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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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