

By the Committee on Banking and Insurance

597-02183-09

20092226__

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; authorizing the Office
8 of Financial Regulation to participate in the
9 Nationwide Mortgage Licensing System and Registry;
10 creating s. 494.00121, F.S.; providing for the
11 issuance of subpoenas; amending s. 494.0014, F.S.;
12 revising provisions relating to the refund of fees;
13 deleting an obsolete provision; capping the amount of
14 administrative fine that can be assessed for a single
15 violation at \$25,000; authorizing a fine of \$1,000 for
16 each day of unlicensed activity up to \$25,000;
17 amending s. 494.00165, F.S.; prohibiting unfair and
18 deceptive advertising relating to mortgage brokering
19 and lending; repealing s. 494.0017, F.S., relating to
20 claims paid from the Regulatory Trust Fund; creating
21 s. 494.00172, F.S.; providing for a \$20 fee to be
22 assessed against loan originators and a \$100 fee to be
23 assessed against mortgage brokers and lenders at the
24 time of license application or renewal; providing that
25 such fees shall be deposited into the Mortgage
26 Guaranty Trust Fund and used to pay claims against
27 licensees; providing for a cap on the amount collected
28 and deposited; providing requirements for seeking
29 recovery from the trust fund; providing limitations on

597-02183-09

20092226__

30 the amount paid; providing for the assignment of
31 certain rights to the office; providing that payment
32 for a claim is prima facie grounds for the revocation
33 of a license; amending s. 494.0018, F.S.; conforming
34 cross-references; amending ss. 494.0019 and 494.002,
35 F.S.; conforming terms; amending s. 494.0023, F.S.;
36 providing that there is a conflicting interest if a
37 licensee or the licensee's relatives have a 1 percent
38 or more interest in the person providing additional
39 products or services; amending s. 494.0025, F.S.;
40 prohibiting the alteration, withholding, concealment,
41 or destruction of records relevant to regulated
42 activities; amending s. 494.0028, F.S.; conforming
43 terms; repealing ss. 494.0029 and 494.00295, F.S.,
44 relating to mortgage business schools and continuing
45 education requirements; providing a directive to the
46 Division of Statutory Revision; amending s. 494.003,
47 F.S.; revising provisions relating to who is exempt
48 from loan originator or mortgage broker licensing and
49 regulation; repealing s. 494.0031, F.S., relating to
50 licensure as a mortgage brokerage business; creating
51 s. 494.00312, F.S.; providing for the licensure of
52 mortgage brokers; providing license application
53 requirements; providing grounds for license denial;
54 requiring the denial of a license under certain
55 circumstances; requiring the commission to adopt rules
56 establishing time periods for barring licensure for
57 certain misdemeanors and felonies; requiring licenses
58 to be renewed annually by a certain date; repealing s.

597-02183-09

20092226__

59 494.0032, F.S., relating to renewal of a mortgage
60 brokerage business license or branch office license;
61 creating s. 494.00321, F.S.; providing for the renewal
62 of a mortgage broker license; providing license
63 renewal requirements; creating s. 494.00323, F.S.;
64 providing for the licensure of loan originators;
65 providing license application requirements; providing
66 grounds for license denial; requiring the denial of a
67 license under certain circumstances; requiring the
68 commission to adopt rules establishing time periods
69 for barring licensure for certain misdemeanors and
70 felonies; requiring licenses to be renewed annually by
71 a certain date; creating s. 494.00324, F.S.; providing
72 for the renewal of a loan originator license;
73 repealing s. 494.0033, F.S., relating to a mortgage
74 broker license; amending s. 494.00331, F.S.;
75 prohibiting a loan originator from being employed or
76 contracting with more than one mortgage broker or
77 mortgage lender; repealing s. 494.0034, F.S., relating
78 to renewal of mortgage broker license; amending s.
79 494.0035, F.S.; providing for the management of a
80 mortgage broker by a principal loan originator and a
81 branch office by a loan originator; providing minimum
82 requirements; amending s. 494.0036, F.S.; revising
83 provisions relating to the licensure of a mortgage
84 broker's branch office; increasing the fees for such
85 license; amending s. 494.0038, F.S.; revising
86 provisions relating to loan origination and mortgage
87 broker fees; creating s. 494.00385, F.S.; providing

597-02183-09

20092226__

88 for loan modification fees; providing requirements and
89 limitations; amending s. 494.0039, F.S.; conforming
90 terms; amending s. 494.004, F.S.; revising provisions
91 relating to licensees; providing for registry
92 requirements; deleting obsolete provisions; amending
93 s. 494.0041, F.S.; revising provisions relating to
94 administrative fines and penalties; providing
95 additional grounds for assessing fines and penalties;
96 amending s. 494.0042, F.S.; providing for loan
97 originator fees; conforming terms; amending ss.
98 494.00421 and 494.0043, F.S.; conforming terms;
99 amending s. 494.006, F.S.; revising provisions
100 relating to who is exempt from mortgage lender
101 licensing and regulation; repealing s. 494.0061, F.S.,
102 relating to mortgage lender license requirements;
103 creating s. 494.00611, F.S.; providing for the
104 licensure of mortgage lenders; providing license
105 application requirements; providing grounds for
106 license denial; requiring the denial of a license
107 under certain circumstances; requiring the commission
108 to adopt rules establishing time periods for barring
109 licensure for certain misdemeanors and felonies;
110 requiring licenses to be renewed annually by a certain
111 date; creating s. 494.00612, F.S.; providing for the
112 renewal of a mortgage lender license; repealing s.
113 494.0062, F.S., relating to correspondent mortgage
114 lender license requirements; amending s. 494.0063,
115 F.S.; requiring a mortgage lender to obtain an annual
116 financial audit report and submit a copy to the office

597-02183-09

20092226__

117 within certain time periods; repealing s. 494.0064,
118 F.S., relating to renewal of mortgage lender license;
119 repealing s. 494.0065, F.S., relating to certain
120 licenses and registrations that were converted into
121 mortgage lender licenses; amending s. 494.0066, F.S.;
122 revising provisions relating to a mortgage lender
123 branch office license; increasing the fees for such
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 amending ss. 494.0068, 494.0069, 494.007, and
131 494.0071, F.S.; conforming terms; amending s.
132 494.0072, F.S.; revising provisions relating to
133 administrative fines and penalties; providing
134 additional grounds for assessing fines and penalties;
135 amending ss. 494.00721, 494.0073, 494.0075, 494.0077,
136 and 501.1377 F.S.; conforming terms; providing for the
137 termination of mortgage business school licenses;
138 providing for the expiration of mortgage brokerage
139 business licenses, mortgage broker licenses, and
140 correspondent mortgage lender licenses; providing
141 requirements for applying for a mortgage broker
142 license and a loan originator license by a certain
143 date; providing for the transfer of a mortgage lender
144 licenses; providing for a one-time \$50 registry fee to
145 be imposed on new licensees; providing effective

597-02183-09

20092226__

146 dates.

147
148 Be It Enacted by the Legislature of the State of Florida:

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

152 494.001 Definitions.—As used in ss. 494.001-494.0077, the
153 term:

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

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

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

597-02183-09

20092226__

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

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

183 ~~(5) "Associate" means a person required to be licensed as a~~
184 ~~mortgage broker under this chapter who is employed by or acting~~
185 ~~as an independent contractor for a mortgage brokerage business~~
186 ~~or a person acting as an independent contractor for a mortgage~~
187 ~~lender or correspondent mortgage lender. The use of the term~~
188 ~~associate, in contexts other than in the administration of ss.~~
189 ~~494.003-494.0077, shall not be construed to impose or effect the~~
190 ~~common law or statutory liability of the employer.~~

191 ~~(1)-(6)~~ "Branch manager broker" means the licensed loan
192 originator licensee in charge of, and responsible for, the
193 operation of the a branch office of a mortgage broker or
194 mortgage lender ~~brokerage business.~~

195 ~~(2)-(7)~~ "Branch office" means a location, other than a
196 mortgage broker's or mortgage lender's licensee's principal
197 place of business:

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

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

597-02183-09

20092226__

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

208 (3)(8) "Commission" means the Financial Services
209 Commission.

210 (4)(9) "Control person" means an individual, partnership,
211 corporation, trust, or other organization that possesses the
212 power, directly or indirectly, to direct the management or
213 policies of a company, whether through ownership of securities,
214 by contract, or otherwise. Control person includes, but is not
215 limited to ~~A person is presumed to control a company if, with~~
216 ~~respect to a particular company, that person:~~

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

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

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

230 (d) For a trust, each trustee.

231 (e) For a limited liability company, all elected managers
232 and those members that have contributed 10 percent or more or

597-02183-09

20092226__

233 that have the right to receive, upon dissolution, 10 percent or
234 more of the partnership's capital.

235 (f) Principal loan originators.

236 (5) "Depository institution" has the same meaning as in s.
237 (3)(c) of the Federal Deposit Insurance Act, and includes any
238 credit union.

239 ~~(a) Is a director, general partner, or officer exercising~~
240 ~~executive responsibility or having similar status or functions;~~

241 ~~(b) Directly or indirectly may vote 10 percent or more of a~~
242 ~~class of voting securities or sell or direct the sale of 10~~
243 ~~percent or more of a class of voting securities; or~~

244 ~~(c) In the case of a partnership, may receive upon~~
245 ~~dissolution or has contributed 10 percent or more of the~~
246 ~~capital.~~

247 ~~(10) "Office" means the Office of Financial Regulation of~~
248 ~~the commission.~~

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

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

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

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

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

597-02183-09

20092226__

262 ~~(c) Probation of a license or registration for an offense~~
263 ~~involving fraud, dishonest dealing, or an act of moral~~
264 ~~turpitude.~~

265 (6) "Financial audit report" means a report prepared in
266 connection with a financial audit that is conducted in
267 accordance with generally accepted auditing standards prescribed
268 by the American Institute of Certified Public Accountants by a
269 certified public accountant licensed to do business in the
270 United States, and which must include:

271 (a) Financial statements, including notes related to the
272 financial statements and required supplementary information,
273 prepared in conformity with United States generally accepted
274 accounting principles.

275 (b) An expression of opinion regarding whether the
276 financial statements are presented in conformity with accounting
277 principles generally accepted in the United States, or an
278 assertion to the effect that such an opinion cannot be expressed
279 and the reasons.

280 (7)(14) "Institutional investor" means a depository
281 institution state or national bank, state or federal savings and
282 loan association or savings bank, real estate investment trust,
283 insurance company, real estate company, accredited investor as
284 defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or
285 mortgage lender business licensed under this chapter ss.
286 494.001-494.0077, or other business entity that invests in
287 mortgage loans, including a secondary mortgage market
288 institution including, without limitation, the Federal National
289 Mortgage Association, the Federal Home Loan Mortgage
290 Corporation, and the Government National Mortgage Association,

597-02183-09

20092226__

291 conduits, investment bankers, and any subsidiary of such
292 entities.

293 (8)~~(15)~~ "Loan commitment" or "commitment" means a statement
294 by the lender setting forth the terms and conditions upon which
295 the lender is willing to make a particular mortgage loan to a
296 particular borrower.

297 (9) "Loan modification" means a modification to an existing
298 loan. The term does not include a refinancing transaction.

299 (10) "Loan origination fee" means the total compensation
300 from any source received by a mortgage broker acting as a loan
301 originator. Any payment for processing mortgage loan
302 applications must be included in the fee and must be paid to the
303 mortgage broker.

304 (11) "Loan originator" means an individual who is an
305 employee of, or contracts with, a mortgage broker or a mortgage
306 lender, and who, directly or indirectly, solicits or offers to
307 solicit a mortgage loan, accepts or offers to accept an
308 application for a mortgage loan, negotiates or offers to
309 negotiate the terms or conditions of a new or existing mortgage
310 loan on behalf of a borrower or lender, processes a mortgage
311 loan application, or negotiates or offers to negotiate the sale
312 of an existing mortgage loan to a noninstitutional investor for
313 compensation or gain. The term includes the activities of a loan
314 originator as that term is defined in the S.A.F.E. Mortgage
315 Licensing Act of 2008, and an individual acting as a loan
316 originator pursuant to that definition is acting as a loan
317 originator for purposes of this definition. The term does not
318 include:

319 (a) An employee of a loan originator who performs only

597-02183-09

20092226__

320 administrative or clerical tasks on behalf of a loan originator.
321 The term "administrative or clerical tasks" means the receipt,
322 collection, and distribution of information for the processing
323 or underwriting of a mortgage loan and communication with a
324 consumer to obtain information necessary for the processing or
325 underwriting of a mortgage loan.

326 (b) A loan processor or underwriter who does not represent
327 to the public, through advertising or other means of
328 communicating or providing information, including the use of
329 business cards, stationery, brochures, signs, rate lists, or
330 other promotional items, that he or she can or will perform any
331 of the activities of a loan originator. The term "loan processor
332 or underwriter" means an individual who performs clerical or
333 support duties at the direction of, and subject to, the
334 supervision and instruction of a state-licensed loan originator
335 or a registered loan originator. The term "clerical or support
336 duties" may include the receipt, collection, distribution, and
337 analysis of information for the processing or underwriting of a
338 mortgage loan, and communication with a consumer to obtain the
339 information necessary for the processing or underwriting of a
340 loan, to the extent that such communication does not include
341 offering or negotiating loan rates or terms, or counseling
342 consumers about mortgage loan rates or terms.

343 (12)-(16) "Lock-in agreement" means an agreement whereby the
344 lender guarantees for a specified number of days or until a
345 specified date the availability of a specified rate of interest
346 or specified formula by which the rate of interest will be
347 determined or ~~and/or~~ specific number of discount points will be
348 given, if the loan is approved and closed within the stated

597-02183-09

20092226__

349 period of time.

350 (13)~~(17)~~ "Making ~~Make~~ a mortgage loan" means to close a
351 mortgage loan in a person's name; ~~or~~ to advance funds, offer to
352 advance funds, or make a commitment to advance funds to an
353 applicant for a mortgage loan; or to provide funds in a table-
354 funded transaction.

355 (14) "Mortgage broker" means a person conducting loan
356 originator activities through one or more licensed loan
357 originators employed by the mortgage broker or as independent
358 contractors to the mortgage broker.

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

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

363 (15) "Mortgage lender" means a person making a mortgage
364 loan, servicing a mortgage loan for others, or providing funds
365 in a table-funded transaction.

366 (16)~~(20)~~ "Mortgage loan" means any:

367 (a) Residential ~~mortgage~~ loan primarily for personal,
368 family, or household use which is secured by a mortgage, deed of
369 trust, or other equivalent consensual security interest on a
370 dwelling, as defined in s. 103(v) of the federal Truth in
371 Lending Act, or for the purchase of residential real estate upon
372 which a dwelling is to be constructed;

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

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

597-02183-09

20092226

378 (17) "Mortgage loan application" means the submission of a
379 borrower's financial information in anticipation of a credit
380 decision, whether written or computer-generated, relating to
381 obtaining a mortgage loan for specified property. If the
382 submission does not state or identify a specific property, the
383 submission is an application for a prequalification and not a
384 mortgage loan application under this part. The subsequent
385 addition of an identified property to the submission converts
386 the submission to a mortgage loan application.

387 ~~(18)-(21)~~ "Net worth" means total assets minus total
388 liabilities pursuant to United States generally accepted
389 accounting principles.

390 ~~(19)-(22)~~ "Noninstitutional investor" means an investor
391 other than an institutional investor.

392 ~~(23)~~ ~~"Nonresidential mortgage loan" means a mortgage loan~~
393 ~~other than a residential mortgage loan.~~

394 (20) "Office" means the Office of Financial Regulation.

395 ~~(21)-(24)~~ "Person" has the same meaning as in s. 1.01 means
396 ~~an individual, partnership, corporation, association, or other~~
397 ~~group, however organized.~~

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

401 (22) "Principal loan originator" means the licensed loan
402 originator in charge of, and responsible for, the operation of a
403 mortgage lender or mortgage broker, including all of the
404 activities of the mortgage lender's or mortgage broker's loan
405 originators and branch managers, whether employees or
406 independent contractors.

597-02183-09

20092226__

407 (23)~~(26)~~ "Principal place of business" means a mortgage
408 broker's or mortgage lender's licensee's primary business
409 office, the street address, or physical location that of which
410 is designated on the application for licensure or any amendment
411 to such application.

412 (24) "Registered loan originator" means a loan originator
413 who is employed by a depository institution, by a subsidiary
414 that is owned and controlled by a depository institution and
415 regulated by a federal banking agency, or by an institution
416 regulated by the Farm Credit Administration, and who is
417 registered with and maintains a unique identifier through the
418 registry.

419 (25) "Registry" means the Nationwide Mortgage Licensing
420 System and Registry," which is the mortgage licensing system
421 developed and maintained by the Conference of State Bank
422 Supervisors and the American Association of Residential Mortgage
423 Regulators for the licensing and registration of loan
424 originators.

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

432 (27)~~(29)~~ "Substantial fault of the borrower" means that the
433 borrower:

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

597-02183-09

20092226__

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

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

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

445

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

453 (28) "Table-funded loan" means a transaction in which a
454 mortgage broker closes a loan in the mortgage broker's own name
455 with funds provided by others, and the loan is simultaneously
456 assigned to the mortgage lender providing the funding.

457 (29) ~~(30)~~ "Ultimate equitable owner" means a natural person
458 who, directly or indirectly, owns or controls an ownership
459 interest in a corporation, a foreign corporation, an alien
460 business organization, or any other form of business
461 organization, regardless of whether such natural person owns or
462 controls such ~~ownership~~ interest through one or more natural
463 persons or one or more proxies, powers of attorney, nominees,
464 corporations, associations, partnerships, trusts, joint stock

597-02183-09

20092226__

465 companies, or other entities or devices, or any combination
466 thereof.

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

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

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

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

483 Section 2. Section 494.0011, Florida Statutes, is amended
484 to read:

485 494.0011 Powers and duties of the commission and office.—

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

488 ~~(2) The commission may adopt rules pursuant to ss.~~
489 ~~120.536(1) and 120.54 To administer ~~implement~~ ss. 494.001-~~
490 ~~494.0077,~~ the commission may adopt rules:

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

597-02183-09

20092226__

494 (b) Relating to compliance with the S.A.F.E. Mortgage
495 Licensing Act of 2008, including rules to:

496 1. Require loan originators, mortgage brokers, mortgage
497 lenders, and branch offices to register through the registry.

498 2. Require the use of uniform forms that have been approved
499 by the registry, and any subsequent amendments to such forms if
500 the forms are substantially in compliance with the provisions of
501 this chapter. Uniform forms that the commission may adopt
502 include, but are not limited to:

503 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

504 b. Uniform Mortgage Biographical Statement & Consent Form,
505 MU2.

506 c. Uniform Mortgage Branch Office Form, MU3.

507 d. Uniform Individual Mortgage License/Registration &
508 Consent Form, MU4.

509 3. Require the filing of forms, documents, and fees in
510 accordance with the requirements of the registry.

511 4. Prescribe requirements for amending or surrendering a
512 license or other activities as the commission deems necessary
513 for the office's participation in the registry.

514 5. Prescribe procedures that allow a licensee to challenge
515 information contained in the registry.

516 6. Prescribe procedures for reporting violations of this
517 chapter and disciplinary actions on licensees to the registry.

518 ~~The commission may prescribe by rule requirements and procedures~~
519 ~~for obtaining an exemption due to a technological or financial~~
520 ~~hardship. The commission may also adopt rules to accept~~
521 ~~certification of compliance with requirements of this act in~~
522 ~~lieu of requiring submission of documents.~~

597-02183-09

20092226__

523 (3) Except as provided in s. 492.00172, all fees, charges,
524 and fines collected pursuant to ss. 494.001-494.0077 shall be
525 deposited in ~~the State Treasury to the credit of the Regulatory~~
526 Trust Fund of ~~under~~ the office.

527 (4) The office shall participate in the registry and shall
528 regularly report to the registry violations of this chapter,
529 disciplinary actions, and other information deemed relevant by
530 the office under this chapter.

531 ~~(4) (a) The office has the power to issue and to serve~~
532 ~~subpoenas and subpoenas duces tecum to compel the attendance of~~
533 ~~witnesses and the production of all books, accounts, records,~~
534 ~~and other documents and materials relevant to an examination or~~
535 ~~investigation. The office, or its duly authorized~~
536 ~~representative, has the power to administer oaths and~~
537 ~~affirmations to any person.~~

538 ~~(b) The office may, in its discretion, seek subpoenas or~~
539 ~~subpoenas duces tecum from any court of competent jurisdiction~~
540 ~~commanding the appearance of witnesses and the production of~~
541 ~~books, accounts, records, and other documents or materials at a~~
542 ~~time and place named in the subpoenas; and any authorized~~
543 ~~representative of the office may serve any subpoena.~~

544 ~~(5) (a) In the event of substantial noncompliance with a~~
545 ~~subpoena or subpoena duces tecum issued or caused to be issued~~
546 ~~by the office, the office may petition the circuit court or any~~
547 ~~other court of competent jurisdiction of the county in which the~~
548 ~~person subpoenaed resides or has its principal place of business~~
549 ~~for an order requiring the subpoenaed person to appear and~~
550 ~~testify and to produce such books, accounts, records, and other~~
551 ~~documents as are specified in the subpoena duces tecum. The~~

597-02183-09

20092226__

552 ~~court may grant injunctive relief restraining the person from~~
553 ~~advertising, promoting, soliciting, entering into, offering to~~
554 ~~enter into, continuing, or completing any mortgage loan~~
555 ~~transaction or mortgage loan servicing transaction. The court~~
556 ~~may grant such other relief, including, but not limited to, the~~
557 ~~restraint, by injunction or appointment of a receiver, of any~~
558 ~~transfer, pledge, assignment, or other disposition of the~~
559 ~~person's assets or any concealment, alteration, destruction, or~~
560 ~~other disposition of books, accounts, records, or other~~
561 ~~documents and materials as the court deems appropriate, until~~
562 ~~the person has fully complied with the subpoena duces tecum and~~
563 ~~the office has completed its investigation or examination. In~~
564 ~~addition, the court may order the refund of any fees collected~~
565 ~~in a mortgage loan transaction whenever books and documents~~
566 ~~substantiating the transaction are not produced or cannot be~~
567 ~~produced. The office is entitled to the summary procedure~~
568 ~~provided in s. 51.011, and the court shall advance such cause on~~
569 ~~its calendar. Attorney's fees and any other costs incurred by~~
570 ~~the office to obtain an order granting, in whole or part, a~~
571 ~~petition for enforcement of a subpoena or subpoena duces tecum~~
572 ~~shall be taxed against the subpoenaed person, and failure to~~
573 ~~comply with such order is a contempt of court.~~

574 ~~(b) When it appears to the office that the compliance with~~
575 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~
576 ~~by the office pursuant to this section is essential and~~
577 ~~otherwise unavailable to an investigation or examination, the~~
578 ~~office, in addition to the other remedies provided for in this~~
579 ~~section, may apply to the circuit court or any other court of~~
580 ~~competent jurisdiction of the county in which the subpoenaed~~

597-02183-09

20092226__

581 ~~person resides or has its principal place of business for a writ~~
582 ~~of ne exeat. The court shall thereupon direct the issuance of~~
583 ~~the writ against the subpoenaed person requiring sufficient bond~~
584 ~~conditioned on compliance with the subpoena or subpoena duces~~
585 ~~tecum. The court shall cause to be endorsed on the writ a~~
586 ~~suitable amount of bond upon the payment of which the person~~
587 ~~named in the writ shall be freed, having a due regard to the~~
588 ~~nature of the case.~~

589 ~~(c) Alternatively, the office may seek a writ of attachment~~
590 ~~from the court having jurisdiction over the person who has~~
591 ~~refused to obey a subpoena, who has refused to give testimony,~~
592 ~~or who has refused to produce the matters described in the~~
593 ~~subpoena duces tecum.~~

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

596 Section 3. Section 494.00121, Florida Statutes, is created
597 to read:

598 494.00121 Subpoenas.-

599 (1) The office may:

600 (a) Issue and serve subpoenas and subpoenas duces tecum to
601 compel the attendance of witnesses and the production of all
602 books, accounts, records, and other documents and materials
603 relevant to an examination or investigation conducted by the
604 office. The office, or its authorized representative, may
605 administer oaths and affirmations to any person.

606 (b) Seek subpoenas or subpoenas duces tecum from any court
607 to command the appearance of witnesses and the production of
608 books, accounts, records, and other documents or materials at a
609 time and place named in the subpoenas, and an authorized

597-02183-09

20092226__

610 representative of the office may serve such subpoena.

611 (2) If there is substantial noncompliance with a subpoena
612 or subpoena duces tecum issued by the office, the office may
613 petition the court in the county where the person subpoenaed
614 resides or has his or her principal place of business for an
615 order requiring the person to appear, testify, or produce such
616 books, accounts, records, and other documents as are specified
617 in the subpoena or subpoena duces tecum.

618 (a) The court may grant injunctive relief restraining the
619 person from advertising, promoting, soliciting, entering into,
620 offering to enter into, continuing, or completing a mortgage
621 loan or servicing a mortgage loan.

622 (b) The court may grant such other relief, including, but
623 not limited to, the restraint, by injunction or appointment of a
624 receiver, of any transfer, pledge, assignment, or other
625 disposition of the person's assets or any concealment,
626 alteration, destruction, or other disposition of books,
627 accounts, records, or other documents and materials as the court
628 deems appropriate, until the person has fully complied with the
629 subpoena duces tecum and the office has completed its
630 investigation or examination.

631 (c) The court may order the refund of any fees collected in
632 a mortgage loan transaction if books and documents
633 substantiating the transaction are not produced or cannot be
634 produced.

635 (d) If it appears to the office that compliance with a
636 subpoena or subpoena duces tecum issued is essential and
637 otherwise unavailable to an investigation or examination, the
638 office may apply to the court for a writ of ne exeat pursuant to

597-02183-09

20092226__

639 s. 68.02.

640 (e) The office may seek a writ of attachment to obtain all
641 books, accounts, records, and other documents and materials
642 relevant to an examination or investigation.

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

650 Section 4. Section 494.0014, Florida Statutes, is amended
651 to read:

652 494.0014 Cease and desist orders; ~~administrative fines;~~
653 refund orders; administrative fines.-

654 (1) The office may ~~has the power to~~ issue and serve upon
655 any person an order to cease and desist and to take corrective
656 action if ~~whenever~~ it has reason to believe the person is
657 violating, has violated, or is about to violate any provision of
658 ss. 494.001-494.0077, any rule or order issued under ss.
659 494.001-494.0077, or any written agreement between the person
660 and the office. All procedural matters relating to issuance and
661 enforcement of such a ~~cease and desist~~ order are governed by the
662 Administrative Procedure Act.

663 (2) The office may ~~has the power to~~ order the refund of any
664 fee directly or indirectly assessed and charged on a mortgage
665 loan transaction which is unauthorized or exceeds the maximum
666 fee specifically authorized in ss. 494.001-494.0077, or any
667 amount collected for the payment of third-party fees which

597-02183-09

20092226__

668 exceeds the cost of the service provided.

669 ~~(3) The office may prohibit the association by a mortgage~~
670 ~~broker business, or the employment by a mortgage lender or~~
671 ~~correspondent mortgage lender, of any person who has engaged in~~
672 ~~a pattern of misconduct while an associate of a mortgage~~
673 ~~brokerage business or an employee of a mortgage lender or~~
674 ~~correspondent mortgage lender. For the purpose of this~~
675 ~~subsection, the term "pattern of misconduct" means the~~
676 ~~commission of three or more violations of ss. 494.001-494.0077~~
677 ~~or the provisions of chapter 494 in effect prior to October 1,~~
678 ~~1991, during any 1-year period or any criminal conviction for~~
679 ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~
680 ~~in effect prior to October 1, 1991.~~

681 (3)-(4) The office may impose an administrative fine of:

682 (a) Up to \$25,000 upon any person who makes or brokers a
683 loan, or any mortgage business school, a fine for each separate
684 violation violations of any provision of ss. 494.001-494.0077
685 ss. 494.001-494.00295 or any rule or order issued under those
686 sections ss. 494.001-494.00295 in an amount not exceeding \$5,000
687 for each separate count or offense.

688 (b) Up to \$1,000 per day, but not to exceed \$25,000
689 cumulatively, for each day that an unlicensed person acts as a
690 loan originator, a mortgage broker, or a mortgage lender. The
691 office may also impose an administrative fine of up to \$1000 per
692 day, but not to exceed \$25,000 cumulatively, for each day that a
693 mortgage broker or mortgage lender conducts business at an
694 unlicensed branch office.

695 Section 5. Section 494.00165, Florida Statutes, is amended
696 to read:

597-02183-09

20092226__

697 494.00165 Prohibited advertising; record requirements.—

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

699 (a) Advertise that an applicant shall ~~will~~ have unqualified
700 access to credit without disclosing the ~~what~~ material
701 limitations on the availability of such credit ~~exist~~. ~~Such~~
702 Material limitations include, but are not limited to, the
703 percentage of down payment required, that a higher rate or
704 points could be required, or that restrictions on ~~as to~~ the
705 maximum principal amount of the loan offered could apply.

706 (b) Advertise a mortgage loan at an expressed interest rate
707 unless the advertisement specifically states that the expressed
708 rate could change or not be available at commitment or closing.

709 (c) Advertise mortgage loans, including rates, margins,
710 discounts, points, fees, commissions, or other material
711 information, including material limitations on such loans,
712 unless the ~~such~~ person is able to make such mortgage loans
713 available to a reasonable number of qualified applicants.

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

716 (e) Engage in unfair, deceptive, or misleading advertising
717 regarding mortgage loans, brokering services, or lending
718 services.

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

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

725 Section 7. Section 494.00172, Florida Statutes, is created

597-02183-09

20092226__

726 to read:

727 494.00172 Mortgage Guaranty Trust Fund; payment of fees
728 and claims.—A nonrefundable fee is imposed on each application
729 for a mortgage broker, mortgage lender, or loan originator
730 license and on each annual application for a renewal of such
731 license. For a loan originator, the initial and renewal fee is
732 \$20. For mortgage brokers and lenders, the initial and renewal
733 fee is \$100. This fee is in addition to the regular application
734 or renewal fee assessed and shall be deposited into the Mortgage
735 Guaranty Trust Fund of the office for the payment of claims in
736 accordance with this section.

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

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

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

748 (b) The borrower has caused a writ of execution to be
749 issued upon such judgment, and the officer executing the
750 judgment has made a return showing that no personal or real
751 property of the judgment debtor liable to be levied upon in
752 satisfaction of the judgment can be found or that the amount
753 realized on the sale of the judgment debtor's property pursuant
754 to such execution is insufficient to satisfy the judgment.

597-02183-09

20092226__

755 (c) The borrower has made all reasonable searches and
756 inquiries to ascertain whether the judgment debtor possesses
757 real or personal property or other assets subject to being sold
758 or applied in satisfaction of the judgment, and has discovered
759 no such property or assets; or he or she has discovered property
760 and assets and has taken all necessary action and proceedings
761 for the application thereof to the judgment, but the amount
762 realized is insufficient to satisfy the judgment.

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

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

770 (f) The act for which recovery is sought occurred on or
771 after January 1, 2010.

772 (3) The requirements of subsection (2) are not applicable
773 if the licensee upon which the claim is sought has filed for
774 bankruptcy or has been adjudicated bankrupt. However, the
775 claimant must file a proof of claim in the bankruptcy
776 proceedings and must notify the office by certified mail of the
777 claim by enclosing a copy of the proof of claim and all
778 supporting documents.

779 (4) Any person who meets all of the conditions in
780 subsection (2) may apply to the office for payment from the
781 trust fund equal to the unsatisfied portion of that person's
782 judgment or \$50,000, whichever is less, but only to the extent
783 and amount reflected in the judgment as being for actual or

597-02183-09

20092226__

784 compensatory damages. Actual or compensatory damages may not
785 include postjudgment interest.

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

789 (b) Payments for claims are limited in the aggregate to
790 \$250,000 against any one licensee under this chapter. If the
791 total claims exceed the aggregate limit of \$250,000, the office
792 shall prorate payments based on the ratio that a claim bears to
793 the total claims filed.

794 (c) Payments shall be made to all persons meeting the
795 requirements of subsection (2) 2 years after the date the first
796 complete and valid notice is received by the office. Persons who
797 give notice after 2 years and who otherwise comply with the
798 conditions precedent to recovery may recover from any remaining
799 portion of the \$250,000 aggregate as provided in this
800 subsection, with claims being paid in the order notice was
801 received until the \$250,000 aggregate has been disbursed.

802 (d) The claimant shall assign his right, title, and
803 interest in the judgment, to the extent of his recovery from the
804 fund, to the office and shall record, at his own expense, the
805 assignment of judgment in every county where the judgment is
806 recorded.

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

597-02183-09

20092226

813 (f) The payment of any amount from the fund in settlement
814 of a claim or in satisfaction of a judgment against a licensee
815 constitutes prima facie grounds for the revocation of the
816 license.

817 Section 8. Section 494.0018, Florida Statutes, is amended
818 to read:

819 494.0018 Penalties.—

820 (1) Whoever knowingly violates any provision of s.
821 494.0042(1)(e), (f), or (g) ~~s. 494.0041(2)(e), (f), or (g); s.~~
822 494.0072(1)(e), (f), or (g) ~~s. 494.0072(2)(e), (f), or (g); or~~
823 s. 494.0025(1), (2), (3), (4), or (5), except as provided in
824 subsection (2) of this section, commits ~~is guilty of~~ a felony of
825 the third degree, punishable as provided in s. 775.082, s.
826 775.083, or s. 775.084. Each such violation constitutes a
827 separate offense.

828 (2) Any person convicted of a violation of any provision of
829 ss. 494.001-494.0077, in which ~~violation~~ the total value of
830 money and property unlawfully obtained exceeds ~~exceeded~~ \$50,000
831 and there were five or more victims, commits ~~is guilty of~~ a
832 felony of the first degree, punishable as provided in s.
833 775.082, s. 775.083, or s. 775.084.

834 Section 9. Section 494.0019, Florida Statutes, is amended
835 to read:

836 494.0019 Liability in case of unlawful transaction.—

837 (1) If a mortgage loan transaction is made in violation of
838 any provision of ss. 494.001-494.0077, the person making the
839 transaction and every licensee, director, or officer who
840 participated in making the transaction are jointly and severally
841 liable to every party to the transaction in an action for

597-02183-09

20092226__

842 damages incurred by the party or parties.

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

849 Section 10. Section 494.002, Florida Statutes, is amended
850 to read:

851 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~
852 ~~in ss. 494.001-494.0077~~ do not limit ~~limits~~ any statutory or
853 common-law right of any person to bring any action in any court
854 for any act involved in the mortgage loan business or the right
855 of the state to punish any person for any violation of any law.

856 Section 11. Section 494.0023, Florida Statutes, is amended
857 to read:

858 494.0023 Conflicting interest.—

859 (1) If, in a mortgage transaction, a licensee has a
860 conflicting interest as specified in subsection (2):

861 (a) The type of conflicting interest shall be fully and
862 fairly disclosed;~~—~~

863 (b) The licensee shall inform the borrower in writing that
864 a financial benefit may be received by the licensee as a result
865 of the conflicting interest; and—

866 (c) The borrower shall be informed that alternative sources
867 may be chosen by the borrower to provide any required services.
868 The following language must be included ~~contained~~ in 12-point
869 type in any agreement between a mortgage broker, mortgage
870 lender, ~~or correspondent mortgage lender~~ and a borrower in

597-02183-09

20092226__

871 substantially this form:

872

873 You are not required to purchase additional products or services
874 from any person or entity suggested or recommended by
875 (Broker/Lender/~~Correspondent Lender~~). However, the
876 (Broker/Lender/~~Correspondent Lender~~) hereby reserves the right
877 to approve the entity selected by the borrower, which approval
878 may not be unreasonably withheld.

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

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

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

887 (c) The person providing the additional products or
888 services, ~~either~~ directly or indirectly, owns, controls, or
889 holds the power to vote, or holds proxies representing, 1 ~~10~~
890 percent or more of any class of equity securities or other
891 beneficial interest in the licensee;

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

897 (e) One or more persons, or such person's relative, sits as
898 an officer or director, or performs similar functions as an
899 officer or director, for both the licensee and the person

597-02183-09

20092226__

900 providing the additional products or services; or

901 (f) The licensee or the licensee's relative sits as an
902 officer or director, or performs similar functions as an officer
903 or director, of the person providing the additional products or
904 services.

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

908 (a) Such person's spouse, father, mother, children,
909 brothers, and sisters.

910 (b) The father, mother, brothers, and sisters of such
911 person's spouse.

912 (c) The spouses of children, brothers, or sisters of such
913 person.

914 Section 12. Section 494.0025, Florida Statutes, is amended
915 to read:

916 494.0025 Prohibited practices.—It is unlawful for any
917 person:

918 (1) To act as a mortgage lender in this state without a
919 current, active license issued by the office pursuant to part
920 III of this chapter ss. 494.006-494.0077.

921 (2) To act as a loan originator ~~correspondent mortgage~~
922 ~~lender~~ in this state without a current, active license issued by
923 the office pursuant to part II of this chapter ss. 494.006-
924 494.0077.

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

928 (4) In any practice or transaction or course of business

597-02183-09

20092226__

929 relating to the sale, purchase, negotiation, promotion,
930 advertisement, or hypothecation of mortgage loan transactions,
931 directly or indirectly:

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

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

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

939 (5) In any matter within the jurisdiction of the office, to
940 knowingly and willfully falsify, conceal, or cover up by a
941 trick, scheme, or device a material fact, make any false or
942 fraudulent statement or representation, or make or use any false
943 writing or document, knowing the same to contain any false or
944 fraudulent statement or entry.

945 (6) To violate s. 655.922(2), subject to ss. 494.001-
946 494.0077.

947 ~~(7) Who is required to be licensed under ss. 494.006-~~
948 ~~494.0077, to fail to report to the office the failure to meet~~
949 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~
950 ~~494.0065 within 48 hours after the person's knowledge of such~~
951 ~~failure or within 48 hours after the person should have known of~~
952 ~~such failure.~~

953 (7)-(8) To pay a fee or commission in any mortgage loan
954 transaction to any person or entity other than a licensed
955 mortgage broker ~~brokerage business, mortgage lender,~~ or
956 ~~correspondent mortgage lender, operating under an active~~
957 ~~license,~~ or a person exempt from licensure under this chapter.

597-02183-09

20092226__

958 (8)~~(9)~~ To record a mortgage broker ~~brokerage~~ agreement or
959 any other document, not rendered by a court of competent
960 jurisdiction, which purports to enforce the terms of the
961 ~~mortgage brokerage~~ agreement.

962 (9)~~(10)~~ To use the name or logo of a financial institution,
963 as defined in s. 655.005(1), or its affiliates or subsidiaries
964 when marketing or soliciting existing or prospective customers
965 if such marketing materials are used without the written consent
966 of the financial institution and in a manner that would lead a
967 reasonable person to believe that the material or solicitation
968 originated from, was endorsed by, or is related to or the
969 responsibility of the financial institution or its affiliates or
970 subsidiaries.

971 (10) Subject to investigation or examination under this
972 chapter, to knowingly alter, withhold, conceal, or destroy any
973 books, records, computer records, or other information relating
974 to a person's activities which subject the person to the
975 jurisdiction of this chapter.

976 Section 13. Section 494.0028, Florida Statutes, is amended
977 to read:

978 494.0028 Arbitration.—

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

982 (a) A noninstitutional investor and a mortgage lender
983 servicing ~~or correspondent mortgage lender to service~~ a mortgage
984 loan.

985 (b) A borrower and a mortgage broker ~~brokerage business,~~
986 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a

597-02183-09

20092226__

987 mortgage loan.

988 (c) A noninstitutional investor and a mortgage broker
989 ~~brokerage business, mortgage lender, or correspondent~~ mortgage
990 lender to fund or purchase a mortgage loan.

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

995 (3) All agreements subject to this section must ~~shall~~
996 provide the noninstitutional investor or borrower with the
997 option to elect arbitration before the American Arbitration
998 Association or other independent nonindustry arbitration forum.
999 Any other nonindustry arbitration forum may apply to the office
1000 to allow such forum to provide arbitration services. The office
1001 shall grant the application if the applicant's fees, practices,
1002 and procedures do not materially differ from those of the
1003 American Arbitration Association.

1004 (4) At the election of the noninstitutional investor or
1005 borrower, venue shall be in the county in which the
1006 noninstitutional investor or borrower entered into the agreement
1007 or at a business location of the mortgage broker or ~~brokerage~~
1008 ~~business, mortgage lender, or correspondent lender.~~

1009 (5) Any fees or charges must be in accordance with ~~shall be~~
1010 ~~made as provided in~~ the rules of the American Arbitration
1011 Association or other approved nonindustry arbitration forum and
1012 may ~~shall~~ not be set in the agreement.

1013 (6) Any election made under this section is ~~shall be~~
1014 irrevocable.

1015 (7) This section may ~~shall~~ not be construed to require an

597-02183-09

20092226__

1016 agreement that ~~which~~ is subject to this section to contain an
1017 arbitration clause.

1018 Section 14. Sections 494.0029 and 494.00295, Florida
1019 Statutes, are repealed.

1020 Section 15. The Division of Statutory Revision is requested
1021 to rename part II of chapter 494, Florida Statutes, consisting
1022 of ss. 494.003-491.0043, Florida Statutes, as "Mortgage Brokers
1023 and Loan Originators."

1024 Section 16. Effective July 1, 2009, section 494.003,
1025 Florida Statutes, is amended to read:

1026 494.003 Exemptions.—

1027 (1) ~~None of~~ The following persons are not ~~is~~ subject to the
1028 requirements of this part ~~ss. 494.003-494.0043~~:

1029 (a) Any person operating exclusively as a registered loan
1030 originator in accordance with the S.A.F.E. Mortgage Licensing
1031 Act of 2008 ~~licensed under ss. 494.006-494.0077, except as~~
1032 ~~provided in s. 494.0073.~~

1033 (b) A depository institution; subsidiaries that are owned
1034 and controlled by a depository institution and regulated by the
1035 Board of Governors of the Federal Reserve System, the
1036 Comptroller of the Currency, the Director of the Office of
1037 Thrift Supervision, the National Credit Union Administration, or
1038 the Federal Deposit Insurance Corporation; and institutions
1039 regulated by the Farm Credit Administration ~~state or federal~~
1040 ~~chartered bank, trust company, savings and loan association,~~
1041 ~~savings bank or credit union, bank holding company regulated~~
1042 ~~under the laws of any state or the United States, or consumer~~
1043 ~~finance company licensed pursuant to chapter 516.~~

1044 (c) ~~A wholly owned bank holding company subsidiary or a~~

597-02183-09

20092226__

1045 ~~wholly owned savings and loan association holding company~~
1046 ~~subsidiary formed and regulated under the laws of any state or~~
1047 ~~the United States that is approved or certified by the~~
1048 ~~Department of Housing and Urban Development, the Veterans~~
1049 ~~Administration, the Government National Mortgage Association,~~
1050 ~~the Federal National Mortgage Association, or the Federal Home~~
1051 ~~Loan Mortgage Corporation.~~

1052 (c) ~~(d)~~ The Federal National Mortgage Association; the
1053 Federal Home Loan Mortgage Corporation; any agency of the
1054 Federal Government; any state, county, or municipal government;
1055 or any quasi-governmental agency that acts in such capacity
1056 under the specific authority of the laws of any state or the
1057 United States.

1058 (d) A licensed attorney who negotiates the terms of a
1059 mortgage loan on behalf of a client as an ancillary matter to
1060 the attorney's representation of the client, unless the attorney
1061 is compensated by a mortgage lender, a mortgage broker, or a
1062 loan originator or by the agent of such lender, broker, or
1063 originator.

1064 ~~(e) Any person licensed to practice law in this state, not~~
1065 ~~actively and principally engaged in the business of negotiating~~
1066 ~~loans secured by real property, when such person renders~~
1067 ~~services in the course of her or his practice as an attorney at~~
1068 ~~law.~~

1069 ~~(2) None of the following persons is required to be~~
1070 ~~licensed under ss. 494.003-494.0043:~~

1071 ~~(a) An insurance company duly licensed in this state when~~
1072 ~~dealing with its clients in the normal course of its insurance~~
1073 ~~business.~~

597-02183-09

20092226__

1074 ~~(b) A federally licensed small business investment company.~~

1075 ~~(c) A securities dealer registered under the provisions of~~
 1076 ~~s. 517.12, when dealing with its corporate or individual clients~~
 1077 ~~in the normal course of its securities business.~~

1078 ~~(d) Any person acting in a fiduciary capacity conferred by~~
 1079 ~~authority of any court.~~

1080 ~~(e) A wholly owned subsidiary of a state or federal~~
 1081 ~~chartered bank or savings and loan association the sole activity~~
 1082 ~~of which is to distribute the lending programs of such state or~~
 1083 ~~federal chartered bank or savings and loan association to~~
 1084 ~~persons who arrange loans for, or make loans to, borrowers.~~

1085 ~~(2)(3)~~ It is not necessary to negate any of the exemptions
 1086 provided in this section in any complaint, information,
 1087 indictment, or other writ or proceeding brought under ss.
 1088 494.001-494.0077. The burden of establishing the right to an ~~any~~
 1089 ~~such~~ exemption is upon the party claiming the benefit of the
 1090 exemption.

1091 Section 17. Section 494.0031, Florida Statutes, is
 1092 repealed.

1093 Section 18. Section 494.00312, Florida Statutes, is created
 1094 to read:

1095 494.00312 Mortgage broker license.—

1096 (1) Each person who acts as a mortgage broker must be
 1097 licensed in accordance with this section.

1098 (2) To apply for a mortgage broker license the applicant
 1099 must:

1100 (a) Submit a completed license application form as
 1101 prescribed by commission rule.

1102 (b) Designate a qualified principal loan originator who

597-02183-09

20092226__

1103 meets the requirement of s. 494.0035 on the application form.

1104 (c) Submit a nonrefundable application fee of \$625, and the
1105 \$100 nonrefundable fee if required by s. 494.00172. Application
1106 fees may not be prorated for partial years of licensure.

1107 (d) Submit a complete set of fingerprints for each of the
1108 applicant's control persons to:

1109 1. The registry for a federal criminal history check. If
1110 the registry is not processing fingerprints at the time the
1111 application is submitted, the Department of Law Enforcement
1112 shall forward the fingerprints submitted pursuant to
1113 subparagraph 2. to the Federal Bureau of Investigation for
1114 processing.

1115 2. The office for a state criminal history check. The
1116 office may contract with a third-party vendor that provides live
1117 scan fingerprinting in lieu of a paper fingerprint card. All
1118 fingerprints shall be submitted to the Department of Law
1119 Enforcement and entered into the statewide automated fingerprint
1120 identification system established in s. 943.05(2)(b) and
1121 available for use in accordance with s. 943.05(2)(g). The cost
1122 of fingerprinting shall be borne by the applicant.

1123 (e) Authorize the registry to obtain an independent credit
1124 report on each of the applicant's control persons from a
1125 consumer reporting agency, and transmit or provide access to the
1126 report to the office. The cost of the credit report shall be
1127 borne by the applicant.

1128 (f) Submit additional information or documentation
1129 requested by the office and required by rule concerning the
1130 applicant or a control person of the applicant. Additional
1131 information may include documentation of pending and prior

597-02183-09

20092226__

1132 disciplinary and criminal history events, including arrest
1133 reports and certified copies of charging documents, plea
1134 agreements, judgments and sentencing documents, documents
1135 relating to pretrial intervention, orders terminating probation
1136 or supervised release, final administrative agency orders, or
1137 other comparable documents that may provide the office with the
1138 appropriate information to determine eligibility for licensure.

1139 (g) Submit any other information required by the registry
1140 for the processing of the application.

1141 (3) An application is considered received for the purposes
1142 of s. 120.60 upon the office's receipt of all documentation from
1143 the registry including the completed application form, criminal
1144 history information, and credit history information, as well as
1145 the licensed application fee, the fee required by s. 492.00172,
1146 and all applicable fingerprinting processing fees.

1147 (4) The office shall issue a mortgage broker license to
1148 each person who is not otherwise ineligible and who meets the
1149 requirements of this section. However, it is a ground for denial
1150 of licensure if the applicant or one of the applicant's control
1151 persons:

1152 (a) Has committed any violation specified in ss. 494.001-
1153 494.0077, or is the subject of a pending felony criminal
1154 prosecution or a prosecution or an administrative enforcement
1155 action, in any jurisdiction, that involves fraud, dishonesty,
1156 breach of trust, money laundering, or any other act of moral
1157 turpitude.

1158 (b) Demonstrates a lack of financial responsibility,
1159 character, and general fitness which would fail to command the
1160 confidence of the community and to warrant a determination that

597-02183-09

20092226__

1161 the mortgage broker will operate honestly, fairly, and
1162 efficiently. For purposes of this paragraph, a person has shown
1163 that he or she is not financially responsible if he or she has
1164 shown a disregard in the management of his or her own financial
1165 condition, which may include, but is not limited to:

1166 1. Current outstanding judgments, except judgments
1167 resulting solely from medical expenses;

1168 2. Current outstanding tax liens or other government liens
1169 and filings;

1170 3. Foreclosures within the past 3 years; or

1171 4. A pattern of seriously delinquent accounts within the
1172 past 3 years.

1173 (5) The office shall deny a license if the applicant has
1174 had a mortgage broker license, or its equivalent, revoked in any
1175 jurisdiction, or any of the applicant's control persons has had
1176 a loan originator license, or its equivalent, revoked in any
1177 jurisdiction.

1178 (6) The commission shall, by rule, establish time periods
1179 during which an applicant is barred from licensure due to prior
1180 criminal convictions of, or guilty or nolo contendere pleas by,
1181 any of the applicant's control persons, regardless of
1182 adjudication.

1183 (a) The rules must provide:

1184 1. Permanent bars for felonies involving fraud, dishonesty,
1185 breach of trust, or money laundering;

1186 2. A 15-year disqualifying period for felonies involving
1187 moral turpitude;

1188 3. A 7-year period for all other felonies; and

1189 4. A 5-year period for misdemeanors involving fraud,

597-02183-09

20092226__

1190 dishonesty, or any other act of moral turpitude.

1191 (b) The rule may also provide for mitigating factors, an
1192 additional waiting period due to dates of imprisonment or
1193 community supervision, an additional waiting period due to the
1194 commitment of multiple crimes, and other factors reasonably
1195 related to the applicant's criminal history. An applicant is not
1196 eligible for licensure until the expiration of the disqualifying
1197 period set by rule. Section 112.011 is not applicable to
1198 eligibility for licensure under this part.

1199 (7) A mortgage broker license may be withdrawn pursuant to
1200 s. 120.60 if it was issued through mistake or inadvertence of
1201 the office. A license must be reinstated if the applicant can
1202 demonstrate that the requirements for obtaining the license
1203 under this chapter have been satisfied.

1204 (8) All mortgage broker licenses must be renewed annually
1205 by December 31 pursuant to s. 494.00321. If a person holding an
1206 active mortgage broker license has not applied to renew the
1207 license annually on or before December 31, the mortgage broker
1208 license expires on December 31. If a person holding an active
1209 mortgage broker license has applied to renew the license on or
1210 before December 31, the mortgage broker license remains active
1211 until the renewal application is approved or denied. A mortgage
1212 broker may not be precluded from reapplying for licensure upon
1213 expiration of a previous license.

1214 Section 19. Section 494.0032, Florida Statutes, is
1215 repealed.

1216 Section 20. Section 494.00321, Florida Statutes, is created
1217 to read:

1218 494.00321 Mortgage broker license renewal.-

597-02183-09

20092226__

1219 (1) To renew a mortgage broker license, a mortgage broker
1220 must:

1221 (a) Submit a completed license renewal form as prescribed
1222 by commission rule.

1223 (b) Submit a nonrefundable renewal fee of \$625, and the
1224 \$100 nonrefundable fee if required by s. 494.00172.

1225 (c) Submit a complete set of fingerprints in accordance
1226 with s. 494.00312 (2) (d) for any new control persons who have not
1227 been screened.

1228 (d) Authorize the registry to obtain an independent credit
1229 report on each of the applicant's control persons from a
1230 consumer reporting agency, and transmit or provide access to the
1231 report to the office. The cost of the credit report shall be
1232 borne by the applicant.

1233 (e) Submit any additional information or documentation
1234 requested by the office and required by rule concerning the
1235 applicant or a control person of the applicant. Additional
1236 information may include documentation of pending and prior
1237 disciplinary and criminal history events, including arrest
1238 reports and certified copies of charging documents, plea
1239 agreements, judgments and sentencing documents, documents
1240 relating to pretrial intervention, orders terminating probation
1241 or supervised release, final administrative agency orders, or
1242 other comparable documents that may provide the office with the
1243 appropriate information to determine eligibility for licensure.

1244 (2) The office may not renew a mortgage broker license
1245 unless the licensee continues to meet the minimum requirements
1246 for initial licensure pursuant to s. 494.00312 and adopted rule.

1247 Section 21. Section 494.00323, Florida Statutes, is created

597-02183-09

20092226__

1248 to read:

1249 494.00323 Loan originator license.-1250 (1) An individual who acts as a loan originator must be
1251 licensed under this section.1252 (2) To apply for loan originator license, an applicant
1253 must:1254 (a) Be at least 18 years of age and have a high school
1255 diploma or its equivalent.1256 (b) Complete a 20-hour prelicensing class approved by the
1257 registry.1258 (c) Pass a written test developed by the registry and
1259 administered by a provider approved by the registry.1260 (d) Submit a completed license application form as
1261 prescribed by commission rule.1262 (e) Submit a nonrefundable application fee of \$285, and the
1263 \$20 nonrefundable fee if required by s. 494.00172. Application
1264 fees may not be prorated for partial years of licensure.1265 (f) Submit a complete set of fingerprints to:1266 1. The registry for a federal criminal history check. If
1267 the registry is not processing fingerprints at the time the
1268 application is submitted, the Department of Law Enforcement
1269 shall forward the fingerprints submitted pursuant to
1270 subparagraph 2. to the Federal Bureau of Investigation for
1271 processing.1272 2. The office for a state criminal history check. The
1273 office may contract with a third-party vendor that provides live
1274 scan fingerprinting in lieu of a paper fingerprint card. All
1275 fingerprints shall be submitted to the Department of Law
1276 Enforcement and entered into the statewide automated fingerprint

597-02183-09

20092226__

1277 identification system established in s. 943.05(2)(b) and
1278 available for use in accordance with s. 943.05(2)(g). The cost
1279 of fingerprinting shall be borne by the applicant.

1280 (g) Authorize the registry to obtain an independent credit
1281 report on the applicant from a consumer reporting agency, and
1282 transmit or provide access to the report to the office. The cost
1283 of the credit report shall be borne by the applicant.

1284 (h) Submit additional information or documentation
1285 requested by the office and required by rule concerning the
1286 applicant. Additional information may include documentation of
1287 pending and prior disciplinary and criminal history events,
1288 including arrest reports and certified copies of charging
1289 documents, plea agreements, judgments and sentencing documents,
1290 documents relating to pretrial intervention, orders terminating
1291 probation or supervised release, final administrative agency
1292 orders, or other comparable documents that may provide the
1293 office with the appropriate information to determine eligibility
1294 for licensure.

1295 (i) Submit any other information required by the registry
1296 for the processing of the application.

1297 (3) An application is considered received for the purposes
1298 of s. 120.60 upon the office's receipt of all documentation from
1299 the registry including the completed application form,
1300 documentation of completion of the pre-licensure class, test
1301 results, criminal history information, and credit history
1302 information, as well as the license application fee, the fee
1303 required by s. 494.00172, and all applicable fingerprinting
1304 processing fees.

1305 (4) The office shall issue a loan originator license to

597-02183-09

20092226__

1306 each person who is not otherwise ineligible and who meets the
1307 requirements of this section. However, it is a ground for denial
1308 of licensure if the applicant:

1309 (a) Has committed any violation specified in ss. 494.001-
1310 494.0077, or is the subject of a pending felony criminal
1311 prosecution or a prosecution or an administrative enforcement
1312 action, in any jurisdiction, which involves fraud, dishonesty,
1313 breach of trust, money laundering, or any other act of moral
1314 turpitude.

1315 (b) Demonstrates a lack of financial responsibility,
1316 character, and general fitness which would fail to command the
1317 confidence of the community and to warrant a determination that
1318 the loan originator will operate honestly, fairly, and
1319 efficiently. For purposes of this paragraph, a person has shown
1320 that he or she is not financially responsible if he or she has
1321 shown a disregard in the management of his or her own financial
1322 condition which may include, but is not limited to:

1323 1. Current outstanding judgments, except judgments
1324 resulting solely from medical expenses;

1325 2. Current outstanding tax liens or other government liens
1326 and filings;

1327 3. Foreclosures within the past 3 years; or

1328 4. A pattern of seriously delinquent accounts within the
1329 past 3 years.

1330 (5) The office may not issue a license to an applicant who
1331 has had a loan originator license or its equivalent revoked in
1332 any jurisdiction.

1333 (6) The commission shall, by rule, establish time periods
1334 during which an applicant is barred from licensure due to prior

597-02183-09

20092226__

1335 criminal convictions of, or guilty or nolo contendere pleas by,
1336 any of the applicant's control persons, regardless of
1337 adjudication.

1338 (a) The rules must provide:

1339 1. Permanent bars for felonies involving fraud, dishonesty,
1340 breach of trust, or money laundering;

1341 2. A 15-year disqualifying period for felonies involving
1342 moral turpitude;

1343 3. A 7-year period for all other felonies; and

1344 4. A 5-year period for misdemeanors involving fraud,
1345 dishonesty, or any other act of moral turpitude.

1346 (b) The rule may also provide for mitigating factors, an
1347 additional waiting period due to dates of imprisonment or
1348 community supervision, an additional waiting period due to the
1349 commitment of multiple crimes, and other factors reasonably
1350 related to the applicant's criminal history. The rule may not
1351 provide standards that are less rigorous than those set forth in
1352 the S.A.F.E. Mortgage Licensing Act of 2008. An applicant is not
1353 eligible for licensure until the expiration of the disqualifying
1354 period set by rule. Section 112.011 is not applicable to
1355 eligibility for licensure under this part.

1356 (7) A loan originator license may be withdrawn pursuant to
1357 s. 120.60 if it was issued through mistake or inadvertence of
1358 the office. A license must be reinstated if the applicant can
1359 demonstrate that the requirements for obtaining the license
1360 under this chapter have been satisfied.

1361 (8) All loan originator licenses must be renewed annually
1362 by December 31 pursuant to s. 494.00324. If a person holding a
1363 loan originator license has not applied to renew the license on

597-02183-09

20092226__

1364 or before December 31, the loan originator license expires on
1365 December 31. If a person holding an active loan originator
1366 license has applied to renew the license on or before December
1367 31, the loan originator license remains active until the renewal
1368 application is approved or denied. A loan originator may not be
1369 precluded from reapplying for licensure upon expiration of a
1370 previous license.

1371 Section 22. Section 494.00324, Florida Statutes, is created
1372 to read:

1373 494.00324 Loan originator license renewal.-

1374 (1) To renew a loan originator license, a loan originator
1375 must:

1376 (a) Submit a completed license renewal form as prescribed
1377 by commission rule.

1378 (b) Submit a nonrefundable renewal fee of \$285, and the \$20
1379 nonrefundable fee if required by s. 494.00172.

1380 (c) Submit a complete set of fingerprints in accordance
1381 with s. 494.00323(2)(f).

1382 (d) Provide documentation of completion of at least 8 hours
1383 of continuing education in courses reviewed and approved by the
1384 registry.

1385 (e) Authorize the registry to obtain an independent credit
1386 report on the applicant from a consumer reporting agency, and
1387 transmit or provide access to the report to the office. The cost
1388 of the credit report shall be borne by the applicant.

1389 (f) Submit any additional information or documentation
1390 requested by the office and required by rule concerning the
1391 licensee. Additional information may include documentation of
1392 pending and prior disciplinary and criminal history events,

597-02183-09

20092226__

1393 including arrest reports and certified copies of charging
 1394 documents, plea agreements, judgments and sentencing documents,
 1395 documents relating to pretrial intervention, orders terminating
 1396 probation or supervised release, final administrative agency
 1397 orders, or other comparable documents that may provide the
 1398 office with the appropriate information to determine eligibility
 1399 for licensure.

1400 (2) The office may not renew a loan originator license
 1401 unless the loan originator continues to meet the minimum
 1402 standards for initial license issuance pursuant to s. 494.00323
 1403 and adopted rule.

1404 Section 23. Section 494.0033, Florida Statutes, is
 1405 repealed.

1406 Section 24. Section 494.00331, Florida Statutes, is amended
 1407 to read:

1408 494.00331 Prohibition against multiple employers ~~Mortgage~~
 1409 ~~broker association.~~ A loan originator may not be employed by or
 1410 contract with more than one mortgage broker or mortgage lender,
 1411 or either simultaneously. ~~No person required to be licensed as a~~
 1412 ~~mortgage broker under this chapter shall be simultaneously an~~
 1413 ~~associate of more than one licensed mortgage brokerage business,~~
 1414 ~~licensed mortgage lender, or licensed correspondent mortgage~~
 1415 ~~lender.~~

1416 Section 25. Section 494.0034, Florida Statutes, is
 1417 repealed.

1418 Section 26. Section 494.0035, Florida Statutes, is amended
 1419 to read:

1420 494.0035 Principal loan originator ~~broker~~ and branch
 1421 manager for mortgage broker requirements.

597-02183-09

20092226__

1422 (1) Each mortgage broker ~~brokerage business~~ must be
1423 operated by a principal loan originator who shall have a
1424 ~~principal broker who shall operate the business under such~~
1425 ~~broker's~~ full charge, control, and supervision of the mortgage
1426 broker business. The principal loan originator must have been
1427 licensed as a loan originator ~~broker must have been a licensed~~
1428 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year
1429 before ~~prior to~~ being designated as the a principal loan
1430 originator ~~broker~~, or must shall demonstrate to the satisfaction
1431 of the office that he or she ~~such principal broker~~ has been
1432 actively engaged in a mortgage broker-related ~~mortgage-related~~
1433 business for at least 1 year before ~~prior to~~ being designated as
1434 a principal loan originator ~~broker~~. Each mortgage broker must
1435 keep the office informed of the person designated as the
1436 principal loan originator as prescribed by commission rule
1437 ~~brokerage business shall maintain a form as prescribed by the~~
1438 ~~commission indicating the business's designation of principal~~
1439 ~~broker and the individual's acceptance of such responsibility.~~
1440 If the designation is inaccurate, the business shall be deemed
1441 to be operated under ~~form is unavailable, inaccurate, or~~
1442 ~~incomplete, it is deemed that the business was operated in the~~
1443 full charge, control, and supervision of ~~by~~ each officer,
1444 director, or ultimate equitable owner of a 10-percent or greater
1445 interest in the mortgage broker ~~brokerage business~~, or any other
1446 person in a similar capacity. A loan originator may not be a
1447 principal loan originator for more than one mortgage broker at
1448 any given time.

1449 (2) Each branch office of a mortgage broker ~~brokerage~~
1450 ~~business~~ must be operated by a ~~have a designated~~ branch manager

597-02183-09

20092226__

1451 ~~broker~~ who shall have ~~operate the business under such broker's~~
 1452 full charge, control, and supervision of the branch office. The
 1453 designated branch manager ~~broker~~ must be a licensed loan
 1454 originator ~~mortgage broker~~ pursuant to s. 494.00323 ~~s. 494.0033~~.
 1455 Each branch office must keep the office informed of the person
 1456 designated as the branch manager as prescribed by commission
 1457 rule, which includes documentation of ~~shall maintain a form as~~
 1458 ~~prescribed by the commission logging the branch's designation of~~
 1459 ~~a branch broker and the individual's acceptance of such~~
 1460 responsibility. If the designation is inaccurate, the branch
 1461 office shall be deemed to be operated under ~~form is unavailable,~~
 1462 ~~inaccurate, or incomplete, it is deemed that the branch was~~
 1463 ~~operated in~~ the full charge, control, and supervision of ~~by~~ each
 1464 officer, director, or ultimate equitable owner of a 10-percent
 1465 or greater interest in the mortgage broker ~~brokerage business,~~
 1466 or any other person in a similar capacity.

1467 Section 27. Section 494.0036, Florida Statutes, is amended
 1468 to read:

1469 494.0036 Mortgage broker branch office license ~~brokerage~~
 1470 ~~business branch offices.~~

1471 (1) Each branch office of a mortgage broker must be
 1472 licensed under this section. ~~A mortgage brokerage business~~
 1473 ~~branch office license is required for each branch office~~
 1474 ~~maintained by a mortgage brokerage business.~~

1475 (2) The office shall issue a mortgage broker ~~brokerage~~
 1476 ~~business~~ branch office license to a mortgage broker ~~brokerage~~
 1477 ~~business~~ licensee after the office determines that the licensee
 1478 has submitted a completed application for a branch office in a
 1479 form ~~as~~ prescribed by commission rule and payment of an initial

597-02183-09

20092226__

1480 nonrefundable branch office license fee of \$350 per branch
1481 office \$225. Application fees may not be prorated for partial
1482 years of licensure. The branch office license shall be issued in
1483 the name of the mortgage broker ~~brokerage business~~ that
1484 maintains the branch office. An application is considered
1485 received for purposes of s. 120.60 upon receipt of a completed
1486 application form as prescribed by commission rule, and the
1487 required fees ~~a nonrefundable application fee of \$225, and any~~
1488 ~~other fee prescribed by law.~~

1489 (3) A branch office license must be renewed at the time of
1490 renewing the mortgage broker license under s. 494.00321. A
1491 nonrefundable branch renewal fee of \$350 per branch office must
1492 be submitted at the time of renewal.

1493 Section 28. Section 494.0038, Florida Statutes, is amended
1494 to read:

1495 494.0038 Loan origination and mortgage broker fees and
1496 Mortgage broker disclosures.-

1497 (1)(a)1. A loan origination fee may not be paid ~~person may~~
1498 ~~not receive a mortgage brokerage fee~~ except pursuant to a
1499 written mortgage broker ~~brokerage~~ agreement between the mortgage
1500 broker ~~brokerage business~~ and the borrower which is signed and
1501 dated by each loan originator responsible for providing loan
1502 origination services, the principal loan originator or branch
1503 manager, the business and the borrower. If the principal loan
1504 originator or branch manager is the only licensed loan
1505 originator responsible for providing loan origination services,
1506 only his or her signature is required.

1507 (a)2. The written mortgage broker ~~brokerage~~ agreement must
1508 describe the services to be provided by the mortgage broker

597-02183-09

20092226__

1509 ~~brokerage business~~ and specify the amount and terms of the loan
1510 origination mortgage brokerage fee that the mortgage broker
1511 ~~brokerage business~~ is to receive.

1512 1. Except for application and third-party fees, all fees
1513 received by a mortgage broker from a borrower must be identified
1514 as a loan origination fee.

1515 2. All fees on the mortgage broker agreement must be
1516 disclosed in dollar amounts.

1517 3. All loan origination fees must be paid to a mortgage
1518 broker.

1519 (b) The ~~written mortgage brokerage~~ agreement must be
1520 executed within 3 business days after a mortgage loan
1521 application is accepted if the borrower is present when the
1522 mortgage loan application is accepted. If the borrower is not
1523 present ~~when such an application is accepted~~, the licensee shall
1524 forward the ~~written mortgage brokerage~~ agreement to the borrower
1525 within 3 business days after the licensee's acceptance of the
1526 application and the licensee bears the burden of proving that
1527 the borrower received and approved the ~~written mortgage~~
1528 ~~brokerage~~ agreement.

1529 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to
1530 receive any payment of any kind from the mortgage lender, the
1531 maximum total dollar amount of the payment must be disclosed to
1532 the borrower in the written mortgage broker ~~brokerage~~ agreement
1533 as described in paragraph (1)(a). The commission may prescribe
1534 by rule an acceptable form for disclosure of brokerage fees
1535 received from the lender. The ~~mortgage brokerage~~ agreement must
1536 state the nature of the relationship with the lender, describe
1537 how compensation is paid by the lender, and describe how the

597-02183-09

20092226__

1538 mortgage interest rate affects the compensation paid to the
1539 mortgage broker ~~brokerage business~~.

1540 (a)2. The exact amount of any payment of any kind by the
1541 lender to the mortgage broker ~~brokerage business~~ must be
1542 disclosed in writing to the borrower within 3 business days
1543 after the mortgage broker ~~brokerage business~~ is made aware of
1544 the exact amount of the payment from the lender but not less
1545 than 3 business days before the execution of the closing or
1546 settlement statement. The licensee bears the burden of proving
1547 such notification was provided to the borrower. Notification is
1548 waived if the exact amount of the payment is accurately
1549 disclosed in the written mortgage broker agreement.

1550 (b)(e) The commission may prescribe by rule the form of
1551 disclosure of brokerage fees.

1552 (3)(2) At the time a written mortgage broker ~~brokerage~~
1553 agreement is signed ~~executed~~ by the borrower or forwarded to the
1554 borrower for signature ~~execution~~, or at the time the mortgage
1555 broker ~~brokerage business~~ accepts an application fee, credit
1556 report fee, property appraisal fee, or any other third-party
1557 fee, but at least ~~not less than~~ 3 business days before execution
1558 of the closing or settlement statement, the mortgage broker
1559 ~~brokerage business~~ shall disclose in writing to any applicant
1560 for a mortgage loan the following information:

1561 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may
1562 not make mortgage loans or commitments. The mortgage broker
1563 ~~brokerage business~~ may make a commitment and may furnish a lock-
1564 in of the rate and program on behalf of the lender if ~~when~~ the
1565 mortgage broker ~~brokerage business~~ has obtained a written
1566 commitment or lock-in for the loan from the lender on behalf of

597-02183-09

20092226__

1567 the borrower for the loan. The commitment must be in the same
1568 form and substance as issued by the lender.

1569 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot
1570 guarantee acceptance into any particular loan program or promise
1571 any specific loan terms or conditions.

1572 (c) A good faith estimate, signed and dated by the
1573 borrower, which discloses the total amount of each of the fees
1574 ~~which~~ the borrower may reasonably expect to pay if the loan is
1575 closed, including, but not limited to, fees earned by the
1576 mortgage broker ~~brokerage business~~, lender fees, third-party
1577 fees, and official fees, together with the terms and conditions
1578 for obtaining a refund of such fees, if any. Any amount
1579 collected in excess of the actual cost shall be returned within
1580 60 days after rejection, withdrawal, or closing. The good faith
1581 estimate must identify the recipient of all payments charged the
1582 borrower and, except for all fees to be received by the mortgage
1583 broker ~~brokerage business~~, may be disclosed in generic terms,
1584 such as, but not limited to, paid to lender, appraiser,
1585 officials, title company, or any other third-party service
1586 provider. This requirement does not supplant or is not a
1587 substitute for the written mortgage broker ~~brokerage~~ agreement
1588 described in subsection (1).

1589 (4) ~~(3)~~ The disclosures required by this subsection must be
1590 furnished in writing at the time an adjustable rate mortgage
1591 loan is offered to the borrower and whenever the terms of the
1592 adjustable rate mortgage loan offered materially change prior to
1593 closing. The mortgage broker shall furnish the disclosures
1594 relating to adjustable rate mortgages in a format prescribed by
1595 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors

597-02183-09

20092226__

1596 of the Federal Reserve System, as amended; its commentary, as
1597 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
1598 1601 et seq., as amended; together with the Consumer Handbook on
1599 Adjustable Rate Mortgages, as amended; published by the Federal
1600 Reserve Board and the Federal Home Loan Bank Board. The licensee
1601 bears the burden of proving such disclosures were provided to
1602 the borrower.

1603 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes
1604 a nonrefundable application fee, the following requirements are
1605 applicable:

1606 (a) The amount of the application fee, which must be
1607 clearly denominated as such, must ~~shall~~ be clearly disclosed.

1608 (b) The specific services that will be performed in
1609 consideration for the application fee must ~~shall~~ be disclosed.

1610 (c) The application fee must be reasonably related to the
1611 services to be performed and may not be based upon a percentage
1612 of the principal amount of the loan or the amount financed.

1613 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
1614 any fee in connection with a mortgage loan other than an
1615 application fee, credit report fee, property appraisal fee, or
1616 other third-party fee ~~prior to obtaining a written commitment~~
1617 ~~from a qualified lender.~~

1618 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker
1619 must ~~brokerage business shall~~ immediately, upon receipt, be
1620 placed into a segregated account with a financial institution
1621 located in the state the accounts of which are insured by the
1622 Federal Government. Such funds shall be held in trust for the
1623 payor and shall be kept in the account until disbursement. Such
1624 funds may be placed in one account if adequate accounting

597-02183-09

20092226__

1625 measures are taken to identify the source of the funds.

1626 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~
1627 ~~brokerage business licensee.~~

1628 (8) A mortgage broker may not pay a commission to any
1629 person not licensed pursuant to this chapter.

1630 (9)~~(8)~~ This section does not prohibit a mortgage broker
1631 ~~brokerage business~~ from offering products and services, in
1632 addition to those offered in conjunction with the loan
1633 origination process, for a fee or commission.

1634 Section 29. Section 494.00385, Florida Statutes, is created
1635 to read:

1636 494.00385 Loan modification fees.-

1637 (1) A fee for negotiating a mortgage loan modification may
1638 not be paid except pursuant to a written agreement between the
1639 loan originator and the borrower. The written agreement must
1640 specify the amount of the fee that will be charged to the
1641 borrower, specify the terms of the mortgage loan for which
1642 modification will be sought, and disclose the expected impact of
1643 the loan modification on the monthly payment and length of the
1644 loan.

1645 (2) A loan modification may not be executed without the
1646 consent of the borrower after the borrower is made aware of each
1647 modified term.

1648 (3) Fees charged for negotiating a loan modification may
1649 not be received until after the loan modification is completed,
1650 and may be charged only if the loan modification results in a
1651 material benefit to the borrower. The commission may adopt rules
1652 to provide guidance on what constitutes a material benefit to
1653 the borrower.

597-02183-09

20092226__

1654 Section 30. Section 494.0039, Florida Statutes, is amended
1655 to read:

1656 494.0039 Principal place of business requirements.—Each
1657 mortgage broker ~~brokerage business~~ licensee shall maintain and
1658 transact business from a principal place of business.

1659 Section 31. Section 494.004, Florida Statutes, is amended
1660 to read:

1661 494.004 Requirements of licensees.—

1662 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
1663 shall report to the office:

1664 (a) In writing, any conviction of, or plea of nolo
1665 contendere to, regardless of adjudication, any felony or any
1666 crime or administrative violation that involves fraud,
1667 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
1668 or any other act of moral turpitude, in any jurisdiction, by the
1669 licensee or any control natural person within named in s.
1670 ~~494.0031(2)(d), not later than 30 days after the date of~~
1671 conviction, entry of a plea of nolo contendere, or final
1672 administrative action.

1673 (b)(2) ~~Each licensee under ss. 494.003-494.0043 shall~~
1674 ~~report,~~ In a form prescribed by rule of the commission, any
1675 conviction of, or plea of nolo contendere to, regardless of
1676 ~~whether~~ adjudication ~~is withheld,~~ any felony committed by the
1677 licensee or any control natural person within named in s.
1678 ~~494.0031(2)(d), not later than 30 days after the date of~~
1679 conviction or the date the plea of nolo contendere is entered.

1680 (c)(3) ~~Each licensee under ss. 494.003-494.0043 shall~~
1681 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
1682 within 30 ~~to the office not later than 7 business~~ days after the

597-02183-09

20092226__

1683 action is instituted.

1684 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
1685 ~~report~~ On a form prescribed by rule of the commission, any
1686 change to the information contained in any initial application
1687 form or any amendment to the application within ~~not later than~~
1688 30 days after the change is effective.

1689 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
1690 ~~transferable or assignable.~~

1691 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
1692 ~~report~~ Any change in the principal loan originator broker, any
1693 addition or subtraction of a control person partners, officers,
1694 members, joint venturers, directors, control persons of any
1695 licensee, or any individual who is the ultimate equitable owner
1696 of a 10-percent or greater interest in the licensee, or any
1697 change in the form of business organization, by written
1698 amendment in the form and at the time the commission specifies
1699 by rule.

1700 ~~(a) In any case in which a person or a group of persons,~~
1701 ~~directly or indirectly or acting by or through one or more~~
1702 ~~persons, proposes to purchase or acquire a controlling interest~~
1703 ~~in a licensee, such person or group shall submit an initial~~
1704 ~~application for licensure as a mortgage brokerage business~~
1705 ~~before such purchase or acquisition and at the time and in the~~
1706 ~~form the commission prescribes by rule.~~

1707 ~~(b) As used in this subsection, the term "controlling~~
1708 ~~interest" means possession of the power to direct or cause the~~
1709 ~~direction of the management or policies of a company whether~~
1710 ~~through ownership of securities, by contract, or otherwise. Any~~
1711 ~~person who directly or indirectly has the right to vote 25~~

597-02183-09

20092226__

1712 ~~percent or more of the voting securities of a company or is~~
1713 ~~entitled to 25 percent or more of the company's profits is~~
1714 ~~presumed to possess a controlling interest.~~

1715 ~~(f)~~(e) Any addition of a ~~partner, officer, member, joint~~
1716 ~~venturer, director, control person, or ultimate equitable owner~~
1717 ~~of the applicant who does not have a controlling interest and~~
1718 ~~who has not~~ previously filed a Uniform Mortgage Biographical
1719 Statement & Consent Form, MU2, or has not previously complied
1720 with the fingerprinting and credit report requirements
1721 ~~provisions of ss. 494.00312 and 494.00321, s. 494.0031(2) (c) and~~
1722 ~~(d) is subject to the such provisions of these sections unless~~
1723 ~~required to file an initial application in accordance with~~
1724 ~~paragraph (a).~~ If, after the addition of a control person, the
1725 office finds that the licensee does not continue to meet
1726 licensure requirements, the office may bring an administrative
1727 action in accordance with s. 494.0041 to enforce the provisions
1728 of this chapter.

1729 ~~(d) The commission shall adopt rules pursuant to ss.~~
1730 ~~120.536(1) and 120.54 providing for the waiver of the~~
1731 ~~application required by this subsection if the person or group~~
1732 ~~of persons proposing to purchase or acquire a controlling~~
1733 ~~interest in a licensee has previously complied with the~~
1734 ~~provisions of s. 494.0031(2) (c) and (d) with respect to the same~~
1735 ~~legal entity or is currently licensed by the office under this~~
1736 ~~chapter.~~

1737 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
1738 ~~business shall file an initial report stating the name, social~~
1739 ~~security number, date of birth, mortgage broker license number,~~
1740 ~~date of hire and, if applicable, date of termination for each~~

597-02183-09

20092226__

1741 ~~person who was an associate of the mortgage brokerage business~~
1742 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
1743 ~~brokerage business shall file a quarterly report only if a~~
1744 ~~person became an associate or ceased to be an associate of the~~
1745 ~~mortgage brokerage business during the immediate preceding~~
1746 ~~quarter. Such report shall be filed within 30 days after the~~
1747 ~~last day of each calendar quarter and shall contain the name,~~
1748 ~~social security number, date of birth, mortgage broker license~~
1749 ~~number, date of hire and, if applicable, the date of termination~~
1750 ~~of each person who became or ceased to be an associate of the~~
1751 ~~mortgage brokerage business during the immediate preceding~~
1752 ~~quarter. The commission shall prescribe, by rule, the procedures~~
1753 ~~for filing reports required by this subsection.~~

1754 (2)(8)(a) In every mortgage loan transaction, each licensee
1755 under this part must ss. 494.003-494.0043 shall notify a
1756 borrower of any material changes in the terms of a mortgage loan
1757 previously offered to the borrower within 3 business days after
1758 being made aware of such changes by the mortgage lender but at
1759 least not less than 3 business days before the signing of the
1760 settlement or closing statement. The licensee bears the burden
1761 of proving such notification was provided and accepted by the
1762 borrower.

1763 ~~(b)~~ A borrower may waive the right to receive notice of a
1764 material change ~~that is granted under paragraph (a)~~ if the
1765 borrower determines that the extension of credit is needed to
1766 meet a bona fide personal financial emergency and the right to
1767 receive notice would delay the closing of the mortgage loan. The
1768 imminent sale of the borrower's home at foreclosure during the
1769 3-day period before the signing of the settlement or closing

597-02183-09

20092226__

1770 statement is ~~constitutes~~ an example of a bona fide personal
 1771 financial emergency. In order to waive the borrower's right to
 1772 receive notice ~~not less than 3 business days before the signing~~
 1773 ~~of the settlement or closing statement of any such material~~
 1774 ~~change~~, the borrower must provide the licensee with a dated
 1775 written statement that describes the personal financial
 1776 emergency, waives the right to receive the notice, bears the
 1777 borrower's signature, and is not on a printed form prepared by
 1778 the licensee for the purpose of such a waiver.

1779 (3) Each mortgage broker shall submit to the registry
 1780 reports of condition, which must be in such form and shall
 1781 contain such information as the registry may require.

1782 (4) A license issued under this part is not transferable or
 1783 assignable.

1784 Section 32. Section 494.0041, Florida Statutes, is amended
 1785 to read:

1786 494.0041 Administrative penalties and fines; license
 1787 violations.-

1788 ~~(1) Whenever the office finds a person in violation of an~~
 1789 ~~act specified in subsection (2), it may enter an order imposing~~
 1790 ~~one or more of the following penalties against the person:~~

1791 ~~(a) Revocation of a license or registration.~~

1792 ~~(b) Suspension of a license or registration subject to~~
 1793 ~~reinstatement upon satisfying all reasonable conditions that the~~
 1794 ~~office specifies.~~

1795 ~~(c) Placement of the licensee, registrant, or applicant on~~
 1796 ~~probation for a period of time and subject to all reasonable~~
 1797 ~~conditions that the office specifies.~~

1798 ~~(d) Issuance of a reprimand.~~

597-02183-09

20092226__

1799 ~~(e) Imposition of a fine in an amount not exceeding \$5,000~~
1800 ~~for each count or separate offense.~~

1801 ~~(f) Denial of a license or registration.~~

1802 ~~(1)~~(2) Each of the following acts constitutes a ground for
1803 which the disciplinary actions specified in subsection (2) ~~(1)~~
1804 may be taken:

1805 (a) Being convicted of, or entering a plea of guilty or
1806 ~~Pleading~~ nolo contendere to, ~~or having been convicted or found~~
1807 ~~guilty of,~~ regardless of whether adjudication was withheld, any
1808 felony or any a crime involving fraud, dishonesty, breach of
1809 trust, money laundering ~~dishonest dealing,~~ or any act of moral
1810 turpitude.

1811 (b) Fraud, misrepresentation, deceit, negligence, or
1812 incompetence, in any mortgage financing transaction.

1813 (c) A material misstatement or omission of fact on an
1814 initial or renewal license application.

1815 (d) Disbursement, or an act which has caused or will cause
1816 disbursement, to any person in any amount from the Mortgage
1817 Guaranty ~~Regulatory~~ Trust Fund, the Securities Guaranty Fund, or
1818 the Florida Real Estate Recovery Fund, regardless of any
1819 repayment or restitution to the disbursed fund by the licensee
1820 or any person acting on behalf of the licensee ~~or registrant~~.

1821 (e) Failure of a loan originator to place immediately upon
1822 receipt, and maintain until authorized to disburse, any money
1823 entrusted to her or him ~~by a person dealing with her or him~~ as a
1824 loan originator ~~mortgage broker~~ in a segregated account of a
1825 federally insured financial institution in this state.

1826 (f) Failure to account or deliver to any person any
1827 property that ~~has come into her or his hands and that~~ is not the

597-02183-09

20092226__

1828 licensee's ~~her or his property~~ or that the licensee ~~she or he~~ is
1829 not ~~in law or equity~~ entitled to retain, under the circumstances
1830 and at the time which has been agreed upon or is required by law
1831 or, in the absence of a fixed time, upon demand of the person
1832 entitled to such accounting and delivery.

1833 (g) Failure to disburse funds in accordance with
1834 agreements.

1835 (h) Any misuse, misapplication, or misappropriation of
1836 personal property entrusted to her or his care to which she or
1837 he had no current property right at the time of entrustment.

1838 (i) Having a license, or the equivalent, to practice any
1839 profession or occupation revoked, suspended, or otherwise acted
1840 against, including the denial of licensure by a licensing
1841 authority of this state or another state, territory, or country
1842 ~~for fraud, dishonest dealing, or any other act of moral~~
1843 ~~turpitude.~~

1844 (j) Failure to comply with any order or rule made or issued
1845 under this part ~~ss. 494.001-494.0077.~~

1846 (k) Acting as a loan originator ~~mortgage broker~~ or mortgage
1847 ~~broker or operating a branch office brokerage business~~ without a
1848 ~~current, active~~ license issued under this part ~~ss. 494.003-~~
1849 ~~494.0043.~~

1850 ~~(l) Failure to timely pay any fee, charge, or fine under~~
1851 ~~ss. 494.001-494.0077.~~

1852 ~~(l)-(m)~~ Failure to maintain, preserve, and keep available
1853 for examination all books, accounts, or other documents required
1854 by ss. 494.001-494.0077 and the rules of the commission.

1855 ~~(m)-(n)~~ Refusal to permit an investigation or examination of
1856 books and records, or refusal to comply with an office subpoena

597-02183-09

20092226__

1857 or subpoena duces tecum.
 1858 (n)~~(e)~~ Consistently and materially underestimating maximum
 1859 closing costs.

1860 (o)~~(p)~~ Failure to comply with, or violation of, any other
 1861 provision of ss. 494.001-494.0077.

1862 (p)~~(q)~~ Commission of fraud, misrepresentation, concealment,
 1863 or dishonest dealing by trick, scheme, or device;r culpable
 1864 negligence;r~~or~~ breach of trust in any business transaction in
 1865 any state, nation, or territory; or aiding, assisting, or
 1866 conspiring with any other person engaged in any such misconduct
 1867 and in furtherance thereof.

1868 (q)~~(r)~~ Failure to timely pay any fee, charge, or fine
 1869 imposed or assessed pursuant to this chapter or rules adopted
 1870 under this chapter.

1871 (r)~~(s)~~ Payment to the office for a license or permit with a
 1872 check or electronic transmission of funds that is dishonored by
 1873 the applicant's or licensee's financial institution.

1874 (s)~~(t)~~ Having a final judgment entered against the
 1875 applicant or licensee in a civil action upon grounds of fraud,
 1876 embezzlement, misrepresentation, or deceit.

1877 (t)~~(u)~~1. Having been the subject of any:

1878 1. Decision, finding, injunction, suspension, prohibition,
 1879 revocation, denial, judgment, or administrative order by any
 1880 court ~~of competent jurisdiction~~, administrative law judge, state
 1881 or federal agency, national securities exchange, national
 1882 commodities exchange, national option exchange, national
 1883 securities association, national commodities association, or
 1884 national option association involving a violation of any federal
 1885 or state securities or commodities law or rule or regulation

597-02183-09

20092226__

1886 adopted under such law or involving a violation of any rule or
1887 regulation of any national securities, commodities, or options
1888 exchange or association.

1889 2. ~~Having been the subject of any~~ Injunction or adverse
1890 administrative order by a state or federal agency regulating
1891 banking, insurance, finance or small loan companies, real
1892 estate, mortgage brokers or lenders, money transmitters, or
1893 other related or similar industries.

1894 (u) ~~(v)~~ In any mortgage transaction, violating any provision
1895 of the federal Real Estate Settlement Procedure Act, as amended,
1896 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
1897 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
1898 under such acts.

1899 (v) Requesting a specific valuation, orally or in writing,
1900 from an appraiser for a particular property, implying to an
1901 appraiser that a specific valuation is needed for a particular
1902 property, or in any manner conditioning the order for an
1903 appraisal on the appraisal meeting a specific valuation. The
1904 numeric value of the specific valuation sought need not be
1905 stated, but rather the mere statement that a specific valuation
1906 is sought, violates this section.

1907 (w) Failure to provide a lender with all appraisals
1908 obtained by the loan originator with respect to a particular
1909 property if more than one appraisal has been obtained.

1910 (x) Conducting any brokering activities in the absence of a
1911 properly designated principal loan originator or brokering
1912 activities at any particular branch office without a properly
1913 designated branch manager.

1914 (y) Having a loan originator, mortgage broker, or mortgage

597-02183-09

20092226__

1915 lender license, or the equivalent thereof, revoked in any
 1916 jurisdiction.

1917 (2) If the office finds a person in violation of any act
 1918 specified in this section, it may enter an order imposing one or
 1919 more of the following penalties:

1920 (a) Revocation of a license or registration.

1921 (b) Suspension of a license or registration, subject to
 1922 reinstatement upon satisfying all reasonable conditions imposed
 1923 by the office.

1924 (c) Issuance of a reprimand.

1925 (d) Imposition of a fine in an amount up to \$25,0000 for
 1926 each count or separate offense.

1927 (e) Denial of a license or registration.

1928 (3) A mortgage broker ~~brokerage business~~ is subject to the
 1929 disciplinary actions specified in subsection (2) ~~(1)~~ for a
 1930 violation of subsection (1) ~~(2)~~ by any ~~officer, member,~~
 1931 ~~director,~~ control person or loan originator employed by or
 1932 contracting with the mortgage broker, ~~joint venturer, partner,~~
 1933 ~~ultimate equitable owner of a 10-percent or greater interest in~~
 1934 ~~the mortgage brokerage business, or associate mortgage broker of~~
 1935 ~~the licensee.~~

1936 (4) A principal loan originator ~~mortgage broker~~ is subject
 1937 to the disciplinary actions specified in subsection (2) ~~(1)~~ for
 1938 violations of subsection (1) ~~(2)~~ by a loan originator ~~associates~~
 1939 ~~in the course of an association with the mortgage broker~~
 1940 ~~brokerage business. The principal mortgage broker is only~~
 1941 ~~subject to suspension or revocation for associate actions if~~
 1942 there is a pattern of repeated violations by the loan originator
 1943 ~~associates~~ or if the principal loan originator ~~mortgage broker~~

597-02183-09

20092226__

1944 has knowledge of the violations.

1945 (5) A branch manager is subject to the disciplinary actions
1946 specified in subsection (2) for violations of subsection (1) by
1947 a loan originator in the course of an association with the
1948 mortgage broker if there is a pattern of repeated violations by
1949 the loan originator or if the branch manager has knowledge of
1950 the violations.

1951 (6)~~(5)~~ A natural person who is associated with a mortgage
1952 broker ~~brokerage business~~ is subject to the disciplinary actions
1953 specified in subsection (2) ~~(1)~~ for a violation of subsection
1954 (1) ~~(2)~~ with respect to an action in which such person was
1955 involved.

1956 (7) Pursuant to s. 120.60(6), the office may summarily
1957 suspend the license of a loan originator or mortgage broker if
1958 the office has reason to believe that a licensee poses an
1959 immediate, serious danger to the public's health, safety, or
1960 welfare. The arrest of the loan originator or the mortgage
1961 broker's control person for any felony or any crime involving
1962 fraud, dishonesty, breach of trust, money laundering, or any
1963 other act of moral turpitude is deemed sufficient to constitute
1964 an immediate danger to the public's health, safety, or welfare.
1965 Any proceeding for the summary suspension of a license must be
1966 conducted by the commissioner of the office, or designee, who
1967 shall issue the final summary order.

1968 (8) The office may deny any request to terminate or
1969 withdraw any application or license if the office believes that
1970 an act which would be a ground for denial, suspension,
1971 restriction, or revocation under this chapter has been
1972 committed.

597-02183-09

20092226__

1973 Section 33. Section 494.0042, Florida Statutes, is amended
1974 to read:

1975 494.0042 Loan originator ~~Brokerage~~ fees.-

1976 (1) A loan originator ~~mortgage brokerage~~ fee earned by a
1977 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not
1978 considered interest or a finance charge under chapter 687.

1979 (2) A person may not charge or exact, directly or
1980 indirectly, from the borrower ~~mortgager~~ a fee or commission in
1981 excess of the maximum fee or commission specified in this
1982 section. The maximum fees or commissions that may be charged for
1983 mortgage loans are as follows:

1984 (a) On a mortgage loan of \$1,000 or less: \$250.

1985 (b) On a mortgage loan exceeding \$1,000 and not exceeding
1986 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
1987 for each additional \$100 of the mortgage loan.

1988 (c) On a mortgage loan exceeding \$2,000 and not exceeding
1989 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
1990 for each additional \$100 of the mortgage loan.

1991 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
1992 percent of the entire mortgage loan.

1993
1994 For the purpose of determining the maximum fee, the amount of
1995 the mortgage loan is based on the amount of mortgage loan
1996 actually funded exclusive of the authorized maximum fees or
1997 commissions.

1998 (3) At the time of accepting a mortgage loan application, a
1999 mortgage broker ~~brokerage business~~ may receive from the borrower
2000 a nonrefundable application fee. If the mortgage loan is funded,
2001 the nonrefundable application fee shall be credited against the

597-02183-09

20092226__

2002 amount owed as a result of the loan being funded. A person may
 2003 not receive any form of compensation for acting as a loan
 2004 originator ~~mortgage broker~~ other than a nonrefundable
 2005 application fee, a fee based on the mortgage amount being
 2006 funded, or a fee which complies with s. 494.00421.

2007 Section 34. Section 494.00421, Florida Statutes, is amended
 2008 to read:

2009 494.00421 Fees earned upon obtaining a bona fide
 2010 commitment.—Notwithstanding the provisions of ss. 494.001-
 2011 494.0077, any mortgage broker ~~brokerage business~~ which contracts
 2012 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from
 2013 a borrower upon obtaining a bona fide commitment shall
 2014 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

2015 (1) The gross loan amount.

2016 (2) In the case of a fixed-rate mortgage, the note rate.

2017 (3) In the case of an adjustable rate mortgage:

2018 (a) The initial note rate.

2019 (b) The length of time for which the initial note rate is
 2020 effective.

2021 (c) The frequency of changes.

2022 (d) The limitation upon such changes including adjustment
 2023 to adjustment cap and life cap.

2024 (e) Whether the loan has any potential for negative
 2025 amortization.

2026 (f) Identification of the margin-interest rate
 2027 differential.

2028 (g) Identification of a nationally recognized index which
 2029 index must be free from control of the mortgage broker, ~~mortgage~~
 2030 ~~brokerage business, mortgage lender, or correspondent mortgage~~

597-02183-09

20092226__

2031 lender.

2032 (4) The estimated net proceeds to be paid directly to the
2033 borrower. "Estimated net proceeds" means the cash to be received
2034 by the borrower after payment of any fees, charges, debts,
2035 liens, or encumbrances to perfect the lien of the new mortgage
2036 and establish the agreed-upon priority of the new mortgage.

2037 (5) The lien priority of the new proposed mortgage.

2038 (6) The number of calendar days, which are mutually agreed
2039 upon, within which the mortgage broker ~~brokerage business~~ shall
2040 obtain a bona fide mortgage commitment.

2041 (7) (a) The following statement, in at least ~~no less than~~
2042 12-point boldface type immediately above the signature lines for
2043 the borrowers:

2044
2045 "You are entering into a contract with a mortgage broker
2046 ~~brokerage business~~ to obtain a bona fide mortgage loan
2047 commitment under the same terms and conditions as stated
2048 hereinabove or in a separate executed good faith estimate form.
2049 If the mortgage broker ~~brokerage business~~ obtains a bona fide
2050 commitment under the same terms and conditions, you will be
2051 obligated to pay the mortgage broker ~~brokerage business~~ fees,
2052 including, but not limited to, a mortgage broker ~~brokerage~~ fee,
2053 even if you choose not to complete the loan transaction. If the
2054 provisions of s. 494.00421, Florida Statutes, are not met, the
2055 mortgage broker ~~brokerage~~ fee can only be earned upon the
2056 funding of the mortgage loan. The borrower may contact the
2057 Department of Financial Services, Tallahassee, Florida,
2058 regarding any complaints that the borrower may have against the
2059 mortgage broker ~~or the mortgage brokerage business~~. The

597-02183-09

20092226__

2060 telephone number of the department is: ...[insert telephone
2061 number]...."

2062 (b) Paragraph (a) does not apply to nonresidential mortgage
2063 loan commitments in excess of \$1 million.

2064 (8) Any other disclosure required pursuant to s. 494.0038.
2065 Section 35. Section 494.0043, Florida Statutes, is amended
2066 to read:

2067 494.0043 Requirements for brokering loans to
2068 noninstitutional investors.-

2069 (1) A loan originator ~~mortgage broker~~, when arranging a
2070 mortgage loan for a noninstitutional investor, shall:

2071 (a) Before any payment of money by the ~~a~~ noninstitutional
2072 investor, provide an opinion of value from an appraiser stating
2073 the value of the security property unless the opinion is waived
2074 in writing. The opinion must state the value of the property as
2075 it exists on the date of the opinion. If any relationship exists
2076 between the mortgage broker and the appraiser, that relationship
2077 shall be disclosed to the investor.

2078 (b) Provide to the noninstitutional investor a mortgagee's
2079 title insurance policy or an opinion of title by an attorney
2080 licensed to practice law in the state, or a copy thereof.

2081 1. If a title insurance policy is issued, it must insure
2082 the noninstitutional investor against the unmarketability of the
2083 mortgagee's interest in such title. It must ~~shall~~ also specify
2084 any superior liens that exist against the property. If an
2085 opinion of title is issued by an attorney ~~licensed to practice~~
2086 ~~law in the state~~, the opinion must include a statement as to the
2087 marketability of the title to the property described in the
2088 mortgage and specify the priority of the mortgage being closed.

597-02183-09

20092226__

2089 2. If the title insurance policy or opinion of title is not
2090 available at the time of purchase, the licensee shall provide a
2091 binder of the title insurance or conditional opinion of title.
2092 This binder or opinion must include any conditions or
2093 requirements that need ~~needed~~ to be corrected before ~~prior to~~
2094 the issuance of the final title policy or opinion of title. The
2095 binder or opinion must also include information concerning the
2096 requirements specified in subparagraph 1. Any conditions must be
2097 eliminated or waived in writing by the investor before ~~prior to~~
2098 delivery to the noninstitutional investor. The policy or
2099 opinion, or a copy thereof, shall be delivered to the investor
2100 within a reasonable period of time, not exceeding 6 months,
2101 after closing.

2102 3. The requirements of this paragraph may be waived in
2103 writing. If the requirements are waived by the noninstitutional
2104 investor, the waiver must include the following statement
2105 ~~wording~~: "The noninstitutional investor acknowledges that the
2106 mortgage broker or mortgage lender brokering this mortgage loan
2107 is not providing a title insurance policy or opinion of title
2108 issued by an attorney who is licensed to practice law in the
2109 State of Florida. Any requirement for title insurance or for a
2110 legal opinion of title is the sole responsibility of the
2111 noninstitutional mortgage investor."

2112 (c) Provide, if the loan is other than a first mortgage, a
2113 statement showing the balance owed by the mortgagor on any
2114 existing mortgages prior to this investment and the status of
2115 such existing mortgages.

2116 (d) Provide a disclosure if the licensee is directly or
2117 indirectly acting as a borrower or principal in the transaction.

597-02183-09

20092226__

2118 (2) Each original or certified copy of the mortgage, or
2119 other instrument securing a note or assignment thereof, must
2120 ~~shall~~ be recorded before being delivered to the noninstitutional
2121 investor. A loan originator ~~mortgage broker~~ shall cause the
2122 properly endorsed original note to be delivered to the
2123 noninstitutional investor.

2124 (3) Each mortgage and assignment must ~~shall~~ be recorded as
2125 soon as practical, but no later than 30 business days after the
2126 date of closing.

2127 (4) Any money from a noninstitutional investor for
2128 disbursement at a mortgage loan closing must ~~shall~~ be deposited
2129 with and disbursed by an attorney duly licensed in this state or
2130 by a title company duly licensed in this state. A person acting
2131 as a loan originator ~~mortgage broker~~ may not have control of any
2132 money from a noninstitutional investor. This subsection does not
2133 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from
2134 receiving a loan originator ~~mortgage brokerage~~ fee upon the
2135 closing of the mortgage loan funded by the noninstitutional
2136 investor.

2137 Section 36. Effective July 1, 2009, section 494.006,
2138 Florida Statutes, is amended to read:

2139 494.006 Exemptions.—

2140 (1) None of the following persons are subject to the
2141 requirements of this part ~~ss. 494.006-494.0077~~ in order to act
2142 as a mortgage lender ~~or correspondent mortgage lender~~:

2143 (a) A depository institution; subsidiaries that are owned
2144 and controlled by a depository institution and regulated by the
2145 Board of Governors of the Federal Reserve System, the
2146 Comptroller of the Currency, the Director of the Office of

597-02183-09

20092226__

2147 Thrift Supervision, the National Credit Union Administration, or
2148 the Federal Deposit Insurance Corporation; and institutions
2149 regulated by the Farm Credit Administration ~~state or federal~~
2150 ~~chartered bank, trust company, savings and loan association,~~
2151 ~~savings bank or credit union, bank holding company regulated~~
2152 ~~under the laws of any state or the United States, or insurance~~
2153 ~~company if the insurance company is duly licensed in this state.~~

2154 (b) Any person acting in a fiduciary capacity conferred by
2155 the authority of any court.

2156 ~~(c) A wholly owned bank holding company subsidiary or a~~
2157 ~~wholly owned savings and loan association holding company~~
2158 ~~subsidiary that is formed and regulated under the laws of any~~
2159 ~~state or the United States and that is approved or certified by~~
2160 ~~the Department of Housing and Urban Development, the Veterans~~
2161 ~~Administration, the Government National Mortgage Association,~~
2162 ~~the Federal National Mortgage Association, or the Federal Home~~
2163 ~~Loan Mortgage Corporation.~~

2164 (c)~~(d)~~ Any person who, as a seller of his or her own real
2165 property, receives one or more mortgages in a purchase money
2166 transaction.

2167 ~~(e) Any person who receives a mortgage as security for an~~
2168 ~~obligation arising out of materials furnished or as services~~
2169 ~~rendered by the person in the improvement of the real property.~~

2170 (d)~~(f)~~ Any person who makes only nonresidential mortgage
2171 loans and sells loans only to institutional investors.

2172 (e)~~(g)~~ The Federal National Mortgage Association; the
2173 Federal Home Loan Mortgage Corporation; an agency of the Federal
2174 Government; any state, county, or municipal government; or any
2175 quasi-governmental agency that acts in such capacity under the

597-02183-09

20092226__

2176 specific authority of the laws of any state or the United
2177 States.

2178 ~~(h) A consumer finance company licensed pursuant to chapter~~
2179 ~~516 as of October 1, 1991.~~

2180 (f) ~~(i)~~ Any natural person making or acquiring a mortgage
2181 loan with his or her own funds for his or her own investment,
2182 and who does not hold himself or herself out to the public, in
2183 any manner, as being in the mortgage lending business.

2184 (g) ~~(j)~~ Any natural person selling a mortgage that was made
2185 or purchased with that person's funds for his or her own
2186 investment, and who does not hold himself or herself out to the
2187 public, in any manner, as being in the mortgage lending
2188 business.

2189 (h) ~~(k)~~ Any person who acts solely under contract and as an
2190 agent for federal, state, or municipal agencies in the servicing
2191 of mortgage loans.

2192 (2) A mortgage broker who closes a mortgage loan in the
2193 mortgage broker's own name in a table-funded transaction is not
2194 considered as acting as a mortgage lender if the mortgage
2195 broker, at or before the closing, advises the borrower in
2196 writing that the mortgage broker is not the actual lender in the
2197 transaction and discloses the name and address of the actual
2198 lender who advances the funds for the loan and to whom the loan
2199 will be assigned at or after settlement.

2200 ~~(2) (a) A natural person employed by a mortgage lender or~~
2201 ~~correspondent mortgage lender licensed under ss. 494.001-~~
2202 ~~494.0077 is exempt from the licensure requirements of ss.~~
2203 ~~494.001-494.0077 when acting within the scope of employment with~~
2204 ~~the licensee.~~

597-02183-09

20092226__

2205 ~~(b) A corporation that is in existence on October 1, 1991,~~
2206 ~~and that is a wholly owned subsidiary of a consumer finance~~
2207 ~~company licensed pursuant to chapter 516 on October 1, 1991, is~~
2208 ~~not required to be licensed under ss. 494.006-494.0077 in order~~
2209 ~~to act as a mortgage lender or a correspondent mortgage lender.~~

2210 (3) It is unnecessary to negate any of the exemptions
2211 provided in ss. 494.001-494.0077 in any complaint, information,
2212 indictment, or other writ or proceeding brought under ss.
2213 494.001-494.0077. The burden of establishing the right to any
2214 exemption is upon the party claiming the benefit of the
2215 exemption.

2216 Section 37. Section 494.0061, Florida Statutes, is
2217 repealed.

2218 Section 38. Section 494.00611, Florida Statutes, is created
2219 to read:

2220 494.00611 Mortgage lender license.—

2221 (1) Each person who acts as a mortgage lender must be
2222 licensed under this section.

2223 (2) To apply for a mortgage lender license the applicant
2224 must:

2225 (a) Submit a completed application form as prescribed by
2226 the commission by rule.

2227 (b) Designate a qualified principal loan originator who
2228 meets the requirement of s. 494.0035 on the application form.

2229 (c) Submit a nonrefundable application fee of \$625, and the
2230 \$100 nonrefundable fee if required by s. 494.00172. Application
2231 fees may not be prorated for partial years of licensure.

2232 (d) Submit a complete set of fingerprints for each of the
2233 applicant's control persons to:

597-02183-09

20092226__

2234 1. The registry for a federal criminal history check. If
2235 the registry is not processing fingerprints at the time the
2236 application is submitted, the Department of Law Enforcement
2237 shall forward the fingerprints submitted pursuant to
2238 subparagraph 2. to the Federal Bureau of Investigation for
2239 processing.

2240 2. The office for a state criminal history check. The
2241 office may contract with a third-party vendor that provides live
2242 scan fingerprinting in lieu of a paper fingerprint card. All
2243 fingerprints shall be submitted to the Department of Law
2244 Enforcement and entered into the statewide automated fingerprint
2245 identification system established in s. 943.05(2)(b) and
2246 available for use in accordance with s. 943.05(2)(g). The cost
2247 of fingerprinting shall be borne by the applicant.

2248 (e) Submit a copy of the applicant's audited financial
2249 statement for the most recent fiscal year, which documents that
2250 the applicant has a bona fide and verifiable net worth, pursuant
2251 to United States generally accepted accounting principles, of at
2252 least \$250,000, which must be continuously maintained as a
2253 condition of licensure. If the applicant is a wholly-owned
2254 subsidiary of another corporation, the audited financial
2255 statement for the parent corporation's financial statement
2256 satisfies this requirement. The commission may establish by rule
2257 the form and procedures for filing the audited financial
2258 statement, including the requirement to file the statement with
2259 the registry when technology is available.

2260 (f) Authorize the registry to obtain an independent credit
2261 report on each of the applicant's control persons from a
2262 consumer reporting agency, and transmit or provide access to the

597-02183-09

20092226__

2263 report to the office. The cost of the credit report shall be
2264 borne by the applicant.

2265 (g) Submit additional information or documentation
2266 requested by the office and required by rule concerning the
2267 applicant or a control person of the applicant. Additional
2268 information may include documentation of pending and prior
2269 disciplinary and criminal history events, including arrest
2270 reports and certified copies of charging documents, plea
2271 agreements, judgments and sentencing documents, documents
2272 relating to pretrial intervention, orders terminating probation
2273 or supervised release, final administrative agency orders, or
2274 other comparable documents that may provide the office with the
2275 appropriate information to determine eligibility for licensure.

2276 (h) Submit any other information required by the registry
2277 for the processing of the application.

2278 (3) An application is considered received for the purposes
2279 of s. 120.60 upon the office's receipt of all documentation from
2280 the registry including the completed application form, criminal
2281 history information, and credit history information, as well as
2282 the license application fee, the fee required under s.
2283 494.00172, and all applicable fingerprinting processing fees.

2284 (4) The office shall issue a mortgage lender license to
2285 each person who is not otherwise ineligible and who meets the
2286 requirements of this section. However, it is a ground for denial
2287 of licensure if the applicant or one of the applicant's control
2288 persons:

2289 (a) Has committed any violation specified in s. 494.0072,
2290 or is the subject of a pending felony criminal prosecution or a
2291 prosecution or an administrative enforcement action, in any

597-02183-09

20092226__

2292 jurisdiction, which involves fraud, dishonesty, breach of trust,
2293 money laundering, or any act of moral turpitude.

2294 (b) Demonstrates a lack of financial responsibility,
2295 character, and general fitness which would fail to command the
2296 confidence of the community and to warrant a determination that
2297 the mortgage broker will operate honestly, fairly, and
2298 efficiently. For purposes of this paragraph, a person has shown
2299 that he or she is not financially responsible if he or she has
2300 shown a disregard in the management of his or her own financial
2301 condition which may include, but is not limited to:

2302 1. Current outstanding judgments, except judgments
2303 resulting solely from medical expenses;

2304 2. Current outstanding tax liens or other government liens
2305 and filings;

2306 3. Foreclosures within the past 3 years; or

2307 4. A pattern of seriously delinquent accounts within the
2308 past 3 years.

2309 (5) The office may not issue a license if the applicant has
2310 had a mortgage lender license or its equivalent revoked in any
2311 jurisdiction, or any of the applicant's control persons has ever
2312 had a loan originator license or its equivalent revoked in any
2313 governmental jurisdiction.

2314 (6) A person required to be licensed under this part, or an
2315 agent or employee thereof, is deemed to have consented to the
2316 venue of courts in this state regarding any matter within the
2317 authority of ss. 494.001-494.0077 regardless of where an act or
2318 violation was committed.

2319 (7) A license issued in accordance with this part is not
2320 transferable or assignable.

597-02183-09

20092226__

2321 (8) A mortgage lender or branch office license may be
2322 withdrawn pursuant to s. 120.60 if it was issued through mistake
2323 or inadvertence of the office. A license must be reinstated if
2324 the applicant can demonstrate that the requirements for
2325 obtaining the license under this chapter have been satisfied.

2326 (9) Each lender, regardless of the number of branches it
2327 operates, shall designate a principal loan originator
2328 representative who exercises control of the licensee's business,
2329 and a branch manager for each branch office. Each mortgage
2330 lender must keep the office informed of the persons designated
2331 as prescribed by commission rule, which includes documentation
2332 of the individual's acceptance of such responsibility. If the
2333 designation is inaccurate, the branch shall be deemed to be
2334 operated under the full charge, control, and supervision by each
2335 officer, director, or ultimate equitable owner of a 10-percent
2336 or greater interest in the mortgage lender business, or any
2337 other person in a similar capacity during that time.

2338 (10) The commission shall, by rule, establish time periods
2339 during which an applicant is barred from licensure due to prior
2340 criminal convictions of, or guilty or nolo contendere pleas by,
2341 any of the applicant's control persons, regardless of
2342 adjudication.

2343 (a) The rules must provide:

- 2344 1. Permanent bars for felonies involving fraud, dishonesty,
2345 breach of trust, or money laundering;
2346 2. A 15-year disqualifying period for felonies involving
2347 moral turpitude;
2348 3. A 7-year period for all other felonies; and
2349 4. A 5-year period for misdemeanors involving fraud,

597-02183-09

20092226__

2350 dishonesty, or any other act of moral turpitude.

2351 (b) The rule may also provide for mitigating factors, an
2352 additional waiting period due to dates of imprisonment or
2353 community supervision, an additional waiting period due to the
2354 commitment of multiple crimes, and other factors reasonably
2355 related to the applicant's criminal history. The rule may not
2356 provide standards that are less rigorous than those set forth in
2357 the S.A.F.E. Mortgage Licensing Act of 2008. An applicant is not
2358 eligible for licensure until the expiration of the disqualifying
2359 period set by rule. Section 112.011 is not applicable to
2360 eligibility for licensure under this part.

2361 (11) All mortgage lender licenses must be renewed annually
2362 by December 31 pursuant to s. 494.00612. If a person holding an
2363 active mortgage broker license has not applied to renew the
2364 license annually on or before December 31, the mortgage broker
2365 license expires on December 31. If a person holding an active
2366 mortgage broker license has applied to renew the license on or
2367 before December 31, the mortgage broker license remains active
2368 until the renewal application is approved or denied. A mortgage
2369 broker may not be precluded from reapplying for licensure upon
2370 expiration of a previous license.

2371 Section 39. Section 494.00612, Florida Statutes, is created
2372 to read:

2373 494.00612 Mortgage lender license renewal.-

2374 (1) To renew a mortgage lender license, a mortgage lender
2375 must:

2376 (a) Submit a completed license renewal form as prescribed
2377 by commission rule.

2378 (b) Submit a nonrefundable renewal fee of \$625, and the

597-02183-09

20092226__

2379 \$100 nonrefundable fee if required by s. 494.00172.

2380 (c) Submit a complete set of fingerprints in accordance
2381 with s. 494.00611(2)(d).

2382 (d) Provide proof that the mortgage lender continues to
2383 meet the net worth requirement in a form prescribed by the
2384 commission rule.

2385 (e) Authorize the registry to obtain an independent credit
2386 report on the mortgage lender from a consumer reporting agency,
2387 and transmit or provide access to the report to the office. The
2388 cost of the credit report shall be borne by the applicant.

2389 (f) Submit any additional information or documentation
2390 requested by the office and required by rule concerning the
2391 licensee. Additional information may include documentation of
2392 pending and prior disciplinary and criminal history events,
2393 including arrest reports and certified copies of charging
2394 documents, plea agreements, judgments and sentencing documents,
2395 documents relating to pretrial intervention, orders terminating
2396 probation or supervised release, final administrative agency
2397 orders, or other comparable documents that may provide the
2398 office with the appropriate information to determine eligibility
2399 for licensure.

2400 (2) The office may not renew a mortgage lender license
2401 unless the mortgage lender continues to meet the minimum
2402 standards for initial license issuance pursuant to s. 494.00611
2403 and adopted rule.

2404 Section 40. Section 494.0062, Florida Statutes, is
2405 repealed.

2406 Section 41. Section 494.0063, Florida Statutes, is amended
2407 to read:

597-02183-09

20092226__

2408 494.0063 Audited financial statements.—All audited
2409 financial statements required by ss. 494.001-494.0077 must be
2410 prepared by an independent licensed certified public accountant.
2411 A mortgage lender must obtain an annual financial audit report
2412 as of the date of the licensee's fiscal year end, as disclosed
2413 to the office on the application or a subsequent amendment to
2414 the application. The mortgage lender shall submit a copy of the
2415 report to the office within 120 days after the end of the
2416 licensee's fiscal year. If the applicant is a wholly owned
2417 subsidiary of another corporation, the financial audit report of
2418 the parent corporation's satisfies this requirement. If the
2419 licensee changes its fiscal year, the licensee must file report
2420 within 18 months after the previously submitted report. The
2421 commission may establish by rule the procedures and form for
2422 filing a financial audit report, including the requirement to
2423 file the report with the registry when technology is available.

2424 Section 42. Section 494.0064, Florida Statutes, is
2425 repealed.

2426 Section 43. Effective April 1, 2010, section 494.0065,
2427 Florida Statutes, is repealed.

2428 Section 44. Section 494.0066, Florida Statutes, is amended
2429 to read:

2430 494.0066 Branch offices.—

2431 (1) Each branch office of a mortgage lender must be
2432 licensed under this section ~~A branch office license is required~~
2433 ~~for each branch office maintained by a licensee under ss.~~
2434 ~~494.006-494.0077.~~

2435 (2) The office shall issue a branch office license to a
2436 mortgage lender licensee licensed under ss. 494.006-494.0077

597-02183-09

20092226__

2437 after the office determines that the mortgage lender licensee
2438 has submitted a completed branch office application form as
2439 prescribed by rule by the commission, ~~and~~ an initial
2440 nonrefundable branch office license fee of \$350 per branch
2441 office \$325. Application fees may not be prorated for partial
2442 years of licensure. The branch office application must include
2443 the name and license number of the mortgage lender licensee
2444 under this part ss. ~~494.006-494.0077~~, the name of the branch
2445 manager licensee's employee in charge of the branch office, and
2446 the address of the branch office. The branch office license
2447 shall be issued in the name of the mortgage lender licensee
2448 under ss. ~~494.006-494.0077~~ and must be renewed in conjunction
2449 with the license renewal. An application is considered received
2450 for purposes of s. 120.60 upon receipt of a completed branch
2451 office renewal form, as prescribed by commission rule, and the
2452 required fees.

2453 (3) A branch office license must be renewed at the time of
2454 renewing the mortgage lender license. A nonrefundable fee of
2455 \$350 per branch office must be submitted at the time of renewal.

2456 Section 45. Section 494.00665, Florida Statutes, is created
2457 to read:

2458 494.00665 Principal loan originator and branch manager for
2459 mortgage lender.-

2460 (1) Each mortgage lender business must be operated by a
2461 principal loan originator who shall have full charge, control,
2462 and supervision of the mortgage lender business. The principal
2463 loan originator must have been licensed as a loan originator
2464 pursuant to s. 494.00323. Each mortgage lender must keep the
2465 office informed of the person designated as the principal loan

597-02183-09

20092226__

2466 originator as prescribed by commission rule. If the designation
2467 is inaccurate, the business shall be deemed to be operated under
2468 the full charge, control, and supervision of each officer,
2469 director, or ultimate equitable owner of a 10 percent or greater
2470 interest in the mortgage lender business, or any other person in
2471 a similar capacity during that time. A loan originator may not
2472 be a principal loan originator for more than one mortgage lender
2473 at any given time.

2474 (2) Each branch office of a mortgage lender must be
2475 operated by a branch manager who shall have full charge,
2476 control, and supervision of the branch office. The designated
2477 branch manager must be a licensed loan originator pursuant to s.
2478 494.00323. Each mortgage lender must keep the office informed of
2479 the person designated as the branch manager as prescribed by
2480 commission rule, which includes documentation of the
2481 individual's acceptance of such responsibility. If the
2482 designation is inaccurate, the branch office shall be deemed to
2483 be operated under the full charge, control, and supervision of
2484 each officer, director, or ultimate equitable owner of a 10
2485 percent or greater interest in the mortgage lender business, or
2486 any other person in a similar capacity during that time.

2487 Section 46. Section 494.0067, Florida Statutes, is amended
2488 to read:

2489 494.0067 Requirements of mortgage lenders ~~licensees~~ under
2490 ~~ss. 494.006-494.0077.~~

2491 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~
2492 ~~494.0077 which~~ makes mortgage loans on real estate in this state
2493 shall transact business from a principal place of business. Each
2494 principal place of business and each branch office shall be

597-02183-09

20092226__

2495 operated under the full charge, control, and supervision of the
2496 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2497 (2) A license issued under this part ~~ss. 494.006-494.0077~~
2498 is not transferable or assignable.

2499 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~
2500 ~~494.0077~~ shall report, on a form prescribed by rule of the
2501 commission, any change in the information contained in any
2502 initial application form, or any amendment thereto, within not
2503 ~~later than~~ 30 days after the change is effective.

2504 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
2505 ~~494.0077~~ shall report any changes in the principal loan
2506 originator, any addition or subtraction of a control person,
2507 ~~partners, officers, members, joint venturers, directors, or~~
2508 ~~control persons of any licensee~~ or any change ~~changes~~ in the
2509 form of business organization by written amendment in such form
2510 and at such time that the commission specifies by rule.

2511 (a) In any case in which a person or a group of persons,
2512 directly or indirectly or acting by or through one or more
2513 persons, proposes to purchase or acquire a controlling interest
2514 in a licensee, such person or group must submit an initial
2515 application for licensure as a mortgage lender ~~or correspondent~~
2516 ~~mortgage lender~~ before such purchase or acquisition and at the
2517 time and in the form prescribed by the commission by rule.

2518 (b) ~~As used in this subsection, the term "controlling~~
2519 ~~interest" means possession of the power to direct or cause the~~
2520 ~~direction of the management or policies of a company whether~~
2521 ~~through ownership of securities, by contract, or otherwise. Any~~
2522 ~~person who directly or indirectly has the right to vote 25~~
2523 ~~percent or more of the voting securities of a company or who is~~

597-02183-09

20092226__

2524 ~~entitled to 25 percent or more of the company's profits is~~
2525 ~~presumed to possess a controlling interest.~~

2526 ~~(b)(c) Any addition of a designated principal~~
2527 ~~representative, partner, officer, member, joint venturer,~~
2528 ~~director, or control person of the applicant who does not have a~~
2529 ~~controlling interest and who has not previously filed a Uniform~~
2530 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~
2531 ~~previously complied with fingerprinting and credit report~~
2532 ~~requirements of s. 494.00611 is the provisions of s.~~
2533 ~~494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.~~
2534 ~~494.0065(5)(e) and (f) shall be subject to the such provisions~~
2535 ~~of this section unless required to file an initial application~~
2536 ~~in accordance with paragraph (a). If after the addition of a~~
2537 ~~control person, the office determines that the licensee does not~~
2538 ~~continue to meet licensure requirements, the office may bring~~
2539 ~~administrative action in accordance with s. 494.0072 to enforce~~
2540 ~~the provisions of this section.~~

2541 ~~(d) The commission shall adopt rules pursuant to ss.~~
2542 ~~120.536(1) and 120.54 providing for the waiver of the~~
2543 ~~application required by this subsection if the person or group~~
2544 ~~of persons proposing to purchase or acquire a controlling~~
2545 ~~interest in a licensee has previously complied with the~~
2546 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~
2547 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~
2548 ~~is currently licensed with the office under this chapter.~~

2549 ~~(5) Each mortgage lender licensee under ~~ss. 494.006-~~~~
2550 ~~494.0077 shall report in a form prescribed by rule by the~~
2551 ~~commission any indictment, information, charge, conviction, plea~~
2552 ~~of guilty or nolo contendere, regardless of adjudication, or~~

597-02183-09

20092226__

2553 ~~plea of guilty~~ to any felony or any crime or administrative
2554 violation that involves fraud, dishonesty, breach of trust,
2555 money laundering ~~dishonest dealing,~~ or any other act of moral
2556 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
2557 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
2558 equitable owner of 10 percent or more of the licensed
2559 corporation, within ~~not later than~~ 30 business days after the
2560 indictment, information, charge, conviction, or final
2561 administrative action.

2562 (6) Each mortgage lender licensee ~~under ss. 494.006-~~
2563 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
2564 involuntary, to the office, within ~~not later than~~ 7 business
2565 days after the action is instituted.

2566 (7) Each mortgage lender licensee ~~under ss. 494.006-~~
2567 ~~494.0077~~ shall designate a registered agent in this state for
2568 service of process.

2569 (8) Each mortgage lender licensee ~~under ss. 494.006-~~
2570 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
2571 faith estimate of the costs the applicant can reasonably expect
2572 to pay in obtaining a mortgage loan. The good faith estimate of
2573 costs must ~~shall~~ be mailed or delivered to the applicant within
2574 3 business days ~~a reasonable time~~ after the licensee receives a
2575 written loan application from the applicant. The estimate of
2576 costs may be provided to the applicant by a person other than
2577 the licensee making the loan. The good faith estimate must
2578 identify the recipient of all payments charged to the borrower
2579 and, except for all fees to be received by the mortgage broker
2580 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
2581 ~~mortgage lender~~, may be disclosed in generic terms, such as, but

597-02183-09

20092226__

2582 not limited to, paid to appraiser, officials, title company, or
2583 any other third-party service provider. The licensee bears the
2584 burden of proving such disclosures were provided to the
2585 borrower. The commission may adopt rules that set forth the
2586 disclosure requirements of this section.

2587 ~~(9) On or before April 30, 2000, each mortgage lender or~~
2588 ~~correspondent mortgage lender shall file an initial report~~
2589 ~~stating the full legal name, residential address, social~~
2590 ~~security number, date of birth, mortgage broker license number,~~
2591 ~~date of hire, and, if applicable, date of termination for each~~
2592 ~~person who acted as a loan originator or an associate of the~~
2593 ~~mortgage lender or correspondent mortgage lender during the~~
2594 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
2595 ~~correspondent mortgage lender shall file a report only if a~~
2596 ~~person became or ceased to be a loan originator or an associate~~
2597 ~~of the mortgage lender or correspondent mortgage lender during~~
2598 ~~the immediate preceding quarter. Such report shall be filed~~
2599 ~~within 30 days after the last day of each calendar quarter and~~
2600 ~~shall contain the full legal name, residential address, social~~
2601 ~~security number, date of birth, date of hire and, if applicable,~~
2602 ~~the mortgage broker license number and date of termination of~~
2603 ~~each person who became or ceased to be a loan originator or an~~
2604 ~~associate of the mortgage lender or correspondent mortgage~~
2605 ~~lender during the immediate preceding quarter. The commission~~
2606 ~~shall prescribe, by rule, the procedures for filing reports~~
2607 ~~required by this subsection.~~

2608 ~~(10) (a) Each mortgage lender or correspondent mortgage~~
2609 ~~lender licensee shall require the principal representative and~~
2610 ~~all loan originators, not currently licensed as mortgage brokers~~

597-02183-09

20092226__

2611 ~~pursuant to s. 494.0033, who perform services for the licensee~~
2612 ~~to complete 14 hours of professional continuing education during~~
2613 ~~each biennial license period. The education shall cover primary~~
2614 ~~and subordinate mortgage financing transactions and the~~
2615 ~~provisions of this chapter and the rules adopted under this~~
2616 ~~chapter.~~

2617 ~~(b) The licensee shall maintain records of such training~~
2618 ~~for a period of 4 years, including records of the content of and~~
2619 ~~hours designated for each program and the date and location of~~
2620 ~~the program.~~

2621 ~~(c) Evidence of completion of such programs shall be~~
2622 ~~included with the licensee's renewal application.~~

2623 (9)~~(11)~~ The disclosures in this subsection must be
2624 furnished in writing at the time an adjustable rate mortgage
2625 loan is offered to the borrower and whenever the terms of the
2626 adjustable rate mortgage loan offered have a material change
2627 prior to closing. The lender shall furnish the disclosures
2628 relating to adjustable rate mortgages in a format prescribed by
2629 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2630 of the Federal Reserve System, as amended; its commentary, as
2631 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2632 1601 et seq., as amended; together with the Consumer Handbook on
2633 Adjustable Rate Mortgages, as amended; published by the Federal
2634 Reserve Board and the Federal Home Loan Bank Board. The licensee
2635 bears the burden of proving such disclosures were provided to
2636 the borrower.

2637 (10)~~(12)~~ ~~(a)~~ In every mortgage loan transaction, each
2638 mortgage lender licensee ~~licensee under ss. 494.006-494.0077~~ shall notify
2639 a borrower of any material changes in the terms of a mortgage

597-02183-09

20092226__

2640 loan previously offered to the borrower within 3 business days
2641 after being made aware of such changes by the lender but at
2642 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the
2643 settlement or closing statement. The licensee bears the burden
2644 of proving such notification was provided and accepted by the
2645 borrower.

2646 ~~(b)~~ A borrower may waive the right to receive notice of a
2647 material change ~~that is granted under paragraph (a)~~ if the
2648 borrower determines that the extension of credit is needed to
2649 meet a bona fide personal financial emergency and the right to
2650 receive notice would delay the closing of the mortgage loan. The
2651 imminent sale of the borrower's home at foreclosure during the
2652 3-day period before the signing of the settlement or closing
2653 statement constitutes an example of a bona fide personal
2654 financial emergency. In order to waive the borrower's right to
2655 receive notice ~~not less than 3 business days before the signing~~
2656 ~~of the settlement or closing statement of any such material~~
2657 ~~change~~, the borrower must provide the licensee with a dated
2658 written statement that describes the personal financial
2659 emergency, waives the right to receive the notice, bears the
2660 borrower's signature, and is not on a printed form prepared by
2661 the licensee for the purpose of such a waiver.

2662 (11) Each mortgage lender must report to the office the
2663 failure to meet the net worth requirements of s. 494.00611
2664 within 2 days after the mortgage lender's knowledge of such
2665 failure or after the mortgage lender should have known of such
2666 failure.

2667 Section 47. Section 494.0068, Florida Statutes, is amended
2668 to read:

597-02183-09

20092226__

2669 494.0068 Loan application process.-

2670 (1) In addition to the requirements set forth in s.
2671 494.0067(8), before accepting an application fee in whole or in
2672 part, a credit report fee, an appraisal fee, or a fee charged as
2673 reimbursement for third-party charges, a mortgage lender shall
2674 make a written disclosure to the borrower, which disclosure may
2675 be contained in the application, setting forth:

2676 (a) Whether all or any part of such fees or charges is
2677 refundable.

2678 (b) The terms and conditions for the refund, if all or any
2679 part of the fees or charges is refundable.

2680 (c) A realistic estimate of the number of days required to
2681 issue a commitment following receipt of the application by the
2682 lender.

2683 (d) The name or title of a person within the lender's
2684 organization to whom the borrower may address written questions,
2685 comments, or complaints and who is required to promptly respond
2686 to such inquiries.

2687 (2) The disclosures required in subsection (1) must ~~shall~~
2688 be acknowledged in writing by the borrower and maintained by the
2689 mortgage lender, and a copy of such acknowledgment shall be
2690 given to the borrower.

2691 (3) The borrower may, without penalty or responsibility for
2692 paying additional fees and charges, withdraw an application at
2693 any time prior to acceptance of commitment. Upon such
2694 withdrawal, the mortgage lender is responsible for refunding to
2695 the borrower only those fees and charges to which the borrower
2696 may be entitled pursuant to the terms set forth in the written
2697 disclosure required by subsection (1), except that:

597-02183-09

20092226__

2698 (a) If the lender failed to provide the borrower with the
 2699 written disclosure required by subsection (1), the lender shall
 2700 promptly refund to the borrower all funds paid to the lender; or

2701 (b) If the lender failed to make a good faith effort to
 2702 approve the loan, the lender shall promptly refund to the
 2703 borrower all funds paid to the lender.

2704 (4) The application fee must be reasonably related to the
 2705 services to be performed and may not be based upon a percentage
 2706 of the principal amount of the loan or the amount financed.

2707 (5) For the purposes of this section, the term "application
 2708 fee" means any moneys advanced by the borrower upon filing an
 2709 application with a mortgage lender to offset the lender's
 2710 expenses for determining whether the borrower is qualified for
 2711 the mortgage loan or whether the mortgage loan should be funded.

2712 Section 48. Section 494.0069, Florida Statutes, is amended
 2713 to read:

2714 494.0069 Lock-in agreement.—

2715 (1) Each lock-in agreement must be in writing and must
 2716 contain:

2717 (a) The expiration date of the lock-in, if any;

2718 (b) The interest rate locked in, if any;

2719 (c) The discount points locked in, if any;

2720 (d) The commitment fee locked in, if any;

2721 (e) The lock-in fee, if any; and

2722 (f) A statement advising of the provisions of ss. 494.006-
 2723 494.0077 regarding lock-in agreements.

2724 (2) The mortgage lender ~~or correspondent mortgage lender~~
 2725 shall make a good faith effort to process the mortgage loan
 2726 application and stand ready to fulfill the terms of its

597-02183-09

20092226__

2727 commitment before the expiration date of the lock-in agreement
2728 or any extension thereof.

2729 (3) Any lock-in agreement received by a mortgage lender ~~or~~
2730 ~~correspondent mortgage lender~~ by mail or through a mortgage
2731 broker must be signed by the mortgage lender ~~or correspondent~~
2732 ~~mortgage lender~~ in order to become effective. The borrower may
2733 rescind any lock-in agreement until a written confirmation of
2734 the agreement has been signed by the lender and mailed to the
2735 borrower or to the mortgage broker ~~brokerage business~~ pursuant
2736 to its contractual relationship with the borrower. If a borrower
2737 elects to so rescind, the mortgage lender ~~or correspondent~~
2738 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2739 (4) ~~(a)~~ Before ~~Any correspondent mortgage lender or mortgage~~
2740 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,
2741 a mortgage lender must have the ability to timely advance funds
2742 on all mortgage loans for which rate lock-in agreements have
2743 been issued. As used in this section, "ability to timely advance
2744 funds" means having sufficient liquid assets or a line of credit
2745 necessary to cover all rate lock-in agreements issued with
2746 respect to which a lock-in fee is collected.

2747 ~~(a)~~ ~~(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender
2748 that does not comply with this subsection ~~paragraph (a)~~ may
2749 issue mortgage rate lock-in agreements only if, prior to the
2750 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2751 1. Has received a written rate lock-in agreement from a
2752 ~~correspondent mortgage lender or~~ mortgage lender that complies
2753 with this subsection ~~paragraph (a)~~; or

2754 2. Has received a written rate lock-in agreement from an
2755 institutional investor or an agency of the Federal Government or

597-02183-09

20092226__

2756 the state or local government that will be funding, making, or
2757 purchasing the mortgage loan.

2758 (b) ~~(e)~~ All rate lock-in fees collected by a mortgage lender
2759 ~~or correspondent mortgage lender~~ who is not in compliance with
2760 ~~paragraph (a)~~ must be deposited into an escrow account in a
2761 federally insured financial institution, and such fees may ~~shall~~
2762 not be removed from such escrow account until:

2763 1. The mortgage loan closes and is funded;

2764 2. The applicant cancels the loan application or the loan
2765 application is rejected; or

2766 3. The mortgage lender ~~or correspondent mortgage lender~~ is
2767 required to forward a portion of the lock-in fee to another
2768 ~~correspondent mortgage lender~~, mortgage lender, institutional
2769 investor, or agency that will be funding, making, or purchasing
2770 the loan. The mortgage lender ~~or correspondent mortgage lender~~
2771 may remove only the amount of the lock-in fee actually paid to
2772 another mortgage lender, ~~correspondent mortgage lender~~,
2773 institutional investor, or agency.

2774 (5) For purposes of this section, the term "lock-in fee"
2775 means any moneys advanced by the borrower to lock in for a
2776 specified period of time a specified interest rate or discount
2777 points.

2778 (6) The commission may adopt by rule a form for required
2779 lock-in agreement disclosures.

2780 Section 49. Section 494.007, Florida Statutes, is amended
2781 to read:

2782 494.007 Commitment process.—

2783 (1) If a commitment is issued, the mortgage lender shall
2784 disclose in writing:

597-02183-09

20092226__

- 2785 (a) The expiration date of the commitment;
- 2786 (b) The mortgage amount, meaning the face amount of credit
2787 provided to the borrower or in the borrower's behalf;
- 2788 (c) If the interest rate or other terms are subject to
2789 change before expiration of the commitment:
- 2790 1. The basis, index, or method, if any, which will be used
2791 to determine the rate at closing. Such basis, index, or method
2792 shall be established and disclosed with direct reference to the
2793 movement of an interest rate index or of a national or regional
2794 index that is available to and verifiable by the borrower and
2795 beyond the control of the lender; or
- 2796 2. The following statement, in at least 10-point bold type:
2797 "The interest rate will be the rate established by the lender in
2798 its discretion as its prevailing rate . . . days before
2799 closing.";
- 2800 (d) The amount of the commitment fee, if any, and whether
2801 and under what circumstances the commitment fee is refundable;
2802 and
- 2803 (e) The time, if any, within which the commitment must be
2804 accepted by the borrower.
- 2805 (2) The provisions of a commitment cannot be changed prior
2806 to expiration of the specified period within which the borrower
2807 must accept it. If any information necessary for an accurate
2808 disclosure required by subsection (1) is unknown to the mortgage
2809 lender at the time disclosure is required, the lender shall make
2810 the disclosure based upon the best information reasonably
2811 available to it and shall state that the disclosure is an
2812 estimate.
- 2813 (3) A commitment fee is refundable if:

597-02183-09

20092226__

2814 (a) The commitment is contingent upon approval by parties
2815 to whom the mortgage lender seeks to sell the loan.

2816 (b) The loan purchaser's requirements are not met due to
2817 circumstances beyond the borrower's control.

2818 (c) The borrower is willing but unable to comply with the
2819 loan purchaser's requirements.

2820 Section 50. Section 494.0071, Florida Statutes, is amended
2821 to read:

2822 494.0071 Expiration of lock-in agreement or commitment.—If
2823 a lock-in agreement has been executed and the loan does not
2824 close before the expiration date of ~~either~~ the lock-in agreement
2825 or any commitment issued consistent therewith through no
2826 substantial fault of the borrower, the borrower may withdraw the
2827 application or reject or terminate any commitment, whereupon the
2828 mortgage lender ~~or correspondent mortgage lender~~ shall promptly
2829 refund to the borrower any lock-in fee and any commitment fee
2830 paid by the borrower.

2831 Section 51. Section 494.0072, Florida Statutes, is amended
2832 to read:

2833 494.0072 Administrative penalties and fines; license
2834 violations.—

2835 ~~(1) Whenever the office finds a person in violation of an~~
2836 ~~act specified in subsection (2), it may enter an order imposing~~
2837 ~~one or more of the following penalties against that person:~~

2838 ~~(a) Revocation of a license or registration.~~

2839 ~~(b) Suspension of a license or registration, subject to~~
2840 ~~reinstatement upon satisfying all reasonable conditions that the~~
2841 ~~office specifies.~~

2842 ~~(c) Placement of the licensee or applicant on probation for~~

597-02183-09

20092226__

2843 ~~a period of time and subject to all reasonable conditions that~~
2844 ~~the office specifies.~~

2845 ~~(d) Issuance of a reprimand.~~

2846 ~~(e) Imposition of a fine in an amount not exceeding \$5,000~~
2847 ~~for each count or separate offense.~~

2848 ~~(f) Denial of a license or registration.~~

2849 (1)~~(2)~~ Each of the following acts constitutes a ground for
2850 which the disciplinary actions specified in subsection (2) ~~(1)~~
2851 may be taken:

2852 (a) Being convicted of, or entering a plea of guilty or
2853 Pleading nolo contendere to, or having been convicted or found
2854 guilty of, regardless of ~~whether~~ adjudication ~~was withheld,~~ any
2855 felony or a crime involving fraud, dishonesty, breach of trust,
2856 money laundering ~~dishonest dealing,~~ or any act of moral
2857 turpitude.

2858 (b) Fraud, misrepresentation, deceit, negligence, or
2859 incompetence in any mortgage financing transaction.

2860 (c) A material misstatement or omission of fact on an
2861 initial or renewal application.

2862 (d) Disbursement, or an act which has caused or will cause
2863 disbursement, to any person in any amount from the Mortgage
2864 Guaranty Regulatory Trust Fund, the Securities Guaranty Fund, or
2865 the Florida Real Estate Recovery Fund, regardless of any
2866 repayment or restitution to the disbursed fund by the licensee
2867 or any person acting on behalf of the licensee.

2868 (e) Failure of a mortgage lender to place immediately upon
2869 receipt, and maintain until authorized to disburse, any money
2870 entrusted to him or her ~~by a person dealing with him or her as a~~
2871 mortgage lender in a segregated account in a federally insured

597-02183-09

20092226__

2872 financial institution;

2873 (f) Failure to account for or deliver to any person any
2874 personal property that ~~has come into his or her hands and that~~
2875 is not the licensee's ~~his or her~~ property or that he or she is
2876 not ~~in law or equity~~ entitled to retain, under the circumstances
2877 and at the time which has been agreed upon or is required by law
2878 or, in the absence of a fixed time, upon demand of the person
2879 entitled to such accounting and delivery.

2880 (g) Failure to disburse funds in accordance with
2881 agreements.

2882 (h) Any misuse, misapplication, or misappropriation of
2883 personal property entrusted to his or her care to which he or
2884 she had no current property right at the time of entrustment.

2885 (i) Having a license, or the equivalent, to practice any
2886 profession or occupation revoked, suspended, or otherwise acted
2887 against, including the denial of licensure by a licensing
2888 authority of this state or another state, territory, or country
2889 ~~for fraud, dishonest dealing, or any other act of moral~~
2890 ~~turpitude.~~

2891 (j) Failure to comply with any order or rule made or issued
2892 under this part ~~the provisions of ss. 494.001-494.0077.~~

2893 (k) Acting as a mortgage lender or operating a branch
2894 ~~office correspondent mortgage lender~~ without a current, ~~active~~
2895 license issued under this part ~~ss. 494.006-494.0077.~~

2896 ~~(l) Failure to timely pay any fee, charge, or fine under~~
2897 ~~ss. 494.001-494.0077.~~

2898 ~~(l)~~ (l) Failure to maintain, preserve, and keep available
2899 for examination all books, accounts, or other documents required
2900 by ss. 494.001-494.0077 or the rules of the commission.

597-02183-09

20092226__

2901 (m)~~(n)~~ Refusal to permit an investigation or examination of
 2902 books and records, or refusal to comply with an office subpoena
 2903 or subpoena duces tecum.

2904 (n)~~(o)~~ Consistently and materially underestimating the
 2905 closing costs.

2906 (o)~~(p)~~ Failure to comply with, or violations of, any other
 2907 provision of ss. 494.001-494.0077.

2908 (p)~~(q)~~ Commission of fraud, misrepresentation, concealment,
 2909 or dishonest dealing by trick, scheme, or device; ;~~;~~ culpable
 2910 negligence; ;~~;~~ or breach of trust in any business transaction in
 2911 any state, nation, or territory; or aiding, assisting, or
 2912 conspiring with any other person engaged in any such misconduct
 2913 and in furtherance thereof.

2914 (q)~~(r)~~ Failure to timely pay any fee, charge, or fine
 2915 imposed or assessed pursuant to this chapter or rules adopted
 2916 under this chapter.

2917 (r)~~(s)~~ Payment to the office for a license or permit with a
 2918 check or electronic transmission of funds that is dishonored by
 2919 the applicant's or licensee's financial institution.

2920 (s)~~(t)~~ Having a final judgment entered against the
 2921 applicant or licensee in a civil action upon grounds of fraud,
 2922 embezzlement, misrepresentation, or deceit.

2923 (t)~~(u)~~ 1. Having been the subject of any:

2924 1. Decision, finding, injunction, suspension, prohibition,
 2925 revocation, denial, judgment, or administrative order by any
 2926 court ~~of competent jurisdiction~~, administrative law judge, state
 2927 or federal agency, national securities exchange, national
 2928 commodities exchange, national option exchange, national
 2929 securities association, national commodities association, or

597-02183-09

20092226__

2930 national option association involving a violation of any federal
2931 or state securities or commodities law, or any rule or
2932 regulation adopted under such law, or involving a violation of
2933 any rule or regulation of any national securities, commodities,
2934 or options exchange or association.

2935 2. ~~Having been the subject of any~~ Injunction or adverse
2936 administrative order by a state or federal agency regulating
2937 banking, insurance, finance or small loan companies, real
2938 estate, mortgage brokers or lenders, money transmitters, or
2939 other related or similar industries.

2940 (u) ~~(v)~~ In any mortgage transaction, violating any provision
2941 of the federal Real Estate Settlement Procedure Act, as amended,
2942 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
2943 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
2944 under such acts.

2945 (v) Requesting a specific valuation, orally or in writing,
2946 from an appraiser for a particular property, implying to an
2947 appraiser that a specific valuation is needed for a particular
2948 property, or in any manner conditioning the order for an
2949 appraisal on the appraisal meeting a specific valuation. The
2950 numeric value of the specific valuation sought need not be
2951 stated, but rather the mere statement that a specific valuation
2952 is sought, violates this section.

2953 (w) Failure to provide a lender with all appraisals
2954 obtained by the loan originator with respect to a particular
2955 property if more than one appraisal has been obtained.

2956 (x) Conducting any lending activities in the absence of a
2957 properly designated principal loan originator or lending
2958 activities at any particular branch office without a properly

597-02183-09

20092226__

2959 designated branch manager.

2960 (y) Having a loan originator, mortgage broker, or mortgage
 2961 lender license, or the equivalent thereof, revoked in any
 2962 jurisdiction.

2963 (z) Operating an unlicensed branch office.

2964 (2) If the office finds a person in violation of an act
 2965 specified in subsection (1), it may enter an order imposing one
 2966 or more of the following penalties:

2967 (a) Revocation of a license or registration.

2968 (b) Suspension of a license or registration, subject to
 2969 reinstatement upon satisfying all reasonable conditions imposed
 2970 by the office.

2971 (c) Issuance of a reprimand.

2972 (d) Imposition of a fine up to \$25,000 for each count or
 2973 separate offense.

2974 (e) Denial of a license or registration.

2975 ~~(3) A mortgage lender or correspondent mortgage lender is~~
 2976 ~~subject to the disciplinary actions specified in subsection (2)~~
 2977 ~~(1) if any officer, member, director, control person, joint~~
 2978 ~~venturer, or ultimate equitable owner of a 10 percent or greater~~
 2979 ~~interest in the mortgage lender or correspondent mortgage~~
 2980 ~~lender, associate, or employee of the mortgage lender or~~
 2981 ~~correspondent mortgage lender violates or has violated any~~
 2982 ~~provision of subsection (1) (2).~~

2983 ~~(4) A natural person who is an associate of or employed by~~
 2984 ~~a mortgage lender or correspondent mortgage lender is subject to~~
 2985 ~~the disciplinary actions specified in subsection (1) if such~~
 2986 ~~person violates any provision of subsection (2).~~

2987 (4)(5) A principal loan originator representative of a

597-02183-09

20092226__

2988 mortgage lender ~~or correspondent mortgage lender~~ is subject to
2989 the disciplinary actions specified in subsection (2) ~~(1)~~ for
2990 violations of subsection (1) ~~(2)~~ by associates of ~~or employees~~
2991 ~~in the course of an association or employment with the~~
2992 ~~correspondent mortgage lender or the mortgage lender.~~ The
2993 principal loan originator representative is only subject to
2994 suspension or revocation for associate ~~or employee~~ actions if
2995 there is a pattern of repeated violations by associates ~~or~~
2996 ~~employees~~ or if the principal loan originator broker or
2997 ~~principal~~ representative had knowledge of the violations.

2998 (5) Pursuant to s. 120.60(6), the office may summarily
2999 suspend the license of mortgage lender if the office has reason
3000 to believe that a licensee poses an immediate, serious danger to
3001 the public's health, safety, or welfare. The arrest of the
3002 mortgage lender or the mortgage lender's control person for any
3003 felony or any crime involving fraud, dishonesty, breach of
3004 trust, money laundering, or any other act of moral turpitude is
3005 deemed sufficient to constitute an immediate danger to the
3006 public's health, safety, or welfare. Any proceeding for the
3007 summary suspension of a license must be conducted by the
3008 commissioner of the office, or designee, who shall issue the
3009 final summary order.

3010 (6) The office may deny any request to terminate or
3011 withdraw any application or license if the office believes that
3012 an act which would be a ground for denial, suspension,
3013 restriction, or revocation under this chapter has been
3014 committed.

3015 Section 52. Section 494.00721, Florida Statutes, is amended
3016 to read:

597-02183-09

20092226__

3017 494.00721 Net worth.—

3018 (1) The net worth requirements ~~required~~ in s. 494.00611 ~~ss.~~
3019 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained
3020 as a condition of licensure.

3021 (2) If a mortgage lender ~~or correspondent mortgage lender~~
3022 fails to satisfy the net worth requirements, the mortgage lender
3023 ~~or correspondent mortgage lender~~ shall immediately cease taking
3024 any new mortgage loan applications. Thereafter, the mortgage
3025 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
3026 within which to satisfy the net worth requirements. If the
3027 licensee makes the office aware, prior to an examination, that
3028 the licensee no longer meets the net worth requirements, the
3029 mortgage lender ~~or correspondent mortgage lender~~ shall have 120
3030 days within which to satisfy the net worth requirements. A
3031 mortgage lender may ~~or correspondent mortgage lender~~ shall not
3032 resume acting as a mortgage lender ~~or correspondent mortgage~~
3033 ~~lender~~ without written authorization from the office, which
3034 authorization shall be granted if the mortgage lender ~~or~~
3035 ~~correspondent mortgage lender~~ provides the office with
3036 documentation which satisfies the requirements of s. 494.00611
3037 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~
3038 whichever is applicable.

3039 (3) If the mortgage lender ~~or correspondent mortgage lender~~
3040 does not satisfy the net worth requirements within 120 days ~~the~~
3041 ~~120-day period~~, the license of the mortgage lender ~~or~~
3042 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
3043 and canceled and all servicing contracts shall be disposed of in
3044 a timely manner by the mortgage lender ~~or correspondent mortgage~~
3045 ~~lender~~.

597-02183-09

20092226__

3046 Section 53. Section 494.0073, Florida Statutes, is amended
 3047 to read:

3048 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
 3049 when acting as a mortgage broker ~~brokerage business~~. ~~The~~
 3050 provision of this part Sections 494.006-494.0077 do not prohibit
 3051 a mortgage lender ~~or correspondent mortgage lender~~ from acting
 3052 as a mortgage broker ~~brokerage business~~. However, in mortgage
 3053 transactions in which a mortgage lender ~~or correspondent~~
 3054 ~~mortgage lender~~ acts as a mortgage broker ~~brokerage business~~,
 3055 the provisions of ss. 494.0038, 494.004(2) ~~494.004(8)~~, 494.0042,
 3056 and 494.0043(1), (2), and (3) apply.

3057 Section 54. Section 494.0075, Florida Statutes, is amended
 3058 to read:

3059 494.0075 Requirements for selling loans to noninstitutional
 3060 investors.-

3061 (1) A mortgage lender, when selling a mortgage loan to a
 3062 noninstitutional investor, shall:

3063 (a) Before any payment of money by a noninstitutional
 3064 investor, provide an opinion of value from an appraiser stating
 3065 the value of the security property unless the opinion is waived
 3066 in writing. The opinion must state the value of the property as
 3067 it exists on the date of the opinion. If any relationship exists
 3068 between the lender and the appraiser, that relationship must
 3069 ~~shall~~ be disclosed.†

3070 (b) Provide to the noninstitutional investor a mortgagee's
 3071 title insurance policy or an opinion of title by an attorney
 3072 licensed to practice law in this state, or a copy thereof:

3073 1. If a title insurance policy is issued, it must insure
 3074 the noninstitutional investor against the unmarketability of the

597-02183-09

20092226__

3075 mortgagee's interest in such title. It must also specify any
3076 superior liens that exist against the property. If an opinion of
3077 title is issued by an attorney ~~licensed to practice law in this~~
3078 ~~state~~, the opinion must include a statement as to the
3079 marketability of the title to the property described in the
3080 mortgage and specify the priority of the mortgage being
3081 purchased.

3082 2. If the title insurance policy or opinion of title is not
3083 available at the time of purchase, the licensee shall provide a
3084 binder of the title insurance or conditional opinion of title.
3085 This binder or opinion must include any conditions or
3086 requirements needed to be corrected before ~~prior to~~ the issuance
3087 of the final title policy or opinion of title. The binder or
3088 opinion must also include information concerning the
3089 requirements specified in subparagraph 1. Any conditions must be
3090 eliminated or waived in writing by the investor before ~~prior to~~
3091 delivery to the noninstitutional investor. The policy or
3092 opinion, or a copy thereof, shall be delivered to the investor
3093 within a reasonable period of time, not exceeding 6 months,
3094 after purchase.

3095 3. The requirements of this paragraph may be waived in
3096 writing. If the requirements are waived by the noninstitutional
3097 investor, the waiver must include the following wording: "The
3098 noninstitutional investor acknowledges that the mortgage lender
3099 selling this mortgage loan is not providing a title insurance
3100 policy or opinion of title issued by an attorney who is licensed
3101 to practice law in the State of Florida. Any requirement for
3102 title insurance or for a legal opinion of title is the sole
3103 responsibility of the noninstitutional mortgage purchaser."

597-02183-09

20092226__

3104 (c) Provide, if the loan is other than a first mortgage, a
3105 statement showing the balance owed by the mortgagor on any
3106 existing mortgages prior to this investment and the status of
3107 such existing mortgages.

3108 (d) Provide a disclosure if the licensee is directly or
3109 indirectly acting as a borrower or principal in the transaction.

3110 (2) Each mortgage, or other instrument securing a note or
3111 assignment thereof, must ~~shall~~ be recorded before being
3112 delivered to the noninstitutional investor.

3113 (3) Each mortgage and assignment shall be recorded as soon
3114 as practical, but within ~~no later than~~ 30 business days after
3115 the date of purchase.

3116 (4) If the loan is to be serviced by a licensee under this
3117 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
3118 shall be a written servicing agreement.

3119 ~~(5) The mortgage lender shall cause the original note to be~~
3120 ~~properly endorsed showing the assignment of the note to the~~
3121 ~~noninstitutional investor.~~

3122 Section 55. Section 494.0077, Florida Statutes, is amended
3123 to read:

3124 494.0077 Other products and services.—This part does
3125 ~~Sections 494.006-494.0077~~ do not prohibit a mortgage lender from
3126 offering, for a fee or commission, products and services in
3127 addition to those offered in conjunction with making a mortgage
3128 loan.

3129 Section 56. Paragraph (b) of subsection (2) of section
3130 501.1377, Florida Statutes, is amended to read:

3131 501.1377 Violations involving homeowners during the course
3132 of residential foreclosure proceedings.—

597-02183-09

20092226__

- 3133 (2) DEFINITIONS.—As used in this section, the term:
- 3134 (b) "Foreclosure-rescue consultant" means a person who
- 3135 directly or indirectly makes a solicitation, representation, or
- 3136 offer to a homeowner to provide or perform, in return for
- 3137 payment of money or other valuable consideration, foreclosure-
- 3138 related rescue services. The term does not apply to:
- 3139 1. A person excluded under s. 501.212.
- 3140 2. A person acting under the express authority or written
- 3141 approval of the United States Department of Housing and Urban
- 3142 Development or other department or agency of the United States
- 3143 or this state to provide foreclosure-related rescue services.
- 3144 3. A charitable, not-for-profit agency or organization, as
- 3145 determined by the United States Internal Revenue Service under
- 3146 s. 501(c)(3) of the Internal Revenue Code, which offers
- 3147 counseling or advice to an owner of residential real property in
- 3148 foreclosure or loan default if the agency or organization does
- 3149 not contract for foreclosure-related rescue services with a for-
- 3150 profit lender or person facilitating or engaging in foreclosure-
- 3151 rescue transactions.
- 3152 4. A person who holds or is owed an obligation secured by a
- 3153 lien on any residential real property in foreclosure if the
- 3154 person performs foreclosure-related rescue services in
- 3155 connection with this obligation or lien and the obligation or
- 3156 lien was not the result of or part of a proposed foreclosure
- 3157 reconveyance or foreclosure-rescue transaction.
- 3158 5. A financial institution as defined in s. 655.005 and any
- 3159 parent or subsidiary of the financial institution or of the
- 3160 parent or subsidiary.
- 3161 6. A licensed mortgage broker, ~~mortgage lender,~~ or

597-02183-09

20092226__

3162 ~~correspondent~~ mortgage lender that provides mortgage counseling
3163 or advice regarding residential real property in foreclosure,
3164 which counseling or advice is within the scope of services set
3165 forth in chapter 494 and is provided without payment of money or
3166 other consideration other than a mortgage broker ~~brokerage~~ fee
3167 as ~~defined in s. 494.001.~~

3168 Section 57. Effective July 1, 2009:

3169 (1) All mortgage business school permits issued pursuant to
3170 s. 494.0029, Florida Statutes, expire on December 31, 2009.

3171 (2) All mortgage brokerage business licenses issued before
3172 January 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida
3173 Statutes, expire on March 31, 2010. However, if a person holding
3174 an active mortgage brokerage business license issued on or
3175 before December 31, 2009, applies for a mortgage broker license
3176 between January 1, 2010, and March 31, 2010, the mortgage
3177 brokerage business license does not expire until the office
3178 approves or denies the mortgage broker license application. A
3179 mortgage broker license approved on or after January 1, 2010 is
3180 effective until December 31, 2010. Application fees may not be
3181 prorated for partial years of licensure.

3182 (3) All mortgage broker licenses issued before January 1,
3183 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3184 expire on March 31, 2010. However, if a person holding an active
3185 mortgage broker license issued on or before December 31, 2009,
3186 applies for a loan originator license between January 1, 2010,
3187 and March 31, 2010, the mortgage broker license does not expire
3188 until the office approves or denies the loan originator license
3189 application. Notwithstanding s. 120.60, Florida Statutes, for
3190 applications submitted between July 1, 2009, and March 31, 2010,

597-02183-09

20092226__

3191 the office has 60 days to notify the applicant of any apparent
3192 errors or omissions in an application and to request any
3193 additional information the agency may require, and the office
3194 has 180 days to approve or deny a completed application.
3195 Application fees may not be prorated for partial years of
3196 licensure.

3197 (4) Persons holding an active mortgage lender license on
3198 January 1, 2010, issued pursuant to s. 494.0061 or s. 494.0064,
3199 Florida Statutes, must file a transition request, in a form
3200 prescribed by commission rule, with the registry by March 31,
3201 2010. The license of a mortgage lender that fails to file a
3202 transition request with the registry by March 31, 2010, expires
3203 on March 31, 2010. License fees may not be prorated for partial
3204 years of licensure.

3205 (5) All mortgage lender licenses issued before January 1,
3206 2010, pursuant to s. 494.0065, Florida Statutes, expire on March
3207 31, 2010. However, if a person holding such license applies for
3208 a mortgage broker license or mortgage lender license between
3209 January 1, 2010, and March 31, 2010, the license does not expire
3210 until the office approves or denies the mortgage broker license
3211 or mortgage lender license application. Application fees may not
3212 be prorated for partial years of licensure.

3213 (6) All correspondent mortgage lender licenses issued
3214 pursuant to s. 494.62, Florida Statutes, expire on March 31,
3215 2010. However, if a person holding an active correspondent
3216 mortgage lender license issued on or before December 31, 2009,
3217 applies for a mortgage broker or mortgage lender license between
3218 January 1, 2010, and March 31, 2010, the correspondent mortgage
3219 lender license does not expire until the office approves or

597-02183-09

20092226__

3220 denies the mortgage broker or mortgage lender license
3221 application. Application fees may not be prorated for partial
3222 years of licensure.

3223 (7) The Office of Financial Regulation shall impose a one-
3224 time \$50 registry fee to be paid by all persons who were
3225 licensed as a mortgage brokerage business, mortgage broker,
3226 mortgage lender, or correspondent mortgage lender before January
3227 1, 2010, and who are seeking licensure as a loan originator,
3228 mortgage broker, or mortgage lender between January 1, 2010, and
3229 March 31, 2010, as provided in this act, to be collected at the
3230 time of license application or transfer.

3231 Section 58. Except as otherwise expressly provided in this
3232 act and except for this section, which shall take effect July 1,
3233 2009, this act shall take effect January 1, 2010.