

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

1 F.S.; providing additional requirements for
2 renewals of mortgage lender's licenses;
3 amending s. 494.0067, F.S.; providing
4 additional requirements for mortgage lender
5 licensees; providing disclosure and
6 notification requirements; authorizing a
7 borrower to waive notification under certain
8 circumstances; providing waiver requirements;
9 amending s. 494.0072, F.S.; specifying
10 additional acts constituting grounds for
11 certain disciplinary actions; providing fines
12 and penalties; amending s. 494.0073, F.S.;
13 providing for application of certain provisions
14 to mortgage brokerage businesses; providing for
15 adoption of rules by the Financial Services
16 Commission; creating s. 817.545, F.S.; defining
17 the term "mortgage lending process"; specifying
18 the elements of the offense of mortgage fraud;
19 providing for venue with respect to the
20 committed offense; providing that a person who
21 commits the offense of mortgage fraud commits a
22 felony of the third degree; providing criminal
23 penalties; providing an effective date.

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

26
27 Section 1. Subsection (2) of section 494.001, Florida
28 Statutes, is amended, and subsections (32), (33), and (34) are
29 added to that section, to read:

30 494.001 Definitions.--As used in ss. 494.001-494.0077,
31 the term:

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, or assist any
5 licensed or exempt entity in negotiating the making of a
6 mortgage loan, including, but not limited to, working with a
7 licensed or exempt entity to structure a loan or discussing
8 terms and conditions necessary for the delivery of a loan
9 product. A natural person whose activities are ministerial and
10 clerical, which may include quoting available interest rates
11 ~~or loan terms and conditions~~, is not acting as a loan
12 originator.

13 (32) "Mortgage loan application" means a submission of
14 a borrower's financial information in anticipation of a credit
15 decision, whether written or computer-generated, relating to a
16 mortgage loan. If the submission does not state or identify a
17 specific property, the submission is an application for a
18 prequalification and not an application for a mortgage loan
19 under this part. The subsequent addition of an identified
20 property to the submission converts the submission to an
21 application for a mortgage loan.

22 (33) "Mortgage brokerage fee" means the total
23 compensation to be received by a mortgage brokerage business
24 for acting as a mortgage broker.

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

27 Section 2. Section 494.0014, Florida Statutes, is
28 amended to read:

29 494.0014 Cease and desist orders; administrative
30 fines; refund orders.--

31

1 (1) The office has the power to issue and serve upon
2 any person an order to cease and desist and to take corrective
3 action whenever it has reason to believe the person is
4 violating, has violated, or is about to violate any provision
5 of ss. 494.001-494.0077, any rule or order issued under ss.
6 494.001-494.0077, or any written agreement between the person
7 and the office. All procedural matters relating to issuance
8 and enforcement of such a cease and desist order are governed
9 by the Administrative Procedure Act.

10 (2) The office has the power to order the refund of
11 any fee directly or indirectly assessed and charged on a
12 mortgage loan transaction which is unauthorized or exceeds the
13 maximum fee specifically authorized in ss. 494.001-494.0077.

14 (3) The office may prohibit the association by a
15 mortgage broker business, or the employment by a mortgage
16 lender or correspondent mortgage lender, of any person who has
17 engaged in a pattern of misconduct while an associate of a
18 mortgage brokerage business or an employee of a mortgage
19 lender or correspondent mortgage lender. For the purpose of
20 this subsection, the term "pattern of misconduct" means the
21 commission of three or more violations of ss. 494.001-494.0077
22 or the provisions of chapter 494 in effect prior to October 1,
23 1991, during any 1-year period or any criminal conviction for
24 violating ss. 494.001-494.0077 or the provisions of chapter
25 494 in effect prior to October 1, 1991.

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

31

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

4 494.0029 Mortgage business schools.--

5 (1)

6 (f) In addition to the remedies set forth in s.
7 494.0014, the office may revoke, suspend, or place on
8 probation the permit of any mortgage business school that
9 fails to meet the requirements of this section, subject to all
10 reasonable conditions that the office specifies.

11 (2)

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

16 (h) Each school permitted under this section is
17 responsible for developing procedures to confirm, and for
18 actually confirming, the identity of each student attending
19 any course offering.

20 Section 4. Section 494.00295, Florida Statutes, is
21 amended to read:

22 494.00295 Professional continuing education.--

23 (1) Mortgage brokers, and the principal

24 representatives and loan originators of a mortgage lender,
25 correspondent mortgage lender, or mortgage lender pursuant to
26 s. 494.0065, must successfully complete at least 14 hours of
27 professional continuing education covering primary and
28 subordinate mortgage financing transactions and the provisions
29 of this chapter during the 2-year period immediately preceding
30 the renewal deadline for a mortgage broker, mortgage lender,
31 correspondent mortgage lender, or mortgage lender pursuant to

1 s. 494.0065. A minimum of 4 hours shall cover the provisions
2 of this chapter and the rules adopted under this chapter. At
3 the time of license renewal, a licensee must certify to the
4 office that the professional continuing education requirements
5 of this section have been met. Licensees shall maintain
6 records documenting compliance with this subsection for a
7 period of 4 years. The requirements for professional
8 continuing education are waived for the license renewal of a
9 mortgage broker who has completed the 24-hour prelicensing
10 classroom education requirement of s. 494.0033(3) within 90
11 days of ~~for~~ the biennial license period immediately following
12 the period in which the person became licensed as a mortgage
13 broker. The requirements for professional continuing education
14 for a principal representative are waived for the license
15 renewal of a mortgage lender, correspondent mortgage lender,
16 or mortgage lender pursuant to s. 494.0065 for the biennial
17 license period immediately following the period in which the
18 principal representative completed the 24 hours of classroom
19 education and passed a written test in order to qualify to be
20 a principal representative.

21 (2) Professional continuing education programs must
22 contribute directly to the professional competency of the
23 participants, may only be offered by permitted mortgage
24 business schools, the office, or entities specifically
25 exempted from permitting as mortgage business schools, and may
26 include electronically transmitted or distance education
27 courses.

28 (3)(a) All electronically transmitted courses shall
29 require that the time spent attending electronically
30 transmitted professional education courses is equal to the
31 number of qualifying hours awarded to participants for course

1 attendance. Before allowing a course participant to complete a
2 course and receive a certificate of course completion, the
3 course provider shall ensure that the course participant has:

4 1. Logged the required number of hours for the
5 particular timed module.

6 2. Completed a test that comprehensively covers the
7 course content for the particular timed module.

8 3. Correctly answered all test questions for the
9 particular timed module.

10 (b) All distance education course participants shall
11 successfully complete a test that comprehensively covers
12 course content in order to receive a certificate of course
13 completion. Distance education providers shall not provide
14 answers to test questions to course participants and shall not
15 issue a certificate of course completion to any course
16 participant who has failed to correctly answer at least 75
17 percent of the total test questions. The test must consist of
18 at least 100 questions.

19 (4)(3) The commission shall adopt rules pursuant to
20 ss. 120.536(1) and 120.54 necessary to administer this
21 section, including rules governing qualifying hours for
22 professional continuing education programs and standards for
23 electronically transmitted or distance education courses,
24 including course completion requirements.

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

27 494.0033 Mortgage broker's license.--

28 (2) Each initial application for a mortgage broker's
29 license must be in the form prescribed by rule of the
30 commission. The commission may require each applicant to
31 provide any information reasonably necessary to make a

1 determination of the applicant's eligibility for licensure.

2 The office shall issue an initial license to any natural
3 person who:

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

6 (b) Has passed a written test adopted and administered
7 by the office, or has passed an electronic test adopted and
8 administered by the office or a third party approved by the
9 office, which is designed to determine competency in primary
10 and subordinate mortgage financing transactions as well as to
11 test knowledge of ss. 494.001-494.0077 and the rules adopted
12 pursuant thereto. The commission may prescribe by rule an
13 additional fee that may not exceed \$100 for the electronic
14 version of the mortgage broker test. The commission may waive
15 by rule the examination requirement for any person who has
16 passed a test approved by the Conference of State Bank
17 Supervisors, the American Association of Residential Mortgage
18 Regulators, or the United States Department of Housing and
19 Urban Development if the test covers primary and subordinate
20 mortgage financing transactions. The commission may adopt
21 rules prescribing an additional fee that may not exceed \$50
22 for an applicant to review his or her completed and graded
23 mortgage broker test. The commission may adopt rules regarding
24 the administration of the testing process, including, but not
25 limited to, procedures relating to pretest registration, test
26 security, scoring, content, result notification, retest
27 procedures and fees, postexamination review, and challenge
28 provisions.

29
30 The commission may require by rule information concerning any
31 such applicant or person, including, but not limited to, his

1 or her full name and any other names by which he or she may
2 have been known, age, social security number, qualifications
3 and educational and business history, and disciplinary and
4 criminal history.

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

7 494.0038 Mortgage broker disclosures.--

8 (1)(a)1. A person may not receive a mortgage brokerage
9 fee for acting as a mortgage brokerage business except
10 pursuant to a written mortgage brokerage agreement between the
11 mortgage brokerage business and the borrower which is signed
12 and dated by the business and the borrower.

13 2. The written mortgage brokerage agreement must
14 describe the services to be provided by the mortgage brokerage
15 business and specify the amount and terms of the mortgage
16 brokerage fee that the mortgage brokerage business is to
17 receive. The written mortgage brokerage agreement must be
18 executed within 3 business days after a mortgage loan
19 application is accepted if the borrower is present when the
20 application is accepted. If the borrower is not present when
21 such an application is accepted, the licensee shall forward
22 the written mortgage brokerage agreement to the borrower
23 within 3 business days after the licensee's acceptance of the
24 application and the licensee bears the burden of proving that
25 the borrower received and approved the written mortgage
26 brokerage agreement.

27 (b)1. If the mortgage brokerage business is to receive
28 any payment of any kind from the lender, the maximum total
29 dollar amount of the payment must be disclosed to the borrower
30 in the written mortgage brokerage agreement as described in
31 paragraph (a). The commission may prescribe by rule an

1 acceptable form for disclosure of brokerage fees received from
2 the lender. The mortgage brokerage agreement must state the
3 nature of the relationship with the lender, describe how
4 compensation is paid by the lender, and describe how the
5 mortgage interest rate affects the compensation paid to the
6 mortgage brokerage business. ~~If any of the rates, points,~~
7 ~~fees, and other terms quoted by or on behalf of the lender are~~
8 ~~to be received by the mortgage brokerage business, such fact~~
9 ~~shall be specifically disclosed to the borrower.~~

10 2. The exact amount of any payment of any kind by the
11 lender to the mortgage brokerage business must be disclosed in
12 writing to the borrower within 3 business days after the
13 mortgage brokerage business is made aware of the exact amount
14 of the payment from the lender but not less than 3 business
15 days before the execution of the closing or settlement
16 statement. The licensee bears the burden of proving such
17 notification was provided to the borrower. ~~If the mortgage~~
18 ~~brokerage fee is for brokering a loan for a particular program~~
19 ~~under which the brokerage fee varies according to the terms of~~
20 ~~the loan, the brokerage fee may be disclosed as a range of~~
21 ~~fees at the time of application. The mortgage broker shall, in~~
22 ~~such instance, disclose the nature of the fee arrangement to~~
23 ~~the borrower, and the exact amount of the fee must be~~
24 ~~disclosed at settlement or closing.~~

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

27 (2) At the time a written mortgage brokerage agreement
28 is executed by the borrower or forwarded to the borrower for
29 execution, or at the time the mortgage brokerage business
30 accepts an application fee, credit report fee, property
31 appraisal fee, or any other third-party fee, but not less than

1 3 business days before execution of the closing or settlement
2 statement, the mortgage brokerage business shall disclose in
3 writing to any applicant for a mortgage loan the following
4 information:

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

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

16 (c) A good faith estimate, signed and dated by the
17 borrower, which discloses of the total amount of each of the
18 fees which the borrower may reasonably expect to pay if the
19 loan is closed, including, but not limited to, fees earned by
20 the mortgage brokerage business, lender fees, third-party
21 fees, and official fees, together with ~~credit report fee,~~
22 ~~property appraisal fee, or any other third party fee~~ and the
23 terms and conditions for obtaining a refund of such fees, if
24 any. Any amount collected in excess of the actual cost shall
25 be returned within 60 days after rejection, withdrawal, or
26 closing. The good faith estimate must identify the recipient
27 of all payments charged the borrower and, except for all fees
28 to be received by the mortgage brokerage business, may be
29 disclosed in generic terms, such as, but not limited to, paid
30 to lender, appraiser, officials, title company, or any other
31 third-party service provider. This requirement does not

1 supplant or is not a substitute for the written mortgage
2 brokerage agreement described in subsection (1).

3 (3) The disclosures required by this subsection must
4 be furnished in writing at the time an adjustable rate
5 mortgage loan is offered to the borrower and whenever the
6 terms of the adjustable rate mortgage loan offered materially
7 change prior to closing. The broker shall furnish the
8 disclosures relating to adjustable rate mortgages in a format
9 prescribed by ss. 226.18 and 226.19 of Regulation Z of the
10 Board of Governors of the Federal Reserve System, as amended,
11 its commentary, as amended, and the federal Truth in Lending
12 Act, 15 U.S.C. ss. 1601 et seq., as amended, together with the
13 Consumer Handbook on Adjustable Rate Mortgages, as amended,
14 published by the Federal Reserve Board and the Federal Home
15 Loan Bank Board. The licensee bears the burden of proving such
16 disclosures were provided to the borrower.

17 (4)(3) If the mortgage brokerage agreement includes a
18 nonrefundable application fee, the following requirements are
19 applicable:

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

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

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

28 (5)(4) A mortgage brokerage business may not accept
29 any fee in connection with a mortgage loan other than an
30 application fee, credit report fee, property appraisal fee, or
31

1 other third-party fee prior to obtaining a written commitment
2 from a qualified lender.

3 ~~(6)(5)~~ Any third-party fee entrusted to a mortgage
4 brokerage business shall immediately, upon receipt, be placed
5 into a segregated account with a financial institution located
6 in the state the accounts of which are insured by the Federal
7 Government. Such funds shall be held in trust for the payor
8 and shall be kept in the account until disbursement. Such
9 funds may be placed in one account if adequate accounting
10 measures are taken to identify the source of the funds.

11 ~~(7)(6)~~ All mortgage brokerage fees shall be paid to a
12 mortgage brokerage business licensee.

13 ~~(8)(7)~~ This section does not prohibit a mortgage
14 brokerage business from offering products and services, in
15 addition to those offered in conjunction with the loan
16 origination process, for a fee or commission.

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

19 494.004 Requirements of licensees.--

20 (8)(a) In every mortgage loan transaction, each
21 licensee under ss. 494.003-494.0043 shall notify a borrower of
22 any material changes in the terms of a mortgage loan
23 previously offered to the borrower within 3 business days
24 after being made aware of such changes by the lender but not
25 less than 3 business days before the signing of the settlement
26 or closing statement. The licensee bears the burden of proving
27 such notification was provided and accepted by the borrower.

28 (b) A borrower may waive the right to receive notice
29 of a material change that is granted under paragraph (a) if
30 the borrower determines that the extension of credit is needed
31 to meet a bona fide personal financial emergency and the right

1 to receive notice would delay the closing of the mortgage
2 loan. The imminent sale of the borrower's home at foreclosure
3 during the 3-day period before the signing of settlement or
4 closing statement constitutes an example of a bona fide
5 personal financial emergency. In order to waive the borrower's
6 right to receive notice not less than 3 business days before
7 the signing of the settlement or closing statement of any such
8 material change, the borrower must provide the licensee with a
9 dated written statement that describes the personal financial
10 emergency, waives the right to receive the notice, bears the
11 borrower's signature, and is not on a printed form prepared by
12 the licensee for the purpose of such a waiver.

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

15 494.0041 Administrative penalties and fines; license
16 violations.--

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

20 (v) In any mortgage transaction, violating any
21 provision of the federal Real Estate Settlement Procedure Act,
22 as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In
23 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any
24 regulations adopted under such acts.

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

27 494.0064 Renewal of mortgage lender's license; branch
28 office license renewal.--

29 (1)~~(a)~~ The office shall renew a mortgage lender
30 license upon receipt of a completed renewal form,
31 certification from the licensee that the licensee currently

1 meets the minimum net worth requirements of s. 494.0061 or s.
2 494.0065, certification from the licensee that during the
3 preceding 2 years the licensee's principal representative and
4 loan originators have completed the professional continuing
5 education requirements of s. 494.00295, and the nonrefundable
6 renewal fee of \$575. The office shall renew a correspondent
7 lender license upon receipt of a completed renewal form,
8 certification from the licensee that the licensee currently
9 meets the minimum net worth requirements of s. 494.0062,
10 certification from the licensee that during the preceding 2
11 years the licensee's principal representative and loan
12 originators have completed the professional continuing
13 education requirements of s. 494.00295, and a nonrefundable
14 renewal fee of \$475. Each licensee shall pay at the time of
15 renewal a nonrefundable fee of \$325 for the renewal of each
16 branch office license.

17 ~~(b) A licensee shall also submit, as part of the~~
18 ~~renewal form, certification that during the preceding 2 years~~
19 ~~the licensee's principal representative and loan originators~~
20 ~~have completed the professional continuing education~~
21 ~~requirements of s. 494.00295.~~

22 Section 10. Subsection (8) and paragraph (a) of
23 subsection (10) of section 494.0067, Florida Statutes, are
24 amended, and subsections (11) and (12) are added to that
25 section, to read:

26 494.0067 Requirements of licensees under ss.
27 494.006-494.0077.--

28 (8) Each licensee under ss. 494.006-494.0077 shall
29 provide an applicant for a mortgage loan a good faith estimate
30 of the costs the applicant can reasonably expect to pay in
31 obtaining a mortgage loan. The good faith estimate of costs

1 shall be mailed or delivered to the applicant within a
2 reasonable time after the licensee receives a written loan
3 application from the applicant. The estimate of costs may be
4 provided to the applicant by a person other than the licensee
5 making the loan. The good faith estimate must identify the
6 recipient of all payments charged to the borrower and, except
7 for all fees to be received by the mortgage brokerage business
8 and the mortgage lender or correspondent mortgage lender, may
9 be disclosed in generic terms, such as, but not limited to,
10 paid to appraiser, officials, title company, or any other
11 third-party service provider. The licensee bears the burden of
12 proving such disclosures were provided to the borrower. The
13 commission may adopt rules that set forth the disclosure
14 requirements of this section.

15 (10)(a) Each mortgage lender or correspondent mortgage
16 lender licensee shall require the principal representative and
17 all loan originators, not currently licensed as mortgage
18 brokers pursuant to s. 494.0033, who perform services for the
19 licensee to complete 14 hours of professional continuing
20 education during each biennial license period. The education
21 shall cover primary and subordinate mortgage financing
22 transactions and the provisions of this chapter and the rules
23 adopted under this chapter.

24 (11) The disclosures in this subsection must be
25 furnished in writing at the time an adjustable rate mortgage
26 loan is offered to the borrower and whenever the terms of the
27 adjustable rate mortgage loan offered have a material change
28 prior to closing. The lender shall furnish the disclosures
29 relating to adjustable rate mortgages in a format prescribed
30 by ss. 226.18 and 226.19 of Regulation Z of the Board of
31 Governors of the Federal Reserve System, as amended, its

1 commentary, as amended, and the federal Truth in Lending Act,
2 15 U.S.C. ss. 1601 et seq., as amended, together with the
3 Consumer Handbook on Adjustable Rate Mortgages, as amended,
4 published by the Federal Reserve Board and the Federal Home
5 Loan Bank Board. The licensee bears the burden of proving such
6 disclosures were provided to the borrower.

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

15 (b) A borrower may waive the right to receive notice
16 of a material change that is granted under paragraph (a) if
17 the borrower determines that the extension of credit is needed
18 to meet a bona fide personal financial emergency and the right
19 to receive notice would delay the closing of the mortgage
20 loan. The imminent sale of the borrower's home at foreclosure
21 during the 3-day period before the signing of settlement or
22 closing statement constitutes an example of a bona fide
23 personal financial emergency. In order to waive the borrower's
24 right to receive notice not less than 3 business days before
25 the signing of the settlement or closing statement of any such
26 material change, the borrower must provide the licensee with a
27 dated written statement that describes the personal financial
28 emergency, waives the right to receive the notice, bears the
29 borrower's signature, and is not on a printed form prepared by
30 the licensee for the purpose of such a waiver.

31

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

5 494.0072 Administrative penalties and fines; license
6 violations.--

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

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

15 (3) A mortgage lender or correspondent mortgage lender
16 is subject to the disciplinary actions specified in subsection
17 (1) if any officer, member, director, control person, joint
18 venturer, or ultimate equitable owner of a 10-percent or
19 greater interest in the mortgage lender or correspondent
20 mortgage lender, associate, or employee of the mortgage lender
21 or correspondent mortgage lender violates or has violated any
22 provision of subsection (2).

23 (5) A principal representative of a mortgage lender or
24 correspondent mortgage lender is subject to the disciplinary
25 actions specified in subsection (1) for violations of
26 subsection (2) by associates or employees in the course of an
27 association or employment with the correspondent mortgage
28 lender or the mortgage lender. The principal representative is
29 only subject to suspension or revocation for associate or
30 employee actions if there is a pattern of repeated violations
31

1 by associates or employees or if the principal broker or
2 principal representative had knowledge of the violations.

3 Section 12. Section 494.0073, Florida Statutes, is
4 amended to read:

5 494.0073 Mortgage lender or correspondent mortgage
6 lender when acting as a mortgage brokerage business.--Sections
7 494.006-494.0077 do not prohibit a mortgage lender or
8 correspondent mortgage lender from acting as a mortgage
9 brokerage business. However, in mortgage transactions in which
10 a mortgage lender or correspondent mortgage lender acts as a
11 mortgage brokerage business, the provisions of ss. 494.0038,
12 494.0042, 494.004(8), and 494.0043(1), (2), and (3) apply.

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

15 817.545 Mortgage fraud.--

16 (1) For the purposes of the section, the term
17 "mortgage lending process" means the process through which a
18 person seeks or obtains a residential mortgage loan,
19 including, but not limited to, the solicitation, application
20 or origination, negotiation of terms, third-party provider
21 services, underwriting, signing and closing, and funding of
22 the loan. Documents involved in the mortgage lending process
23 include, but are not limited to, mortgages, deeds, surveys,
24 inspection reports, uniform residential loan applications, or
25 other loan applications; appraisal reports; HUD-1 settlement
26 statements; supporting personal documentation for loan
27 applications such as W-2 forms, verifications of income and
28 employment, credit reports, bank statements, tax returns, and
29 payroll stubs; and any required disclosures.

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

1 (a) Makes any material misstatement,
2 misrepresentation, or omission during the mortgage lending
3 process with the intention that the misstatement,
4 misrepresentation, or omission will be relied on by a mortgage
5 lender, borrower, or any other person or entity involved in
6 the mortgage lending process; however, omissions on a loan
7 application regarding employment, income, or assets for a loan
8 which does not require this information are not considered a
9 material omission for purposes of this subsection.

10 (b) Uses or facilitates the use of any material
11 misstatement, misrepresentation, or omission during the
12 mortgage lending process with the intention that the material
13 misstatement, misrepresentation, or omission will be relied on
14 by a mortgage lender, borrower, or any other person or entity
15 involved in the mortgage lending process; however, omissions
16 on a loan application regarding employment, income, or assets
17 for a loan which does not require this information are not
18 considered a material omission for purposes of this
19 subsection.

20 (c) Receives any proceeds or any other funds in
21 connection with the mortgage lending process that the person
22 knew resulted from a violation of paragraph (a) or paragraph
23 (b).

24 (d) Files or causes to be filed with the clerk of the
25 circuit court for any county of this state a document involved
26 in the mortgage lending process which contains a material
27 misstatement, misrepresentation, or omission.

28 (3) An offense of mortgage fraud may not be predicated
29 solely upon information lawfully disclosed under federal
30 disclosure laws, regulations, or interpretations related to
31 the mortgage lending process.

1 (4) For the purpose of venue under this section, any
2 violation of this section is considered to have been
3 committed:

4 (a) In the county in which the real property is
5 located; or

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

8 (5) Any person who violates subsection (2) commits a
9 felony of the third degree, punishable as provided in s.
10 775.082, s. 775.083, or s. 775.084.

11 Section 14. This act shall take effect October 1,
12 2007.

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