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Proposed Committee Substitute by the Committee on Banking and Insurance

1 A bill to be entitled
2 An act relating to mortgage brokering and lending;
3 amending s. 494.001, F.S.; redefining terms, defining
4 new terms, and deleting terms; amending s. 494.0011,
5 F.S.; authorizing the Financial Services Commission to
6 adopt rules relating to compliance with the S.A.F.E.
7 Mortgage Licensing Act of 2008; requiring the
8 commission to adopt rules establishing time periods
9 for barring licensure for certain misdemeanors and
10 felonies; authorizing the Office of Financial
11 Regulation to participate in the Nationwide Mortgage
12 Licensing System and Registry; creating s. 494.00121,
13 F.S.; providing for the issuance of subpoenas;
14 amending s. 494.0014, F.S.; revising provisions
15 relating to the refund of fees; deleting an obsolete
16 provision; amending s. 494.00165, F.S.; prohibiting
17 unfair and deceptive advertising relating to mortgage
18 brokering and lending; repealing s. 494.0017, F.S.,
19 relating to claims paid from the Regulatory Trust
20 Fund; creating s. 494.00172, F.S.; providing for a \$20
21 fee to be assessed against loan originators and a \$100
22 fee to be assessed against mortgage brokers and
23 lenders at the time of license application or renewal;
24 providing that such fees shall be deposited into the
25 Mortgage Guaranty Trust Fund and used to pay claims
26 against licensees; providing for a cap on the amount
27 collected and deposited; providing requirements for



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28 seeking recovery from the trust fund; providing
29 limitations on the amount paid; providing for the
30 assignment of certain rights to the office; providing
31 that payment for a claim is prima facie grounds for
32 the revocation of a license; amending s. 494.0018,
33 F.S.; conforming cross-references; amending ss.
34 494.0019 and 494.002, F.S.; conforming terms; amending
35 s. 494.0023, F.S.; deleting the statutory disclosure
36 form and revising the disclosure that must be provided
37 to a borrower in writing; providing that there is a
38 conflicting interest if a licensee or the licensee's
39 relatives have a 1 percent or more interest in the
40 person providing additional products or services;
41 authorizing the commission to adopt rules; amending s.
42 494.0025, F.S.; prohibiting the alteration,
43 withholding, concealment, or destruction of records
44 relevant to regulated activities; creating s. 494.255,
45 F.S.; providing for license violations and
46 administrative penalties; authorizing a fine of \$1,000
47 for each day of unlicensed activity up to \$25,000;
48 amending s. 494.0028, F.S.; conforming terms;
49 repealing ss. 494.0029 and 494.00295, F.S., relating
50 to mortgage business schools and continuing education
51 requirements; creating s. 494.00296, F.S.; providing
52 for loan modification services; prohibiting certain
53 related acts; providing for a loan modification
54 agreement and for the inclusion of a borrower's right
55 of cancellation statement; providing remedies;
56 providing a directive to the Division of Statutory



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57 Revision; amending s. 494.003, F.S.; revising
58 provisions relating to who is exempt from loan
59 originator or mortgage broker licensing and
60 regulation; repealing s. 494.0031, F.S., relating to
61 licensure as a mortgage brokerage business; creating
62 s. 494.00312, F.S.; providing for the licensure of
63 loan originators; providing license application
64 requirements; providing grounds for license denial;
65 requiring the denial of a license under certain
66 circumstances; requiring licenses to be renewed
67 annually by a certain date; creating s. 494.00313,
68 F.S.; providing for the renewal of a loan originator
69 license; repealing s. 494.0032, F.S., relating to
70 renewal of a mortgage brokerage business license or
71 branch office license; creating s. 494.00321, F.S.;
72 providing for the licensure of mortgage brokers;
73 providing license application requirements; providing
74 grounds for license denial; requiring the denial of a
75 license under certain circumstances; requiring
76 licenses to be renewed by a certain date; creating s.
77 494.00322, F.S.; providing for the annual renewal of a
78 mortgage broker license; providing license renewal
79 requirements; repealing s. 494.0033, F.S., relating to
80 a mortgage broker license; amending s. 494.00331,
81 F.S.; requiring a loan originator to be an employee or
82 independent contractor for a mortgage broker or
83 mortgage lender; repealing s. 494.0034, F.S., relating
84 to renewal of mortgage broker license; amending s.
85 494.0035, F.S.; providing for the management of a



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86 mortgage broker by a principal loan originator and a
87 branch office by a loan originator; providing minimum
88 requirements; amending s. 494.0036, F.S.; revising
89 provisions relating to the licensure of a mortgage
90 broker's branch office; amending s. 494.0038, F.S.;
91 revising provisions relating to loan origination and
92 mortgage broker fees; amending s. 494.0039, F.S.;
93 conforming terms; amending s. 494.004, F.S.; revising
94 provisions relating to licensees; providing for
95 registry requirements; deleting obsolete provisions;
96 repealing s. 494.0041, F.S., relating to license
97 violations and administrative penalties; providing
98 additional grounds for assessing fines and penalties;
99 amending s. 494.0042, F.S.; providing for loan
100 originator fees; conforming terms; amending ss.
101 494.00421 and 494.0043, F.S.; conforming terms;
102 amending s. 494.006, F.S.; revising provisions
103 relating to who is exempt from licensure and
104 regulation as a mortgage lender; repealing s.
105 494.0061, F.S., relating to mortgage lender license
106 requirements; creating s. 494.00611, F.S.; providing
107 for the licensure of mortgage lenders; providing
108 license application requirements; providing grounds
109 for license denial; requiring the denial of a license
110 under certain circumstances; requiring licenses to be
111 renewed annually by a certain date; creating s.
112 494.00612, F.S.; providing for the renewal of a
113 mortgage lender license; repealing s. 494.0062, F.S.,
114 relating to correspondent mortgage lender license



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115 requirements; amending s. 494.0063, F.S.; requiring a
116 mortgage lender to obtain an annual financial audit
117 report and submit a copy to the office within certain
118 time periods; repealing s. 494.0064, F.S., relating to
119 renewal of mortgage lender license; repealing s.
120 494.0065, F.S., relating to certain licenses and
121 registrations that were converted into mortgage lender
122 licenses; amending s. 494.0066, F.S.; revising
123 provisions relating to a mortgage lender branch office
124 license; creating s. 494.00665, F.S.; providing for a
125 principal loan originator and branch manager for a
126 mortgage lender; providing requirements and
127 limitations; amending s. 494.0067, F.S.; revising
128 requirements of mortgage lenders; providing for
129 registry requirements; deleting obsolete provisions;
130 providing for servicing agreements; amending ss.
131 494.0068, 494.0069, 494.007, and 494.0071, F.S.;
132 conforming terms; repealing s. 494.0072, F.S.,
133 relating to license violations and administrative
134 penalties; amending ss. 494.00721, 494.0073, 494.0075,
135 494.0077, and 501.1377 F.S.; deleting provisions
136 relating to foreclosure rescue consultants and
137 foreclosure related rescue service agreements;
138 providing for the termination of mortgage business
139 school licenses; providing for the expiration of
140 mortgage brokerage business licenses, mortgage broker
141 licenses, and correspondent mortgage lender licenses;
142 providing requirements for applying for a loan
143 originator, mortgage broker and mortgage lender



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144 license by a certain date; providing effective dates.

145

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

147

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

150 494.001 Definitions.—As used in ss. 494.001-494.0077, the
151 term:

152 ~~(1) "Act as a correspondent mortgage lender" means to make~~
153 ~~a mortgage loan.~~

154 ~~(2) "Act as a loan originator" means being employed by a~~
155 ~~mortgage lender or correspondent mortgage lender, for~~
156 ~~compensation or gain or in the expectation of compensation or~~
157 ~~gain, to negotiate, offer to negotiate, or assist any licensed~~
158 ~~or exempt entity in negotiating the making of a mortgage loan,~~
159 ~~including, but not limited to, working with a licensed or exempt~~
160 ~~entity to structure a loan or discussing terms and conditions~~
161 ~~necessary for the delivery of a loan product. A natural person~~
162 ~~whose activities are ministerial and clerical, which may include~~
163 ~~quoting available interest rates, is not acting as a loan~~
164 ~~originator.~~

165 ~~(3) "Act as a mortgage broker" means, for compensation or~~
166 ~~gain, or in the expectation of compensation or gain, either~~
167 ~~directly or indirectly, accepting or offering to accept an~~
168 ~~application for a mortgage loan, soliciting or offering to~~
169 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~
170 ~~offering to negotiate the terms or conditions of a mortgage loan~~
171 ~~on behalf of a lender, or negotiating or offering to negotiate~~
172 ~~the sale of an existing mortgage loan to a noninstitutional~~



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173 ~~investor. An employee whose activities are ministerial and~~
174 ~~clerical, which may include quoting available interest rates or~~
175 ~~loan terms and conditions, is not acting as a mortgage broker.~~

176 ~~(4) "Act as a mortgage lender" means to make a mortgage~~
177 ~~loan or to service a mortgage loan for others or, for~~
178 ~~compensation or gain, or in the expectation of compensation or~~
179 ~~gain, either directly or indirectly, to sell or offer to sell a~~
180 ~~mortgage loan to a noninstitutional investor.~~

181 ~~(5) "Associate" means a person required to be licensed as a~~
182 ~~mortgage broker under this chapter who is employed by or acting~~
183 ~~as an independent contractor for a mortgage brokerage business~~
184 ~~or a person acting as an independent contractor for a mortgage~~
185 ~~lender or correspondent mortgage lender. The use of the term~~
186 ~~associate, in contexts other than in the administration of ss.~~
187 ~~494.003-494.0077, shall not be construed to impose or effect the~~
188 ~~common-law or statutory liability of the employer.~~

189 (1) "Borrower" means a natural person obligated to repay a
190 mortgage loan and includes, but is not limited to, a coborrower,
191 cosignor, or guarantor.

192 (2)~~(6)~~ "Branch manager ~~broker"~~ means the licensed loan
193 originator licensee in charge of, and responsible for, the
194 operation of the ~~a~~ branch office of a mortgage broker or
195 mortgage lender ~~brokerage business~~.

196 (3)~~(7)~~ "Branch office" means a location, other than a
197 mortgage broker's or mortgage lender's licensee's principal
198 place of business:

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



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

205 (c) ~~At which, due to the actions of any employee or~~
206 ~~associate of the licensee, may be construed by the public as a~~
207 ~~branch office of the licensee where mortgage loans are~~
208 originated, negotiated, funded, or serviced by a licensee.

209 ~~(4)-(8)~~ "Commission" means the Financial Services
210 Commission.

211 ~~(5)-(9)~~ "Control person" means an individual, partnership,
212 corporation, trust, or other organization that possesses the
213 power, directly or indirectly, to direct the management or
214 policies of a company, whether through ownership of securities,
215 by contract, or otherwise. Control person includes, but is not
216 limited to ~~A person is presumed to control a company if, with~~
217 ~~respect to a particular company, that person:~~

218 (a) A company's executive officers, including the
219 president, chief executive officer, chief financial officer,
220 chief operations officer, chief legal officer, chief compliance
221 officer, director, and other individuals having similar status
222 or functions.

223 (b) For a corporation, each shareholder that, directly or
224 indirectly, owns 10 percent or more or that has the power to
225 vote 10 percent or more, of a class of voting securities unless
226 the applicant is a publicly traded company.

227 (c) For a partnership, all general partners and limited or
228 special partners that have contributed 10 percent or more or
229 that have the right to receive, upon dissolution, 10 percent or
230 more of the partnership's capital.



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- 231 (d) For a trust, each trustee.
- 232 (e) For a limited liability company, all elected managers
233 and those members that have contributed 10 percent or more or
234 that have the right to receive, upon dissolution, 10 percent or
235 more of the partnership's capital.
- 236 (f) Principal loan originators.
- 237 (6) "Credit report" means any written, oral, or other
238 information obtained from a consumer reporting agency as
239 described in the federal Fair Credit Reporting Act, which bears
240 on an individual's credit worthiness, credit standing, or credit
241 capacity. A credit score alone, as calculated by the reporting
242 agency, is not considered a credit report.
- 243 (7) "Credit score" means a score, grade, or value that is
244 derived by using data from a credit report in any type of model,
245 method, or program, whether electronically, in an algorithm,
246 computer software or program, or any other process, for the
247 purpose of grading or ranking credit report data.
- 248 (8) "Depository institution" has the same meaning as in s.
249 (3) (c) of the Federal Deposit Insurance Act, and includes any
250 credit union.
- 251 ~~(a) Is a director, general partner, or officer exercising~~
252 ~~executive responsibility or having similar status or functions;~~
- 253 ~~(b) Directly or indirectly may vote 10 percent or more of a~~
254 ~~class of voting securities or sell or direct the sale of 10~~
255 ~~percent or more of a class of voting securities; or~~
- 256 ~~(c) In the case of a partnership, may receive upon~~
257 ~~dissolution or has contributed 10 percent or more of the~~
258 ~~capital.~~
- 259 ~~(10) "Office" means the Office of Financial Regulation of~~



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260 ~~the commission.~~

261 ~~(11) "Employed" means engaged in the service of another for~~
262 ~~salary or wages subject to withholding, FICA, or other lawful~~
263 ~~deductions by the employer as a condition of employment.~~

264 ~~(12) "Employee" means a natural person who is employed and~~
265 ~~who is subject to the right of the employer to direct and~~
266 ~~control the actions of the employee.~~

267 ~~(13) "Good standing" means that the registrant or licensee,~~
268 ~~or a subsidiary or affiliate thereof, is not, at the time of~~
269 ~~application, being penalized for one or more of the following~~
270 ~~disciplinary actions by a licensing authority of any state,~~
271 ~~territory, or country:~~

272 ~~(a) Revocation of a license or registration.~~

273 ~~(b) Suspension of a license or registration.~~

274 ~~(c) Probation of a license or registration for an offense~~
275 ~~involving fraud, dishonest dealing, or an act of moral~~
276 ~~turpitude.~~

277 (9) "Financial audit report" means a report prepared in
278 connection with a financial audit that is conducted in
279 accordance with generally accepted auditing standards prescribed
280 by the American Institute of Certified Public Accountants by a
281 certified public accountant licensed to do business in the
282 United States, and which must include:

283 (a) Financial statements, including notes related to the
284 financial statements and required supplementary information,
285 prepared in conformity with United States generally accepted
286 accounting principles.

287 (b) An expression of opinion regarding whether the
288 financial statements are presented in conformity with accounting



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289 principles generally accepted in the United States, or an
290 assertion to the effect that such an opinion cannot be expressed
291 and the reasons.

292 (10)-(14) "Institutional investor" means a depository
293 institution state or national bank, state or federal savings and
294 loan association or savings bank, real estate investment trust,
295 insurance company, real estate company, accredited investor as
296 defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or
297 mortgage lender business licensed under this chapter ss.
298 494.001-494.0077, or other business entity that invests in
299 mortgage loans, including a secondary mortgage market
300 institution including, without limitation, the Federal National
301 Mortgage Association, the Federal Home Loan Mortgage
302 Corporation, and the Government National Mortgage Association,
303 conduits, investment bankers, and any subsidiary of such
304 entities.

305 (11)-(15) "Loan commitment" or "commitment" means a
306 statement by the lender setting forth the terms and conditions
307 upon which the lender is willing to make a particular mortgage
308 loan to a particular borrower.

309 (12) "Loan modification" means a modification to an
310 existing loan. The term does not include a refinancing
311 transaction.

312 (13) "Loan origination fee" means the total compensation
313 from any source received by a mortgage broker acting as a loan
314 originator. Any payment for processing mortgage loan
315 applications must be included in the fee and must be paid to the
316 mortgage broker.

317 (14) "Loan originator" means an individual who, directly or



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318 indirectly, solicits or offers to solicit a mortgage loan,
319 accepts or offers to accept an application for a mortgage loan,
320 negotiates or offers to negotiate the terms or conditions of a
321 new or existing mortgage loan on behalf of a borrower or lender,
322 processes a mortgage loan application, or negotiates or offers
323 to negotiate the sale of an existing mortgage loan to a
324 noninstitutional investor for compensation or gain. The term
325 includes the activities of a loan originator as that term is
326 defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an
327 individual acting as a loan originator pursuant to that
328 definition is acting as a loan originator for purposes of this
329 definition. The term does not include an employee of a mortgage
330 broker or mortgage lender who performs only administrative or
331 clerical tasks, including quoting available interest rates,
332 physically handling a completed application form, or
333 transmitting a completed form to a lender on behalf of a
334 prospective borrower

335 (15)-(16) "Lock-in agreement" means an agreement whereby the
336 lender guarantees for a specified number of days or until a
337 specified date the availability of a specified rate of interest
338 or specified formula by which the rate of interest will be
339 determined or ~~and/or~~ specific number of discount points will be
340 given, if the loan is approved and closed within the stated
341 period of time.

342 (16)-(17) "Making ~~Make~~ a mortgage loan" means to close a
343 mortgage loan in a person's name, ~~or to~~ advance funds, offer to
344 advance funds, or make a commitment to advance funds to an
345 applicant for a mortgage loan.

346 (17) "Mortgage broker" means a person conducting loan



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347 originator activities through one or more licensed loan
348 originators employed by the mortgage broker or as independent
349 contractors to the mortgage broker.

350 ~~(18) "Mortgage brokerage fee" means a fee received for~~
351 ~~acting as a mortgage broker.~~

352 ~~(19) "Mortgage brokerage business" means a person acting as~~
353 ~~a mortgage broker.~~

354 (18) "Mortgage lender" means a person making a mortgage
355 loan or servicing a mortgage loan for others, or, for
356 compensation or gain, directly or indirectly, selling or
357 offering to sell a mortgage loan to a noninstitutional investor.

358 (19) ~~(20)~~ "Mortgage loan" means any:

359 (a) Residential mortgage loan primarily for personal,
360 family, or household use which is secured by a mortgage, deed of
361 trust, or other equivalent consensual security interest on a
362 dwelling, as defined in s. 103(v) of the federal Truth in
363 Lending Act, or for the purchase of residential real estate upon
364 which a dwelling is to be constructed;

365 (b) Loan on commercial real property if the borrower is a
366 natural person or the lender is a noninstitutional investor; or

367 (c) Loan on improved real property consisting of five or
368 more dwelling units if the borrower is a natural person or the
369 lender is a noninstitutional investor.

370 (20) "Mortgage loan application" means the submission of a
371 borrower's financial information in anticipation of a credit
372 decision, which includes the borrower's name, the borrower's
373 monthly income, the borrower's social security number to obtain
374 a credit report, the property address, an estimate of the value
375 of the property, the mortgage loan amount sought, and any other



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376 information deemed necessary by the loan originator. An
377 application may be in writing or electronically submitted,
378 including a written record of an oral application.

379 (21) "Net worth" means total assets minus total liabilities
380 pursuant to United States generally accepted accounting
381 principles.

382 (22) "Noninstitutional investor" means an investor other
383 than an institutional investor.

384 ~~(23) "Nonresidential mortgage loan" means a mortgage loan~~
385 ~~other than a residential mortgage loan.~~

386 (23) "Office" means the Office of Financial Regulation.

387 (24) "Person" has the same meaning as in s. 1.01 ~~means an~~
388 ~~individual, partnership, corporation, association, or other~~
389 ~~group, however organized.~~

390 ~~(25) "Principal broker" means a licensee in charge of, and~~
391 ~~responsible for, the operation of the principal place of~~
392 ~~business and all branch brokers.~~

393 (25) "Principal loan originator" means the licensed loan
394 originator in charge of, and responsible for, the operation of a
395 mortgage lender or mortgage broker, including all of the
396 activities of the mortgage lender's or mortgage broker's loan
397 originators and branch managers, whether employees or
398 independent contractors.

399 (26) "Principal place of business" means a mortgage
400 broker's or mortgage lender's licensee's primary business
401 office, the street address, or physical location that ~~of which~~
402 is designated on the application for licensure or any amendment
403 to such application.

404 (27) "Registered loan originator" means a loan originator



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405 who is employed by a depository institution, by a subsidiary
406 that is owned and controlled by a depository institution and
407 regulated by a federal banking agency, or by an institution
408 regulated by the Farm Credit Administration, and who is
409 registered with and maintains a unique identifier through the
410 registry.

411 (28) "Registry" means the Nationwide Mortgage Licensing
412 System and Registry, which is the mortgage licensing system
413 developed and maintained by the Conference of State Bank
414 Supervisors and the American Association of Residential Mortgage
415 Regulators for the licensing and registration of loan
416 originators.

417 (29) "Relative" means any of the following, whether by the
418 full or half blood or by adoption:

419 (a) A person's spouse, father, mother, children, brothers,
420 and sisters.

421 (b) The father, mother, brothers, and sisters of the
422 person's spouse.

423 (c) The spouses of the person's children, brothers, or
424 sisters.

425 ~~(27) "Residential mortgage loan" means any mortgage or~~
426 ~~other security instrument secured by improved real property~~
427 ~~consisting of no more than four dwelling units.~~

428 (30) "Servicing endorsement" means authorizing a mortgage
429 lender to service a loan for more than 4 months.

430 (31)~~(28)~~ "Servicing Service a mortgage loan" means to
431 receive, or cause to be received, or transferred for another,
432 installment payments of principal, interest, or other payments
433 pursuant to a mortgage loan.



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434 ~~(32)-(29)~~ "Substantial fault of the borrower" means that the
435 borrower:

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

438 (b) Provided information, in the application or
439 subsequently, which upon verification proved to be significantly
440 inaccurate, causing the need for review or further investigation
441 by the lender or broker;

442 (c) Failed to produce by ~~no later than~~ the date specified
443 by the lender all documentation specified in the commitment or
444 closing instructions as being required for closing; or

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

447
448 For purposes of this definition, a borrower is considered to
449 have provided information or documentation in a timely manner if
450 such information and documentation was received by the lender
451 within 7 days after the borrower received a request for same,
452 and information is considered significantly inaccurate if the
453 correct information materially affects the eligibility of the
454 borrower for the loan for which application is made.

455 ~~(33)-(30)~~ "Ultimate equitable owner" means a natural person
456 who, directly or indirectly, owns or controls an ownership
457 interest in a corporation, a foreign corporation, an alien
458 business organization, or any other form of business
459 organization, regardless of whether such natural person owns or
460 controls such ~~ownership~~ interest through one or more natural
461 persons or one or more proxies, powers of attorney, nominees,
462 corporations, associations, partnerships, trusts, joint stock



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463 companies, or other entities or devices, or any combination
464 thereof.

465 ~~(31) "Principal representative" means an individual who~~
466 ~~operates the business operations of a licensee under part III.~~

467 ~~(32) "Mortgage loan application" means a submission of a~~
468 ~~borrower's financial information in anticipation of a credit~~
469 ~~decision, whether written or computer-generated, relating to a~~
470 ~~mortgage loan. If the submission does not state or identify a~~
471 ~~specific property, the submission is an application for a~~
472 ~~prequalification and not an application for a mortgage loan~~
473 ~~under this part. The subsequent addition of an identified~~
474 ~~property to the submission converts the submission to an~~
475 ~~application for a mortgage loan.~~

476 ~~(33) "Mortgage brokerage fee" means the total compensation~~
477 ~~to be received by a mortgage brokerage business for acting as a~~
478 ~~mortgage broker.~~

479 ~~(34) "Business day" means any calendar day except Sunday or~~
480 ~~a legal holiday.~~

481 Section 2. Section 494.0011, Florida Statutes, is amended
482 to read:

483 494.0011 Powers and duties of the commission and office.—

484 (1) The office shall be responsible for the administration
485 and enforcement of ss. 494.001-494.0077.

486 ~~(2) The commission may adopt rules pursuant to ss.~~
487 ~~120.536(1) and 120.54 To administer implement ss. 494.001-~~
488 ~~494.0077, the commission may adopt rules:~~

489 (a) Requiring electronic submission of any forms,
490 documents, or fees required by this act ~~if such rules reasonably~~
491 ~~accommodate technological or financial hardship.~~



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492 (b) Relating to compliance with the S.A.F.E. Mortgage
493 Licensing Act of 2008, including rules to:
494 1. Require loan originators, mortgage brokers, mortgage
495 lenders, and branch offices to register through the registry.
496 2. Require the use of uniform forms that have been approved
497 by the registry, and any subsequent amendments to such forms if
498 the forms are substantially in compliance with the provisions of
499 this chapter. Uniform forms that the commission may adopt
500 include, but are not limited to:
501 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.
502 b. Uniform Mortgage Biographical Statement & Consent Form,
503 MU2.
504 c. Uniform Mortgage Branch Office Form, MU3.
505 d. Uniform Individual Mortgage License/Registration &
506 Consent Form, MU4.
507 3. Require the filing of forms, documents, and fees in
508 accordance with the requirements of the registry.
509 4. Prescribe requirements for amending or surrendering a
510 license or other activities as the commission deems necessary
511 for the office's participation in the registry.
512 5. Prescribe procedures that allow a licensee to challenge
513 information contained in the registry.
514 6. Prescribe procedures for reporting violations of this
515 chapter and disciplinary actions on licensees to the registry.
516 ~~The commission may prescribe by rule requirements and procedures~~
517 ~~for obtaining an exemption due to a technological or financial~~
518 ~~hardship. The commission may also adopt rules to accept~~
519 ~~certification of compliance with requirements of this act in~~
520 ~~lieu of requiring submission of documents.~~



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521 (c) Establishing time periods during which a loan
522 originator, mortgage broker, or mortgage lender license
523 applicant under part II or part III is barred from licensure due
524 to prior criminal convictions of, or guilty or nolo contendere
525 pleas by, any of the applicant's control persons, regardless of
526 adjudication.

527 1. The rules must provide:

528 a. Permanent bars for felonies involving fraud, dishonesty,
529 breach of trust, or money laundering;

530 b. A 15-year disqualifying period for felonies involving
531 moral turpitude;

532 c. A 7-year period for all other felonies; and

533 d. A 5-year period for misdemeanors involving fraud,
534 dishonesty, or any other act of moral turpitude.

535 2. The rule may provide for an additional waiting period
536 due to dates of imprisonment or community supervision, the
537 commitment of multiple crimes, and other factors reasonably
538 related to the applicant's criminal history.

539 3. The rule may provide for mitigating factors for crimes
540 identified in sub-subparagraph 1.b. However, the mitigation may
541 not result in a period of disqualification less than 7 years.
542 The rule may not mitigate the disqualifying periods in sub-
543 subparagraphs 1.a., 1.c., and 1.d.

544 4. An applicant is not eligible for licensure until the
545 expiration of the disqualifying period set by rule.

546 5. Section 112.011 is not applicable to eligibility for
547 licensure under this part.

548 (3) Except as provided in s. 494.00172, all fees, charges,
549 and fines collected pursuant to ss. 494.001-494.0077 shall be



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550 deposited in ~~the State Treasury to the credit of~~ the Regulatory
551 Trust Fund of under the office.

552 (4) The office shall participate in the registry and shall
553 regularly report to the registry violations of this chapter,
554 disciplinary actions, and other information deemed relevant by
555 the office under this chapter.

556 ~~(4) (a) The office has the power to issue and to serve~~
557 ~~subpoenas and subpoenas duces tecum to compel the attendance of~~
558 ~~witnesses and the production of all books, accounts, records,~~
559 ~~and other documents and materials relevant to an examination or~~
560 ~~investigation. The office, or its duly authorized~~
561 ~~representative, has the power to administer oaths and~~
562 ~~affirmations to any person.~~

563 ~~(b) The office may, in its discretion, seek subpoenas or~~
564 ~~subpoenas duces tecum from any court of competent jurisdiction~~
565 ~~commanding the appearance of witnesses and the production of~~
566 ~~books, accounts, records, and other documents or materials at a~~
567 ~~time and place named in the subpoenas; and any authorized~~
568 ~~representative of the office may serve any subpoena.~~

569 ~~(5) (a) In the event of substantial noncompliance with a~~
570 ~~subpoena or subpoena duces tecum issued or caused to be issued~~
571 ~~by the office, the office may petition the circuit court or any~~
572 ~~other court of competent jurisdiction of the county in which the~~
573 ~~person subpoenaed resides or has its principal place of business~~
574 ~~for an order requiring the subpoenaed person to appear and~~
575 ~~testify and to produce such books, accounts, records, and other~~
576 ~~documents as are specified in the subpoena duces tecum. The~~
577 ~~court may grant injunctive relief restraining the person from~~
578 ~~advertising, promoting, soliciting, entering into, offering to~~



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579 ~~enter into, continuing, or completing any mortgage loan~~
580 ~~transaction or mortgage loan servicing transaction. The court~~
581 ~~may grant such other relief, including, but not limited to, the~~
582 ~~restraint, by injunction or appointment of a receiver, of any~~
583 ~~transfer, pledge, assignment, or other disposition of the~~
584 ~~person's assets or any concealment, alteration, destruction, or~~
585 ~~other disposition of books, accounts, records, or other~~
586 ~~documents and materials as the court deems appropriate, until~~
587 ~~the person has fully complied with the subpoena duces tecum and~~
588 ~~the office has completed its investigation or examination. In~~
589 ~~addition, the court may order the refund of any fees collected~~
590 ~~in a mortgage loan transaction whenever books and documents~~
591 ~~substantiating the transaction are not produced or cannot be~~
592 ~~produced. The office is entitled to the summary procedure~~
593 ~~provided in s. 51.011, and the court shall advance such cause on~~
594 ~~its calendar. Attorney's fees and any other costs incurred by~~
595 ~~the office to obtain an order granting, in whole or part, a~~
596 ~~petition for enforcement of a subpoena or subpoena duces tecum~~
597 ~~shall be taxed against the subpoenaed person, and failure to~~
598 ~~comply with such order is a contempt of court.~~

599 ~~(b) When it appears to the office that the compliance with~~
600 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~
601 ~~by the office pursuant to this section is essential and~~
602 ~~otherwise unavailable to an investigation or examination, the~~
603 ~~office, in addition to the other remedies provided for in this~~
604 ~~section, may apply to the circuit court or any other court of~~
605 ~~competent jurisdiction of the county in which the subpoenaed~~
606 ~~person resides or has its principal place of business for a writ~~
607 ~~of ne exeat. The court shall thereupon direct the issuance of~~



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608 ~~the writ against the subpoenaed person requiring sufficient bond~~
609 ~~conditioned on compliance with the subpoena or subpoena duces~~
610 ~~tecum. The court shall cause to be endorsed on the writ a~~
611 ~~suitable amount of bond upon the payment of which the person~~
612 ~~named in the writ shall be freed, having a due regard to the~~
613 ~~nature of the case.~~

614 ~~(c) Alternatively, the office may seek a writ of attachment~~
615 ~~from the court having jurisdiction over the person who has~~
616 ~~refused to obey a subpoena, who has refused to give testimony,~~
617 ~~or who has refused to produce the matters described in the~~
618 ~~subpoena duces tecum.~~

619 ~~(6) The grant or denial of any license under this chapter~~
620 ~~must be in accordance with s. 120.60.~~

621 Section 3. Section 494.00121, Florida Statutes, is created
622 to read:

623 494.00121 Subpoenas.—

624 (1) The office may:

625 (a) Issue and serve subpoenas and subpoenas duces tecum to
626 compel the attendance of witnesses and the production of all
627 books, accounts, records, and other documents and materials
628 relevant to an examination or investigation conducted by the
629 office. The office, or its authorized representative, may
630 administer oaths and affirmations to any person.

631 (b) Seek subpoenas or subpoenas duces tecum from any court
632 to command the appearance of witnesses and the production of
633 books, accounts, records, and other documents or materials at a
634 time and place named in the subpoenas, and an authorized
635 representative of the office may serve such subpoena.

636 (2) If there is substantial noncompliance with a subpoena



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637 or subpoena duces tecum issued by the office, the office may
638 petition the court in the county where the person subpoenaed
639 resides or has his or her principal place of business for an
640 order requiring the person to appear, testify, or produce such
641 books, accounts, records, and other documents as are specified
642 in the subpoena or subpoena duces tecum.

643 (a) The court may grant injunctive relief restraining the
644 person from advertising, promoting, soliciting, entering into,
645 offering to enter into, continuing, or completing a mortgage
646 loan or servicing a mortgage loan.

647 (b) The court may grant such other relief, including, but
648 not limited to, the restraint, by injunction or appointment of a
649 receiver, of any transfer, pledge, assignment, or other
650 disposition of the person's assets or any concealment,
651 alteration, destruction, or other disposition of books,
652 accounts, records, or other documents and materials as the court
653 deems appropriate, until the person has fully complied with the
654 subpoena duces tecum and the office has completed its
655 investigation or examination.

656 (c) The court may order the refund of any fees collected in
657 a mortgage loan transaction if books and documents
658 substantiating the transaction are not produced or cannot be
659 produced.

660 (d) If it appears to the office that compliance with a
661 subpoena or subpoena duces tecum issued is essential and
662 otherwise unavailable to an investigation or examination, the
663 office may apply to the court for a writ of ne exeat pursuant to
664 s. 68.02.

665 (e) The office may seek a writ of attachment to obtain all



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666 books, accounts, records, and other documents and materials
667 relevant to an examination or investigation.

668 (3) The office is entitled to the summary procedure
669 provided in s. 51.011, and the court shall advance such cause on
670 its calendar. Attorney's fees and any other costs incurred by
671 the office to obtain an order granting, in whole or in part, a
672 petition for enforcement of a subpoena or subpoena duces tecum
673 shall be taxed against the subpoenaed person, and failure to
674 comply with such order is a contempt of court.

675 Section 4. Section 494.0014, Florida Statutes, is amended
676 to read:

677 494.0014 Cease and desist orders; ~~administrative fines;~~
678 refund orders.-

679 (1) The office may ~~has the power to~~ issue and serve upon
680 any person an order to cease and desist and to take corrective
681 action if ~~whenever~~ it has reason to believe the person is
682 violating, has violated, or is about to violate any provision of
683 ss. 494.001-494.0077, any rule or order issued under ss.
684 494.001-494.0077, or any written agreement between the person
685 and the office. All procedural matters relating to issuance and
686 enforcement of such a ~~cease and desist~~ order are governed by the
687 Administrative Procedure Act.

688 (2) The office may ~~has the power to~~ order the refund of any
689 fee directly or indirectly assessed and charged on a mortgage
690 loan transaction which is unauthorized or exceeds the maximum
691 fee specifically authorized in ss. 494.001-494.0077, or any
692 amount collected for the payment of third-party fees which
693 exceeds the cost of the service provided.

694 ~~(3) The office may prohibit the association by a mortgage~~



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695 ~~broker business, or the employment by a mortgage lender or~~
696 ~~correspondent mortgage lender, of any person who has engaged in~~
697 ~~a pattern of misconduct while an associate of a mortgage~~
698 ~~brokerage business or an employee of a mortgage lender or~~
699 ~~correspondent mortgage lender. For the purpose of this~~
700 ~~subsection, the term "pattern of misconduct" means the~~
701 ~~commission of three or more violations of ss. 494.001-494.0077~~
702 ~~or the provisions of chapter 494 in effect prior to October 1,~~
703 ~~1991, during any 1-year period or any criminal conviction for~~
704 ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~
705 ~~in effect prior to October 1, 1991.~~

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

711 Section 5. Section 494.00165, Florida Statutes, is amended
712 to read:

713 494.00165 Prohibited advertising; record requirements.—

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

715 (a) Advertise that an applicant shall ~~will~~ have unqualified
716 access to credit without disclosing the ~~what~~ material
717 limitations on the availability of such credit ~~exist~~. ~~Such~~
718 Material limitations include, but are not limited to, the
719 percentage of down payment required, that a higher rate or
720 points could be required, or that restrictions on ~~as to~~ the
721 maximum principal amount of the loan offered could apply.

722 (b) Advertise a mortgage loan at an expressed interest rate
723 unless the advertisement specifically states that the expressed



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724 rate could change or not be available at commitment or closing.

725 (c) Advertise mortgage loans, including rates, margins,
726 discounts, points, fees, commissions, or other material
727 information, including material limitations on such loans,
728 unless the such person is able to make such mortgage loans
729 available to a reasonable number of qualified applicants.

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

732 (e) Engage in unfair, deceptive, or misleading advertising
733 regarding mortgage loans, brokering services, or lending
734 services.

735 (2) Each person required to be licensed under this chapter
736 must shall maintain a record of samples of each of its
737 advertisements, including commercial scripts of each radio or
738 television broadcast, for examination by the office for ~~a period~~
739 ~~of~~ 2 years after the date of publication or broadcast.

740 Section 6. Section 494.0017, Florida Statutes, is repealed.

741 Section 7. Effective October 1, 2010, section 494.00172,
742 Florida Statutes, is created to read:

743 494.00172 Mortgage Guaranty Trust Fund; payment of fees and
744 claims.—A nonrefundable fee is imposed on each application for a
745 mortgage broker, mortgage lender, or loan originator license and
746 on each annual application for a renewal of such license. For a
747 loan originator, the initial and renewal fee is \$20. For
748 mortgage brokers and lenders, the initial and renewal fee is
749 \$100. This fee is in addition to the regular application or
750 renewal fee assessed and shall be deposited into the Mortgage
751 Guaranty Trust Fund of the office for the payment of claims in
752 accordance with this section.



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753 (1) If the amount in the trust fund exceeds \$5 million, the
754 additional fee shall be discontinued and may not be reimposed
755 until the fund is reduced to below \$1 million pursuant to
756 disbursements made in accordance with this section.

757 (2) A borrower in a mortgage loan transaction is eligible
758 to seek recovery from the trust fund if all of the following
759 conditions are met:

760 (a) The borrower has recorded a final judgment issued by a
761 state court wherein the cause of action against a licensee under
762 this chapter was based on a violation of this chapter and the
763 damages were the result of that violation.

764 (b) The borrower has caused a writ of execution to be
765 issued upon such judgment, and the officer executing the
766 judgment has made a return showing that no personal or real
767 property of the judgment debtor liable to be levied upon in
768 satisfaction of the judgment can be found or that the amount
769 realized on the sale of the judgment debtor's property pursuant
770 to such execution is insufficient to satisfy the judgment.

771 (c) The borrower has made all reasonable searches and
772 inquiries to ascertain whether the judgment debtor possesses
773 real or personal property or other assets subject to being sold
774 or applied in satisfaction of the judgment, and has discovered
775 no such property or assets; or he or she has discovered property
776 and assets and has taken all necessary action and proceedings
777 for the application thereof to the judgment, but the amount
778 realized is insufficient to satisfy the judgment.

779 (d) The borrower has applied any amounts recovered from the
780 judgment debtor, or from any other source, to the damages
781 awarded by the court.



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782 (e) The borrower, at the time the action was instituted,
783 gave notice and provided a copy of the complaint to the office
784 by certified mail. The requirement of a timely giving of notice
785 may be waived by the office upon a showing of good cause.

786 (f) The act for which recovery is sought occurred on or
787 after January 1, 2011.

788 (3) The requirements of subsection (2) are not applicable
789 if the licensee upon which the claim is sought has filed for
790 bankruptcy or has been adjudicated bankrupt. However, the
791 claimant must file a proof of claim in the bankruptcy
792 proceedings and must notify the office by certified mail of the
793 claim by enclosing a copy of the proof of claim and all
794 supporting documents.

795 (4) Any person who meets all of the conditions in
796 subsection (2) may apply to the office for payment from the
797 trust fund equal to the unsatisfied portion of that person's
798 judgment or \$50,000, whichever is less, but only to the extent
799 and amount reflected in the judgment as being for actual or
800 compensatory damages. Actual or compensatory damages may not
801 include postjudgment interest.

802 (a) A borrower may not collect more than \$50,000 from the
803 trust fund for any claim regardless of the number of licensees
804 liable for the borrower's damages.

805 (b) Payments for claims are limited in the aggregate to
806 \$250,000 against any one licensee under this chapter. If the
807 total claims exceed the aggregate limit of \$250,000, the office
808 shall prorate payments based on the ratio that a claim bears to
809 the total claims filed.

810 (c) Payments shall be made to all persons meeting the



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811 requirements of subsection (2) 2 years after the date the first
812 complete and valid notice is received by the office. Persons who
813 give notice after 2 years and who otherwise comply with the
814 conditions precedent to recovery may recover from any remaining
815 portion of the \$250,000 aggregate as provided in this
816 subsection, with claims being paid in the order notice was
817 received until the \$250,000 aggregate has been disbursed.

818 (d) The claimant shall assign his right, title, and
819 interest in the judgment, to the extent of his recovery from the
820 fund, to the office and shall record, at his own expense, the
821 assignment of judgment in every county where the judgment is
822 recorded.

823 (e) If the money in the fund is insufficient to satisfy any
824 valid claim or portion thereof, the office shall satisfy such
825 unpaid claim or portion as soon as a sufficient amount of money
826 has been deposited in the trust fund. If there is more than one
827 unsatisfied claim outstanding, such claims shall be paid in the
828 order in which the claims were filed with the office.

829 (f) The payment of any amount from the fund in settlement
830 of a claim or in satisfaction of a judgment against a licensee
831 constitutes prima facie grounds for the revocation of the
832 license.

833 Section 8. Section 494.0018, Florida Statutes, is amended
834 to read:

835 494.0018 Penalties.—

836 (1) Whoever knowingly violates any provision of s.
837 494.00255(1) (a), (b), or (c) s. 494.0041(2) (e), (f), or (g); s.
838 494.0072(2) (e), (f), or (g); or s. 494.0025(1), (2), (3), (4),
839 or (5), except as provided in subsection (2) of this section,



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840 commits ~~is guilty of~~ a felony of the third degree, punishable as
841 provided in s. 775.082, s. 775.083, or s. 775.084. Each such
842 violation constitutes a separate offense.

843 (2) Any person convicted of a violation of any provision of
844 ss. 494.001-494.0077, in which ~~violation~~ the total value of
845 money and property unlawfully obtained exceeds ~~exceeded~~ \$50,000
846 and there were five or more victims, commits ~~is guilty of~~ a
847 felony of the first degree, punishable as provided in s.
848 775.082, s. 775.083, or s. 775.084.

849 Section 9. Section 494.0019, Florida Statutes, is amended
850 to read:

851 494.0019 Liability in case of unlawful transaction.—

852 (1) If a mortgage loan transaction is made in violation of
853 any provision of ss. 494.001-494.0077, the person making the
854 transaction and every licensee, director, or officer who
855 participated in making the transaction are jointly and severally
856 liable to every party to the transaction in an action for
857 damages incurred by the party or parties.

858 (2) A person is not liable under this section upon a
859 showing that such person's licensees, officers, and directors
860 who participated in making the mortgage loan transaction, if
861 any, acted in good faith and without knowledge and, with the
862 exercise of due diligence, could not have known of the act
863 committed in violation of ss. 494.001-494.0077.

864 Section 10. Section 494.002, Florida Statutes, is amended
865 to read:

866 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~
867 ~~in ss.~~ 494.001-494.0077 do not limit ~~limits~~ any statutory or
868 common-law right of any person to bring any action in any court



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869 for any act involved in the mortgage loan business or the right
870 of the state to punish any person for any violation of any law.

871 Section 11. Section 494.0023, Florida Statutes, is amended
872 to read:

873 494.0023 Conflicting interest.—

874 (1) If, in a mortgage transaction, a licensee has a
875 conflicting interest as specified in subsection (2), the
876 licensee shall, at a minimum, provide the following disclosures
877 to the borrower in writing:

878 (a) The nature of the relationship, ownership, or financial
879 interest between the provider of products or services, or
880 business incident thereto, and the licensee making the referral;
881 ~~The type of conflicting interest shall be fully and fairly~~
882 ~~disclosed.~~

883 (b) An estimated charge or range of charges generally made
884 by such a provider; ~~The licensee shall inform the borrower in~~
885 ~~writing~~

886 (c) That a financial benefit may be received by the
887 licensee as a result of the conflicting interest; and.

888 (d) ~~(e) The borrower shall be informed~~ That alternative
889 sources may be chosen by the borrower to provide the any
890 required products or services. ~~The following language must be~~
891 ~~contained in 12-point type in any agreement between a mortgage~~
892 ~~broker, mortgage lender, or correspondent mortgage lender and a~~
893 ~~borrower in substantially this form:~~

894
895 ~~You are not required to purchase additional products or services~~
896 ~~from any person or entity suggested or recommended by~~
897 ~~(Broker/Lender/Correspondent Lender). However, the~~



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898 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~
899 ~~to approve the entity selected by the borrower, which approval~~
900 ~~may not be unreasonably withheld.~~

901 (2) A licensee has a conflicting interest if:

902 (a) The licensee or the licensee's relative provides the
903 borrower with additional products or services;

904 (b) The licensee or licensee's relative, ~~either~~ directly or
905 indirectly, owns, controls, or holds with power to vote, or
906 holds proxies representing, 1 ~~10~~ percent or more of any class of
907 equity securities or other beneficial interest in the ~~such~~
908 person providing the additional products or services;

909 (c) The person providing the additional products or
910 services, ~~either~~ directly or indirectly, owns, controls, or
911 holds the power to vote, or holds proxies representing, 1 ~~10~~
912 percent or more of any class of equity securities or other
913 beneficial interest in the licensee;

914 (d) A holding company, ~~either~~ directly or indirectly, owns,
915 controls, or holds with power to vote, or holds proxies
916 representing, 1 ~~10~~ percent or more of any class of equity
917 securities or other beneficial interest in both the licensee and
918 the person providing the additional products or services;

919 (e) One or more persons, or such person's relative, sits as
920 an officer or director, or performs similar functions as an
921 officer or director, for both the licensee and the person
922 providing the additional products or services; or

923 (f) The licensee or the licensee's relative sits as an
924 officer or director, or performs similar functions as an officer
925 or director, of the person providing the additional products or
926 services.



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927 (3) The commission may adopt rules to administer the
928 disclosure requirements of this section. The rules must consider
929 the disclosure requirements of the federal Real Estate
930 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the
931 federal Truth in Lending Act, 15 U.S.C. et seq.; and related
932 federal regulations.

933 ~~(3) As used in this section, the term "relative" of any~~
934 ~~natural person means any of the following persons, whether by~~
935 ~~the full or half blood or by adoption:~~

936 ~~(a) Such person's spouse, father, mother, children,~~
937 ~~brothers, and sisters.~~

938 ~~(b) The father, mother, brothers, and sisters of such~~
939 ~~person's spouse.~~

940 ~~(c) The spouses of children, brothers, or sisters of such~~
941 ~~person.~~

942 Section 12. Section 494.0025, Florida Statutes, is amended
943 to read:

944 494.0025 Prohibited practices.—It is unlawful for any
945 person:

946 ~~(1) To act as a mortgage lender in this state without a~~
947 ~~current, active license issued by the office pursuant to ss.~~
948 ~~494.006-494.0077.~~

949 (1)(2) To act as a loan originator correspondent mortgage
950 lender in this state without a current, active license issued by
951 the office pursuant to part II of this chapter ss. 494.006-
952 494.0077.

953 (2)(3) To act as a mortgage broker in this state without a
954 current, active license issued by the office pursuant to part II
955 of this chapter ss. 494.003-494.0043.



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956 (3) To act as a mortgage lender in this state without a
957 current, active license issued by the office pursuant to part
958 III of this chapter.

959 (4) In any practice or transaction or course of business
960 relating to the sale, purchase, negotiation, promotion,
961 advertisement, or hypothecation of mortgage loan transactions,
962 directly or indirectly:

963 (a) To knowingly or willingly employ any device, scheme, or
964 artifice to defraud;

965 (b) To engage in any transaction, practice, or course of
966 business which operates as a fraud upon any person in connection
967 with the purchase or sale of any mortgage loan; or

968 (c) To obtain property by fraud, willful misrepresentation
969 of a future act, or false promise.

970 (5) In any matter within the jurisdiction of the office, to
971 knowingly and willfully falsify, conceal, or cover up by a
972 trick, scheme, or device a material fact, make any false or
973 fraudulent statement or representation, or make or use any false
974 writing or document, knowing the same to contain any false or
975 fraudulent statement or entry.

976 (6) To violate s. 655.922(2), subject to ss. 494.001-
977 494.0077.

978 ~~(7) Who is required to be licensed under ss. 494.006-~~
979 ~~494.0077, to fail to report to the office the failure to meet~~
980 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~
981 ~~494.0065 within 48 hours after the person's knowledge of such~~
982 ~~failure or within 48 hours after the person should have known of~~
983 ~~such failure.~~

984 (7)(8) To pay a fee or commission in any mortgage loan



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985 transaction to any person or entity other than a licensed
986 mortgage broker ~~brokerage business, mortgage lender, or~~
987 ~~correspondent mortgage lender, operating under an active~~
988 ~~license,~~ or a person exempt from licensure under this chapter.

989 ~~(8)(9)~~ To record a mortgage broker ~~brokerage~~ agreement or
990 any other document, not rendered by a court of competent
991 jurisdiction, which purports to enforce the terms of the
992 ~~mortgage brokerage~~ agreement.

993 ~~(9)(10)~~ To use the name or logo of a financial institution,
994 as defined in s. 655.005(1), or its affiliates or subsidiaries
995 when marketing or soliciting existing or prospective customers
996 if such marketing materials are used without the written consent
997 of the financial institution and in a manner that would lead a
998 reasonable person to believe that the material or solicitation
999 originated from, was endorsed by, or is related to or the
1000 responsibility of the financial institution or its affiliates or
1001 subsidiaries.

1002 (10) Subject to investigation or examination under this
1003 chapter, to knowingly alter, withhold, conceal, or destroy any
1004 books, records, computer records, or other information relating
1005 to a person's activities which subject the person to the
1006 jurisdiction of this chapter.

1007 Section 13. Section 494.00255, Florida Statutes, is created
1008 to read:

1009 494.00255 Administrative penalties and fines; license
1010 violations.-

1011 (1) Each of the following acts constitutes a ground for
1012 which the disciplinary actions specified in subsection (2) may
1013 be taken against a person licensed or required to be licensed



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1014 under part II or part III of chapter:

1015 (a) Failure to immediately place upon receipt, and maintain
1016 until authorized to disburse, any money entrusted to the
1017 licensee as a licensee in a segregated account of a federally
1018 insured financial institution in this state.

1019 (b) Failure to account or deliver to any person any
1020 property that is not the licensee's, or that the licensee is not
1021 entitled to retain, under the circumstances and at the time that
1022 has been agreed upon or as required by law or, in the absence of
1023 a fixed time, upon demand of the person entitled to such
1024 accounting and delivery.

1025 (c) Failure to disburse funds in accordance with
1026 agreements.

1027 (d) Any misuse, misapplication, or misappropriation of
1028 personal property entrusted to the licensee's care to which the
1029 licensee had no current property right at the time of
1030 entrustment.

1031 (e) Fraud, misrepresentation, deceit, negligence, or
1032 incompetence in any mortgage financing transaction.

1033 (f) Requesting a specific valuation, orally or in writing,
1034 from an appraiser for a particular property, implying to an
1035 appraiser that a specific valuation is needed for a particular
1036 property, or in any manner conditioning the order for an
1037 appraisal on the appraisal meeting a specific valuation. The
1038 numeric value of the specific valuation sought need not be
1039 stated, but rather the mere statement that a specific valuation
1040 is sought, violates this section.

1041 (g) Consistently and materially underestimating maximum
1042 closing costs.



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1043 (h) Disbursement, or an act which has caused or will cause
1044 disbursement, to any person in any amount from the Mortgage
1045 Guaranty Trust Fund, the Securities Guaranty Fund, or the
1046 Florida Real Estate Recovery Fund, regardless of any repayment
1047 or restitution to the disbursed fund by the licensee or any
1048 person acting on behalf of the licensee.

1049 (i) Commission of fraud, misrepresentation, concealment, or
1050 dishonest dealing by trick, scheme, or device; culpable
1051 negligence; breach of trust in any business transaction in any
1052 state, nation, or territory; or aiding, assisting, or conspiring
1053 with any other person engaged in any such misconduct and in
1054 furtherance thereof.

1055 (j) Being convicted of, or entering a plea of guilty or
1056 nolo contendere to, regardless of adjudication, any felony or
1057 any crime involving fraud, dishonesty, breach of trust, money
1058 laundering, or act of moral turpitude.

1059 (k) Having a final judgment entered against the licensee in
1060 a civil action upon grounds of fraud, embezzlement,
1061 misrepresentation, or deceit.

1062 (l) Having been the subject of any:

1063 1. Decision, finding, injunction, suspension, prohibition,
1064 revocation, denial, judgment, or administrative order by any
1065 court, administrative law judge, state or federal agency,
1066 national securities exchange, national commodities exchange,
1067 national option exchange, national securities association,
1068 national commodities association, or national option association
1069 involving a violation of any federal or state securities or
1070 commodities law or rule or regulation adopted under such law or
1071 involving a violation of any rule or regulation of any national



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1072 securities, commodities, or options exchange or association.

1073 2. Injunction or adverse administrative order by a state or
1074 federal agency regulating banking, insurance, finance or small
1075 loan companies, real estate, mortgage brokers or lenders, money
1076 transmitters, or other related or similar industries.

1077 (m) In any mortgage transaction, violating any provision of
1078 the federal Real Estate Settlement Procedure Act, as amended, 12
1079 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
1080 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
1081 under such acts.

1082 (n) Having a loan originator, mortgage broker, or mortgage
1083 lender license, or the equivalent thereof, revoked in any
1084 jurisdiction.

1085 (o) Having a license, or the equivalent, to practice any
1086 profession or occupation revoked, suspended, or otherwise acted
1087 against, including the denial of licensure by a licensing
1088 authority of this state or another state, territory, or country.

1089 (p) Acting as a loan originator, mortgage broker, or
1090 mortgage lender without a current license issued under part II
1091 or part III of this chapter.

1092 (q) Operating a mortgage broker or mortgage lender branch
1093 office without a current license issued under part II or part
1094 III of this chapter.

1095 (r) Conducting any brokering or lending activities in the
1096 absence of a properly designated principal loan originator or
1097 brokering or lending activities at any particular branch office
1098 without a properly designated branch manager.

1099 (s) A material misstatement or omission of fact on an
1100 initial or renewal license application.



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1101 (t) Payment to the office for a license or permit with a
1102 check or electronic transmission of funds which is dishonored by
1103 the applicant's or licensee's financial institution.

1104 (u) Failure to comply with, or violations of, any provision
1105 of ss. 494.001-494.0077, or any rule or order made or issued
1106 under ss. 494.001-494.0077.

1107 (v) Failure to maintain, preserve, and keep available for
1108 examination all books, accounts, or other documents required by
1109 ss. 494.001-494.0077 and the rules of the commission.

1110 (w) Refusal to permit an investigation or examination of
1111 books and records, or refusal to comply with an office subpoena
1112 or subpoena duces tecum.

1113 (x) Failure to timely pay any fee, charge, or fine imposed
1114 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1115 (2) If the office finds a person in violation of any act
1116 specified in this section, it may enter an order imposing one or
1117 more of the following penalties:

1118 (a) Issuance of a reprimand.

1119 (b) Suspension of a license or registration, subject to
1120 reinstatement upon satisfying all reasonable conditions imposed
1121 by the office.

1122 (c) Revocation of a license or registration.

1123 (d) Denial of a license or registration.

1124 (e) Imposition of a fine in an amount up to \$25,000 for
1125 each count or separate offense.

1126 (f) An administrative fine of up to \$1,000 per day, but not
1127 to exceed \$25,000 cumulatively, for each day that

1128 1. A mortgage broker or mortgage lender conducts business
1129 at an unlicensed branch office.



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1130 2. An unlicensed person acts as a loan originator, a
1131 mortgage broker, or a mortgage lender.

1132 (3) A mortgage broker or mortgage lender, as applicable, is
1133 subject to the disciplinary actions specified in subsection (2)
1134 for a violation of subsection (1) by:

1135 (a) A control person of the mortgage broker or mortgage
1136 lender;

1137 (b) A loan originator employed by or contracting with the
1138 mortgage broker; or

1139 (c) An associate of the mortgage lender.

1140 (4) A principal loan originator of a mortgage broker is
1141 subject to the disciplinary actions specified in subsection (2)
1142 for violations of subsection (1) by a loan originator in the
1143 course of an association with the mortgage broker if there is a
1144 pattern of repeated violations by the loan originator or if the
1145 principal loan originator has knowledge of the violations.

1146 (5) A principal loan originator of a mortgage lender is
1147 subject to the disciplinary actions specified in subsection (2)
1148 for violations of subsection (1) by an associate of a mortgage
1149 lender if there is a pattern of repeated violations by the
1150 associate or if the principal loan originator has knowledge of
1151 the violations.

1152 (6) A branch manager is subject to the disciplinary actions
1153 specified in subsection (2) for violations of subsection (1) by
1154 a loan originator in the course of an association with the
1155 mortgage broker if there is a pattern of repeated violations by
1156 the loan originator or if the branch manager has knowledge of
1157 the violations.

1158 (7) A natural person who is associated with a mortgage



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1159 broker is subject to the disciplinary actions specified in
1160 subsection (2) for a violation of subsection (1) with respect to
1161 an action in which such person was involved.

1162 (8) Pursuant to s. 120.60(6), the office may summarily
1163 suspend the license of a loan originator, mortgage broker, or
1164 mortgage lender if the office has reason to believe that a
1165 licensee poses an immediate, serious danger to the public's
1166 health, safety, or welfare. The arrest of the licensee, or the
1167 mortgage broker or the mortgage lender's control person, for any
1168 felony or any crime involving fraud, dishonesty, breach of
1169 trust, money laundering, or any other act of moral turpitude is
1170 deemed sufficient to constitute an immediate danger to the
1171 public's health, safety, or welfare. Any proceeding for the
1172 summary suspension of a license must be conducted by the
1173 commissioner of the office, or designee, who shall issue the
1174 final summary order.

1175 (9) The office may deny any request to terminate or
1176 withdraw any license application or license if the office
1177 believes that an act that would be a ground for license denial,
1178 suspension, restriction, or revocation under this chapter has
1179 been committed.

1180 Section 14. Section 494.0028, Florida Statutes, is amended
1181 to read:

1182 494.0028 Arbitration.—

1183 (1) This section applies to any mortgage broker ~~brokerage~~
1184 agreement, servicing agreement, loan application, or purchase
1185 agreement that ~~which~~ provides for arbitration between:

1186 (a) A noninstitutional investor and a mortgage lender
1187 servicing ~~or correspondent mortgage lender to service a mortgage~~



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1188 loan.

1189 (b) A borrower and a mortgage broker ~~brokerage business,~~
1190 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a
1191 mortgage loan.

1192 (c) A noninstitutional investor and a mortgage broker
1193 ~~brokerage business,~~ ~~mortgage lender,~~ or ~~correspondent~~ mortgage
1194 lender to fund or purchase a mortgage loan.

1195 (2) All agreements subject to this section must ~~shall~~
1196 provide that, at the voluntary election of the noninstitutional
1197 investor or borrower, disputes shall be handled by ~~either~~ a
1198 court ~~of competent jurisdiction~~ or by binding arbitration.

1199 (3) All agreements subject to this section must ~~shall~~
1200 provide the noninstitutional investor or borrower with the
1201 option to elect arbitration before the American Arbitration
1202 Association or other independent nonindustry arbitration forum.
1203 Any other nonindustry arbitration forum may apply to the office
1204 to allow such forum to provide arbitration services. The office
1205 shall grant the application if the applicant's fees, practices,
1206 and procedures do not materially differ from those of the
1207 American Arbitration Association.

1208 (4) At the election of the noninstitutional investor or
1209 borrower, venue shall be in the county in which the
1210 noninstitutional investor or borrower entered into the agreement
1211 or at a business location of the mortgage broker or ~~brokerage~~
1212 ~~business,~~ mortgage lender, ~~or correspondent~~ lender.

1213 (5) Any fees or charges must be in accordance with ~~shall be~~
1214 ~~made as provided in~~ the rules of the American Arbitration
1215 Association or other approved nonindustry arbitration forum and
1216 may ~~shall~~ not be set in the agreement.



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1217 (6) Any election made under this section is ~~shall be~~
1218 irrevocable.

1219 (7) This section does ~~shall not be construed to~~ require an
1220 agreement that ~~which~~ is subject to this section to contain an
1221 arbitration clause.

1222 Section 15. Effective October 1, 2010, sections 494.0029
1223 and 494.00295, Florida Statutes, are repealed.

1224 Section 16. Section 494.00296, Florida Statutes, is created
1225 to read:

1226 494.00296 Loan modification.-

1227 (1) PROHIBITED ACTS.-When offering or providing loan
1228 modifications services, a loan originator, mortgage broker, or
1229 mortgage lender may not:

1230 (a) Engage in or initiate loan modification services
1231 without first executing a written agreement for loan
1232 modification services with the borrower;

1233 (b) Execute a loan modification without the consent of the
1234 borrower after the borrower is made aware of each modified term;
1235 or

1236 (c) Solicit, charge, receive, or attempt to collect or
1237 secure payment, directly or indirectly, for loan modification
1238 services before completing or performing all services included
1239 in the agreement for loan modification services. A fee may be
1240 charged only if the loan modification results in a material
1241 benefit to the borrower. The commission may adopt rules to
1242 provide guidance on what constitutes a material benefit to the
1243 borrower

1244 (2) LOAN MODIFICATION AGREEMENT.-

1245 (a) The written agreement for loan modification services



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1246 must be printed in at least 12-point uppercase type and signed
1247 by both parties. The agreement must include the name and address
1248 of the person providing loan modification services, the exact
1249 nature and specific detail of each service to be provided, the
1250 total amount and terms of charges to be paid by the borrower for
1251 the services, and the date of the agreement. The date of the
1252 agreement may not be earlier than the date the borrower signed
1253 the agreement. The mortgage broker or mortgage lender must give
1254 the borrower a copy of the agreement to review at least 1
1255 business day before the borrower is to sign the agreement.

1256 (b) The borrower has the right to cancel the written
1257 agreement without any penalty or obligation if the borrower
1258 cancels the agreement within 3 business days after signing the
1259 agreement. The right to cancel may not be waived by the borrower
1260 or limited in any manner by the loan originator, mortgage
1261 broker, or mortgage lender. If the borrower cancels the
1262 agreement, any payments to the loan originator, mortgage broker,
1263 or mortgage lender must be returned to the homeowner within 10
1264 business days after receipt of the notice of cancellation.

1265 (c) An agreement for loan modification services must
1266 contain, immediately above the signature line, a statement in at
1267 least 12-point uppercase type which substantially complies with
1268 the following:

1269 BORROWER'S RIGHT OF CANCELLATION

1270
1271 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
1272 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3
1273 BUSINESS DAYS AFER THE DATE THIS AGREEMENT IS SIGNED
1274 BY YOU.



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1275 THE LOAN ORIGNATOR, MORTGAGE BROKER, OR MORTGAGE
1276 LENDER IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY,
1277 PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL
1278 PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR ANY
1279 REASON YOU HAVE PAID THE CONSULTANT BEFORE
1280 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU
1281 WITHIN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES
1282 YOUR CANCELLATION NOTICE.
1283 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
1284 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD
1285 BE MAILED (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT
1286 ... (ADDRESS) ... NO LATER THAN MIDNIGHT OF
1287 ... (DATE)
1288 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
1289 MORTGAGE LENDER OR MORTGAGE SERVICER BEFORE SIGNING
1290 THIS AGREEMENT. YOUR LENDER OR SERVICER MAY BE WILLING
1291 TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH
1292 YOU FREE OF CHARGE.

1293
1294 (d) The inclusion of the statement does not prohibit a loan
1295 originator, mortgage broker, or mortgage lender from giving the
1296 homeowner more time to cancel the agreement than is set forth in
1297 the statement if all other requirements of this subsection are
1298 met.

1299 (e) The person offering or providing the loan modification
1300 services must give the borrower a copy of the signed agreement
1301 within 3 hours after the borrower signs the agreement.

1302 (3) REMEDIES.-

1303 (a) Without regard to any other remedy or relief to which a



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1304 person is entitled, anyone aggrieved by a violation of this
1305 section may bring an action to obtain a declaratory judgment
1306 that an act or practice violates this section and to enjoin a
1307 person who has violated, is violating, or is otherwise likely to
1308 violate this section.

1309 (b) In any action brought by a person who has suffered a
1310 loss as a result of a violation of this section, such person may
1311 recover actual damages, plus attorney's fees and court costs, as
1312 follows:

1313 1. In any action brought under this section, upon motion of
1314 the party against whom such action is filed alleging that the
1315 action is frivolous, without legal or factual merit, or brought
1316 for the purpose of harassment, the court may, after hearing
1317 evidence as to the necessity therefore, require the party
1318 instituting the action to post a bond in the amount that the
1319 court finds reasonable to indemnify the defendant for any
1320 damages incurred, including reasonable attorney's fees.

1321 2. In any civil litigation resulting from an act or
1322 practice involving a violation of this section, the prevailing
1323 party, after judgment in the trial court and exhaustion of all
1324 appeals, if any, may receive reasonable attorney's fees and
1325 costs from the nonprevailing party.

1326 3. The attorney for the prevailing party shall submit a
1327 sworn affidavit of time spent on the case and costs incurred for
1328 all the motions, hearings, and appeals to the trial judge who
1329 presided over the civil case.

1330 4. The trial judge may award the prevailing party the sum
1331 of reasonable costs incurred in the action plus a reasonable
1332 legal fee for the hours actually spent on the case as sworn to



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1333 in an affidavit.

1334 5. Any award of attorney's fees or costs become part of the
1335 judgment and subject to execution as the law allows.

1336 (c) The provisions of this subsection do not apply to any
1337 action initiated by the enforcing authority.

1338 Section 17. The Division of Statutory Revision is requested
1339 to rename part II of chapter 494, Florida Statutes, consisting
1340 of ss. 494.003-491.0043, Florida Statutes, as "Loan Originators
1341 and Mortgage Brokers."

1342 Section 18. Section 494.003, Florida Statutes, is amended
1343 to read:

1344 494.003 Exemptions.—

1345 (1) ~~None of~~ The following persons are not ~~is~~ subject to the
1346 requirements of this part ~~ss. 494.003-494.0043~~:

1347 (a) Any person operating exclusively as a registered loan
1348 originator in accordance with the S.A.F.E. Mortgage Licensing
1349 Act of 2008 ~~licensed under ss. 494.006-494.0077, except as~~
1350 ~~provided in s. 494.0073.~~

1351 (b) A depository institution; subsidiaries that are owned
1352 and controlled by a depository institution and regulated by the
1353 Board of Governors of the Federal Reserve System, the
1354 Comptroller of the Currency, the Director of the Office of
1355 Thrift Supervision, the National Credit Union Administration, or
1356 the Federal Deposit Insurance Corporation; or institutions
1357 regulated by the Farm Credit Administration ~~state or federal~~
1358 ~~chartered bank, trust company, savings and loan association,~~
1359 ~~savings bank or credit union, bank holding company regulated~~
1360 ~~under the laws of any state or the United States, or consumer~~
1361 ~~finance company licensed pursuant to chapter 516.~~



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1362 ~~(c) A wholly owned bank holding company subsidiary or a~~
1363 ~~wholly owned savings and loan association holding company~~
1364 ~~subsidiary formed and regulated under the laws of any state or~~
1365 ~~the United States that is approved or certified by the~~
1366 ~~Department of Housing and Urban Development, the Veterans~~
1367 ~~Administration, the Government National Mortgage Association,~~
1368 ~~the Federal National Mortgage Association, or the Federal Home~~
1369 ~~Loan Mortgage Corporation.~~

1370 (c)~~(d)~~ The Federal National Mortgage Association; ~~the~~
1371 ~~Federal Home Loan Mortgage Corporation; any agency of the~~
1372 ~~Federal Government; any state, county, or municipal government;~~
1373 ~~or any quasi-governmental agency that acts in such capacity~~
1374 ~~under the specific authority of the laws of any state or the~~
1375 ~~United States.~~

1376 (d) A licensed attorney who negotiates the terms of a
1377 mortgage loan on behalf of a client as an ancillary matter to
1378 the attorney's representation of the client, unless the attorney
1379 is compensated by a mortgage lender, a mortgage broker, or a
1380 loan originator or by the agent of such lender, broker, or
1381 originator.

1382 ~~(c) Any person licensed to practice law in this state, not~~
1383 ~~actively and principally engaged in the business of negotiating~~
1384 ~~loans secured by real property, when such person renders~~
1385 ~~services in the course of her or his practice as an attorney at~~
1386 ~~law.~~

1387 ~~(2) None of the following persons is required to be~~
1388 ~~licensed under ss. 494.003-494.0043:~~

1389 ~~(a) An insurance company duly licensed in this state when~~
1390 ~~dealing with its clients in the normal course of its insurance~~



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1391 ~~business.~~
1392 ~~(b) A federally licensed small business investment company.~~
1393 ~~(c) A securities dealer registered under the provisions of~~
1394 ~~s. 517.12, when dealing with its corporate or individual clients~~
1395 ~~in the normal course of its securities business.~~
1396 ~~(d) Any person acting in a fiduciary capacity conferred by~~
1397 ~~authority of any court.~~
1398 ~~(e) A wholly owned subsidiary of a state or federal~~
1399 ~~chartered bank or savings and loan association the sole activity~~
1400 ~~of which is to distribute the lending programs of such state or~~
1401 ~~federal chartered bank or savings and loan association to~~
1402 ~~persons who arrange loans for, or make loans to, borrowers.~~
1403 ~~(2)-(3)~~ It is not necessary to negate any of the exemptions
1404 provided in this section in any complaint, information,
1405 indictment, or other writ or proceeding brought under ss.
1406 494.001-494.0077. The burden of establishing the right to an ~~any~~
1407 ~~such~~ exemption is upon the party claiming the benefit of the
1408 exemption.
1409 Section 19. Effective October 1, 2010, section 494.0031,
1410 Florida Statutes, is repealed.
1411 Section 20. Effective October 1, 2010, section 494.00312,
1412 Florida Statutes, is created to read:
1413 494.00312 Loan originator license.-
1414 (1) An individual who acts as a loan originator must be
1415 licensed under this section.
1416 (2) In order to apply for loan originator license, an
1417 applicant must:
1418 (a) Be at least 18 years of age and have a high school
1419 diploma or its equivalent.



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1420 (b) Complete a 20-hour prelicensing class approved by the
1421 registry.

1422 (c) Pass a written test developed by the registry and
1423 administered by a provider approved by the registry.

1424 (d) Submit a completed license application form as
1425 prescribed by commission rule.

1426 (e) Submit a nonrefundable application fee of \$195, and the
1427 \$20 nonrefundable fee if required by s. 494.00172. Application
1428 fees may not be prorated for partial years of licensure.

1429 (f) Submit fingerprints in accordance with rules adopted by
1430 the commission:

1431 1. The fingerprints may be submitted to the registry, the
1432 office, or a vendor acting on behalf of the registry or the
1433 office.

1434 2. The office may contract with a third-party vendor to
1435 provide live-scan fingerprinting in lieu of a paper fingerprint
1436 card.

1437 3. A state criminal history background check must be
1438 conducted through the Department of Law Enforcement and a
1439 federal criminal history background check must be conducted
1440 through the Federal Bureau of Investigation.

1441 4. All fingerprints submitted to the Department of Law
1442 Enforcement must be submitted electronically and entered into
1443 the statewide automated fingerprint identification system
1444 established in s. 943.05(2)(b) and available for use in
1445 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1446 annual fee to the department to participate in the system and
1447 inform the department of any person whose fingerprints are no
1448 longer required to be retained.



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1449 5. The costs of fingerprint processing, including the cost
1450 of retaining the fingerprints, shall be borne by the person
1451 subject to the background check.

1452 6. The office is responsible for reviewing the results of
1453 the state and federal criminal history checks and determining
1454 whether the applicant meets licensure requirements.

1455 (g) Authorize the registry to obtain an independent credit
1456 report on the applicant from a consumer reporting agency, and
1457 transmit or provide access to the report to the office. The cost
1458 of the credit report shall be borne by the applicant.

1459 (h) Submit additional information or documentation
1460 requested by the office and required by rule concerning the
1461 applicant. Additional information may include documentation of
1462 pending and prior disciplinary and criminal history events,
1463 including arrest reports and certified copies of charging
1464 documents, plea agreements, judgments and sentencing documents,
1465 documents relating to pretrial intervention, orders terminating
1466 probation or supervised release, final administrative agency
1467 orders, or other comparable documents that may provide the
1468 office with the appropriate information to determine eligibility
1469 for licensure.

1470 (i) Submit any other information required by the registry
1471 for the processing of the application.

1472 (3) An application is considered received for the purposes
1473 of s. 120.60 upon the office's receipt of all documentation from
1474 the registry, including the completed application form,
1475 documentation of completion of the prelicensure class, test
1476 results, criminal history information, and independent credit
1477 report, as well as the license application fee, the fee required



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1478 by s. 494.00172, and all applicable fingerprinting processing
1479 fees.

1480 (4) The office shall issue a loan originator license to
1481 each person who is not otherwise ineligible and who meets the
1482 requirements of this section. However, it is a ground for denial
1483 of licensure if the applicant:

1484 (a) Has committed any violation specified in ss. 494.001-
1485 494.0077, or is the subject of a pending felony criminal
1486 prosecution or a prosecution or an administrative enforcement
1487 action, in any jurisdiction, which involves fraud, dishonesty,
1488 breach of trust, money laundering, or any other act of moral
1489 turpitude.

1490 (b) Demonstrates a lack of financial responsibility,
1491 character, and general fitness which would fail to command the
1492 confidence of the community and to warrant a determination that
1493 the loan originator will operate honestly, fairly, and
1494 efficiently.

1495 1. For purposes of this paragraph, a person has shown that
1496 he or she is not financially responsible if he or she has shown
1497 a disregard in the management of his or her own financial
1498 condition, which may include, but is not limited to:

1499 a. Current outstanding judgments, except judgments
1500 resulting solely from medical expenses;

1501 b. Current outstanding tax liens or other government liens
1502 and filings;

1503 c. Foreclosures within the past 3 years; or

1504 d. A pattern of seriously delinquent accounts within the
1505 past 7 years.

1506 2. If an applicant's credit report would serve, in whole or



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1507 in part, as the basis for denial of a license, before denying
1508 the license, the office must notify the applicant in writing of
1509 the specific items of concern found in the credit report. The
1510 applicant shall be provided an opportunity to submit any
1511 mitigating information with regard to the items identified by
1512 the office. The use of the terms "poor credit history," "poor
1513 credit rating," or similar language do not meet the requirements
1514 of this subsection. The office may not use an applicant's credit
1515 score as a basis for denying licensure.

1516 (5) The office may not issue a license to an applicant who
1517 has had a loan originator license or its equivalent revoked in
1518 any jurisdiction.

1519 (6) A loan originator license may be withdrawn pursuant to
1520 s. 120.60 if it was issued through mistake or inadvertence of
1521 the office. A license must be reinstated if the applicant
1522 demonstrates that the requirements for obtaining the license
1523 under this chapter have been satisfied.

1524 (7) All loan originator licenses must be renewed annually
1525 by December 31 pursuant to s. 494.00313. If a person holding a
1526 loan originator license has not applied to renew the license on
1527 or before December 31, the loan originator license expires on
1528 December 31. If a person holding an active loan originator
1529 license has applied to renew the license on or before December
1530 31, the loan originator license remains active until the renewal
1531 application is approved or denied. A loan originator is not
1532 precluded from reapplying for licensure upon expiration of a
1533 previous license.

1534 Section 21. Effective October 1, 2010, section 494.00313,
1535 Florida Statutes, is created to read:



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1536 494.00313 Loan originator license renewal.-

1537 (1) In order to renew a loan originator license, a loan
1538 originator must:

1539 (a) Submit a completed license renewal form as prescribed
1540 by commission rule.

1541 (b) Submit a nonrefundable renewal fee of \$150, and the \$20
1542 nonrefundable fee if required by s. 494.00172.

1543 (c) Provide documentation of completion of at least 8 hours
1544 of continuing education in courses reviewed and approved by the
1545 registry.

1546 (d) Authorize the registry to obtain an independent credit
1547 report on the applicant from a consumer reporting agency, and
1548 transmit or provide access to the report to the office. The cost
1549 of the credit report shall be borne by the applicant.

1550 (e) Submit any additional information or documentation
1551 requested by the office and required by rule concerning the
1552 licensee. Additional information may include documentation of
1553 pending and prior disciplinary and criminal history events,
1554 including arrest reports and certified copies of charging
1555 documents, plea agreements, judgments and sentencing documents,
1556 documents relating to pretrial intervention, orders terminating
1557 probation or supervised release, final administrative agency
1558 orders, or other comparable documents that may provide the
1559 office with the appropriate information to determine eligibility
1560 for licensure.

1561 (2) The office may not renew a loan originator license
1562 unless the loan originator continues to meet the minimum
1563 standards for initial license issuance pursuant to s. 494.00312
1564 and adopted rule.



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1565 Section 22. Effective October 1, 2010, section 494.0032,
1566 Florida Statutes, is repealed.

1567 Section 23. Effective October 1, 2010, section 494.00321,
1568 Florida Statutes, is created to read:

1569 494.00321 Mortgage broker license.-

1570 (1) Each person who acts as a mortgage broker must be
1571 licensed in accordance with this section.

1572 (2) In order to apply for a mortgage broker license the
1573 applicant must:

1574 (a) Submit a completed license application form as
1575 prescribed by commission rule.

1576 (b) Designate a qualified principal loan originator on the
1577 application form who meets the requirements of s. 494.0035.

1578 (c) Submit a nonrefundable application fee of \$425, and the
1579 \$100 nonrefundable fee if required by s. 494.00172. Application
1580 fees may not be prorated for partial years of licensure.

1581 (d) Submit fingerprints for each of the applicant's control
1582 persons in accordance with rules adopted by the commission:

1583 1. The fingerprints may be submitted to the registry, the
1584 office, or a vendor acting on behalf of the registry or the
1585 office.

1586 2. The office may contract with a third-party vendor to
1587 provide live-scan fingerprinting in lieu of a paper fingerprint
1588 card.

1589 3. A state criminal history background check must be
1590 conducted through the Department of Law Enforcement and a
1591 federal criminal history background check must be conducted
1592 through the Federal Bureau of Investigation.

1593 4. All fingerprints submitted to the Department of Law



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1594 Enforcement must be submitted electronically and entered into
1595 the statewide automated fingerprint identification system
1596 established in s. 943.05(2)(b) and available for use in
1597 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1598 annual fee to the department to participate in the system and
1599 inform the department of any person whose fingerprints are no
1600 longer required to be retained.

1601 5. The costs of fingerprint processing, including the cost
1602 of retaining the fingerprints, shall be borne by the person
1603 subject to the background check.

1604 6. The office is responsible for reviewing the results of
1605 the state and federal criminal history checks and determining
1606 whether the applicant meets licensure requirements.

1607 (e) Authorize the registry to obtain an independent credit
1608 report on each of the applicant's control persons from a
1609 consumer reporting agency, and transmit or provide access to the
1610 report to the office. The cost of the credit report shall be
1611 borne by the applicant.

1612 (f) Submit additional information or documentation
1613 requested by the office and required by rule concerning the
1614 applicant or a control person of the applicant. Additional
1615 information may include documentation of pending and prior
1616 disciplinary and criminal history events, including arrest
1617 reports and certified copies of charging documents, plea
1618 agreements, judgments and sentencing documents, documents
1619 relating to pretrial intervention, orders terminating probation
1620 or supervised release, final administrative agency orders, or
1621 other comparable documents that may provide the office with the
1622 appropriate information to determine eligibility for licensure.



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1623 (g) Submit any other information required by the registry
1624 for the processing of the application.

1625 (3) An application is considered received for the purposes
1626 of s. 120.60 upon the office's receipt of all documentation from
1627 the registry, including the completed application form, criminal
1628 history information, and independent credit report, as well as
1629 the licensed application fee, the fee required by s. 492.00172,
1630 and all applicable fingerprinting processing fees.

1631 (4) The office shall issue a mortgage broker license to
1632 each person who is not otherwise ineligible and who meets the
1633 requirements of this section. However, it is a ground for denial
1634 of licensure if the applicant or one of the applicant's control
1635 persons:

1636 (a) Has committed any violation specified in ss. 494.001-
1637 494.0077, or is the subject of a pending felony criminal
1638 prosecution or a prosecution or an administrative enforcement
1639 action, in any jurisdiction, which involves fraud, dishonesty,
1640 breach of trust, money laundering, or any other act of moral
1641 turpitude.

1642 (b) Demonstrates a lack of financial responsibility,
1643 character, and general fitness which would fail to command the
1644 confidence of the community and to warrant a determination that
1645 the loan originator will operate honestly, fairly, and
1646 efficiently.

1647 1. For purposes of this paragraph, a person has shown that
1648 he or she is not financially responsible if he or she has shown
1649 a disregard in the management of his or her own financial
1650 condition, which may include, but is not limited to:

1651 a. Current outstanding judgments, except judgments



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1652 resulting solely from medical expenses;

1653 b. Current outstanding tax liens or other government liens
1654 and filings;

1655 c. Foreclosures within the past 3 years; or

1656 d. A pattern of seriously delinquent accounts within the
1657 past 7 years.

1658 2. If an applicant's credit report would serve, in whole or
1659 in part, as the basis for denial of a license, before denying
1660 the license, the office must notify the applicant in writing of
1661 the specific items of concern found in the credit report. The
1662 applicant shall be provided an opportunity to submit any
1663 mitigating information with regard to the items identified by
1664 the office. The use of the terms "poor credit history," "poor
1665 credit rating," or similar language do not meet the requirements
1666 of this subsection. The office may not use an applicant's credit
1667 score as a basis for denying licensure.

1668 (5) The office shall deny a license if the applicant has
1669 had a mortgage broker license, or its equivalent, revoked in any
1670 jurisdiction, or any of the applicant's control persons has had
1671 a loan originator license, or its equivalent, revoked in any
1672 jurisdiction.

1673 (6) A mortgage broker license may be withdrawn pursuant to
1674 s. 120.60 if it was issued through mistake or inadvertence of
1675 the office. A license must be reinstated if the applicant
1676 demonstrates that the requirements for obtaining the license
1677 under this chapter have been satisfied.

1678 (7) All mortgage broker licenses must be renewed annually
1679 by December 31 pursuant to s. 494.00322. If a person holding an
1680 active mortgage broker license has not applied to renew the



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1681 license annually on or before December 31, the mortgage broker
1682 license expires on December 31. If a person holding an active
1683 mortgage broker license has applied to renew the license on or
1684 before December 31, the mortgage broker license remains active
1685 until the renewal application is approved or denied. A mortgage
1686 broker is not precluded from reapplying for licensure upon
1687 expiration of a previous license.

1688 Section 24. Effective October 1, 2010, section 494.00322,
1689 Florida Statutes, is created to read:

1690 494.00322 Mortgage broker license renewal.-

1691 (1) In order to renew a mortgage broker license, a mortgage
1692 broker must:

1693 (a) Submit a completed license renewal form as prescribed
1694 by commission rule.

1695 (b) Submit a nonrefundable renewal fee of \$375, and the
1696 \$100 nonrefundable fee if required by s. 494.00172.

1697 (c) Submit fingerprints in accordance with s.
1698 494.00321(2) (d) for any new control persons who have not been
1699 screened.

1700 (d) Authorize the registry to obtain an independent credit
1701 report on each of the applicant's control persons from a
1702 consumer reporting agency, and transmit or provide access to the
1703 report to the office. The cost of the credit report shall be
1704 borne by the applicant.

1705 (e) Submit any additional information or documentation
1706 requested by the office and required by rule concerning the
1707 applicant or a control person of the applicant. Additional
1708 information may include documentation of pending and prior
1709 disciplinary and criminal history events, including arrest



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1710 reports and certified copies of charging documents, plea
1711 agreements, judgments and sentencing documents, documents
1712 relating to pretrial intervention, orders terminating probation
1713 or supervised release, final administrative agency orders, or
1714 other comparable documents that may provide the office with the
1715 appropriate information to determine eligibility for licensure.

1716 (2) The office may not renew a mortgage broker license
1717 unless the licensee continues to meet the minimum requirements
1718 for initial licensure pursuant to s. 494.00321 and adopted rule.

1719 Section 25. Effective October 1, 2010, section 494.0033,
1720 Florida Statutes, is repealed.

1721 Section 26. Section 494.00331, Florida Statutes, is amended
1722 to read:

1723 494.00331 ~~Loan originator employment Mortgage broker~~
1724 ~~association.~~ An individual may not act as a loan originator
1725 unless he or she is an employee of, or an independent contractor
1726 for, a mortgage broker or a mortgage lender, and may not be
1727 employed by or contract with more than one mortgage broker or
1728 mortgage lender, or either simultaneously. ~~No person required to~~
1729 ~~be licensed as a mortgage broker under this chapter shall be~~
1730 ~~simultaneously an associate of more than one licensed mortgage~~
1731 ~~brokerage business, licensed mortgage lender, or licensed~~
1732 ~~correspondent mortgage lender.~~

1733 Section 27. Effective October 1, 2010, section 494.0034,
1734 Florida Statutes, is repealed.

1735 Section 28. Section 494.0035, Florida Statutes, is amended
1736 to read:

1737 494.0035 Principal loan originator ~~broker~~ and branch
1738 manager for mortgage broker ~~requirements.~~



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1739 (1) Each mortgage broker ~~brokerage business~~ must be
1740 operated by a principal loan originator who shall have a
1741 principal broker who shall operate the business under such
1742 ~~broker's~~ full charge, control, and supervision of the mortgage
1743 broker business. The principal loan originator must have been
1744 licensed as a loan originator ~~broker must have been a licensed~~
1745 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year
1746 before ~~prior to~~ being designated as the a principal loan
1747 originator ~~broker~~, or must shall demonstrate to the satisfaction
1748 of the office that he or she ~~such principal broker~~ has been
1749 actively engaged in a mortgage broker-related ~~mortgage-related~~
1750 business for at least 1 year before ~~prior to~~ being designated as
1751 a principal loan originator ~~broker~~. Each mortgage broker must
1752 keep the office informed of the person designated as the
1753 principal loan originator as prescribed by commission rule
1754 ~~brokerage business shall maintain a form as prescribed by the~~
1755 ~~commission indicating the business's designation of principal~~
1756 ~~broker and the individual's acceptance of such responsibility.~~
1757 If the designation is inaccurate, the business shall be deemed
1758 to be operated under ~~form is unavailable, inaccurate, or~~
1759 ~~incomplete, it is deemed that the business was operated in the~~
1760 full charge, control, and supervision of ~~by~~ each officer,
1761 director, or ultimate equitable owner of a 10-percent or greater
1762 interest in the mortgage broker ~~brokerage business~~, or any other
1763 person in a similar capacity. A loan originator may not be a
1764 principal loan originator for more than one mortgage broker at
1765 any given time.

1766 (2) Each branch office of a mortgage broker ~~brokerage~~
1767 ~~business~~ must be operated by a ~~have a designated~~ branch manager



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1768 ~~broker~~ who shall have ~~operate the business under such broker's~~
1769 ~~full charge, control, and supervision of the branch office.~~ The
1770 designated branch manager ~~broker~~ must be a licensed loan
1771 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033~~.
1772 Each branch office must keep the office informed of the person
1773 designated as the branch manager as prescribed by commission
1774 rule, which includes documentation of ~~shall maintain a form as~~
1775 ~~prescribed by the commission logging the branch's designation of~~
1776 ~~a branch broker and the individual's acceptance of such~~
1777 ~~responsibility. If the~~ designation is inaccurate, the branch
1778 office shall be deemed to be operated under ~~form is unavailable,~~
1779 ~~inaccurate, or incomplete, it is deemed that the branch was~~
1780 ~~operated in the full charge, control, and supervision of~~ by each
1781 officer, director, or ultimate equitable owner of a 10-percent
1782 or greater interest in the mortgage broker ~~brokerage business,~~
1783 or any other person in a similar capacity.

1784 Section 29. Section 494.0036, Florida Statutes, is amended
1785 to read:

1786 494.0036 Mortgage broker branch office license ~~brokerage~~
1787 ~~business branch offices.~~

1788 (1) Each branch office of a mortgage broker must be
1789 licensed under this section. ~~A mortgage brokerage business~~
1790 ~~branch office license is required for each branch office~~
1791 ~~maintained by a mortgage brokerage business.~~

1792 (2) The office shall issue a mortgage broker ~~brokerage~~
1793 ~~business~~ branch office license to a mortgage broker ~~brokerage~~
1794 ~~business~~ licensee after the office determines that the licensee
1795 has submitted a completed application for a branch office in a
1796 form ~~as~~ prescribed by commission rule and payment of an initial



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1797 nonrefundable branch office license fee of \$225 per branch
1798 office. Application fees may not be prorated for partial years
1799 of licensure. The branch office license shall be issued in the
1800 name of the mortgage broker ~~brokerage business~~ that maintains
1801 the branch office. An application is considered received for
1802 purposes of s. 120.60 upon receipt of a completed application
1803 form as prescribed by commission rule, and the required fees a
1804 ~~nonrefundable application fee of \$225, and any other fee~~
1805 ~~prescribed by law.~~

1806 (3) A branch office license must be renewed annually at the
1807 time of renewing the mortgage broker license under s. 494.00322.
1808 A nonrefundable branch renewal fee of \$225 per branch office
1809 must be submitted at the time of renewal.

1810 Section 30. Section 494.0038, Florida Statutes, is amended
1811 to read:

1812 494.0038 Loan origination and mortgage broker fees and
1813 ~~Mortgage broker~~ disclosures.-

1814 (1) ~~(a)1.~~ A loan origination fee may not be paid ~~person may~~
1815 ~~not receive a mortgage brokerage fee~~ except pursuant to a
1816 written mortgage broker ~~brokerage~~ agreement between the mortgage
1817 broker ~~brokerage business~~ and the borrower which is signed and
1818 dated by the principal loan originator or branch manager, ~~the~~
1819 ~~business~~ and the borrower. The unique registry identifier of
1820 each loan originator responsible for providing loan originator
1821 services must be printed on the mortgage broker agreement.

1822 ~~(a)2.~~ The written mortgage broker ~~brokerage~~ agreement must
1823 describe the services to be provided by the mortgage broker
1824 ~~brokerage business~~ and specify the amount and terms of the loan
1825 origination ~~mortgage brokerage~~ fee that the mortgage broker



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1826 ~~brokerage business~~ is to receive.

1827 1. Except for application and third-party fees, all fees
1828 received by a mortgage broker from a borrower must be identified
1829 as a loan origination fee.

1830 2. All fees on the mortgage broker agreement must be
1831 disclosed in dollar amounts.

1832 3. All loan origination fees must be paid to a mortgage
1833 broker.

1834 (b) The ~~written mortgage brokerage~~ agreement must be
1835 executed within 3 business days after a mortgage loan
1836 application is accepted if the borrower is present when the
1837 mortgage loan application is accepted. If the borrower is not
1838 present ~~when such an application is accepted~~, the licensee shall
1839 forward the ~~written mortgage brokerage~~ agreement to the borrower
1840 within 3 business days after the licensee's acceptance of the
1841 application and the licensee bears the burden of proving that
1842 the borrower received and approved the ~~written mortgage~~
1843 ~~brokerage~~ agreement.

1844 (2) ~~(b) 1.~~ If the mortgage broker ~~brokerage business~~ is to
1845 receive any payment of any kind from the mortgage lender, the
1846 maximum total dollar amount of the payment must be disclosed to
1847 the borrower in the written mortgage broker ~~brokerage~~ agreement
1848 as described in paragraph (1) (a). The commission may prescribe
1849 by rule an acceptable form for disclosure of brokerage fees
1850 received from the lender. The ~~mortgage brokerage~~ agreement must
1851 state the nature of the relationship with the lender, describe
1852 how compensation is paid by the lender, and describe how the
1853 mortgage interest rate affects the compensation paid to the
1854 mortgage broker ~~brokerage business~~.



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1855 (a)~~2~~. The exact amount of any payment of any kind by the
1856 lender to the mortgage broker ~~brokerage business~~ must be
1857 disclosed in writing to the borrower within 3 business days
1858 after the mortgage broker ~~brokerage business~~ is made aware of
1859 the exact amount of the payment from the lender but not less
1860 than 3 business days before the execution of the closing or
1861 settlement statement. The licensee bears the burden of proving
1862 such notification was provided to the borrower. Notification is
1863 waived if the exact amount of the payment is accurately
1864 disclosed in the written mortgage broker agreement.

1865 (b)~~(c)~~ The commission may prescribe by rule the form of
1866 disclosure of brokerage fees.

1867 (3)~~(2)~~ At the time a written mortgage broker ~~brokerage~~
1868 agreement is signed ~~executed~~ by the borrower or forwarded to the
1869 borrower for signature ~~execution~~, or at the time the mortgage
1870 broker ~~brokerage~~ business accepts an application fee, credit
1871 report fee, property appraisal fee, or any other third-party
1872 fee, but at least ~~not less than~~ 3 business days before execution
1873 of the closing or settlement statement, the mortgage broker
1874 ~~brokerage business~~ shall disclose in writing to any applicant
1875 for a mortgage loan the following information:

1876 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may
1877 not make mortgage loans or commitments. The mortgage broker
1878 ~~brokerage business~~ may make a commitment and may furnish a lock-
1879 in of the rate and program on behalf of the lender if ~~when~~ the
1880 mortgage broker ~~brokerage business~~ has obtained a written
1881 commitment or lock-in for the loan from the lender on behalf of
1882 the borrower for the loan. The commitment must be in the same
1883 form and substance as issued by the lender.



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1884 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot
1885 guarantee acceptance into any particular loan program or promise
1886 any specific loan terms or conditions.

1887 (c) A good faith estimate, signed and dated by the
1888 borrower, which discloses the total amount of each of the fees
1889 ~~which~~ the borrower may reasonably expect to pay if the loan is
1890 closed, including, but not limited to, fees earned by the
1891 mortgage broker ~~brokerage business~~, lender fees, third-party
1892 fees, and official fees, together with the terms and conditions
1893 for obtaining a refund of such fees, if any. Any amount
1894 collected in excess of the actual cost shall be returned within
1895 60 days after rejection, withdrawal, or closing. The good faith
1896 estimate must identify the recipient of all payments charged the
1897 borrower and, except for all fees to be received by the mortgage
1898 broker ~~brokerage business~~, may be disclosed in generic terms,
1899 such as, but not limited to, paid to lender, appraiser,
1900 officials, title company, or any other third-party service
1901 provider. This requirement does not supplant or is not a
1902 substitute for the written mortgage broker ~~brokerage~~ agreement
1903 described in subsection (1).

1904 (4) ~~(3)~~ The disclosures required by this subsection must be
1905 furnished in writing at the time an adjustable rate mortgage
1906 loan is offered to the borrower and whenever the terms of the
1907 adjustable rate mortgage loan offered materially change prior to
1908 closing. The mortgage broker shall furnish the disclosures
1909 relating to adjustable rate mortgages in a format prescribed by
1910 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
1911 of the Federal Reserve System, as amended; its commentary, as
1912 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.



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1913 1601 et seq., as amended; together with the Consumer Handbook on
1914 Adjustable Rate Mortgages, as amended; published by the Federal
1915 Reserve Board and the Federal Home Loan Bank Board. The licensee
1916 bears the burden of proving such disclosures were provided to
1917 the borrower.

1918 ~~(5)~~ ~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes
1919 a nonrefundable application fee, the following requirements are
1920 applicable:

1921 (a) The amount of the application fee, which must be
1922 clearly denominated as such, must ~~shall~~ be clearly disclosed.

1923 (b) The specific services that will be performed in
1924 consideration for the application fee must ~~shall~~ be disclosed.

1925 (c) The application fee must be reasonably related to the
1926 services to be performed and may not be based upon a percentage
1927 of the principal amount of the loan or the amount financed.

1928 ~~(6)~~ ~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
1929 any fee in connection with a mortgage loan other than an
1930 application fee, credit report fee, property appraisal fee, or
1931 other third-party fee ~~prior to obtaining a written commitment~~
1932 ~~from a qualified lender.~~

1933 ~~(7)~~ ~~(6)~~ Any third-party fee entrusted to a mortgage broker
1934 must ~~brokerage business shall~~ immediately, upon receipt, be
1935 placed into a segregated account with a financial institution
1936 located in the state the accounts of which are insured by the
1937 Federal Government. Such funds shall be held in trust for the
1938 payor and shall be kept in the account until disbursement. Such
1939 funds may be placed in one account if adequate accounting
1940 measures are taken to identify the source of the funds.

1941 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~



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1942 ~~brokerage business licensee.~~

1943 (8) A mortgage broker may not pay a commission to any
1944 person not licensed pursuant to this chapter.

1945 (9)~~(8)~~ This section does not prohibit a mortgage broker
1946 ~~brokerage business~~ from offering products and services, in
1947 addition to those offered in conjunction with the loan
1948 origination process, for a fee or commission.

1949 Section 31. Section 494.0039, Florida Statutes, is amended
1950 to read:

1951 494.0039 Principal place of business requirements.—Each
1952 mortgage broker ~~brokerage business~~ licensee shall maintain and
1953 transact business from a principal place of business.

1954 Section 32. Section 494.004, Florida Statutes, is amended
1955 to read:

1956 494.004 Requirements of licensees.—

1957 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
1958 shall report to the office:

1959 (a) In writing, any conviction of, or plea of nolo
1960 contendere to, regardless of adjudication, any felony or any
1961 crime or administrative violation that involves fraud,
1962 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
1963 or any other act of moral turpitude, in any jurisdiction, by the
1964 licensee or any control ~~natural~~ person within ~~named in s.~~
1965 ~~494.0031(2)(d), not later than~~ 30 days after the date of
1966 conviction, entry of a plea of nolo contendere, or final
1967 administrative action.

1968 (b)~~(2)~~ ~~Each licensee under ss. 494.003-494.0043 shall~~
1969 ~~report,~~ In a form prescribed by rule of the commission, any
1970 conviction of, or plea of nolo contendere to, regardless of



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1971 ~~whether~~ adjudication ~~is withheld~~, any felony committed by the
1972 licensee or any control ~~natural~~ person within ~~named in s.~~
1973 494.0031(2) (d), ~~not later than~~ 30 days after the date of
1974 conviction or the date the plea of nolo contendere is entered.

1975 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~
1976 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
1977 within 30 ~~to the office not later than 7~~ business days after the
1978 action is instituted.

1979 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
1980 ~~report~~ On a form prescribed by rule of the commission, any
1981 change to the information contained in any initial application
1982 form or any amendment to the application within ~~not later than~~
1983 30 days after the change is effective.

1984 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
1985 ~~transferable or assignable.~~

1986 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
1987 ~~report~~ Any change in the principal loan originator ~~broker~~, any
1988 addition or subtraction of a control person ~~partners, officers,~~
1989 ~~members, joint venturers, directors, control persons of any~~
1990 ~~licensee, or any individual who is the ultimate equitable owner~~
1991 ~~of a 10-percent or greater interest in the licensee, or any~~
1992 change in the form of business organization, by written
1993 amendment in the form and at the time the commission specifies
1994 by rule.

1995 ~~(a) In any case in which a person or a group of persons,~~
1996 ~~directly or indirectly or acting by or through one or more~~
1997 ~~persons, proposes to purchase or acquire a controlling interest~~
1998 ~~in a licensee, such person or group shall submit an initial~~
1999 ~~application for licensure as a mortgage brokerage business~~



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2000 ~~before such purchase or acquisition and at the time and in the~~
2001 ~~form the commission prescribes by rule.~~

2002 ~~(b) As used in this subsection, the term "controlling~~
2003 ~~interest" means possession of the power to direct or cause the~~
2004 ~~direction of the management or policies of a company whether~~
2005 ~~through ownership of securities, by contract, or otherwise. Any~~
2006 ~~person who directly or indirectly has the right to vote 25~~
2007 ~~percent or more of the voting securities of a company or is~~
2008 ~~entitled to 25 percent or more of the company's profits is~~
2009 ~~presumed to possess a controlling interest.~~

2010 ~~(f)(e) Any addition of a partner, officer, member, joint~~
2011 ~~venturer, director, control person, or ultimate equitable owner~~
2012 ~~of the applicant who does not have a controlling interest and~~
2013 ~~who has not previously filed a Uniform Mortgage Biographical~~
2014 ~~Statement & Consent Form, MU2, or has not previously complied~~
2015 ~~with the fingerprinting and credit report requirements~~
2016 ~~provisions of ss. 494.00321 and 494.00322, s. 494.0031(2)(c) and~~
2017 ~~(d) is subject to the such provisions of these sections unless~~
2018 ~~required to file an initial application in accordance with~~
2019 ~~paragraph (a). If, after the addition of a control person, the~~
2020 ~~office finds that the licensee does not continue to meet~~
2021 ~~licensure requirements, the office may bring an administrative~~
2022 ~~action in accordance with s. 494.00255 s. 494.0041 to enforce~~
2023 ~~the provisions of this chapter.~~

2024 ~~(d) The commission shall adopt rules pursuant to ss.~~
2025 ~~120.536(1) and 120.54 providing for the waiver of the~~
2026 ~~application required by this subsection if the person or group~~
2027 ~~of persons proposing to purchase or acquire a controlling~~
2028 ~~interest in a licensee has previously complied with the~~



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2029 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~
2030 ~~legal entity or is currently licensed by the office under this~~
2031 ~~chapter.~~

2032 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
2033 ~~business shall file an initial report stating the name, social~~
2034 ~~security number, date of birth, mortgage broker license number,~~
2035 ~~date of hire and, if applicable, date of termination for each~~
2036 ~~person who was an associate of the mortgage brokerage business~~
2037 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
2038 ~~brokerage business shall file a quarterly report only if a~~
2039 ~~person became an associate or ceased to be an associate of the~~
2040 ~~mortgage brokerage business during the immediate preceding~~
2041 ~~quarter. Such report shall be filed within 30 days after the~~
2042 ~~last day of each calendar quarter and shall contain the name,~~
2043 ~~social security number, date of birth, mortgage broker license~~
2044 ~~number, date of hire and, if applicable, the date of termination~~
2045 ~~of each person who became or ceased to be an associate of the~~
2046 ~~mortgage brokerage business during the immediate preceding~~
2047 ~~quarter. The commission shall prescribe, by rule, the procedures~~
2048 ~~for filing reports required by this subsection.~~

2049 ~~(2)(8)(a)~~ In every mortgage loan transaction, each licensee
2050 under this part must ~~ss. 494.003-494.0043~~ shall notify a
2051 borrower of any material changes in the terms of a mortgage loan
2052 previously offered to the borrower within 3 business days after
2053 being made aware of such changes by the mortgage lender but at
2054 least ~~not less than~~ 3 business days before the signing of the
2055 settlement or closing statement. The licensee bears the burden
2056 of proving such notification was provided and accepted by the
2057 borrower.



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2058 ~~(b)~~ A borrower may waive the right to receive notice of a
2059 material change ~~that is granted under paragraph (a)~~ if the
2060 borrower determines that the extension of credit is needed to
2061 meet a bona fide personal financial emergency and the right to
2062 receive notice would delay the closing of the mortgage loan. The
2063 imminent sale of the borrower's home at foreclosure during the
2064 3-day period before the signing of the settlement or closing
2065 statement is ~~constitutes~~ an example of a bona fide personal
2066 financial emergency. In order to waive the borrower's right to
2067 receive notice ~~not less than 3 business days before the signing~~
2068 ~~of the settlement or closing statement of any such material~~
2069 ~~change~~, the borrower must provide the licensee with a dated
2070 written statement that describes the personal financial
2071 emergency, waives the right to receive the notice, bears the
2072 borrower's signature, and is not on a printed form prepared by
2073 the licensee for the purpose of such a waiver.

2074 (3) Each mortgage broker shall submit to the registry
2075 reports of condition, which must be in such form and shall
2076 contain such information as the registry may require.

2077 (4) A license issued under this part is not transferable or
2078 assignable.

2079 Section 33. Section 494.0041, Florida Statutes, is
2080 repealed.

2081 Section 34. Section 494.0042, Florida Statutes, is amended
2082 to read:

2083 494.0042 Loan originator ~~Brokerage~~ fees.—

2084 (1) A loan originator ~~mortgage brokerage~~ fee earned by a
2085 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not
2086 considered interest or a finance charge under chapter 687.



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2087 (2) A person may not charge or exact, directly or
2088 indirectly, from the borrower ~~mortgager~~ a fee or commission in
2089 excess of the maximum fee or commission specified in this
2090 section. The maximum fees or commissions that may be charged for
2091 mortgage loans are as follows:

2092 (a) On a mortgage loan of \$1,000 or less: \$250.

2093 (b) On a mortgage loan exceeding \$1,000 and not exceeding
2094 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
2095 for each additional \$100 of the mortgage loan.

2096 (c) On a mortgage loan exceeding \$2,000 and not exceeding
2097 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
2098 for each additional \$100 of the mortgage loan.

2099 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
2100 percent of the entire mortgage loan.

2101
2102 For the purpose of determining the maximum fee, the amount of
2103 the mortgage loan is based on the amount of mortgage loan
2104 actually funded exclusive of the authorized maximum fees or
2105 commissions.

2106 (3) At the time of accepting a mortgage loan application, a
2107 mortgage broker ~~brokerage business~~ may receive from the borrower
2108 a nonrefundable application fee. If the mortgage loan is funded,
2109 the nonrefundable application fee shall be credited against the
2110 amount owed as a result of the loan being funded. A person may
2111 not receive any form of compensation for acting as a loan
2112 originator ~~mortgage broker~~ other than a nonrefundable
2113 application fee, a fee based on the mortgage amount being
2114 funded, or a fee which complies with s. 494.00421.

2115 Section 35. Section 494.00421, Florida Statutes, is amended



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2116 to read:
2117 494.00421 Fees earned upon obtaining a bona fide
2118 commitment.—Notwithstanding the provisions of ss. 494.001-
2119 494.0077, any mortgage broker ~~brokerage business~~ which contracts
2120 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from
2121 a borrower upon obtaining a bona fide commitment shall
2122 accurately disclose in the mortgage broker ~~brokerage~~ agreement:
2123 (1) The gross loan amount.
2124 (2) In the case of a fixed-rate mortgage, the note rate.
2125 (3) In the case of an adjustable rate mortgage:
2126 (a) The initial note rate.
2127 (b) The length of time for which the initial note rate is
2128 effective.
2129 (c) The frequency of changes.
2130 (d) The limitation upon such changes including adjustment
2131 to adjustment cap and life cap.
2132 (e) Whether the loan has any potential for negative
2133 amortization.
2134 (f) Identification of the margin-interest rate
2135 differential.
2136 (g) Identification of a nationally recognized index which
2137 index must be free from control of the mortgage broker, ~~mortgage~~
2138 ~~brokerage business, mortgage lender, or correspondent mortgage~~
2139 lender.
2140 (4) The estimated net proceeds to be paid directly to the
2141 borrower. “Estimated net proceeds” means the cash to be received
2142 by the borrower after payment of any fees, charges, debts,
2143 liens, or encumbrances to perfect the lien of the new mortgage
2144 and establish the agreed-upon priority of the new mortgage.



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- 2145 (5) The lien priority of the new proposed mortgage.
- 2146 (6) The number of calendar days, which are mutually agreed
2147 upon, within which the mortgage broker ~~brokerage business~~ shall
2148 obtain a bona fide mortgage commitment.
- 2149 (7) (a) The following statement, in at least ~~no less than~~
2150 12-point boldface type immediately above the signature lines for
2151 the borrowers:
- 2152
- 2153 "You are entering into a contract with a mortgage broker
2154 ~~brokerage business~~ to obtain a bona fide mortgage loan
2155 commitment under the same terms and conditions as stated
2156 hereinabove or in a separate executed good faith estimate form.
2157 If the mortgage broker ~~brokerage business~~ obtains a bona fide
2158 commitment under the same terms and conditions, you will be
2159 obligated to pay the mortgage broker ~~brokerage business~~ fees,
2160 including, but not limited to, a mortgage broker ~~brokerage~~ fee,
2161 even if you choose not to complete the loan transaction. If the
2162 provisions of s. 494.00421, Florida Statutes, are not met, the
2163 mortgage broker ~~brokerage~~ fee can only be earned upon the
2164 funding of the mortgage loan. The borrower may contact the
2165 Department of Financial Services, Tallahassee, Florida,
2166 regarding any complaints that the borrower may have against the
2167 mortgage broker ~~or the mortgage brokerage business~~. The
2168 telephone number of the department is: ...[insert telephone
2169 number]...."
- 2170 (b) Paragraph (a) does not apply to nonresidential mortgage
2171 loan commitments in excess of \$1 million.
- 2172 (8) Any other disclosure required pursuant to s. 494.0038.
2173 Section 36. Section 494.0043, Florida Statutes, is amended



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2174 to read:

2175 494.0043 Requirements for brokering loans to
2176 noninstitutional investors.—

2177 (1) A loan originator ~~mortgage broker~~, when arranging a
2178 mortgage loan for a noninstitutional investor, shall:

2179 (a) Before any payment of money by the ~~a~~ noninstitutional
2180 investor, provide an opinion of value from an appraiser stating
2181 the value of the security property unless the opinion is waived
2182 in writing. The opinion must state the value of the property as
2183 it exists on the date of the opinion. If any relationship exists
2184 between the mortgage broker and the appraiser, that relationship
2185 shall be disclosed to the investor.

2186 (b) Provide to the noninstitutional investor a mortgagee's
2187 title insurance policy or an opinion of title by an attorney
2188 licensed to practice law in the state, or a copy thereof.

2189 1. If a title insurance policy is issued, it must insure
2190 the noninstitutional investor against the unmarketability of the
2191 mortgagee's interest in such title. It must ~~shall~~ also specify
2192 any superior liens that exist against the property. If an
2193 opinion of title is issued by an attorney ~~licensed to practice~~
2194 ~~law in the state~~, the opinion must include a statement as to the
2195 marketability of the title to the property described in the
2196 mortgage and specify the priority of the mortgage being closed.

2197 2. If the title insurance policy or opinion of title is not
2198 available at the time of purchase, the licensee shall provide a
2199 binder of the title insurance or conditional opinion of title.
2200 This binder or opinion must include any conditions or
2201 requirements that need ~~needed~~ to be corrected before ~~prior to~~
2202 the issuance of the final title policy or opinion of title. The



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2203 binder or opinion must also include information concerning the
2204 requirements specified in subparagraph 1. Any conditions must be
2205 eliminated or waived in writing by the investor before ~~prior to~~
2206 delivery to the noninstitutional investor. The policy or
2207 opinion, or a copy thereof, shall be delivered to the investor
2208 within a reasonable period of time, not exceeding 6 months,
2209 after closing.

2210 3. The requirements of this paragraph may be waived in
2211 writing. If the requirements are waived by the noninstitutional
2212 investor, the waiver must include the following statement
2213 ~~wording~~: "The noninstitutional investor acknowledges that the
2214 mortgage broker or mortgage lender brokering this mortgage loan
2215 is not providing a title insurance policy or opinion of title
2216 issued by an attorney who is licensed to practice law in the
2217 State of Florida. Any requirement for title insurance or for a
2218 legal opinion of title is the sole responsibility of the
2219 noninstitutional mortgage investor."

2220 (c) Provide, if the loan is other than a first mortgage, a
2221 statement showing the balance owed by the mortgagor on any
2222 existing mortgages prior to this investment and the status of
2223 such existing mortgages.

2224 (d) Provide a disclosure if the licensee is directly or
2225 indirectly acting as a borrower or principal in the transaction.

2226 (2) Each original or certified copy of the mortgage, or
2227 other instrument securing a note or assignment thereof, must
2228 ~~shall~~ be recorded before being delivered to the noninstitutional
2229 investor. A loan originator ~~mortgage broker~~ shall cause the
2230 properly endorsed original note to be delivered to the
2231 noninstitutional investor.



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2232 (3) Each mortgage and assignment must ~~shall~~ be recorded as
2233 soon as practical, but no later than 30 business days after the
2234 date of closing.

2235 (4) Any money from a noninstitutional investor for
2236 disbursement at a mortgage loan closing must ~~shall~~ be deposited
2237 with and disbursed by an attorney duly licensed in this state or
2238 by a title company duly licensed in this state. A person acting
2239 as a loan originator ~~mortgage broker~~ may not have control of any
2240 money from a noninstitutional investor. This subsection does not
2241 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from
2242 receiving a loan originator ~~mortgage brokerage~~ fee upon the
2243 closing of the mortgage loan funded by the noninstitutional
2244 investor.

2245 Section 37. Section 494.006, Florida Statutes, is amended
2246 to read:

2247 494.006 Exemptions.—

2248 (1) None of the following persons are subject to the
2249 requirements of this part ~~ss. 494.006-494.0077~~ in order to act
2250 as a mortgage lender ~~or correspondent mortgage lender~~:

2251 (a) Any person operating exclusively as a registered loan
2252 originator in accordance with the S.A.F.E. Mortgage Licensing
2253 Act of 2008.

2254 (b) A depository institution; subsidiaries that are owned
2255 and controlled by a depository institution and regulated by the
2256 Board of Governors of the Federal Reserve System, the
2257 Comptroller of the Currency, the Director of the Office of
2258 Thrift Supervision, the National Credit Union Administration, or
2259 the Federal Deposit Insurance Corporation; or institutions
2260 regulated by the Farm Credit Administration



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2261 (c) The Federal National Mortgage Association; the Federal
2262 Home Loan Mortgage Corporation; an agency of the Federal
2263 Government; any state, county, or municipal government; or any
2264 quasi-governmental agency that acts in such capacity under the
2265 specific authority of the laws of any state or the United
2266 States.

2267 (d)~~(b)~~ Any person acting in a fiduciary capacity conferred
2268 by the authority of any court.

2269 ~~(c) A wholly owned bank holding company subsidiary or a~~
2270 ~~wholly owned savings and loan association holding company~~
2271 ~~subsidiary that is formed and regulated under the laws of any~~
2272 ~~state or the United States and that is approved or certified by~~
2273 ~~the Department of Housing and Urban Development, the Veterans~~
2274 ~~Administration, the Government National Mortgage Association,~~
2275 ~~the Federal National Mortgage Association, or the Federal Home~~
2276 ~~Loan Mortgage Corporation.~~

2277 (e)~~(d)~~ Any person who, as a seller of his or her own real
2278 property, receives one or more mortgages in a purchase money
2279 transaction.

2280 ~~(c) Any person who receives a mortgage as security for an~~
2281 ~~obligation arising out of materials furnished or as services~~
2282 ~~rendered by the person in the improvement of the real property.~~

2283 (f)~~(f)~~ Any person who makes only nonresidential mortgage
2284 loans and sells loans only to institutional investors.

2285 ~~(g) The Federal National Mortgage Association; the Federal~~
2286 ~~Home Loan Mortgage Corporation; an agency of the Federal~~
2287 ~~Government; any state, county, or municipal government; or any~~
2288 ~~quasi-governmental agency that acts in such capacity under the~~
2289 ~~specific authority of the laws of any state or the United~~



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2290 ~~States.~~
2291 ~~(h) A consumer finance company licensed pursuant to chapter~~
2292 ~~516 as of October 1, 1991.~~
2293 ~~(g)(i)~~ Any natural person making or acquiring a mortgage
2294 loan with his or her own funds for his or her own investment,
2295 and who does not hold himself or herself out to the public, in
2296 any manner, as being in the mortgage lending business.
2297 ~~(h)(j)~~ Any natural person selling a mortgage that was made
2298 or purchased with that person's funds for his or her own
2299 investment, and who does not hold himself or herself out to the
2300 public, in any manner, as being in the mortgage lending
2301 business.
2302 ~~(i)(k)~~ Any person who acts solely under contract and as an
2303 agent for federal, state, or municipal agencies in the servicing
2304 of mortgage loans.
2305 ~~(2)(a) A natural person employed by a mortgage lender or~~
2306 ~~correspondent mortgage lender licensed under ss. 494.001-~~
2307 ~~494.0077 is exempt from the licensure requirements of ss.~~
2308 ~~494.001-494.0077 when acting within the scope of employment with~~
2309 ~~the licensee.~~
2310 ~~(b) A corporation that is in existence on October 1, 1991,~~
2311 ~~and that is a wholly owned subsidiary of a consumer finance~~
2312 ~~company licensed pursuant to chapter 516 on October 1, 1991, is~~
2313 ~~not required to be licensed under ss. 494.006-494.0077 in order~~
2314 ~~to act as a mortgage lender or a correspondent mortgage lender.~~
2315 ~~(2)(3)~~ It is unnecessary to negate any of the exemptions
2316 provided in this section ~~ss. 494.001-494.0077~~ in any complaint,
2317 information, indictment, or other writ or proceeding brought
2318 under ss. 494.001-494.0077. The burden of establishing the right



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2319 to an any exemption is upon the party claiming the benefit of
2320 the exemption.

2321 Section 38. Effective October 1, 2010, section 494.0061,
2322 Florida Statutes, is repealed.

2323 Section 39. Effective October 1, 2010, section 494.00611,
2324 Florida Statutes, is created to read:

2325 494.00611 Mortgage lender license.-

2326 (1) Each person who acts as a mortgage lender must be
2327 licensed under this section.

2328 (2) In order to apply for a mortgage lender license the
2329 applicant must:

2330 (a) Submit a completed application form as prescribed by
2331 the commission by rule.

2332 (b) Designate a qualified principal loan originator who
2333 meets the requirements of s. 494.0035 on the application form.

2334 (c) Submit a nonrefundable application fee of \$500, and the
2335 \$100 nonrefundable fee if required by s. 494.00172. Application
2336 fees may not be prorated for partial years of licensure.

2337 (d) Submit fingerprints for each of the applicant's control
2338 persons in accordance with rules adopted by the commission:

2339 1. The fingerprints may be submitted to the registry, the
2340 office, or a vendor acting on behalf of the registry or the
2341 office.

2342 2. The office may contract with a third-party vendor to
2343 provide live-scan fingerprinting in lieu of a paper fingerprint
2344 card.

2345 3. A state criminal history background check must be
2346 conducted through the Department of Law Enforcement and a
2347 federal criminal history background check must be conducted



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2348 through the Federal Bureau of Investigation.

2349 4. All fingerprints submitted to the Department of Law
2350 Enforcement must be submitted electronically and entered into
2351 the statewide automated fingerprint identification system
2352 established in s. 943.05(2)(b) and available for use in
2353 accordance with s. 943.05(2)(g) and (h). The office shall pay an
2354 annual fee to the department to participate in the system and
2355 inform the department of any person whose fingerprints are no
2356 longer required to be retained.

2357 5. The costs of fingerprint processing, including the cost
2358 of retaining the fingerprints, shall be borne by the person
2359 subject to the background check.

2360 6. The office is responsible for reviewing the results of
2361 the state and federal criminal history checks and determining
2362 whether the applicant meets licensure requirements.

2363 (e) Indicate whether the applicant will be seeking a
2364 servicing endorsement on the application form.

2365 (f) Submit a copy of the applicant's financial audit report
2366 for the most recent fiscal year which, pursuant to United States
2367 generally accepted accounting principles, documents that the
2368 applicant has a bona fide and verifiable net worth, of at least
2369 \$63,000 if the applicant is not seeking a servicing endorsement,
2370 or at least \$250,000 if the applicant is seeking a servicing
2371 endorsement, which must be continuously maintained as a
2372 condition of licensure. If the applicant is a wholly owned
2373 subsidiary of another corporation, the financial audit report
2374 for the parent corporation's satisfies this requirement. The
2375 commission may establish by rule the form and procedures for
2376 filing the financial audit report, including the requirement to



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2377 file the report with the registry when technology is available.

2378 (g) Authorize the registry to obtain an independent credit
2379 report on each of the applicant's control persons from a
2380 consumer reporting agency, and transmit or provide access to the
2381 report to the office. The cost of the credit report shall be
2382 borne by the applicant.

2383 (h) Submit additional information or documentation
2384 requested by the office and required by rule concerning the
2385 applicant or a control person of the applicant. Additional
2386 information may include documentation of pending and prior
2387 disciplinary and criminal history events, including arrest
2388 reports and certified copies of charging documents, plea
2389 agreements, judgments and sentencing documents, documents
2390 relating to pretrial intervention, orders terminating probation
2391 or supervised release, final administrative agency orders, or
2392 other comparable documents that may provide the office with the
2393 appropriate information to determine eligibility for licensure.

2394 (i) Submit any other information required by the registry
2395 for the processing of the application.

2396 (3) An application is considered received for the purposes
2397 of s. 120.60 upon the office's receipt of all documentation from
2398 the registry, including the completed application form, criminal
2399 history information, and independent credit report, as well as
2400 the license application fee, the fee required under s.
2401 494.00172, and all applicable fingerprinting processing fees.

2402 (4) The office shall issue a mortgage lender license to
2403 each person who is not otherwise ineligible and who meets the
2404 requirements of this section. However, it is a ground for denial
2405 of licensure if the applicant or one of the applicant's control



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2406 persons:

2407 (a) Has committed any violation specified in ss. 494.001-
2408 494.0077, or is the subject of a pending felony criminal
2409 prosecution or a prosecution or an administrative enforcement
2410 action, in any jurisdiction, which involves fraud, dishonesty,
2411 breach of trust, money laundering, or any other act of moral
2412 turpitude.

2413 (b) Demonstrates a lack of financial responsibility,
2414 character, and general fitness which would fail to command the
2415 confidence of the community and to warrant a determination that
2416 the loan originator will operate honestly, fairly, and
2417 efficiently.

2418 1. For purposes of this paragraph, a person has shown that
2419 he or she is not financially responsible if he or she has shown
2420 a disregard in the management of his or her own financial
2421 condition, which may include, but is not limited to:

2422 a. Current outstanding judgments, except judgments
2423 resulting solely from medical expenses;

2424 b. Current outstanding tax liens or other government liens
2425 and filings;

2426 c. Foreclosures within the past 3 years; or

2427 d. A pattern of seriously delinquent accounts within the
2428 past 7 years.

2429 2. If an applicant's credit report would serve, in whole or
2430 in part, as the basis for denial of a license, before denying
2431 the license, the office must notify the applicant in writing of
2432 the specific items of concern found in the credit report. The
2433 applicant shall be provided an opportunity to submit any
2434 mitigating information with regard to the items identified by



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2435 the office. The use of the terms "poor credit history," "poor
2436 credit rating," or similar language do not meet the requirements
2437 of this subsection. The office may not use an applicant's credit
2438 score as a basis for denying licensure.

2439 (5) The office may not issue a license if the applicant has
2440 had a mortgage lender license or its equivalent revoked in any
2441 jurisdiction, or any of the applicant's control persons has ever
2442 had a loan originator license or its equivalent revoked in any
2443 jurisdiction.

2444 (6) A person required to be licensed under this part, or an
2445 agent or employee thereof, is deemed to have consented to the
2446 venue of courts in this state regarding any matter within the
2447 authority of ss. 494.001-494.0077 regardless of where an act or
2448 violation was committed.

2449 (7) A license issued in accordance with this part is not
2450 transferable or assignable.

2451 (8) A mortgage lender or branch office license may be
2452 withdrawn pursuant to s. 120.60 if it was issued through mistake
2453 or inadvertence of the office. A license must be reinstated if
2454 the applicant demonstrates that the requirements for obtaining
2455 the license under this chapter have been satisfied.

2456 (9) Each lender, regardless of the number of branches it
2457 operates, shall designate a principal loan originator
2458 representative who exercises control of the licensee's business,
2459 and a branch manager for each branch office. Each mortgage
2460 lender must keep the office informed of the persons designated
2461 as prescribed by commission rule, which includes documentation
2462 of the individual's acceptance of such responsibility. If the
2463 designation is inaccurate, the branch shall be deemed to be



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2464 operated under the full charge, control, and supervision by each
2465 officer, director, or ultimate equitable owner of a 10 percent
2466 or greater interest in the mortgage lender business, or any
2467 other person in a similar capacity during that time.

2468 (10) All mortgage lender licenses must be renewed annually
2469 by December 31 pursuant to s. 494.00612. If a person holding an
2470 active mortgage broker license has not applied to renew the
2471 license annually on or before December 31, the mortgage broker
2472 license expires on December 31. If a person holding an active
2473 mortgage broker license has applied to renew the license on or
2474 before December 31, the mortgage broker license remains active
2475 until the renewal application is approved or denied. A mortgage
2476 broker is not precluded from reapplying for licensure upon
2477 expiration of a previous license.

2478 Section 40. Effective October 1, 2010, section 494.00612,
2479 Florida Statutes, is created to read:

2480 494.00612 Mortgage lender license renewal.-

2481 (1) In order to renew a mortgage lender license, a mortgage
2482 lender must:

2483 (a) Submit a completed license renewal form as prescribed
2484 by commission rule.

2485 (b) Submit a nonrefundable renewal fee of \$475, and the
2486 \$100 nonrefundable fee if required by s. 494.00172.

2487 (c) Submit fingerprints in accordance with s.
2488 494.00611(2) (d) for any new control persons who have not been
2489 screened.

2490 (d) Provide proof that the mortgage lender continues to
2491 meet the applicable net worth requirement in a form prescribed
2492 by commission rule.



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2493 (e) Authorize the registry to obtain an independent credit
2494 report on the mortgage lender from a consumer reporting agency,
2495 and transmit or provide access to the report to the office. The
2496 cost of the credit report shall be borne by the applicant.

2497 (f) Submit any additional information or documentation
2498 requested by the office and required by rule concerning the
2499 licensee. Additional information may include documentation of
2500 pending and prior disciplinary and criminal history events,
2501 including arrest reports and certified copies of charging
2502 documents, plea agreements, judgments and sentencing documents,
2503 documents relating to pretrial intervention, orders terminating
2504 probation or supervised release, final administrative agency
2505 orders, or other comparable documents that may provide the
2506 office with the appropriate information to determine eligibility
2507 for licensure.

2508 (2) The office may not renew a mortgage lender license
2509 unless the mortgage lender continues to meet the minimum
2510 standards for initial license issuance pursuant to s. 494.00611
2511 and adopted rule.

2512 Section 41. Effective October 1, 2010, section 494.0062,
2513 Florida Statutes, is repealed.

2514 Section 42. Section 494.0063, Florida Statutes, is amended
2515 to read:

2516 494.0063 Audited financial statements.—All audited
2517 financial statements required by ss. 494.001-494.0077 must be
2518 prepared by an independent licensed certified public accountant.
2519 A mortgage lender must obtain an annual financial audit report
2520 as of the date of the licensee's fiscal year end, as disclosed
2521 to the office on the application or a subsequent amendment to



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2522 the application. The mortgage lender shall submit a copy of the
2523 report to the office within 120 days after the end of the
2524 licensee's fiscal year. If the applicant is a wholly owned
2525 subsidiary of another corporation, the financial audit report of
2526 the parent corporation's satisfies this requirement. If the
2527 licensee changes its fiscal year, the licensee must file report
2528 within 18 months after the previously submitted report. The
2529 commission may establish by rule the procedures and form for
2530 filing a financial audit report, including the requirement to
2531 file the report with the registry when technology is available.

2532 Section 43. Effective October 1, 2010, section 494.0064,
2533 Florida Statutes, is repealed.

2534 Section 44. Effective October 1, 2010, section 494.0065,
2535 Florida Statutes, is repealed.

2536 Section 45. Section 494.0066, Florida Statutes, is amended
2537 to read:

2538 494.0066 Branch offices.-

2539 (1) Each branch office of a mortgage lender must be
2540 licensed under this section ~~A branch office license is required~~
2541 ~~for each branch office maintained by a licensee under ss.~~
2542 ~~494.006-494.0077.~~

2543 (2) The office shall issue a branch office license to a
2544 mortgage lender licensee licensed under ss. ~~494.006-494.0077~~
2545 after the office determines that the mortgage lender licensee
2546 has submitted a completed branch office application form as
2547 prescribed by rule by the commission, ~~and~~ an initial
2548 nonrefundable branch office license fee of \$225 per branch
2549 office ~~\$325. Application fees may not be prorated for partial~~
2550 years of licensure. The branch office application must include



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2551 the name and license number of the mortgage lender licensee
2552 under this part ~~ss. 494.006-494.0077~~, the name of the branch
2553 manager licensee's employee in charge of the branch office, and
2554 the address of the branch office. The branch office license
2555 shall be issued in the name of the mortgage lender licensee
2556 under ~~ss. 494.006-494.0077~~ and must be renewed in conjunction
2557 with the license renewal. An application is considered received
2558 for purposes of s. 120.60 upon receipt of a completed branch
2559 office renewal form, as prescribed by commission rule, and the
2560 required fees.

2561 (3) A branch office license must be renewed at the time of
2562 renewing the mortgage lender license. A nonrefundable fee of
2563 \$225 per branch office must be submitted at the time of renewal.

2564 Section 46. Section 494.00665, Florida Statutes, is created
2565 to read:

2566 494.00665 Principal loan originator and branch manager for
2567 mortgage lender.-

2568 (1) Each mortgage lender business must be operated by a
2569 principal loan originator who shall have full charge, control,
2570 and supervision of the mortgage lender business. The principal
2571 loan originator must have been licensed as a loan originator
2572 pursuant to s. 494.00312. Each mortgage lender must keep the
2573 office informed of the person designated as the principal loan
2574 originator as prescribed by commission rule. If the designation
2575 is inaccurate, the business shall be deemed to be operated under
2576 the full charge, control, and supervision of each officer,
2577 director, or ultimate equitable owner of a 10 percent or greater
2578 interest in the mortgage lender business, or any other person in
2579 a similar capacity during that time.



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2580 (2) Each branch office of a mortgage lender must be
2581 operated by a branch manager who shall have full charge,
2582 control, and supervision of the branch office. The designated
2583 branch manager must be a licensed loan originator pursuant to s.
2584 494.00312. Each mortgage lender must keep the office informed of
2585 the person designated as the branch manager as prescribed by
2586 commission rule, which includes documentation of the
2587 individual's acceptance of such responsibility. If the
2588 designation is inaccurate, the branch office shall be deemed to
2589 be operated under the full charge, control, and supervision of
2590 each officer, director, or ultimate equitable owner of a 10
2591 percent or greater interest in the mortgage lender business, or
2592 any other person in a similar capacity during that time.

2593 Section 47. Section 494.0067, Florida Statutes, is amended
2594 to read:

2595 494.0067 Requirements of mortgage lenders ~~licensees under~~
2596 ~~ss. 494.006-494.0077.~~

2597 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~
2598 ~~494.0077 which~~ makes mortgage loans on real estate in this state
2599 shall transact business from a principal place of business. Each
2600 principal place of business and each branch office shall be
2601 operated under the full charge, control, and supervision of the
2602 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2603 (2) A license issued under this part ~~ss. 494.006-494.0077~~
2604 is not transferable or assignable.

2605 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~
2606 ~~494.0077~~ shall report, on a form prescribed by rule of the
2607 commission, any change in the information contained in any
2608 initial application form, or any amendment thereto, within ~~not~~



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2609 ~~later than~~ 30 days after the change is effective.

2610 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
2611 ~~494.0077~~ shall report any changes in the principal loan
2612 originator, any addition or subtraction of a control person,
2613 ~~partners, officers, members, joint venturers, directors, or~~
2614 ~~control persons of any licensee~~ or any change changes in the
2615 form of business organization by written amendment in such form
2616 and at such time that the commission specifies by rule.

2617 (a) In any case in which a person or a group of persons,
2618 directly or indirectly or acting by or through one or more
2619 persons, proposes to purchase or acquire a controlling interest
2620 in a licensee, such person or group must submit an initial
2621 application for licensure as a mortgage lender ~~or correspondent~~
2622 ~~mortgage lender~~ before such purchase or acquisition and at the
2623 time and in the form prescribed by the commission by rule.

2624 ~~(b) As used in this subsection, the term "controlling~~
2625 ~~interest" means possession of the power to direct or cause the~~
2626 ~~direction of the management or policies of a company whether~~
2627 ~~through ownership of securities, by contract, or otherwise. Any~~
2628 ~~person who directly or indirectly has the right to vote 25~~
2629 ~~percent or more of the voting securities of a company or who is~~
2630 ~~entitled to 25 percent or more of the company's profits is~~
2631 ~~presumed to possess a controlling interest.~~

2632 ~~(b)(c)~~ Any addition of a designated principal
2633 ~~representative, partner, officer, member, joint venturer,~~
2634 ~~director, or control person of the applicant who does not have a~~
2635 ~~controlling interest and who has not previously~~ filed a Uniform
2636 Mortgage Biographical Statement & Consent Form, MU2, or has not
2637 previously complied with fingerprinting and credit report



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2638 requirements of s. 494.00611 is the provisions of s.
2639 494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.
2640 494.0065(5)(e) and (f) shall be subject to the such provisions
2641 of this section unless required to file an initial application
2642 in accordance with paragraph (a). If after the addition of a
2643 control person, the office determines that the licensee does not
2644 continue to meet licensure requirements, the office may bring
2645 administrative action in accordance with s. 494.00255 s.
2646 494.0072 to enforce the provisions of this section.

2647 ~~(d) The commission shall adopt rules pursuant to ss.~~
2648 ~~120.536(1) and 120.54 providing for the waiver of the~~
2649 ~~application required by this subsection if the person or group~~
2650 ~~of persons proposing to purchase or acquire a controlling~~
2651 ~~interest in a licensee has previously complied with the~~
2652 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~
2653 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~
2654 ~~is currently licensed with the office under this chapter.~~

2655 (5) Each mortgage lender licensee ~~under ss. 494.006-~~
2656 ~~494.0077~~ shall report in a form prescribed by rule by the
2657 commission any indictment, information, charge, conviction, plea
2658 of guilty or nolo contendere, regardless of adjudication, or
2659 ~~plea of guilty~~ to any felony or any crime or administrative
2660 violation that involves fraud, dishonesty, breach of trust,
2661 money laundering ~~dishonest dealing,~~ or any other act of moral
2662 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
2663 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
2664 equitable owner of 10 percent or more of the licensed
2665 corporation, within ~~not later than~~ 30 business days after the
2666 indictment, information, charge, conviction, or final



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2667 administrative action.

2668 (6) Each mortgage lender ~~licensee under ss. 494.006-~~
2669 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
2670 involuntary, to the office, within ~~not later than~~ 7 business
2671 days after the action is instituted.

2672 (7) Each mortgage lender ~~licensee under ss. 494.006-~~
2673 ~~494.0077~~ shall designate a registered agent in this state for
2674 service of process.

2675 (8) Each mortgage lender ~~licensee under ss. 494.006-~~
2676 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
2677 faith estimate of the costs the applicant can reasonably expect
2678 to pay in obtaining a mortgage loan. The good faith estimate of
2679 costs must ~~shall~~ be mailed or delivered to the applicant within
2680 3 business days ~~a reasonable time~~ after the licensee receives a
2681 written loan application from the applicant. The estimate of
2682 costs may be provided to the applicant by a person other than
2683 the licensee making the loan. The good faith estimate must
2684 identify the recipient of all payments charged to the borrower
2685 and, except for all fees to be received by the mortgage broker
2686 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
2687 ~~mortgage lender~~, may be disclosed in generic terms, such as, but
2688 not limited to, paid to appraiser, officials, title company, or
2689 any other third-party service provider. The licensee bears the
2690 burden of proving such disclosures were provided to the
2691 borrower. The commission may adopt rules that set forth the
2692 disclosure requirements of this section.

2693 (9) ~~On or before April 30, 2000, each mortgage lender or~~
2694 ~~correspondent mortgage lender shall file an initial report~~
2695 ~~stating the full legal name, residential address, social~~



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2696 ~~security number, date of birth, mortgage broker license number,~~
2697 ~~date of hire, and, if applicable, date of termination for each~~
2698 ~~person who acted as a loan originator or an associate of the~~
2699 ~~mortgage lender or correspondent mortgage lender during the~~
2700 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
2701 ~~correspondent mortgage lender shall file a report only if a~~
2702 ~~person became or ceased to be a loan originator or an associate~~
2703 ~~of the mortgage lender or correspondent mortgage lender during~~
2704 ~~the immediate preceding quarter. Such report shall be filed~~
2705 ~~within 30 days after the last day of each calendar quarter and~~
2706 ~~shall contain the full legal name, residential address, social~~
2707 ~~security number, date of birth, date of hire and, if applicable,~~
2708 ~~the mortgage broker license number and date of termination of~~
2709 ~~each person who became or ceased to be a loan originator or an~~
2710 ~~associate of the mortgage lender or correspondent mortgage~~
2711 ~~lender during the immediate preceding quarter. The commission~~
2712 ~~shall prescribe, by rule, the procedures for filing reports~~
2713 ~~required by this subsection.~~

2714 ~~(10) (a) Each mortgage lender or correspondent mortgage~~
2715 ~~lender licensee shall require the principal representative and~~
2716 ~~all loan originators, not currently licensed as mortgage brokers~~
2717 ~~pursuant to s. 494.0033, who perform services for the licensee~~
2718 ~~to complete 14 hours of professional continuing education during~~
2719 ~~each biennial license period. The education shall cover primary~~
2720 ~~and subordinate mortgage financing transactions and the~~
2721 ~~provisions of this chapter and the rules adopted under this~~
2722 ~~chapter.~~

2723 ~~(b) The licensee shall maintain records of such training~~
2724 ~~for a period of 4 years, including records of the content of and~~



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2725 ~~hours designated for each program and the date and location of~~
2726 ~~the program.~~

2727 ~~(c) Evidence of completion of such programs shall be~~
2728 ~~included with the licensee's renewal application.~~

2729 ~~(9)~~ (11) The disclosures in this subsection must be
2730 furnished in writing at the time an adjustable rate mortgage
2731 loan is offered to the borrower and whenever the terms of the
2732 adjustable rate mortgage loan offered have a material change
2733 prior to closing. The lender shall furnish the disclosures
2734 relating to adjustable rate mortgages in a format prescribed by
2735 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2736 of the Federal Reserve System, as amended; its commentary, as
2737 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2738 1601 et seq., as amended; together with the Consumer Handbook on
2739 Adjustable Rate Mortgages, as amended; published by the Federal
2740 Reserve Board and the Federal Home Loan Bank Board. The licensee
2741 bears the burden of proving such disclosures were provided to
2742 the borrower.

2743 ~~(10)~~ (12) (a) In every mortgage loan transaction, each
2744 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify
2745 a borrower of any material changes in the terms of a mortgage
2746 loan previously offered to the borrower within 3 business days
2747 after being made aware of such changes by the lender but at
2748 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the
2749 settlement or closing statement. The licensee bears the burden
2750 of proving such notification was provided and accepted by the
2751 borrower.

2752 ~~(b)~~ A borrower may waive the right to receive notice of a
2753 material change ~~that is granted under paragraph (a)~~ if the



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2754 borrower determines that the extension of credit is needed to
2755 meet a bona fide personal financial emergency and the right to
2756 receive notice would delay the closing of the mortgage loan. The
2757 imminent sale of the borrower's home at foreclosure during the
2758 3-day period before the signing of the settlement or closing
2759 statement constitutes an example of a bona fide personal
2760 financial emergency. In order to waive the borrower's right to
2761 receive notice ~~not less than 3 business days before the signing~~
2762 ~~of the settlement or closing statement of any such material~~
2763 ~~change~~, the borrower must provide the licensee with a dated
2764 written statement that describes the personal financial
2765 emergency, waives the right to receive the notice, bears the
2766 borrower's signature, and is not on a printed form prepared by
2767 the licensee for the purpose of such a waiver.

2768 (11) A mortgage lender may close loans in its own name but
2769 may not service the loan for more than 4 months unless the
2770 lender has a servicing endorsement. Only a mortgage lender who
2771 continuously maintains a net worth of at least \$250,000 may
2772 obtain a servicing endorsement.

2773 (12) A mortgage lender must report to the office the
2774 failure to meet the applicable net worth requirements of s.
2775 494.00611 within 2 days after the mortgage lender's knowledge of
2776 such failure or after the mortgage lender should have known of
2777 such failure.

2778 Section 48. Section 494.0068, Florida Statutes, is amended
2779 to read:

2780 494.0068 Loan application process.—

2781 (1) In addition to the requirements set forth in s.
2782 494.0067(8), before accepting an application fee in whole or in



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2783 part, a credit report fee, an appraisal fee, or a fee charged as
2784 reimbursement for third-party charges, a mortgage lender shall
2785 make a written disclosure to the borrower, which disclosure may
2786 be contained in the application, setting forth:

2787 (a) Whether all or any part of such fees or charges is
2788 refundable.

2789 (b) The terms and conditions for the refund, if all or any
2790 part of the fees or charges is refundable.

2791 (c) A realistic estimate of the number of days required to
2792 issue a commitment following receipt of the application by the
2793 lender.

2794 (d) The name or title of a person within the lender's
2795 organization to whom the borrower may address written questions,
2796 comments, or complaints and who is required to promptly respond
2797 to such inquiries.

2798 (2) The disclosures required in subsection (1) must ~~shall~~
2799 be acknowledged in writing by the borrower and maintained by the
2800 mortgage lender, and a copy of such acknowledgment shall be
2801 given to the borrower.

2802 (3) The borrower may, without penalty or responsibility for
2803 paying additional fees and charges, withdraw an application at
2804 any time prior to acceptance of commitment. Upon such
2805 withdrawal, the mortgage lender is responsible for refunding to
2806 the borrower only those fees and charges to which the borrower
2807 may be entitled pursuant to the terms set forth in the written
2808 disclosure required by subsection (1), except that:

2809 (a) If the lender failed to provide the borrower with the
2810 written disclosure required by subsection (1), the lender shall
2811 promptly refund to the borrower all funds paid to the lender; or



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2812 (b) If the lender failed to make a good faith effort to
2813 approve the loan, the lender shall promptly refund to the
2814 borrower all funds paid to the lender.

2815 (4) The application fee must be reasonably related to the
2816 services to be performed and may not be based upon a percentage
2817 of the principal amount of the loan or the amount financed.

2818 (5) For the purposes of this section, the term "application
2819 fee" means any moneys advanced by the borrower upon filing an
2820 application with a mortgage lender to offset the lender's
2821 expenses for determining whether the borrower is qualified for
2822 the mortgage loan or whether the mortgage loan should be funded.

2823 Section 49. Section 494.0069, Florida Statutes, is amended
2824 to read:

2825 494.0069 Lock-in agreement.—

2826 (1) Each lock-in agreement must be in writing and must
2827 contain:

2828 (a) The expiration date of the lock-in, if any;

2829 (b) The interest rate locked in, if any;

2830 (c) The discount points locked in, if any;

2831 (d) The commitment fee locked in, if any;

2832 (e) The lock-in fee, if any; and

2833 (f) A statement advising of the provisions of ss. 494.006-
2834 494.0077 regarding lock-in agreements.

2835 (2) The mortgage lender ~~or correspondent mortgage lender~~
2836 shall make a good faith effort to process the mortgage loan
2837 application and stand ready to fulfill the terms of its
2838 commitment before the expiration date of the lock-in agreement
2839 or any extension thereof.

2840 (3) Any lock-in agreement received by a mortgage lender ~~or~~



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2841 ~~correspondent mortgage lender~~ by mail or through a mortgage
2842 broker must be signed by the mortgage lender ~~or correspondent~~
2843 ~~mortgage lender~~ in order to become effective. The borrower may
2844 rescind any lock-in agreement until a written confirmation of
2845 the agreement has been signed by the lender and mailed to the
2846 borrower or to the mortgage broker ~~brokerage business~~ pursuant
2847 to its contractual relationship with the borrower. If a borrower
2848 elects to so rescind, the mortgage lender ~~or correspondent~~
2849 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2850 (4)(a) ~~Before Any correspondent mortgage lender or mortgage~~
2851 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,
2852 a mortgage lender must have the ability to timely advance funds
2853 on all mortgage loans for which rate lock-in agreements have
2854 been issued. As used in this section, "ability to timely advance
2855 funds" means having sufficient liquid assets or a line of credit
2856 necessary to cover all rate lock-in agreements issued with
2857 respect to which a lock-in fee is collected.

2858 ~~(a)(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender
2859 that does not comply with this subsection ~~paragraph (a)~~ may
2860 issue mortgage rate lock-in agreements only if, prior to the
2861 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2862 1. Has received a written rate lock-in agreement from a
2863 ~~correspondent mortgage lender or~~ mortgage lender that complies
2864 with this subsection ~~paragraph (a)~~; or

2865 2. Has received a written rate lock-in agreement from an
2866 institutional investor or an agency of the Federal Government or
2867 the state or local government that will be funding, making, or
2868 purchasing the mortgage loan.

2869 ~~(b)(c)~~ All rate lock-in fees collected by a mortgage lender



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2870 ~~or correspondent mortgage lender~~ who is not in compliance with
2871 ~~paragraph (a)~~ must be deposited into an escrow account in a
2872 federally insured financial institution, and such fees may ~~shall~~
2873 not be removed from such escrow account until:

2874 1. The mortgage loan closes and is funded;

2875 2. The applicant cancels the loan application or the loan
2876 application is rejected; or

2877 3. The mortgage lender ~~or correspondent mortgage lender~~ is
2878 required to forward a portion of the lock-in fee to another
2879 ~~correspondent mortgage lender~~, mortgage lender, institutional
2880 investor, or agency that will be funding, making, or purchasing
2881 the loan. The mortgage lender ~~or correspondent mortgage lender~~
2882 may remove only the amount of the lock-in fee actually paid to
2883 another mortgage lender, ~~correspondent mortgage lender~~,
2884 institutional investor, or agency.

2885 (5) For purposes of this section, the term "lock-in fee"
2886 means any moneys advanced by the borrower to lock in for a
2887 specified period of time a specified interest rate or discount
2888 points.

2889 (6) The commission may adopt by rule a form for required
2890 lock-in agreement disclosures.

2891 Section 50. Section 494.007, Florida Statutes, is amended
2892 to read:

2893 494.007 Commitment process.—

2894 (1) If a commitment is issued, the mortgage lender shall
2895 disclose in writing:

2896 (a) The expiration date of the commitment;

2897 (b) The mortgage amount, meaning the face amount of credit
2898 provided to the borrower or in the borrower's behalf;



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2899 (c) If the interest rate or other terms are subject to
2900 change before expiration of the commitment:

2901 1. The basis, index, or method, if any, which will be used
2902 to determine the rate at closing. Such basis, index, or method
2903 shall be established and disclosed with direct reference to the
2904 movement of an interest rate index or of a national or regional
2905 index that is available to and verifiable by the borrower and
2906 beyond the control of the lender; or

2907 2. The following statement, in at least 10-point bold type:
2908 "The interest rate will be the rate established by the lender in
2909 its discretion as its prevailing rate . . . days before
2910 closing.";

2911 (d) The amount of the commitment fee, if any, and whether
2912 and under what circumstances the commitment fee is refundable;
2913 and

2914 (e) The time, if any, within which the commitment must be
2915 accepted by the borrower.

2916 (2) The provisions of a commitment cannot be changed prior
2917 to expiration of the specified period within which the borrower
2918 must accept it. If any information necessary for an accurate
2919 disclosure required by subsection (1) is unknown to the mortgage
2920 lender at the time disclosure is required, the lender shall make
2921 the disclosure based upon the best information reasonably
2922 available to it and shall state that the disclosure is an
2923 estimate.

2924 (3) A commitment fee is refundable if:

2925 (a) The commitment is contingent upon approval by parties
2926 to whom the mortgage lender seeks to sell the loan.

2927 (b) The loan purchaser's requirements are not met due to



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2928 circumstances beyond the borrower's control.

2929 (c) The borrower is willing but unable to comply with the
2930 loan purchaser's requirements.

2931 Section 51. Section 494.0071, Florida Statutes, is amended
2932 to read:

2933 494.0071 Expiration of lock-in agreement or commitment.—If
2934 a lock-in agreement has been executed and the loan does not
2935 close before the expiration date of ~~either~~ the lock-in agreement
2936 or any commitment issued consistent therewith through no
2937 substantial fault of the borrower, the borrower may withdraw the
2938 application or reject or terminate any commitment, whereupon the
2939 mortgage lender ~~or correspondent mortgage lender~~ shall promptly
2940 refund to the borrower any lock-in fee and any commitment fee
2941 paid by the borrower.

2942 Section 52. Section 494.0072, Florida Statutes, is
2943 repealed.

2944 Section 53. Section 494.00721, Florida Statutes, is amended
2945 to read:

2946 494.00721 Net worth.—

2947 (1) The net worth requirements ~~required~~ in s. 494.00611 ~~ss.~~
2948 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained
2949 as a condition of licensure.

2950 (2) If a mortgage lender ~~or correspondent mortgage lender~~
2951 fails to satisfy the net worth requirements, the mortgage lender
2952 ~~or correspondent mortgage lender~~ shall immediately cease taking
2953 any new mortgage loan applications. Thereafter, the mortgage
2954 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
2955 within which to satisfy the net worth requirements. If the
2956 licensee makes the office aware, prior to an examination, that



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2957 the licensee no longer meets the net worth requirements, the
2958 mortgage lender ~~or correspondent mortgage lender~~ shall have 120
2959 days within which to satisfy the net worth requirements. A
2960 mortgage lender may ~~or correspondent mortgage lender~~ shall not
2961 resume acting as a mortgage lender ~~or correspondent mortgage~~
2962 ~~lender~~ without written authorization from the office, which
2963 authorization shall be granted if the mortgage lender ~~or~~
2964 ~~correspondent mortgage lender~~ provides the office with
2965 documentation which satisfies the requirements of s. 494.00611
2966 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~
2967 whichever is applicable.

2968 (3) If the mortgage lender ~~or correspondent mortgage lender~~
2969 does not satisfy the net worth requirements within 120 days ~~the~~
2970 ~~120-day period~~, the license of the mortgage lender ~~or~~
2971 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
2972 and canceled and all servicing contracts shall be disposed of in
2973 a timely manner by the mortgage lender ~~or correspondent mortgage~~
2974 ~~lender~~.

2975 Section 54. Section 494.0073, Florida Statutes, is amended
2976 to read:

2977 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
2978 when acting as a mortgage broker ~~brokerage business~~. The
2979 provision of this part ~~Sections 494.006-494.0077~~ do not prohibit
2980 a mortgage lender ~~or correspondent mortgage lender~~ from acting
2981 as a mortgage broker ~~brokerage business~~. However, in mortgage
2982 transactions in which a mortgage lender ~~or correspondent~~
2983 ~~mortgage lender~~ acts as a mortgage broker ~~brokerage business~~,
2984 the provisions of ss. 494.0038, 494.004(2) ~~494.004(8)~~, 494.0042,
2985 and 494.0043(1), (2), and (3) apply.



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2986 Section 55. Section 494.0075, Florida Statutes, is amended
2987 to read:

2988 494.0075 Requirements for selling loans to noninstitutional
2989 investors.—

2990 (1) A mortgage lender, when selling a mortgage loan to a
2991 noninstitutional investor, shall:

2992 (a) Before any payment of money by a noninstitutional
2993 investor, provide an opinion of value from an appraiser stating
2994 the value of the security property unless the opinion is waived
2995 in writing. The opinion must state the value of the property as
2996 it exists on the date of the opinion. If any relationship exists
2997 between the lender and the appraiser, that relationship must
2998 ~~shall~~ be disclosed.†

2999 (b) Provide to the noninstitutional investor a mortgagee's
3000 title insurance policy or an opinion of title by an attorney
3001 licensed to practice law in this state, or a copy thereof:

3002 1. If a title insurance policy is issued, it must insure
3003 the noninstitutional investor against the unmarketability of the
3004 mortgagee's interest in such title. It must also specify any
3005 superior liens that exist against the property. If an opinion of
3006 title is issued by an attorney ~~licensed to practice law in this~~
3007 ~~state~~, the opinion must include a statement as to the
3008 marketability of the title to the property described in the
3009 mortgage and specify the priority of the mortgage being
3010 purchased.

3011 2. If the title insurance policy or opinion of title is not
3012 available at the time of purchase, the licensee shall provide a
3013 binder of the title insurance or conditional opinion of title.
3014 This binder or opinion must include any conditions or



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3015 requirements needed to be corrected before ~~prior to~~ the issuance
3016 of the final title policy or opinion of title. The binder or
3017 opinion must also include information concerning the
3018 requirements specified in subparagraph 1. Any conditions must be
3019 eliminated or waived in writing by the investor before ~~prior to~~
3020 delivery to the noninstitutional investor. The policy or
3021 opinion, or a copy thereof, shall be delivered to the investor
3022 within a reasonable period of time, not exceeding 6 months,
3023 after purchase.

3024 3. The requirements of this paragraph may be waived in
3025 writing. If the requirements are waived by the noninstitutional
3026 investor, the waiver must include the following wording: "The
3027 noninstitutional investor acknowledges that the mortgage lender
3028 selling this mortgage loan is not providing a title insurance
3029 policy or opinion of title issued by an attorney who is licensed
3030 to practice law in the State of Florida. Any requirement for
3031 title insurance or for a legal opinion of title is the sole
3032 responsibility of the noninstitutional mortgage purchaser."

3033 (c) Provide, if the loan is other than a first mortgage, a
3034 statement showing the balance owed by the mortgagor on any
3035 existing mortgages prior to this investment and the status of
3036 such existing mortgages.

3037 (d) Provide a disclosure if the licensee is directly or
3038 indirectly acting as a borrower or principal in the transaction.

3039 (2) Each mortgage, or other instrument securing a note or
3040 assignment thereof, must ~~shall~~ be recorded before being
3041 delivered to the noninstitutional investor.

3042 (3) Each mortgage and assignment shall be recorded as soon
3043 as practical, but within ~~no later than~~ 30 business days after



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3044 the date of purchase.

3045 (4) If the loan is to be serviced by a licensee under this
3046 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
3047 shall be a written servicing agreement.

3048 ~~(5) The mortgage lender shall cause the original note to be~~
3049 ~~properly endorsed showing the assignment of the note to the~~
3050 ~~noninstitutional investor.~~

3051 Section 56. Section 494.0077, Florida Statutes, is amended
3052 to read:

3053 494.0077 Other products and services.—This part does
3054 ~~Sections 494.006-494.0077~~ ~~do~~ not prohibit a mortgage lender from
3055 offering, for a fee or commission, products and services in
3056 addition to those offered in conjunction with making a mortgage
3057 loan.

3058 Section 57. Section 501.1377, Florida Statutes, is amended
3059 to read:

3060 501.1377 Violations involving homeowners during the course
3061 of residential foreclosure proceedings.—

3062 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
3063 that homeowners who are in default on their mortgages, in
3064 foreclosure, or at risk of losing their homes due to nonpayment
3065 of taxes may be vulnerable to fraud, deception, and unfair
3066 ~~dealings with foreclosure-rescue consultants or equity~~
3067 ~~purchasers~~. The intent of this section is to provide a homeowner
3068 with information necessary to make an informed decision
3069 regarding the sale or transfer of his or her home to an equity
3070 purchaser. It is the further intent of this section ~~to require~~
3071 ~~that foreclosure-related rescue services agreements be expressed~~
3072 ~~in writing in order to safeguard homeowners against deceit and~~



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3073 ~~financial hardship~~, to ensure, foster, and encourage fair
3074 dealing in the sale and purchase of homes in foreclosure or
3075 default; to prohibit representations that tend to mislead; to
3076 prohibit or restrict unfair contract terms; to provide a
3077 cooling-off period for homeowners who enter into contracts for
3078 services related to saving their homes from foreclosure or
3079 preserving their rights to possession of their homes; to afford
3080 homeowners a reasonable and meaningful opportunity to rescind
3081 sales to equity purchasers; and to preserve and protect home
3082 equity for the homeowners of this state.

3083 (2) DEFINITIONS.—As used in this section, the term:

3084 (a) "Equity purchaser" means any person who acquires a
3085 legal, equitable, or beneficial ownership interest in any
3086 residential real property as a result of a foreclosure-rescue
3087 transaction. The term does not apply to a person who acquires
3088 the legal, equitable, or beneficial interest in such property:

- 3089 1. By a certificate of title from a foreclosure sale
3090 conducted under chapter 45;
- 3091 2. At a sale of property authorized by statute;
- 3092 3. By order or judgment of any court;
- 3093 4. From a spouse, parent, grandparent, child, grandchild,
3094 or sibling of the person or the person's spouse; or
- 3095 5. As a deed in lieu of foreclosure, a workout agreement, a
3096 bankruptcy plan, or any other agreement between a foreclosing
3097 lender and a homeowner.

3098 ~~(b) "Foreclosure-rescue consultant" means a person who~~
3099 ~~directly or indirectly makes a solicitation, representation, or~~
3100 ~~offer to a homeowner to provide or perform, in return for~~
3101 ~~payment of money or other valuable consideration, foreclosure-~~



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3102 ~~related rescue services. The term does not apply to:~~
3103 ~~1. A person excluded under s. 501.212.~~
3104 ~~2. A person acting under the express authority or written~~
3105 ~~approval of the United States Department of Housing and Urban~~
3106 ~~Development or other department or agency of the United States~~
3107 ~~or this state to provide foreclosure-related rescue services.~~
3108 ~~3. A charitable, not for profit agency or organization, as~~
3109 ~~determined by the United States Internal Revenue Service under~~
3110 ~~s. 501(c)(3) of the Internal Revenue Code, which offers~~
3111 ~~counseling or advice to an owner of residential real property in~~
3112 ~~foreclosure or loan default if the agency or organization does~~
3113 ~~not contract for foreclosure-related rescue services with a for-~~
3114 ~~profit lender or person facilitating or engaging in foreclosure-~~
3115 ~~rescue transactions.~~
3116 ~~4. A person who holds or is owed an obligation secured by a~~
3117 ~~lien on any residential real property in foreclosure if the~~
3118 ~~person performs foreclosure-related rescue services in~~
3119 ~~connection with this obligation or lien and the obligation or~~
3120 ~~lien was not the result of or part of a proposed foreclosure~~
3121 ~~reconveyance or foreclosure-rescue transaction.~~
3122 ~~5. A financial institution as defined in s. 655.005 and any~~
3123 ~~parent or subsidiary of the financial institution or of the~~
3124 ~~parent or subsidiary.~~
3125 ~~6. A licensed mortgage broker, mortgage lender, or~~
3126 ~~correspondent mortgage lender that provides mortgage counseling~~
3127 ~~or advice regarding residential real property in foreclosure,~~
3128 ~~which counseling or advice is within the scope of services set~~
3129 ~~forth in chapter 494 and is provided without payment of money or~~
3130 ~~other consideration other than a mortgage brokerage fee as~~



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3131 ~~defined in s. 494.001.~~

3132 ~~(c) "Foreclosure-related rescue services" means any good or~~
3133 ~~service related to, or promising assistance in connection with:~~

3134 ~~1. Stopping, avoiding, or delaying foreclosure proceedings~~
3135 ~~concerning residential real property; or~~

3136 ~~2. Curing or otherwise addressing a default or failure to~~
3137 ~~timely pay with respect to a residential mortgage loan~~
3138 ~~obligation.~~

3139 ~~(b)(d)~~ "Foreclosure-rescue transaction" means a
3140 transaction:

3141 1. By which residential real property in foreclosure is
3142 conveyed to an equity purchaser and the homeowner maintains a
3143 legal or equitable interest in the residential real property
3144 conveyed, including, without limitation, a lease option
3145 interest, an option to acquire the property, an interest as
3146 beneficiary or trustee to a land trust, or other interest in the
3147 property conveyed; and

3148 2. That is designed or intended by the parties to stop,
3149 avoid, or delay foreclosure proceedings against a homeowner's
3150 residential real property.

3151 ~~(c)(e)~~ "Homeowner" means any record title owner of
3152 residential real property that is the subject of foreclosure
3153 proceedings.

3154 ~~(d)(f)~~ "Residential real property" means real property
3155 consisting of one-family to four-family dwelling units, one of
3156 which is occupied by the owner as his or her principal place of
3157 residence.

3158 ~~(e)(g)~~ "Residential real property in foreclosure" means
3159 residential real property against which there is an outstanding



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3160 notice of the pendency of foreclosure proceedings recorded
3161 pursuant to s. 48.23.

3162 ~~(3) PROHIBITED ACTS. In the course of offering or providing~~
3163 ~~foreclosure-related rescue services, a foreclosure-rescue~~
3164 ~~consultant may not:~~

3165 ~~(a) Engage in or initiate foreclosure-related rescue~~
3166 ~~services without first executing a written agreement with the~~
3167 ~~homeowner for foreclosure-related rescue services; or~~

3168 ~~(b) Solicit, charge, receive, or attempt to collect or~~
3169 ~~secure payment, directly or indirectly, for foreclosure-related~~
3170 ~~rescue services before completing or performing all services~~
3171 ~~contained in the agreement for foreclosure-related rescue~~
3172 ~~services.~~

3173 ~~(4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN~~
3174 ~~AGREEMENT.—~~

3175 ~~(a) The written agreement for foreclosure-related rescue~~
3176 ~~services must be printed in at least 12-point uppercase type and~~
3177 ~~signed by both parties. The agreement must include the name and~~
3178 ~~address of the person providing foreclosure-related rescue~~
3179 ~~services, the exact nature and specific detail of each service~~
3180 ~~to be provided, the total amount and terms of charges to be paid~~
3181 ~~by the homeowner for the services, and the date of the~~
3182 ~~agreement. The date of the agreement may not be earlier than the~~
3183 ~~date the homeowner signed the agreement. The foreclosure-rescue~~
3184 ~~consultant must give the homeowner a copy of the agreement to~~
3185 ~~review not less than 1 business day before the homeowner is to~~
3186 ~~sign the agreement.~~

3187 ~~(b) The homeowner has the right to cancel the written~~
3188 ~~agreement without any penalty or obligation if the homeowner~~



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3218 ~~OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN~~
3219 ~~OR A RESTRUCTURING WITH YOU FREE OF CHARGE.~~

3220 ~~(d) The inclusion of the statement does not prohibit the~~
3221 ~~foreclosure-rescue consultant from giving the homeowner more~~
3222 ~~time in which to cancel the agreement than is set forth in the~~
3223 ~~statement, provided all other requirements of this subsection~~
3224 ~~are met.~~

3225 ~~(e) The foreclosure-rescue consultant must give the~~
3226 ~~homeowner a copy of the signed agreement within 3 hours after~~
3227 ~~the homeowner signs the agreement.~~

3228 ~~(3)(5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.-~~

3229 ~~(a)1.~~ A foreclosure-rescue transaction must include a
3230 written agreement prepared in at least 12-point uppercase type
3231 that is completed, signed, and dated by the homeowner and the
3232 equity purchaser before executing any instrument from the
3233 homeowner to the equity purchaser quitclaiming, assigning,
3234 transferring, conveying, or encumbering an interest in the
3235 residential real property in foreclosure. The equity purchaser
3236 must give the homeowner a copy of the completed agreement within
3237 3 hours after the homeowner signs the agreement.

3238 1. The agreement must contain the entire understanding of
3239 the parties and must include:

3240 a. The name, business address, and telephone number of the
3241 equity purchaser.

3242 b. The street address and full legal description of the
3243 property.

3244 c. Clear and conspicuous disclosure of any financial or
3245 legal obligations of the homeowner which ~~that~~ will be assumed by
3246 the equity purchaser.



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3247 d. The total consideration to be paid by the equity
3248 purchaser in connection with or incident to the acquisition of
3249 the property by the equity purchaser.

3250 e. The terms of payment or other consideration, including,
3251 but not limited to, any services that the equity purchaser
3252 represents will be performed for the homeowner before or after
3253 the sale.

3254 f. The date and time when possession of the property is to
3255 be transferred to the equity purchaser.

3256 2. A foreclosure-rescue transaction agreement must contain,
3257 above the signature line, a statement in at least 12-point
3258 uppercase type that substantially complies with the following:

3259
3260 I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY
3261 HOME TO THE OTHER UNDERSIGNED PARTY.

3262 3. A foreclosure-rescue transaction agreement must state
3263 the specifications of any option or right to repurchase the
3264 residential real property in foreclosure, including the specific
3265 amounts of any escrow payments or deposit, down payment,
3266 purchase price, closing costs, commissions, or other fees or
3267 costs.

3268 4. A foreclosure-rescue transaction agreement must comply
3269 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and
3270 related regulations.

3271 (b) The homeowner may cancel the foreclosure-rescue
3272 transaction agreement without penalty if the homeowner notifies
3273 the equity purchaser of such cancellation no later than 5 p.m.
3274 on the 3rd business day after signing the written agreement. Any
3275 moneys paid by the equity purchaser to the homeowner or by the



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3276 homeowner to the equity purchaser must be returned at
3277 cancellation. The right to cancel does not limit or otherwise
3278 affect the homeowner's right to cancel the transaction under any
3279 other law. The right to cancel may not be waived by the
3280 homeowner or limited ~~in any way~~ by the equity purchaser. The
3281 equity purchaser must give the homeowner, at the time the
3282 written agreement is signed, a notice of the homeowner's right
3283 to cancel the foreclosure-rescue transaction as set forth in
3284 this subsection. The notice, which must be set forth on a
3285 separate cover sheet to the written agreement that contains no
3286 other written or pictorial material, must be in at least 12-
3287 point uppercase type, double-spaced, and read as follows:

3288 NOTICE TO THE HOMEOWNER/SELLER

3289
3290 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
3291 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

3292 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
3293 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
3294 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

3295 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
3296 YOU OR BY THE PURCHASER.

3297 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE
3298 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU
3299 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

3300 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
3301 5:00 P.M. ON ... (DATE) ... AT ... (ADDRESS) IT IS BEST TO MAIL
3302 IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT
3303 REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR
3304 POST OFFICE RECEIPT.



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3305 I (we) hereby cancel this transaction.
3306 ...Seller's Signature...
3307 ...Printed Name of Seller...
3308 ...Seller's Signature...
3309 ...Printed Name of Seller...
3310 ...Date...

3311 (c) In any foreclosure-rescue transaction in which the
3312 homeowner has ~~is provided~~ the right to repurchase the
3313 residential real property, the homeowner has a 30-day right to
3314 cure any default of the terms of the contract with the equity
3315 purchaser, and this right to cure may be exercised on up to
3316 three separate occasions. The homeowner's right to cure must be
3317 included in any written agreement required by this subsection.

3318 (d) In any foreclosure-rescue transaction, before or at the
3319 time of conveyance, the equity purchaser must fully assume or
3320 discharge any lien in foreclosure as well as any prior liens
3321 that are ~~will~~ not be extinguished by the foreclosure.

3322 (e) If the homeowner has the right to repurchase the
3323 residential real property, the equity purchaser must verify and
3324 be able to demonstrate that the homeowner has or will have a
3325 reasonable ability to make the required payments to exercise the
3326 option to repurchase under the written agreement. For purposes
3327 of this subsection, there is a rebuttable presumption that the
3328 homeowner has a reasonable ability to make the payments required
3329 to repurchase the property if the homeowner's monthly payments
3330 for primary housing expenses and regular monthly principal and
3331 interest payments on other personal debt do not exceed 60
3332 percent of the homeowner's monthly gross income.

3333 (f) If the homeowner has the right to repurchase the



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3334 residential real property, the price the homeowner pays may not
3335 be unconscionable, unfair, or commercially unreasonable. A
3336 rebuttable presumption, solely between the equity purchaser and
3337 the homeowner, arises that the foreclosure-rescue transaction
3338 was unconscionable if the homeowner's repurchase price is
3339 greater than 17 percent per annum more than the total amount
3340 paid by the equity purchaser to acquire, improve, maintain, and
3341 hold the property. Unless the repurchase agreement or a
3342 memorandum of the repurchase agreement is recorded in accordance
3343 with s. 695.01, the presumption does ~~arising under this~~
3344 ~~subsection shall~~ not apply against creditors or subsequent
3345 purchasers for a valuable consideration and without notice.

3346 (4) ~~(6)~~ REBUTTABLE PRESUMPTION.—Any foreclosure-rescue
3347 transaction involving a lease option or other repurchase
3348 agreement creates a rebuttable presumption, solely between the
3349 equity purchaser and the homeowner, that the transaction is a
3350 loan transaction and the conveyance from the homeowner to the
3351 equity purchaser is a mortgage under s. 697.01. Unless the lease
3352 option or other repurchase agreement, or a memorandum of the
3353 lease option or other repurchase agreement, is recorded in
3354 accordance with s. 695.01, the presumption does ~~created under~~
3355 ~~this subsection shall~~ not apply against creditors or subsequent
3356 purchasers for a valuable consideration and without notice.

3357 (5) ~~(7)~~ VIOLATIONS.—A person who violates any provision of
3358 this section commits an unfair and deceptive trade practice as
3359 defined in part II of this chapter. Violators are subject to the
3360 penalties and remedies provided in part II of this chapter,
3361 including a monetary penalty not to exceed \$15,000 per
3362 violation.



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3363 Section 58. Effective October 1, 2009:
3364 (1) All mortgage business school permits issued pursuant to
3365 s. 494.0029, Florida Statutes, expire on September 30, 2010.
3366 (2) All mortgage brokerage business licenses issued before
3367 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida
3368 Statutes, expire on December 31, 2010. However, if a person
3369 holding an active mortgage brokerage business license issued
3370 before October 1, 2010, applies for a mortgage broker license
3371 through the Nationwide Mortgage Licensing System and Registry
3372 between October 1, 2010, and December 31, 2010, the mortgage
3373 brokerage business license does not expire until the Office of
3374 Financial Regulation approves or denies the mortgage broker
3375 license application. A mortgage broker license approved on or
3376 after October 1, 2010, is effective until December 31, 2011.
3377 Application fees may not be prorated for partial years of
3378 licensure.
3379 (3) All mortgage broker licenses issued before October 1,
3380 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3381 expire on December 31, 2010. However, if a person holding an
3382 active mortgage broker license issued before October 1, 2010,
3383 applies for a loan originator license through the Nationwide
3384 Mortgage Licensing System and Registry between October 1, 2010,
3385 and December 31, 2010, the mortgage broker license does not
3386 expire until the Office of Financial Regulation approves or
3387 denies the loan originator license application. Notwithstanding
3388 s. 120.60, Florida Statutes, for mortgage broker applications
3389 submitted between July 1, 2009, and December 31, 2009, or loan
3390 originator applications submitted between October 1, 2010, and
3391 December 31, 2010, the office has 60 days to notify the



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3392 applicant of any apparent errors or omissions in an application
3393 and to request any additional information that the agency may
3394 require, and the office has 180 days to approve or deny a
3395 completed application. Application fees may not be prorated for
3396 partial years of licensure.

3397 (4) All mortgage lender licenses issued before October 1,
3398 2010, pursuant to s. 494.0061 or 494.0064, Florida Statutes,
3399 expire on December 31, 2010. However, if a person holding an
3400 active mortgage lender license applies for a mortgage broker
3401 license or mortgage lender license through the Nationwide
3402 Mortgage Licensing System and Registry between October 1, 2010,
3403 and December 31, 2010, the mortgage lender license does not
3404 expire until the Office of Financial Regulation approves or
3405 denies the mortgage broker license or mortgage lender license
3406 application. Application fees may not be prorated for partial
3407 years of licensure.

3408 (5) All mortgage lender licenses issued before October 1,
3409 2010, pursuant to s. 494.0065 or s. 494.0064, Florida Statutes,
3410 expire on December 31, 2010. However, if a person holding such
3411 license applies for a mortgage broker license or mortgage lender
3412 license through the Nationwide Mortgage Licensing System and
3413 Registry between October 1, 2010, and December 31, 2010, the
3414 mortgage lender license does not expire until the Office of
3415 Financial Regulation approves or denies the mortgage broker
3416 license or mortgage lender license application. Application fees
3417 may not be prorated for partial years of licensure.

3418 (6) All correspondent mortgage lender licenses issued
3419 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,
3420 Florida Statutes, expire on on December 31, 2010. However, if a



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3421 person holding an active correspondent mortgage lender license
3422 issued before October 1, 2010, applies for a mortgage broker or
3423 mortgage lender license through the Nationwide Mortgage
3424 Licensing System and Registry between October 1, 2010, and
3425 December 31, 2010, the correspondent mortgage lender license
3426 does not expire until the Office of Financial Regulation
3427 approves or denies the mortgage broker or mortgage lender
3428 license application. Application fees may not be prorated for
3429 partial years of licensure.

3430 Section 59. Except as otherwise expressly provided in this
3431 act and except for this section, which shall take effect July 1,
3432 2009, this act shall take effect January 1, 2010.