted and
 180 administered by the office or a third party approved by the
 181 office, which is designed to determine competency in primary and
 182 subordinate mortgage financing transactions as well as to test
 183 knowledge of ss. 494.001-494.0077 and the rules adopted pursuant
 184 thereto. The commission may prescribe by rule an additional fee
 185 that may not exceed \$100 for the electronic version of the
 186 mortgage broker test. The commission may waive by rule the
 187 examination requirement for any person who has passed a test
 188 approved by the Conference of State Bank Supervisors, the
 189 American Association of Residential Mortgage Regulators, or the
 190 United States Department of Housing and Urban Development if the
 191 test covers primary and subordinate mortgage financing
 192 transactions. The commission may adopt rules prescribing an
 193 additional fee that may not exceed \$50 for an applicant to
 194 review his or her completed and graded mortgage broker test. The

CS/CS/HB 1125

2007

195 commission may adopt rules regarding the administration of the
 196 testing process, including, but not limited to, procedures
 197 relating to pretest registration, test security, scoring,
 198 content, result notification, retest procedures and fees,
 199 postexamination review, and challenge provisions.

200
 201 The commission may require by rule information concerning any
 202 such applicant or person, including, but not limited to, his or
 203 her full name and any other names by which he or she may have
 204 been known, age, social security number, qualifications and
 205 educational and business history, and disciplinary and criminal
 206 history.

207 Section 6. Section 494.0038, Florida Statutes, is amended
 208 to read:

209 494.0038 Mortgage broker disclosures.--

210 (1) (a) 1. A person may not receive a mortgage brokerage fee
 211 ~~for acting as a mortgage brokerage business~~ except pursuant to a
 212 written mortgage brokerage agreement between the mortgage
 213 brokerage business and the borrower that is signed and dated by
 214 the business and the borrower.

215 2. The written mortgage brokerage agreement must describe
 216 the services to be provided by the mortgage brokerage business
 217 and specify the amount and terms of the mortgage brokerage fee
 218 that the mortgage brokerage business is to receive. The written
 219 mortgage brokerage agreement must be executed within 3 business
 220 days after a mortgage loan application is accepted if the
 221 borrower is present when the application is accepted. If the
 222 borrower is not present when the is application accepted, the

223 licensee shall forward the written mortgage brokerage agreement
224 to the borrower within 3 business days after the licensee's
225 acceptance of the application, and the licensee bears the burden
226 of proving that the borrower received and approved the written
227 mortgage brokerage agreement.

228 (b)1. If the mortgage brokerage business is to receive any
229 payment of any kind from the lender, the maximum total dollar
230 amount of the payment must be disclosed to the borrower in the
231 written mortgage brokerage agreement as described in paragraph
232 (a). The commission may prescribe by rule an acceptable form for
233 disclosure of brokerage fees received from the lender. The
234 mortgage brokerage agreement must state the nature of the
235 relationship with the lender, describe how compensation is paid
236 by the lender, and describe how the mortgage interest rate
237 affects the compensation paid to the mortgage brokerage
238 business. ~~If any of the rates, points, fees, and other terms~~
239 ~~quoted by or on behalf of the lender are to be received by the~~
240 ~~mortgage brokerage business, such fact shall be specifically~~
241 ~~disclosed to the borrower.~~

242 2. The exact amount of any payment of any kind by the
243 lender to the mortgage brokerage business must be disclosed in
244 writing to the borrower within 3 business days after the
245 mortgage brokerage business is made aware of the exact amount of
246 the payment from the lender but no later than 3 business days
247 prior to the execution of the closing or settlement statement.
248 The licensee bears the burden of proving such notification was
249 provided to the borrower. ~~If the mortgage brokerage fee is for~~
250 ~~brokering a loan for a particular program under which the~~

251 ~~brokerage fee varies according to the terms of the loan, the~~
252 ~~brokerage fee may be disclosed as a range of fees at the time of~~
253 ~~application. The mortgage broker shall, in such instance,~~
254 ~~disclose the nature of the fee arrangement to the borrower, and~~
255 ~~the exact amount of the fee must be disclosed at settlement or~~
256 ~~closing.~~

257 (c) The commission may prescribe by rule the form of
258 disclosure of brokerage fees.

259 (2) At the time a written mortgage brokerage agreement is
260 executed by the borrower or forwarded to the borrower for
261 execution, or at the time the mortgage brokerage business
262 accepts an application fee, credit report fee, property
263 appraisal fee, or any other third-party fee, but not fewer than
264 3 business days prior to execution of the closing or settlement
265 statement, the mortgage brokerage business shall disclose in
266 writing to any applicant for a mortgage loan the following
267 information:

268 (a) That such mortgage brokerage business may not make
269 mortgage loans or commitments. The mortgage brokerage business
270 may make a commitment and may furnish a lock-in of the rate and
271 program on behalf of the lender when the mortgage brokerage
272 business has obtained a written commitment or lock-in for the
273 loan from the lender on behalf of the borrower for the loan. The
274 commitment must be in the same form and substance as issued by
275 the lender.

276 (b) That such mortgage brokerage business cannot guarantee
277 acceptance into any particular loan program or promise any
278 specific loan terms or conditions.

279 (c) A good faith estimate, signed and dated by the
280 borrower, that discloses of the total amount of each of the fees
281 that the borrower may reasonably expect to pay if the loan is
282 closed, including, but not limited to, fees earned by the
283 mortgage brokerage business, lender fees, third-party fees, and
284 official fees, together with ~~credit report fee, property~~
285 ~~appraisal fee, or any other third party fee~~ and the terms and
286 conditions for obtaining a refund of such fees, if any. Any
287 amount collected in excess of the actual cost shall be returned
288 within 60 days after rejection, withdrawal, or closing. The good
289 faith estimate must identify the recipient of all payments
290 charged the borrower and, except for all fees to be received by
291 the mortgage brokerage business, may be disclosed in generic
292 terms, such as, but not limited to, paid to lender, appraiser,
293 officials, title company, or any other third-party service
294 provider. This requirement does not supplant or is not a
295 substitute for the written mortgage brokerage agreement
296 described in subsection (1).

297 (3) The disclosures required by this subsection must be
298 furnished in writing at the time an adjustable rate mortgage
299 loan is offered to the borrower and whenever the terms of the
300 adjustable rate mortgage loan offered materially change prior to
301 closing. The broker shall furnish the disclosures relating to
302 adjustable rate mortgages in a format prescribed by ss. 226.18
303 and 226.19 of Regulation Z of the Board of Governors of the
304 Federal Reserve System, as amended, its commentary, as amended,
305 and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et
306 seq., as amended, together with the Consumer Handbook on

307 Adjustable Rate Mortgages, as amended, published by the Federal
308 Reserve Board and the Federal Home Loan Bank Board. The licensee
309 bears the burden of proving such disclosures were provided to
310 the borrower.

311 (4)~~(3)~~ If the mortgage brokerage agreement includes a
312 nonrefundable application fee, the following requirements are
313 applicable:

314 (a) The amount of the application fee, which must be
315 clearly denominated as such, shall be clearly disclosed.

316 (b) The specific services that will be performed in
317 consideration for the application fee shall be disclosed.

318 (c) The application fee must be reasonably related to the
319 services to be performed and may not be based upon a percentage
320 of the principal amount of the loan or the amount financed.

321 (5)~~(4)~~ A mortgage brokerage business may not accept any
322 fee in connection with a mortgage loan other than an application
323 fee, credit report fee, property appraisal fee, or other third-
324 party fee prior to obtaining a written commitment from a
325 qualified lender.

326 (6)~~(5)~~ Any third-party fee entrusted to a mortgage
327 brokerage business shall immediately, upon receipt, be placed
328 into a segregated account with a financial institution located
329 in the state the accounts of which are insured by the Federal
330 Government. Such funds shall be held in trust for the payor and
331 shall be kept in the account until disbursement. Such funds may
332 be placed in one account if adequate accounting measures are
333 taken to identify the source of the funds.

334 ~~(7)(6)~~ All mortgage brokerage fees shall be paid to a
 335 mortgage brokerage business licensee.

336 ~~(8)(7)~~ This section does not prohibit a mortgage brokerage
 337 business from offering products and services, in addition to
 338 those offered in conjunction with the loan origination process,
 339 for a fee or commission.

340 Section 7. Subsection (8) is added to section 494.004,
 341 Florida Statutes, to read:

342 494.004 Requirements of licensees.--

343 (8) (a) In every mortgage loan transaction, each licensee
 344 under ss. 494.003-494.0043 shall notify a borrower of any
 345 material changes in the terms of a mortgage loan previously
 346 offered to the borrower within 3 business days after being made
 347 aware of such changes by the lender but not less than 3 business
 348 days before the signing of the settlement or closing statement.
 349 The licensee bears the burden of proving such notification was
 350 provided and accepted by the borrower.

351 (b) A borrower may waive the right to receive notice of a
 352 material change that is granted under paragraph (a) if the
 353 borrower determines that the extension of credit is needed to
 354 meet a bona fide personal financial emergency and the right to
 355 receive notice would delay the closing of the mortgage loan. The
 356 imminent sale of the borrower's home at foreclosure during the
 357 3-day period before the signing of the settlement or closing
 358 statement constitutes an example of a bona fide personal
 359 financial emergency. In order to waive the borrower's right to
 360 receive notice not less than 3 business days before the signing
 361 of the settlement or closing statement of any such material

362 change, the borrower must provide the licensee with a dated
 363 written statement that describes the personal financial
 364 emergency, waives the right to receive the notice, bears the
 365 borrower's signature, and is not on a printed form prepared by
 366 the licensee for the purpose of such a waiver.

367 Section 8. Paragraph (v) is added to subsection (2) of
 368 section 494.0041, Florida Statutes, to read:

369 494.0041 Administrative penalties and fines; license
 370 violations.--

371 (1) Whenever the office finds a person in violation of an
 372 act specified in subsection (2), it may enter an order imposing
 373 one or more of the following penalties against the person:

374 (a) Revocation of a license or registration.

375 (b) Suspension of a license or registration subject to
 376 reinstatement upon satisfying all reasonable conditions that the
 377 office specifies.

378 (c) Placement of the licensee, registrant, or applicant on
 379 probation for a period of time and subject to all reasonable
 380 conditions that the office specifies.

381 (d) Issuance of a reprimand.

382 (e) Imposition of a fine in an amount not exceeding \$5,000
 383 for each count or separate offense.

384 (f) Denial of a license or registration.

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

388 (v) In any mortgage transaction, violating any provision
 389 of the federal Real Estate Settlement Procedure Act, as amended,

CS/CS/HB 1125

2007

390 12 U.S.C. ss. 2601 et seq., the federal Truth In Lending Act, as
391 amended, 15 U.S.C. ss. 1601 et seq., or any regulations adopted
392 under such acts.

393 Section 9. Subsection (1) of section 494.0064, Florida
394 Statutes, is amended to read:

395 494.0064 Renewal of mortgage lender's license; branch
396 office license renewal.--

397 ~~(1)(a)~~ The office shall renew a mortgage lender license
398 upon receipt of a completed renewal form, certification from the
399 licensee that the licensee currently meets the minimum net worth
400 requirements of s. 494.0061 or s. 494.0065, certification from
401 the licensee that during the preceding 2 years the licensee's
402 principal representative and loan originators have completed the
403 professional continuing education requirements of s. 494.00295,
404 and the nonrefundable renewal fee of \$575. The office shall
405 renew a correspondent lender license upon receipt of a completed
406 renewal form, certification from the licensee that the licensee
407 currently meets the minimum net worth requirements of s.
408 494.0062, certification from the licensee that during the
409 preceding 2 years the licensee's principal representative and
410 loan originators have completed the professional continuing
411 education requirements of s. 494.00295, and a nonrefundable
412 renewal fee of \$475. Each licensee shall pay at the time of
413 renewal a nonrefundable fee of \$325 for the renewal of each
414 branch office license.

415 ~~(b) A licensee shall also submit, as part of the renewal~~
416 ~~form, certification that during the preceding 2 years the~~
417 ~~licensee's principal representative and loan originators have~~

418 ~~completed the professional continuing education requirements of~~
419 ~~s. 494.00295.~~

420 Section 10. Subsection (8) and paragraph (a) of subsection
421 (10) of section 494.0067, Florida Statutes, are amended, and
422 subsections (11) and (12) are added to that section, to read:

423 494.0067 Requirements of licensees under ss. 494.006-
424 494.0077.--

425 (8) Each licensee under ss. 494.006-494.0077 shall provide
426 an applicant for a mortgage loan a good faith estimate of the
427 costs the applicant can reasonably expect to pay in obtaining a
428 mortgage loan. The good faith estimate of costs shall be mailed
429 or delivered to the applicant within a reasonable time after the
430 licensee receives a written loan application from the applicant.
431 The estimate of costs may be provided to the applicant by a
432 person other than the licensee making the loan. The good faith
433 estimate must identify the recipient of all payments charged to
434 the borrower and, except for all fees to be received by the
435 mortgage brokerage business and the mortgage lender or
436 correspondent mortgage lender, may be disclosed in generic
437 terms, such as, but not limited to, paid to appraiser,
438 officials, title company, or any other third-party service
439 provider. The licensee bears the burden of proving such
440 disclosures were provided to the borrower. The commission may
441 adopt rules that set forth the disclosure requirements of this
442 section.

443 (10) (a) Each mortgage lender or correspondent mortgage
444 lender licensee shall require the principal representative and
445 all loan originators, not currently licensed as mortgage brokers

446 pursuant to s. 494.0033, who perform services for the licensee
447 to complete 14 hours of professional continuing education during
448 each biennial license period. The education shall cover primary
449 and subordinate mortgage financing transactions and the
450 provisions of this chapter and the rules adopted under this
451 chapter.

452 (11) The disclosures in this subsection must be furnished
453 in writing at the time an adjustable rate mortgage loan is
454 offered to the borrower and whenever the terms of the adjustable
455 rate mortgage loan offered have a material change prior to
456 closing. The lender shall furnish the disclosures relating to
457 adjustable rate mortgages in a format prescribed by ss. 226.18
458 and 226.19 of Regulation Z of the Board of Governors of the
459 Federal Reserve System, as amended, its commentary, as amended,
460 and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et
461 seq., as amended, together with the Consumer Handbook on
462 Adjustable Rate Mortgages, as amended, published by the Federal
463 Reserve Board and the Federal Home Loan Bank Board. The licensee
464 bears the burden of proving such disclosures were provided to
465 the borrower.

466 (12) (a) In every mortgage loan transaction, each licensee
467 under ss. 494.006-494.0077 shall notify a borrower of any
468 material changes in the terms of a mortgage loan previously
469 offered to the borrower within 3 business days after being made
470 aware of such changes by the lender but not less than 3 business
471 days before the signing of the settlement or closing statement.
472 The licensee bears the burden of proving such notification was
473 provided and accepted by the borrower.

474 (b) A borrower may waive the right to receive notice of a
475 material change that is granted under paragraph (a) if the
476 borrower determines that the extension of credit is needed to
477 meet a bona fide personal financial emergency and the right to
478 receive notice would delay the closing of the mortgage loan. The
479 imminent sale of the borrower's home at foreclosure during the
480 3-day period before the signing of the settlement or closing
481 statement constitutes an example of a bona fide personal
482 financial emergency. In order to waive the borrower's right to
483 receive notice not less than 3 business days before the signing
484 of the settlement or closing statement of any such material
485 change, the borrower must provide the licensee with a dated
486 written statement that describes the personal financial
487 emergency, waives the right to receive the notice, bears the
488 borrower's signature, and is not on a printed form prepared by
489 the licensee for the purpose of such a waiver.

490 Section 11. Paragraph (v) is added to subsection (2) of
491 section 494.0072, Florida Statutes, subsection (3) of that
492 section is amended, and subsection (5) is added to that section,
493 to read:

494 494.0072 Administrative penalties and fines; license
495 violations.--

496 (1) Whenever the office finds a person in violation of an
497 act specified in subsection (2), it may enter an order imposing
498 one or more of the following penalties against that person:

499 (a) Revocation of a license or registration.

500 (b) Suspension of a license or registration, subject to
 501 reinstatement upon satisfying all reasonable conditions that the
 502 office specifies.

503 (c) Placement of the licensee or applicant on probation
 504 for a period of time and subject to all reasonable conditions
 505 that the office specifies.

506 (d) Issuance of a reprimand.

507 (e) Imposition of a fine in an amount not exceeding \$5,000
 508 for each count or separate offense.

509 (f) Denial of a license or registration.

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

513 (v) In any mortgage transaction, violating any provision
 514 of the federal Real Estate Settlement Procedure Act, as amended,
 515 12 U.S.C. ss. 2601 et seq., the federal Truth In Lending Act, as
 516 amended, 15 U.S.C. ss. 1601 et seq., or any regulations adopted
 517 under such acts.

518 (3) A mortgage lender or correspondent mortgage lender is
 519 subject to the disciplinary actions specified in subsection (1)
 520 if any officer, member, director, control person, joint
 521 venturer, or ultimate equitable owner of a 10-percent or greater
 522 interest in the mortgage lender or correspondent mortgage
 523 lender, associate, or employee of the mortgage lender or
 524 correspondent mortgage lender violates or has violated any
 525 provision of subsection (2).

526 (5) A principal representative of a mortgage lender or
 527 correspondent mortgage lender is subject to the disciplinary

CS/CS/HB 1125

2007

528 actions specified in subsection (1) for violations of subsection
 529 (2) by associates or employees in the course of an association
 530 or employment with the correspondent mortgage lender or the
 531 mortgage lender. The principal representative is only subject to
 532 suspension or revocation for associate or employee actions if
 533 there is a pattern of repeated violations by associates or
 534 employees or if the principal broker or principal representative
 535 had knowledge of the violations.

536 Section 12. Section 494.0073, Florida Statutes, is amended
 537 to read:

538 494.0073 Mortgage lender or correspondent mortgage lender
 539 when acting as a mortgage brokerage business.--Sections 494.006-
 540 494.0077 do not prohibit a mortgage lender or correspondent
 541 mortgage lender from acting as a mortgage brokerage business.
 542 However, in mortgage transactions in which a mortgage lender or
 543 correspondent mortgage lender acts as a mortgage brokerage
 544 business, the provisions of ss. 494.0038, 494.0042, 494.004(8),
 545 and 494.0043(1), (2), and (3) apply.

546 Section 13. Section 817.545, Florida Statutes, is created
 547 to read:

548 817.545 Mortgage fraud.--

549 (1) For purposes of this section, the term "mortgage
 550 lending process" means the process through which a person seeks
 551 or obtains a residential mortgage loan, including, but not
 552 limited to, solicitation, application or origination,
 553 negotiation of terms, third-party provider services,
 554 underwriting, signing and closing, and funding of the loan.
 555 Documents involved in the mortgage lending process include, but

556 are not limited to, mortgages, deeds, surveys, inspection
557 reports, uniform residential loan applications, or other loan
558 applications; appraisal reports; HUD-1 settlement statements;
559 supporting personal documentation for loan applications such as
560 W-2 forms, verifications of income and employment, credit
561 reports, bank statements, tax returns, and payroll stubs; and
562 any required disclosures.

563 (2) A person commits the offense of mortgage fraud if,
564 with the intent to defraud, the person knowingly:

565 (a) Makes any material misstatement, misrepresentation, or
566 omission during the mortgage lending process with the intention
567 that the misstatement, misrepresentation, or omission will be
568 relied on by a mortgage lender, borrower, or any other person or
569 entity involved in the mortgage lending process, provided that
570 omissions on a loan application regarding employment, income, or
571 assets for a loan that does not require this information shall
572 not be a material omission for purposes of this paragraph.

573 (b) Uses or facilitates the use of any material
574 misstatement, misrepresentation, or omission during the mortgage
575 lending process with the intention that the material
576 misstatement, misrepresentation, or omission will be relied on
577 by a mortgage lender, borrower, or any other person or entity
578 involved in the mortgage lending process, provided that
579 omissions on a loan application regarding employment, income, or
580 assets for a loan that does not require this information shall
581 not be a material omission for purposes of this paragraph.

582 (c) Receives any proceeds or any other funds in connection
583 with the mortgage lending process that the person knew resulted

584 from a violation of paragraph (a) or paragraph (b).

585 (d) Files or causes to be filed with the clerk of the
 586 circuit court for any county of this state a mortgage lending
 587 process document that contains a material misstatement,
 588 misrepresentation, or omission.

589 (3) An offense of mortgage fraud shall not be predicated
 590 solely upon information lawfully disclosed under federal
 591 disclosure laws, regulations, or interpretations related to the
 592 mortgage lending process.

593 (4) For the purpose of venue under this section, any
 594 violation of this section shall be considered to have been
 595 committed:

596 (a) In the county in which the real property is located;
 597 or

598 (b) In any county in which a material act was performed in
 599 furtherance of the violation.

600 (5) Any person who violates subsection (2) commits a
 601 felony of the third degree, punishable as provided in s.
 602 775.082, s. 775.083, or s. 775.084.

603 Section 14. This act shall take effect October 1, 2007.