

By the Committees on Banking and Insurance; and Banking and Insurance; and Senator Fasano

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

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30 assignment of certain rights to the office; providing
31 that payment for a claim is prima facie grounds for
32 the revocation of a license; amending s. 494.0018,
33 F.S.; conforming cross-references; amending ss.
34 494.0019 and 494.002, F.S.; conforming terms; amending
35 s. 494.0023, F.S.; deleting the statutory disclosure
36 form and revising the disclosure that must be provided
37 to a borrower in writing; providing that there is a
38 conflicting interest if a licensee or the licensee's
39 relatives have a 1 percent or more interest in the
40 person providing additional products or services;
41 authorizing the commission to adopt rules; amending s.
42 494.0025, F.S.; prohibiting the alteration,
43 withholding, concealment, or destruction of records
44 relevant to regulated activities; creating s. 494.255,
45 F.S.; providing for license violations and
46 administrative penalties; authorizing a fine of \$1,000
47 for each day of unlicensed activity up to \$25,000;
48 amending s. 494.0028, F.S.; conforming terms;
49 repealing ss. 494.0029 and 494.00295, F.S., relating
50 to mortgage business schools and continuing education
51 requirements; creating s. 494.00296, F.S.; providing
52 for loan modification services; prohibiting certain
53 related acts; providing for a loan modification
54 agreement and for the inclusion of a borrower's right
55 of cancellation statement; providing remedies;
56 providing a directive to the Division of Statutory
57 Revision; amending s. 494.003, F.S.; revising
58 provisions relating to who is exempt from loan

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

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88 requirements; amending s. 494.0036, F.S.; revising
89 provisions relating to the licensure of a mortgage
90 broker's branch office; amending s. 494.0038, F.S.;
91 revising provisions relating to loan origination and
92 mortgage broker fees; amending s. 494.0039, F.S.;
93 conforming terms; amending s. 494.004, F.S.; revising
94 provisions relating to licensees; providing for
95 registry requirements; deleting obsolete provisions;
96 repealing s. 494.0041, F.S., relating to license
97 violations and administrative penalties; providing
98 additional grounds for assessing fines and penalties;
99 amending s. 494.0042, F.S.; providing for loan
100 originator fees; conforming terms; amending ss.
101 494.00421 and 494.0043, F.S.; conforming terms;
102 amending s. 494.006, F.S.; revising provisions
103 relating to who is exempt from licensure and
104 regulation as a mortgage lender; repealing s.
105 494.0061, F.S., relating to mortgage lender license
106 requirements; creating s. 494.00611, F.S.; providing
107 for the licensure of mortgage lenders; providing
108 license application requirements; providing grounds
109 for license denial; requiring the denial of a license
110 under certain circumstances; requiring licenses to be
111 renewed annually by a certain date; creating s.
112 494.00612, F.S.; providing for the renewal of a
113 mortgage lender license; repealing s. 494.0062, F.S.,
114 relating to correspondent mortgage lender license
115 requirements; amending s. 494.0063, F.S.; requiring a
116 mortgage lender to obtain an annual financial audit

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

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

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

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

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

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

165 ~~(3) "Act as a mortgage broker" means, for compensation or~~
166 ~~gain, or in the expectation of compensation or gain, either~~
167 ~~directly or indirectly, accepting or offering to accept an~~
168 ~~application for a mortgage loan, soliciting or offering to~~
169 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~
170 ~~offering to negotiate the terms or conditions of a mortgage loan~~
171 ~~on behalf of a lender, or negotiating or offering to negotiate~~
172 ~~the sale of an existing mortgage loan to a noninstitutional~~
173 ~~investor. An employee whose activities are ministerial and~~
174 ~~clerical, which may include quoting available interest rates or~~

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175 ~~loan terms and conditions, is not acting as a mortgage broker.~~

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

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

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

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

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

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

202 (b) At which the licensee's name, advertising or
203 promotional materials, or signage suggest that mortgage loans

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204 are originated, negotiated, funded, or serviced; or

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

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

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

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

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

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

231 (d) For a trust, each trustee.

232 (e) For a limited liability company, all elected managers

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

236 (f) Principal loan originators.

237 (6) "Credit report" means any written, oral, or other
238 information obtained from a consumer reporting agency as
239 described in the federal Fair Credit Reporting Act, which bears
240 on an individual's credit worthiness, credit standing, or credit
241 capacity. A credit score alone, as calculated by the reporting
242 agency, is not considered a credit report.

243 (7) "Credit score" means a score, grade, or value that is
244 derived by using data from a credit report in any type of model,
245 method, or program, whether electronically, in an algorithm,
246 computer software or program, or any other process, for the
247 purpose of grading or ranking credit report data.

248 (8) "Depository institution" has the same meaning as in s.
249 (3) (c) of the Federal Deposit Insurance Act, and includes any
250 credit union.

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

253 ~~(b) Directly or indirectly may vote 10 percent or more of a~~
254 ~~class of voting securities or sell or direct the sale of 10~~
255 ~~percent or more of a class of voting securities; or~~

256 ~~(c) In the case of a partnership, may receive upon~~
257 ~~dissolution or has contributed 10 percent or more of the~~
258 ~~capital.~~

259 ~~(10) "Office" means the Office of Financial Regulation of~~
260 ~~the commission.~~

261 ~~(11) "Employed" means engaged in the service of another for~~

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262 ~~salary or wages subject to withholding, FICA, or other lawful~~
263 ~~deductions by the employer as a condition of employment.~~

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

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

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

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

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

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

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

287 (b) An expression of opinion regarding whether the
288 financial statements are presented in conformity with accounting
289 principles generally accepted in the United States, or an
290 assertion to the effect that such an opinion cannot be expressed

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291 and the reasons.

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

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

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

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

317 (14) "Loan originator" means an individual who, directly or
318 indirectly, solicits or offers to solicit a mortgage loan,
319 accepts or offers to accept an application for a mortgage loan,

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

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

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

346 (17) "Mortgage broker" means a person conducting loan
347 originator activities through one or more licensed loan
348 originators employed by the mortgage broker or as independent

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349 contractors to the mortgage broker.

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

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

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

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

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

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

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

370 (20) "Mortgage loan application" means the submission of a
371 borrower's financial information in anticipation of a credit
372 decision, which includes the borrower's name, the borrower's
373 monthly income, the borrower's social security number to obtain
374 a credit report, the property address, an estimate of the value
375 of the property, the mortgage loan amount sought, and any other
376 information deemed necessary by the loan originator. An
377 application may be in writing or electronically submitted,

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378 including a written record of an oral application.

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

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

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

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

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

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

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

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

404 (27) "Registered loan originator" means a loan originator
405 who is employed by a depository institution, by a subsidiary
406 that is owned and controlled by a depository institution and

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407 regulated by a federal banking agency, or by an institution
408 regulated by the Farm Credit Administration, and who is
409 registered with and maintains a unique identifier through the
410 registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

447

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

502 b. Uniform Mortgage Biographical Statement & Consent Form,
503 MU2.

504 c. Uniform Mortgage Branch Office Form, MU3.

505 d. Uniform Individual Mortgage License/Registration &
506 Consent Form, MU4.

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

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

512 5. Prescribe procedures that allow a licensee to challenge
513 information contained in the registry.

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

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

521 (c) Establishing time periods during which a loan
522 originator, mortgage broker, or mortgage lender license

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523 applicant under part II or part III is barred from licensure due
524 to prior criminal convictions of, or guilty or nolo contendere
525 pleas by, any of the applicant's control persons, regardless of
526 adjudication.

527 1. The rules must provide:

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

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

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

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

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

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

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

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

548 (3) Except as provided in s. 494.00172, all fees, charges,
549 and fines collected pursuant to ss. 494.001-494.0077 shall be
550 deposited in ~~the State Treasury to the credit of~~ the Regulatory
551 Trust Fund ~~of~~ under the office.

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

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

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

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

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

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

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610 ~~tecum. The court shall cause to be endorsed on the writ a~~
611 ~~suitable amount of bond upon the payment of which the person~~
612 ~~named in the writ shall be freed, having a due regard to the~~
613 ~~nature of the case.~~

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

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

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

623 494.00121 Subpoenas.—

624 (1) The office may:

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

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

636 (2) If there is substantial noncompliance with a subpoena
637 or subpoena duces tecum issued by the office, the office may
638 petition the court in the county where the person subpoenaed

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639 resides or has his or her principal place of business for an
640 order requiring the person to appear, testify, or produce such
641 books, accounts, records, and other documents as are specified
642 in the subpoena or subpoena duces tecum.

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

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

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

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

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

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

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

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

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

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

694 ~~(3) The office may prohibit the association by a mortgage~~
695 ~~broker business, or the employment by a mortgage lender or~~
696 ~~correspondent mortgage lender, of any person who has engaged in~~

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

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

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

713 494.00165 Prohibited advertising; record requirements.—

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

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

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

725 (c) Advertise mortgage loans, including rates, margins,

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

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

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

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

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

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

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

753 (1) If the amount in the trust fund exceeds \$5 million, the
754 additional fee shall be discontinued and may not be reimposed

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755 until the fund is reduced to below \$1 million pursuant to
756 disbursements made in accordance with this section.

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

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

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

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

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

782 (e) The borrower, at the time the action was instituted,
783 gave notice and provided a copy of the complaint to the office

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784 by certified mail. The requirement of a timely giving of notice
785 may be waived by the office upon a showing of good cause.

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

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

795 (4) Any person who meets all of the conditions in
796 subsection (2) may apply to the office for payment from the
797 trust fund equal to the unsatisfied portion of that person's
798 judgment or \$50,000, whichever is less, but only to the extent
799 that the amount reflected in the judgment is for actual or
800 compensatory damages, plus any attorney's fees and costs awarded
801 by the trial court which have been determined by the court, and
802 the documented costs associated with attempting to collect the
803 judgment. Actual or compensatory damages may not include
804 postjudgment interest. Attorney's fees may not exceed \$5,000 or
805 20 percent of the actual or compensatory damages, whichever is
806 less. If actual or compensatory damages, plus attorney's fees
807 and costs, exceeds \$50,000, actual or compensatory damages must
808 be paid first. The cumulative payment for actual or compensatory
809 damages, plus attorney's fees and costs, may not exceed \$50,000
810 as described in this section.

811 (a) A borrower may not collect more than \$50,000 from the
812 trust fund for any claim regardless of the number of licensees

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813 liable for the borrower's damages.

814 (b) Payments for claims are limited in the aggregate to
815 \$250,000 against any one licensee under this chapter. If the
816 total claims exceed the aggregate limit of \$250,000, the office
817 shall prorate payments based on the ratio that a claim bears to
818 the total claims filed.

819 (c) Payments shall be made to all persons meeting the
820 requirements of subsection (2) 2 years after the date the first
821 complete and valid notice is received by the office. Persons who
822 give notice after 2 years and who otherwise comply with the
823 conditions precedent to recovery may recover from any remaining
824 portion of the \$250,000 aggregate as provided in this
825 subsection, with claims being paid in the order notice was
826 received until the \$250,000 aggregate has been disbursed.

827 (d) The claimant shall assign his right, title, and
828 interest in the judgment, to the extent of his recovery from the
829 fund, to the office and shall record, at his own expense, the
830 assignment of judgment in every county where the judgment is
831 recorded.

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

838 (f) The payment of any amount from the fund in settlement
839 of a claim or in satisfaction of a judgment against a licensee
840 constitutes prima facie grounds for the revocation of the
841 license.

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842 Section 8. Section 494.0018, Florida Statutes, is amended
843 to read:

844 494.0018 Penalties.—

845 (1) Whoever knowingly violates any provision of s.
846 494.00255(1) (a), (b), or (c) ~~s. 494.0041(2) (e), (f), or (g); s.~~
847 ~~494.0072(2) (e), (f), or (g);~~ or s. 494.0025(1), (2), (3), (4),
848 or (5), except as provided in subsection (2) of this section,
849 commits ~~is guilty of~~ a felony of the third degree, punishable as
850 provided in s. 775.082, s. 775.083, or s. 775.084. Each such
851 violation constitutes a separate offense.

852 (2) Any person convicted of a violation of any provision of
853 ss. 494.001-494.0077, in which ~~violation~~ the total value of
854 money and property unlawfully obtained exceeds ~~exceeded~~ \$50,000
855 and there were five or more victims, commits ~~is guilty of~~ a
856 felony of the first degree, punishable as provided in s.
857 775.082, s. 775.083, or s. 775.084.

858 Section 9. Section 494.0019, Florida Statutes, is amended
859 to read:

860 494.0019 Liability in case of unlawful transaction.—

861 (1) If a mortgage loan transaction is made in violation of
862 any provision of ss. 494.001-494.0077, the person making the
863 transaction and every licensee, director, or officer who
864 participated in making the transaction are jointly and severally
865 liable to every party to the transaction in an action for
866 damages incurred by the party or parties.

867 (2) A person is not liable under this section upon a
868 showing that such person's licensees, officers, and directors
869 who participated in making the mortgage loan transaction, if
870 any, acted in good faith and without knowledge and, with the

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871 exercise of due diligence, could not have known of the act
872 committed in violation of ss. 494.001-494.0077.

873 Section 10. Section 494.002, Florida Statutes, is amended
874 to read:

875 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~
876 ~~in ss. 494.001-494.0077~~ do not limit ~~limits~~ any statutory or
877 common-law right of any person to bring any action in any court
878 for any act involved in the mortgage loan business or the right
879 of the state to punish any person for any violation of any law.

880 Section 11. Section 494.0023, Florida Statutes, is amended
881 to read:

882 494.0023 Conflicting interest.—

883 (1) If, in a mortgage transaction, a licensee has a
884 conflicting interest as specified in subsection (2), the
885 licensee shall, at a minimum, provide the following disclosures
886 to the borrower in writing:

887 (a) The nature of the relationship, ownership, or financial
888 interest between the provider of products or services, or
889 business incident thereto, and the licensee making the referral;
890 ~~The type of conflicting interest shall be fully and fairly~~
891 ~~disclosed.~~

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

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

897 (d) ~~(c) The borrower shall be informed~~ That alternative
898 sources may be chosen by the borrower to provide the any
899 required products or services. ~~The following language must be~~

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900 ~~contained in 12-point type in any agreement between a mortgage~~
901 ~~broker, mortgage lender, or correspondent mortgage lender and a~~
902 ~~borrower in substantially this form:~~

903
904 ~~You are not required to purchase additional products or services~~
905 ~~from any person or entity suggested or recommended by~~
906 ~~(Broker/Lender/Correspondent Lender). However, the~~
907 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~
908 ~~to approve the entity selected by the borrower, which approval~~
909 ~~may not be unreasonably withheld.~~

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

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

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

918 (c) The person providing the additional products or
919 services, ~~either~~ directly or indirectly, owns, controls, or
920 holds the power to vote, or holds proxies representing, 1 ~~10~~
921 percent or more of any class of equity securities or other
922 beneficial interest in the licensee;

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

928 (e) One or more persons, or such person's relative, sits as

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929 an officer or director, or performs similar functions as an
930 officer or director, for both the licensee and the person
931 providing the additional products or services; or

932 (f) The licensee or the licensee's relative sits as an
933 officer or director, or performs similar functions as an officer
934 or director, of the person providing the additional products or
935 services.

936 (3) The commission may adopt rules to administer the
937 disclosure requirements of this section. The rules must consider
938 the disclosure requirements of the federal Real Estate
939 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the
940 federal Truth in Lending Act, 15 U.S.C. et seq.; and related
941 federal regulations.

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

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

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

949 ~~(c) The spouses of children, brothers, or sisters of such~~
950 ~~person.~~

951 Section 12. Section 494.0025, Florida Statutes, is amended
952 to read:

953 494.0025 Prohibited practices.—It is unlawful for any
954 person:

955 ~~(1) To act as a mortgage lender in this state without a~~
956 ~~current, active license issued by the office pursuant to ss.~~
957 ~~494.006-494.0077.~~

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958 (1)~~(2)~~ To act as a loan originator ~~correspondent mortgage~~
959 ~~lender~~ in this state without a current, active license issued by
960 the office pursuant to part II of this chapter ~~ss. 494.006-~~
961 ~~494.0077.~~

962 (2)~~(3)~~ To act as a mortgage broker in this state without a
963 current, active license issued by the office pursuant to part II
964 of this chapter ~~ss. 494.003-494.0043.~~

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

968 (4) In any practice or transaction or course of business
969 relating to the sale, purchase, negotiation, promotion,
970 advertisement, or hypothecation of mortgage loan transactions,
971 directly or indirectly:

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

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

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

979 (5) In any matter within the jurisdiction of the office, to
980 knowingly and willfully falsify, conceal, or cover up by a
981 trick, scheme, or device a material fact, make any false or
982 fraudulent statement or representation, or make or use any false
983 writing or document, knowing the same to contain any false or
984 fraudulent statement or entry.

985 (6) To violate s. 655.922(2), subject to ss. 494.001-
986 494.0077.

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987 ~~(7) Who is required to be licensed under ss. 494.006-~~
988 ~~494.0077, to fail to report to the office the failure to meet~~
989 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~
990 ~~494.0065 within 48 hours after the person's knowledge of such~~
991 ~~failure or within 48 hours after the person should have known of~~
992 ~~such failure.~~

993 (7)(8) To pay a fee or commission in any mortgage loan
994 transaction to any person or entity other than a licensed
995 mortgage broker ~~brokerage business, mortgage lender, or~~
996 ~~correspondent mortgage lender, operating under an active~~
997 ~~license, or a person exempt from licensure under this chapter.~~

998 (8)(9) To record a mortgage broker ~~brokerage~~ agreement or
999 any other document, not rendered by a court of competent
1000 jurisdiction, which purports to enforce the terms of the
1001 ~~mortgage brokerage~~ agreement.

1002 (9)(10) To use the name or logo of a financial institution,
1003 as defined in s. 655.005(1), or its affiliates or subsidiaries
1004 when marketing or soliciting existing or prospective customers
1005 if such marketing materials are used without the written consent
1006 of the financial institution and in a manner that would lead a
1007 reasonable person to believe that the material or solicitation
1008 originated from, was endorsed by, or is related to or the
1009 responsibility of the financial institution or its affiliates or
1010 subsidiaries.

1011 (10) Subject to investigation or examination under this
1012 chapter, to knowingly alter, withhold, conceal, or destroy any
1013 books, records, computer records, or other information relating
1014 to a person's activities which subject the person to the
1015 jurisdiction of this chapter.

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1016 Section 13. Section 494.00255, Florida Statutes, is created
1017 to read:

1018 494.00255 Administrative penalties and fines; license
1019 violations.-

1020 (1) Each of the following acts constitutes a ground for
1021 which the disciplinary actions specified in subsection (2) may
1022 be taken against a person licensed or required to be licensed
1023 under part II or part III of chapter:

1024 (a) Failure to immediately place upon receipt, and maintain
1025 until authorized to disburse, any money entrusted to the
1026 licensee as a licensee in a segregated account of a federally
1027 insured financial institution in this state.

1028 (b) Failure to account or deliver to any person any
1029 property that is not the licensee's, or that the licensee is not
1030 entitled to retain, under the circumstances and at the time that
1031 has been agreed upon or as required by law or, in the absence of
1032 a fixed time, upon demand of the person entitled to such
1033 accounting and delivery.

1034 (c) Failure to disburse funds in accordance with
1035 agreements.

1036 (d) Any misuse, misapplication, or misappropriation of
1037 personal property entrusted to the licensee's care to which the
1038 licensee had no current property right at the time of
1039 entrustment.

1040 (e) Fraud, misrepresentation, deceit, negligence, or
1041 incompetence in any mortgage financing transaction.

1042 (f) Requesting a specific valuation, orally or in writing,
1043 from an appraiser for a particular property, implying to an
1044 appraiser that a specific valuation is needed for a particular

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1045 property, or in any manner conditioning the order for an
1046 appraisal on the appraisal meeting a specific valuation. The
1047 numeric value of the specific valuation sought need not be
1048 stated, but rather the mere statement that a specific valuation
1049 is sought, violates this section.

1050 (g) Consistently and materially underestimating maximum
1051 closing costs.

1052 (h) Disbursement, or an act which has caused or will cause
1053 disbursement, to any person in any amount from the Mortgage
1054 Guaranty Trust Fund, the Securities Guaranty Fund, or the
1055 Florida Real Estate Recovery Fund, regardless of any repayment
1056 or restitution to the disbursed fund by the licensee or any
1057 person acting on behalf of the licensee.

1058 (i) Commission of fraud, misrepresentation, concealment, or
1059 dishonest dealing by trick, scheme, or device; culpable
1060 negligence; breach of trust in any business transaction in any
1061 state, nation, or territory; or aiding, assisting, or conspiring
1062 with any other person engaged in any such misconduct and in
1063 furtherance thereof.

1064 (j) Being convicted of, or entering a plea of guilty or
1065 nolo contendere to, regardless of adjudication, any felony or
1066 any crime involving fraud, dishonesty, breach of trust, money
1067 laundering, or act of moral turpitude.

1068 (k) Having a final judgment entered against the licensee in
1069 a civil action upon grounds of fraud, embezzlement,
1070 misrepresentation, or deceit.

1071 (l) Having been the subject of any:

1072 1. Decision, finding, injunction, suspension, prohibition,
1073 revocation, denial, judgment, or administrative order by any

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1074 court, administrative law judge, state or federal agency,
1075 national securities exchange, national commodities exchange,
1076 national option exchange, national securities association,
1077 national commodities association, or national option association
1078 involving a violation of any federal or state securities or
1079 commodities law or rule or regulation adopted under such law or
1080 involving a violation of any rule or regulation of any national
1081 securities, commodities, or options exchange or association.

1082 2. Injunction or adverse administrative order by a state or
1083 federal agency regulating banking, insurance, finance or small
1084 loan companies, real estate, mortgage brokers or lenders, money
1085 transmitters, or other related or similar industries.

1086 (m) In any mortgage transaction, violating any provision of
1087 the federal Real Estate Settlement Procedure Act, as amended, 12
1088 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
1089 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
1090 under such acts.

1091 (n) Having a loan originator, mortgage broker, or mortgage
1092 lender license, or the equivalent thereof, revoked in any
1093 jurisdiction.

1094 (o) Having a license, or the equivalent, to practice any
1095 profession or occupation revoked, suspended, or otherwise acted
1096 against, including the denial of licensure by a licensing
1097 authority of this state or another state, territory, or country.

1098 (p) Acting as a loan originator, mortgage broker, or
1099 mortgage lender without a current license issued under part II
1100 or part III of this chapter.

1101 (q) Operating a mortgage broker or mortgage lender branch
1102 office without a current license issued under part II or part

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1103 III of this chapter.

1104 (r) Conducting any brokering or lending activities in the
1105 absence of a properly designated principal loan originator or
1106 brokering or lending activities at any particular branch office
1107 without a properly designated branch manager.

1108 (s) A material misstatement or omission of fact on an
1109 initial or renewal license application.

1110 (t) Payment to the office for a license or permit with a
1111 check or electronic transmission of funds which is dishonored by
1112 the applicant's or licensee's financial institution.

1113 (u) Failure to comply with, or violations of, any provision
1114 of ss. 494.001-494.0077, or any rule or order made or issued
1115 under ss. 494.001-494.0077.

1116 (v) Failure to maintain, preserve, and keep available for
1117 examination all books, accounts, or other documents required by
1118 ss. 494.001-494.0077 and the rules of the commission.

1119 (w) Refusal to permit an investigation or examination of
1120 books and records, or refusal to comply with an office subpoena
1121 or subpoena duces tecum.

1122 (x) Failure to timely pay any fee, charge, or fine imposed
1123 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1124 (2) If the office finds a person in violation of any act
1125 specified in this section, it may enter an order imposing one or
1126 more of the following penalties:

1127 (a) Issuance of a reprimand.

1128 (b) Suspension of a license or registration, subject to
1129 reinstatement upon satisfying all reasonable conditions imposed
1130 by the office.

1131 (c) Revocation of a license or registration.

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- 1132 (d) Denial of a license or registration.
- 1133 (e) Imposition of a fine in an amount up to \$25,000 for
1134 each count or separate offense.
- 1135 (f) An administrative fine of up to \$1,000 per day, but not
1136 to exceed \$25,000 cumulatively, for each day that
- 1137 1. A mortgage broker or mortgage lender conducts business
1138 at an unlicensed branch office.
- 1139 2. An unlicensed person acts as a loan originator, a
1140 mortgage broker, or a mortgage lender.
- 1141 (3) A mortgage broker or mortgage lender, as applicable, is
1142 subject to the disciplinary actions specified in subsection (2)
1143 for a violation of subsection (1) by:
- 1144 (a) A control person of the mortgage broker or mortgage
1145 lender;
- 1146 (b) A loan originator employed by or contracting with the
1147 mortgage broker; or
- 1148 (c) An associate of the mortgage lender.
- 1149 (4) A principal loan originator of a mortgage broker is
1150 subject to the disciplinary actions specified in subsection (2)
1151 for violations of subsection (1) by a loan originator in the
1152 course of an association with the mortgage broker if there is a
1153 pattern of repeated violations by the loan originator or if the
1154 principal loan originator has knowledge of the violations.
- 1155 (5) A principal loan originator of a mortgage lender is
1156 subject to the disciplinary actions specified in subsection (2)
1157 for violations of subsection (1) by an associate of a mortgage
1158 lender if there is a pattern of repeated violations by the
1159 associate or if the principal loan originator has knowledge of
1160 the violations.

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1161 (6) A branch manager is subject to the disciplinary actions
1162 specified in subsection (2) for violations of subsection (1) by
1163 a loan originator in the course of an association with the
1164 mortgage broker if there is a pattern of repeated violations by
1165 the loan originator or if the branch manager has knowledge of
1166 the violations.

1167 (7) A natural person who is associated with a mortgage
1168 broker is subject to the disciplinary actions specified in
1169 subsection (2) for a violation of subsection (1) with respect to
1170 an action in which such person was involved.

1171 (8) Pursuant to s. 120.60(6), the office may summarily
1172 suspend the license of a loan originator, mortgage broker, or
1173 mortgage lender if the office has reason to believe that a
1174 licensee poses an immediate, serious danger to the public's
1175 health, safety, or welfare. The arrest of the licensee, or the
1176 mortgage broker or the mortgage lender's control person, for any
1177 felony or any crime involving fraud, dishonesty, breach of
1178 trust, money laundering, or any other act of moral turpitude is
1179 deemed sufficient to constitute an immediate danger to the
1180 public's health, safety, or welfare. Any proceeding for the
1181 summary suspension of a license must be conducted by the
1182 commissioner of the office, or designee, who shall issue the
1183 final summary order.

1184 (9) The office may deny any request to terminate or
1185 withdraw any license application or license if the office
1186 believes that an act that would be a ground for license denial,
1187 suspension, restriction, or revocation under this chapter has
1188 been committed.

1189 Section 14. Section 494.0028, Florida Statutes, is amended

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1190 to read:

1191 494.0028 Arbitration.—

1192 (1) This section applies to any mortgage broker ~~brokerage~~
1193 agreement, servicing agreement, loan application, or purchase
1194 agreement that ~~which~~ provides for arbitration between:

1195 (a) A noninstitutional investor and a mortgage lender
1196 servicing ~~or correspondent mortgage lender to service~~ a mortgage
1197 loan.

1198 (b) A borrower and a mortgage broker ~~brokerage business,~~
1199 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a
1200 mortgage loan.

1201 (c) A noninstitutional investor and a mortgage broker
1202 ~~brokerage business, mortgage lender,~~ or ~~correspondent~~ mortgage
1203 lender to fund or purchase a mortgage loan.

1204 (2) All agreements subject to this section must ~~shall~~
1205 provide that, at the voluntary election of the noninstitutional
1206 investor or borrower, disputes shall be handled by ~~either~~ a
1207 court ~~of competent jurisdiction~~ or by binding arbitration.

1208 (3) All agreements subject to this section must ~~shall~~
1209 provide the noninstitutional investor or borrower with the
1210 option to elect arbitration before the American Arbitration
1211 Association or other independent nonindustry arbitration forum.
1212 Any other nonindustry arbitration forum may apply to the office
1213 to allow such forum to provide arbitration services. The office
1214 shall grant the application if the applicant's fees, practices,
1215 and procedures do not materially differ from those of the
1216 American Arbitration Association.

1217 (4) At the election of the noninstitutional investor or
1218 borrower, venue shall be in the county in which the

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1219 noninstitutional investor or borrower entered into the agreement
1220 or at a business location of the mortgage broker or brokerage
1221 ~~business, mortgage lender, or correspondent lender.~~

1222 (5) Any fees or charges must be in accordance with ~~shall be~~
1223 ~~made as provided in~~ the rules of the American Arbitration
1224 Association or other approved nonindustry arbitration forum and
1225 may ~~shall~~ not be set in the agreement.

1226 (6) Any election made under this section is ~~shall be~~
1227 irrevocable.

1228 (7) This section does ~~shall~~ not be ~~construed to~~ require an
1229 agreement that ~~which~~ is subject to this section to contain an
1230 arbitration clause.

1231 Section 15. Effective October 1, 2010, sections 494.0029
1232 and 494.00295, Florida Statutes, are repealed.

1233 Section 16. Section 494.00296, Florida Statutes, is created
1234 to read:

1235 494.00296 Loan modification.—

1236 (1) PROHIBITED ACTS.—When offering or providing loan
1237 modifications services, a loan originator, mortgage broker, or
1238 mortgage lender may not:

1239 (a) Engage in or initiate loan modification services
1240 without first executing a written agreement for loan
1241 modification services with the borrower;

1242 (b) Execute a loan modification without the consent of the
1243 borrower after the borrower is made aware of each modified term;
1244 or

1245 (c) Solicit, charge, receive, or attempt to collect or
1246 secure payment, directly or indirectly, for loan modification
1247 services before completing or performing all services included

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1248 in the agreement for loan modification services. A fee may be
1249 charged only if the loan modification results in a material
1250 benefit to the borrower. The commission may adopt rules to
1251 provide guidance on what constitutes a material benefit to the
1252 borrower

1253 (2) LOAN MODIFICATION AGREEMENT.—

1254 (a) The written agreement for loan modification services
1255 must be printed in at least 12-point uppercase type and signed
1256 by both parties. The agreement must include the name and address
1257 of the person providing loan modification services, the exact
1258 nature and specific detail of each service to be provided, the
1259 total amount and terms of charges to be paid by the borrower for
1260 the services, and the date of the agreement. The date of the
1261 agreement may not be earlier than the date the borrower signed
1262 the agreement. The mortgage broker or mortgage lender must give
1263 the borrower a copy of the agreement to review at least 1
1264 business day before the borrower is to sign the agreement.

1265 (b) The borrower has the right to cancel the written
1266 agreement without any penalty or obligation if the borrower
1267 cancels the agreement within 3 business days after signing the
1268 agreement. The right to cancel may not be waived by the borrower
1269 or limited in any manner by the loan originator, mortgage
1270 broker, or mortgage lender. If the borrower cancels the
1271 agreement, any payments to the loan originator, mortgage broker,
1272 or mortgage lender must be returned to the homeowner within 10
1273 business days after receipt of the notice of cancellation.

1274 (c) An agreement for loan modification services must
1275 contain, immediately above the signature line, a statement in at
1276 least 12-point uppercase type which substantially complies with

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1277 the following:

1278 BORROWER'S RIGHT OF CANCELLATION

1279

1280 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
1281 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3
1282 BUSINESS DAYS AFER THE DATE THIS AGREEMENT IS SIGNED
1283 BY YOU.

1284 THE LOAN ORIGNATOR, MORTGAGE BROKER, OR MORTGAGE
1285 LENDER IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY,
1286 PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL
1287 PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR ANY
1288 REASON YOU HAVE PAID THE CONSULTANT BEFORE
1289 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU
1290 WITHIN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES
1291 YOUR CANCELLATION NOTICE.

1292 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
1293 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD
1294 BE MAILED (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT
1295 ... (ADDRESS) ... NO LATER THAN MIDNIGHT OF
1296 ... (DATE)

1297 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
1298 MORTGAGE LENDER OR MORTGAGE SERVICER BEFORE SIGNING
1299 THIS AGREEMENT. YOUR LENDER OR SERVICER MAY BE WILLING
1300 TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH
1301 YOU FREE OF CHARGE.

1302

1303 (d) The inclusion of the statement does not prohibit a loan
1304 originator, mortgage broker, or mortgage lender from giving the
1305 homeowner more time to cancel the agreement than is set forth in

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1306 the statement if all other requirements of this subsection are
1307 met.

1308 (e) The person offering or providing the loan modification
1309 services must give the borrower a copy of the signed agreement
1310 within 3 hours after the borrower signs the agreement.

1311 (3) REMEDIES.—

1312 (a) Without regard to any other remedy or relief to which a
1313 person is entitled, anyone aggrieved by a violation of this
1314 section may bring an action to obtain a declaratory judgment
1315 that an act or practice violates this section and to enjoin a
1316 person who has violated, is violating, or is otherwise likely to
1317 violate this section.

1318 (b) In any action brought by a person who has suffered a
1319 loss as a result of a violation of this section, such person may
1320 recover actual damages, plus attorney's fees and court costs, as
1321 follows:

1322 1. In any action brought under this section, upon motion of
1323 the party against whom such action is filed alleging that the
1324 action is frivolous, without legal or factual merit, or brought
1325 for the purpose of harassment, the court may, after hearing
1326 evidence as to the necessity therefore, require the party
1327 instituting the action to post a bond in the amount that the
1328 court finds reasonable to indemnify the defendant for any
1329 damages incurred, including reasonable attorney's fees.

1330 2. In any civil litigation resulting from an act or
1331 practice involving a violation of this section, the prevailing
1332 party, after judgment in the trial court and exhaustion of all
1333 appeals, if any, may receive reasonable attorney's fees and
1334 costs from the nonprevailing party.

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1335 3. The attorney for the prevailing party shall submit a
1336 sworn affidavit of time spent on the case and costs incurred for
1337 all the motions, hearings, and appeals to the trial judge who
1338 presided over the civil case.

1339 4. The trial judge may award the prevailing party the sum
1340 of reasonable costs incurred in the action plus a reasonable
1341 legal fee for the hours actually spent on the case as sworn to
1342 in an affidavit.

1343 5. Any award of attorney's fees or costs become part of the
1344 judgment and subject to execution as the law allows.

1345 (c) The provisions of this subsection do not apply to any
1346 action initiated by the enforcing authority.

1347 Section 17. The Division of Statutory Revision is requested
1348 to rename part II of chapter 494, Florida Statutes, consisting
1349 of ss. 494.003-491.0043, Florida Statutes, as "Loan Originators
1350 and Mortgage Brokers."

1351 Section 18. Section 494.003, Florida Statutes, is amended
1352 to read:

1353 494.003 Exemptions.—

1354 (1) ~~None of~~ The following persons are not ~~is~~ subject to the
1355 requirements of ~~this part ss. 494.003-494.0043:~~

1356 (a) Any person operating exclusively as a registered loan
1357 originator in accordance with the S.A.F.E. Mortgage Licensing
1358 Act of 2008 ~~licensed under ss. 494.006-494.0077, except as~~
1359 ~~provided in s. 494.0073.~~

1360 (b) A depository institution; subsidiaries that are owned
1361 and controlled by a depository institution and regulated by the
1362 Board of Governors of the Federal Reserve System, the
1363 Comptroller of the Currency, the Director of the Office of

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1364 Thrift Supervision, the National Credit Union Administration, or
1365 the Federal Deposit Insurance Corporation; or institutions
1366 regulated by the Farm Credit Administration ~~state or federal~~
1367 ~~chartered bank, trust company, savings and loan association,~~
1368 ~~savings bank or credit union, bank holding company regulated~~
1369 ~~under the laws of any state or the United States, or consumer~~
1370 ~~finance company licensed pursuant to chapter 516.~~

1371 ~~(c) A wholly owned bank holding company subsidiary or a~~
1372 ~~wholly owned savings and loan association holding company~~
1373 ~~subsidiary formed and regulated under the laws of any state or~~
1374 ~~the United States that is approved or certified by the~~
1375 ~~Department of Housing and Urban Development, the Veterans~~
1376 ~~Administration, the Government National Mortgage Association,~~
1377 ~~the Federal National Mortgage Association, or the Federal Home~~
1378 ~~Loan Mortgage Corporation.~~

1379 ~~(c)~~ (d) The Federal National Mortgage Association; the
1380 Federal Home Loan Mortgage Corporation; any agency of the
1381 Federal Government; any state, county, or municipal government;
1382 or any quasi-governmental agency that acts in such capacity
1383 under the specific authority of the laws of any state or the
1384 United States.

1385 (d) A licensed attorney who negotiates the terms of a
1386 mortgage loan on behalf of a client as an ancillary matter to
1387 the attorney's representation of the client, unless the attorney
1388 is compensated by a mortgage lender, a mortgage broker, or a
1389 loan originator or by the agent of such lender, broker, or
1390 originator.

1391 ~~(e) Any person licensed to practice law in this state, not~~
1392 ~~actively and principally engaged in the business of negotiating~~

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1393 ~~loans secured by real property, when such person renders~~
1394 ~~services in the course of her or his practice as an attorney at~~
1395 ~~law.~~

1396 ~~(2) None of the following persons is required to be~~
1397 ~~licensed under ss. 494.003-494.0043:~~

1398 ~~(a) An insurance company duly licensed in this state when~~
1399 ~~dealing with its clients in the normal course of its insurance~~
1400 ~~business.~~

1401 ~~(b) A federally licensed small business investment company.~~

1402 ~~(c) A securities dealer registered under the provisions of~~
1403 ~~s. 517.12, when dealing with its corporate or individual clients~~
1404 ~~in the normal course of its securities business.~~

1405 ~~(d) Any person acting in a fiduciary capacity conferred by~~
1406 ~~authority of any court.~~

1407 ~~(e) A wholly owned subsidiary of a state or federal~~
1408 ~~chartered bank or savings and loan association the sole activity~~
1409 ~~of which is to distribute the lending programs of such state or~~
1410 ~~federal chartered bank or savings and loan association to~~
1411 ~~persons who arrange loans for, or make loans to, borrowers.~~

1412 ~~(2)(3)~~ It is not necessary to negate any of the exemptions
1413 provided in this section in any complaint, information,
1414 indictment, or other writ or proceeding brought under ss.
1415 494.001-494.0077. The burden of establishing the right to an ~~any~~
1416 ~~such~~ exemption is upon the party claiming the benefit of the
1417 exemption.

1418 Section 19. Effective October 1, 2010, section 494.0031,
1419 Florida Statutes, is repealed.

1420 Section 20. Effective October 1, 2010, section 494.00312,
1421 Florida Statutes, is created to read:

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- 1422 494.00312 Loan originator license.-
- 1423 (1) An individual who acts as a loan originator must be
- 1424 licensed under this section.
- 1425 (2) In order to apply for loan originator license, an
- 1426 applicant must:
- 1427 (a) Be at least 18 years of age and have a high school
- 1428 diploma or its equivalent.
- 1429 (b) Complete a 20-hour prelicensing class approved by the
- 1430 registry.
- 1431 (c) Pass a written test developed by the registry and
- 1432 administered by a provider approved by the registry.
- 1433 (d) Submit a completed license application form as
- 1434 prescribed by commission rule.
- 1435 (e) Submit a nonrefundable application fee of \$195, and the
- 1436 \$20 nonrefundable fee if required by s. 494.00172. Application
- 1437 fees may not be prorated for partial years of licensure.
- 1438 (f) Submit fingerprints in accordance with rules adopted by
- 1439 the commission:
- 1440 1. The fingerprints may be submitted to the registry, the
- 1441 office, or a vendor acting on behalf of the registry or the
- 1442 office.
- 1443 2. The office may contract with a third-party vendor to
- 1444 provide live-scan fingerprinting in lieu of a paper fingerprint
- 1445 card.
- 1446 3. A state criminal history background check must be
- 1447 conducted through the Department of Law Enforcement and a
- 1448 federal criminal history background check must be conducted
- 1449 through the Federal Bureau of Investigation.
- 1450 4. All fingerprints submitted to the Department of Law

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1451 Enforcement must be submitted electronically and entered into
1452 the statewide automated fingerprint identification system
1453 established in s. 943.05(2)(b) and available for use in
1454 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1455 annual fee to the department to participate in the system and
1456 inform the department of any person whose fingerprints are no
1457 longer required to be retained.

1458 5. The costs of fingerprint processing, including the cost
1459 of retaining the fingerprints, shall be borne by the person
1460 subject to the background check.

1461 6. The office is responsible for reviewing the results of
1462 the state and federal criminal history checks and determining
1463 whether the applicant meets licensure requirements.

1464 (g) Authorize the registry to obtain an independent credit
1465 report on the applicant from a consumer reporting agency, and
1466 transmit or provide access to the report to the office. The cost
1467 of the credit report shall be borne by the applicant.

1468 (h) Submit additional information or documentation
1469 requested by the office and required by rule concerning the
1470 applicant. Additional information may include documentation of
1471 pending and prior disciplinary and criminal history events,
1472 including arrest reports and certified copies of charging
1473 documents, plea agreements, judgments and sentencing documents,
1474 documents relating to pretrial intervention, orders terminating
1475 probation or supervised release, final administrative agency
1476 orders, or other comparable documents that may provide the
1477 office with the appropriate information to determine eligibility
1478 for licensure.

1479 (i) Submit any other information required by the registry

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1480 for the processing of the application.

1481 (3) An application is considered received for the purposes
1482 of s. 120.60 upon the office's receipt of all documentation from
1483 the registry, including the completed application form,
1484 documentation of completion of the prelicensure class, test
1485 results, criminal history information, and independent credit
1486 report, as well as the license application fee, the fee required
1487 by s. 494.00172, and all applicable fingerprinting processing
1488 fees.

1489 (4) The office shall issue a loan originator license to
1490 each person who is not otherwise ineligible and who meets the
1491 requirements of this section. However, it is a ground for denial
1492 of licensure if the applicant:

1493 (a) Has committed any violation specified in ss. 494.001-
1494 494.0077, or is the subject of a pending felony criminal
1495 prosecution or a prosecution or an administrative enforcement
1496 action, in any jurisdiction, which involves fraud, dishonesty,
1497 breach of trust, money laundering, or any other act of moral
1498 turpitude.

1499 (b) Demonstrates a lack of financial responsibility,
1500 character, and general fitness which would fail to command the
1501 confidence of the community and to warrant a determination that
1502 the loan originator will operate honestly, fairly, and
1503 efficiently.

1504 1. For purposes of this paragraph, a person has shown that
1505 he or she is not financially responsible if he or she has shown
1506 a disregard in the management of his or her own financial
1507 condition, which may include, but is not limited to:

1508 a. Current outstanding judgments, except judgments

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1509 resulting solely from medical expenses;

1510 b. Current outstanding tax liens or other government liens
1511 and filings;

1512 c. Foreclosures within the past 3 years; or

1513 d. A pattern of seriously delinquent accounts within the
1514 past 7 years.

1515 2. If an applicant's credit report would serve, in whole or
1516 in part, as the basis for denial of a license, before denying
1517 the license, the office must notify the applicant in writing of
1518 the specific items of concern found in the credit report. The
1519 applicant shall be provided an opportunity to submit any
1520 mitigating information with regard to the items identified by
1521 the office. The use of the terms "poor credit history," "poor
1522 credit rating," or similar language do not meet the requirements
1523 of this subsection. The office may not use an applicant's credit
1524 score as a basis for denying licensure.

1525 (5) The office may not issue a license to an applicant who
1526 has had a loan originator license or its equivalent revoked in
1527 any jurisdiction.

1528 (6) A loan originator license may be withdrawn pursuant to
1529 s. 120.60 if it was issued through mistake or inadvertence of
1530 the office. A license must be reinstated if the applicant
1531 demonstrates that the requirements for obtaining the license
1532 under this chapter have been satisfied.

1533 (7) All loan originator licenses must be renewed annually
1534 by December 31 pursuant to s. 494.00313. If a person holding a
1535 loan originator license has not applied to renew the license on
1536 or before December 31, the loan originator license expires on
1537 December 31. If a person holding an active loan originator

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1538 license has applied to renew the license on or before December
1539 31, the loan originator license remains active until the renewal
1540 application is approved or denied. A loan originator is not
1541 precluded from reapplying for licensure upon expiration of a
1542 previous license.

1543 Section 21. Effective October 1, 2010, section 494.00313,
1544 Florida Statutes, is created to read:

1545 494.00313 Loan originator license renewal.-

1546 (1) In order to renew a loan originator license, a loan
1547 originator must:

1548 (a) Submit a completed license renewal form as prescribed
1549 by commission rule.

1550 (b) Submit a nonrefundable renewal fee of \$150, and the \$20
1551 nonrefundable fee if required by s. 494.00172.

1552 (c) Provide documentation of completion of at least 8 hours
1553 of continuing education in courses reviewed and approved by the
1554 registry.

1555 (d) Authorize the registry to obtain an independent credit
1556 report on the applicant from a consumer reporting agency, and
1557 transmit or provide access to the report to the office. The cost
1558 of the credit report shall be borne by the applicant.

1559 (e) Submit any additional information or documentation
1560 requested by the office and required by rule concerning the
1561 licensee. Additional information may include documentation of
1562 pending and prior disciplinary and criminal history events,
1563 including arrest reports and certified copies of charging
1564 documents, plea agreements, judgments and sentencing documents,
1565 documents relating to pretrial intervention, orders terminating
1566 probation or supervised release, final administrative agency

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1567 orders, or other comparable documents that may provide the
1568 office with the appropriate information to determine eligibility
1569 for licensure.

1570 (2) The office may not renew a loan originator license
1571 unless the loan originator continues to meet the minimum
1572 standards for initial license issuance pursuant to s. 494.00312
1573 and adopted rule.

1574 Section 22. Effective October 1, 2010, section 494.0032,
1575 Florida Statutes, is repealed.

1576 Section 23. Effective October 1, 2010, section 494.00321,
1577 Florida Statutes, is created to read:

1578 494.00321 Mortgage broker license.—

1579 (1) Each person who acts as a mortgage broker must be
1580 licensed in accordance with this section.

1581 (2) In order to apply for a mortgage broker license the
1582 applicant must:

1583 (a) Submit a completed license application form as
1584 prescribed by commission rule.

1585 (b) Designate a qualified principal loan originator on the
1586 application form who meets the requirements of s. 494.0035.

1587 (c) Submit a nonrefundable application fee of \$425, and the
1588 \$100 nonrefundable fee if required by s. 494.00172. Application
1589 fees may not be prorated for partial years of licensure.

1590 (d) Submit fingerprints for each of the applicant's control
1591 persons in accordance with rules adopted by the commission:

1592 1. The fingerprints may be submitted to the registry, the
1593 office, or a vendor acting on behalf of the registry or the
1594 office.

1595 2. The office may contract with a third-party vendor to

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1596 provide live-scan fingerprinting in lieu of a paper fingerprint
1597 card.

1598 3. A state criminal history background check must be
1599 conducted through the Department of Law Enforcement and a
1600 federal criminal history background check must be conducted
1601 through the Federal Bureau of Investigation.

1602 4. All fingerprints submitted to the Department of Law
1603 Enforcement must be submitted electronically and entered into
1604 the statewide automated fingerprint identification system
1605 established in s. 943.05(2) (b) and available for use in
1606 accordance with s. 943.05(2) (g) and (h). The office shall pay an
1607 annual fee to the department to participate in the system and
1608 inform the department of any person whose fingerprints are no
1609 longer required to be retained.

1610 5. The costs of fingerprint processing, including the cost
1611 of retaining the fingerprints, shall be borne by the person
1612 subject to the background check.

1613 6. The office is responsible for reviewing the results of
1614 the state and federal criminal history checks and determining
1615 whether the applicant meets licensure requirements.

1616 (e) Authorize the registry to obtain an independent credit
1617 report on each of the applicant's control persons from a
1618 consumer reporting agency, and transmit or provide access to the
1619 report to the office. The cost of the credit report shall be
1620 borne by the applicant.

1621 (f) Submit additional information or documentation
1622 requested by the office and required by rule concerning the
1623 applicant or a control person of the applicant. Additional
1624 information may include documentation of pending and prior

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1625 disciplinary and criminal history events, including arrest
1626 reports and certified copies of charging documents, plea
1627 agreements, judgments and sentencing documents, documents
1628 relating to pretrial intervention, orders terminating probation
1629 or supervised release, final administrative agency orders, or
1630 other comparable documents that may provide the office with the
1631 appropriate information to determine eligibility for licensure.

1632 (g) Submit any other information required by the registry
1633 for the processing of the application.

1634 (3) An application is considered received for the purposes
1635 of s. 120.60 upon the office's receipt of all documentation from
1636 the registry, including the completed application form, criminal
1637 history information, and independent credit report, as well as
1638 the licensed application fee, the fee required by s. 492.00172,
1639 and all applicable fingerprinting processing fees.

1640 (4) The office shall issue a mortgage broker license to
1641 each person who is not otherwise ineligible and who meets the
1642 requirements of this section. However, it is a ground for denial
1643 of licensure if the applicant or one of the applicant's control
1644 persons:

1645 (a) Has committed any violation specified in ss. 494.001-
1646 494.0077, or is the subject of a pending felony criminal
1647 prosecution or a prosecution or an administrative enforcement
1648 action, in any jurisdiction, which involves fraud, dishonesty,
1649 breach of trust, money laundering, or any other act of moral
1650 turpitude.

1651 (b) Demonstrates a lack of financial responsibility,
1652 character, and general fitness which would fail to command the
1653 confidence of the community and to warrant a determination that

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1654 the loan originator will operate honestly, fairly, and
1655 efficiently.

1656 1. For purposes of this paragraph, a person has shown that
1657 he or she is not financially responsible if he or she has shown
1658 a disregard in the management of his or her own financial
1659 condition, which may include, but is not limited to:

1660 a. Current outstanding judgments, except judgments
1661 resulting solely from medical expenses;

1662 b. Current outstanding tax liens or other government liens
1663 and filings;

1664 c. Foreclosures within the past 3 years; or

1665 d. A pattern of seriously delinquent accounts within the
1666 past 7 years.

1667 2. If an applicant's credit report would serve, in whole or
1668 in part, as the basis for denial of a license, before denying
1669 the license, the office must notify the applicant in writing of
1670 the specific items of concern found in the credit report. The
1671 applicant shall be provided an opportunity to submit any
1672 mitigating information with regard to the items identified by
1673 the office. The use of the terms "poor credit history," "poor
1674 credit rating," or similar language do not meet the requirements
1675 of this subsection. The office may not use an applicant's credit
1676 score as a basis for denying licensure.

1677 (5) The office shall deny a license if the applicant has
1678 had a mortgage broker license, or its equivalent, revoked in any
1679 jurisdiction, or any of the applicant's control persons has had
1680 a loan originator license, or its equivalent, revoked in any
1681 jurisdiction.

1682 (6) A mortgage broker license may be withdrawn pursuant to

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1683 s. 120.60 if it was issued through mistake or inadvertence of
1684 the office. A license must be reinstated if the applicant
1685 demonstrates that the requirements for obtaining the license
1686 under this chapter have been satisfied.

1687 (7) All mortgage broker licenses must be renewed annually
1688 by December 31 pursuant to s. 494.00322. If a person holding an
1689 active mortgage broker license has not applied to renew the
1690 license annually on or before December 31, the mortgage broker
1691 license expires on December 31. If a person holding an active
1692 mortgage broker license has applied to renew the license on or
1693 before December 31, the mortgage broker license remains active
1694 until the renewal application is approved or denied. A mortgage
1695 broker is not precluded from reapplying for licensure upon
1696 expiration of a previous license.

1697 Section 24. Effective October 1, 2010, section 494.00322,
1698 Florida Statutes, is created to read:

1699 494.00322 Mortgage broker license renewal.-

1700 (1) In order to renew a mortgage broker license, a mortgage
1701 broker must:

1702 (a) Submit a completed license renewal form as prescribed
1703 by commission rule.

1704 (b) Submit a nonrefundable renewal fee of \$375, and the
1705 \$100 nonrefundable fee if required by s. 494.00172.

1706 (c) Submit fingerprints in accordance with s.
1707 494.00321(2) (d) for any new control persons who have not been
1708 screened.

1709 (d) Authorize the registry to obtain an independent credit
1710 report on each of the applicant's control persons from a
1711 consumer reporting agency, and transmit or provide access to the

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1712 report to the office. The cost of the credit report shall be
1713 borne by the applicant.

1714 (e) Submit any additional information or documentation
1715 requested by the office and required by rule concerning the
1716 applicant or a control person of the applicant. Additional
1717 information may include documentation of pending and prior
1718 disciplinary and criminal history events, including arrest
1719 reports and certified copies of charging documents, plea
1720 agreements, judgments and sentencing documents, documents
1721 relating to pretrial intervention, orders terminating probation
1722 or supervised release, final administrative agency orders, or
1723 other comparable documents that may provide the office with the
1724 appropriate information to determine eligibility for licensure.

1725 (2) The office may not renew a mortgage broker license
1726 unless the licensee continues to meet the minimum requirements
1727 for initial licensure pursuant to s. 494.00321 and adopted rule.

1728 Section 25. Effective October 1, 2010, section 494.0033,
1729 Florida Statutes, is repealed.

1730 Section 26. Section 494.00331, Florida Statutes, is amended
1731 to read:

1732 494.00331 ~~Loan originator employment Mortgage broker~~
1733 ~~association.~~ An individual may not act as a loan originator
1734 unless he or she is an employee of, or an independent contractor
1735 for, a mortgage broker or a mortgage lender, and may not be
1736 employed by or contract with more than one mortgage broker or
1737 mortgage lender, or either simultaneously. ~~No person required to~~
1738 be licensed as a mortgage broker under this chapter shall be
1739 simultaneously an associate of more than one licensed mortgage
1740 brokerage business, licensed mortgage lender, or licensed

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1741 ~~correspondent mortgage lender.~~

1742 Section 27. Effective October 1, 2010, section 494.0034,
1743 Florida Statutes, is repealed.

1744 Section 28. Section 494.0035, Florida Statutes, is amended
1745 to read:

1746 494.0035 Principal loan originator ~~broker~~ and branch
1747 manager for mortgage broker requirements.-

1748 (1) Each mortgage broker ~~brokerage business~~ must be
1749 operated by a principal loan originator who shall have a
1750 principal broker who shall operate the business under such
1751 broker's full charge, control, and supervision of the mortgage
1752 broker business. The principal loan originator must have been
1753 licensed as a loan originator ~~broker must have been a licensed~~
1754 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year
1755 before ~~prior to~~ being designated as the a principal loan
1756 originator ~~broker~~, or must shall demonstrate to the satisfaction
1757 of the office that he or she ~~such principal broker~~ has been
1758 actively engaged in a mortgage broker-related ~~mortgage-related~~
1759 business for at least 1 year before ~~prior to~~ being designated as
1760 a principal loan originator ~~broker~~. Each mortgage broker must
1761 keep the office informed of the person designated as the
1762 principal loan originator as prescribed by commission rule
1763 ~~brokerage business shall maintain a form as prescribed by the~~
1764 ~~commission indicating the business's designation of principal~~
1765 ~~broker and the individual's acceptance of such responsibility.~~
1766 If the designation is inaccurate, the business shall be deemed
1767 to be operated under ~~form is unavailable, inaccurate, or~~
1768 ~~incomplete, it is deemed that the business was operated in the~~
1769 full charge, control, and supervision of ~~by~~ each officer,

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1770 director, or ultimate equitable owner of a 10-percent or greater
1771 interest in the mortgage broker ~~brokerage business~~, or any other
1772 person in a similar capacity. A loan originator may not be a
1773 principal loan originator for more than one mortgage broker at
1774 any given time.

1775 (2) Each branch office of a mortgage broker ~~brokerage~~
1776 ~~business~~ must be operated by a ~~have a designated~~ branch manager
1777 ~~broker~~ who shall have ~~operate the business under such broker's~~
1778 full charge, control, and supervision of the branch office. The
1779 designated branch manager ~~broker~~ must be a licensed loan
1780 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033~~.
1781 Each branch office must keep the office informed of the person
1782 designated as the branch manager as prescribed by commission
1783 rule, which includes documentation of ~~shall maintain a form as~~
1784 ~~prescribed by the commission logging the branch's designation of~~
1785 ~~a branch broker and the individual's acceptance of such~~
1786 responsibility. If the designation is inaccurate, the branch
1787 office shall be deemed to be operated under ~~form is unavailable,~~
1788 ~~inaccurate, or incomplete, it is deemed that the branch was~~
1789 ~~operated in~~ the full charge, control, and supervision of ~~by~~ each
1790 officer, director, or ultimate equitable owner of a 10-percent
1791 or greater interest in the mortgage broker ~~brokerage business~~,
1792 or any other person in a similar capacity.

1793 Section 29. Section 494.0036, Florida Statutes, is amended
1794 to read:

1795 494.0036 Mortgage broker branch office license ~~brokerage~~
1796 ~~business branch offices.~~

1797 (1) Each branch office of a mortgage broker must be
1798 licensed under this section. ~~A mortgage brokerage business~~

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1799 ~~branch office license is required for each branch office~~
 1800 ~~maintained by a mortgage brokerage business.~~

1801 (2) The office shall issue a mortgage broker ~~brokerage~~
 1802 ~~business~~ branch office license to a mortgage broker ~~brokerage~~
 1803 ~~business~~ licensee after the office determines that the licensee
 1804 has submitted a completed application for a branch office in a
 1805 form ~~as~~ prescribed by commission rule and payment of an initial
 1806 nonrefundable branch office license fee of \$225 per branch
 1807 office. Application fees may not be prorated for partial years
 1808 of licensure. The branch office license shall be issued in the
 1809 name of the mortgage broker ~~brokerage business~~ that maintains
 1810 the branch office. An application is considered received for
 1811 purposes of s. 120.60 upon receipt of a completed application
 1812 form as prescribed by commission rule, and the required fees a
 1813 ~~nonrefundable application fee of \$225, and any other fee~~
 1814 ~~prescribed by law.~~

1815 (3) A branch office license must be renewed annually at the
 1816 time of renewing the mortgage broker license under s. 494.00322.
 1817 A nonrefundable branch renewal fee of \$225 per branch office
 1818 must be submitted at the time of renewal.

1819 Section 30. Section 494.0038, Florida Statutes, is amended
 1820 to read:

1821 494.0038 Loan origination and mortgage broker fees and
 1822 ~~Mortgage broker disclosures.~~

1823 (1)(a)1. A loan origination fee may not be paid ~~person may~~
 1824 ~~not receive a mortgage brokerage fee~~ except pursuant to a
 1825 written mortgage broker ~~brokerage~~ agreement between the mortgage
 1826 broker ~~brokerage business~~ and the borrower which is signed and
 1827 dated by the principal loan originator or branch manager, ~~the~~

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1828 ~~business~~ and the borrower. The unique registry identifier of
1829 each loan originator responsible for providing loan originator
1830 services must be printed on the mortgage broker agreement.

1831 (a)2. The written mortgage broker ~~brokerage~~ agreement must
1832 describe the services to be provided by the mortgage broker
1833 ~~brokerage business~~ and specify the amount and terms of the loan
1834 origination mortgage ~~brokerage~~ fee that the mortgage broker
1835 ~~brokerage business~~ is to receive.

1836 1. Except for application and third-party fees, all fees
1837 received by a mortgage broker from a borrower must be identified
1838 as a loan origination fee.

1839 2. All fees on the mortgage broker agreement must be
1840 disclosed in dollar amounts.

1841 3. All loan origination fees must be paid to a mortgage
1842 broker.

1843 (b) The ~~written mortgage brokerage~~ agreement must be
1844 executed within 3 business days after a mortgage loan
1845 application is accepted if the borrower is present when the
1846 mortgage loan application is accepted. If the borrower is not
1847 present ~~when such an application is accepted~~, the licensee shall
1848 forward the ~~written mortgage brokerage~~ agreement to the borrower
1849 within 3 business days after the licensee's acceptance of the
1850 application and the licensee bears the burden of proving that
1851 the borrower received and approved the ~~written mortgage~~
1852 ~~brokerage~~ agreement.

1853 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to
1854 receive any payment of any kind from the mortgage lender, the
1855 maximum total dollar amount of the payment must be disclosed to
1856 the borrower in the written mortgage broker ~~brokerage~~ agreement

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1857 as described in paragraph (1)(a). The commission may prescribe
1858 by rule an acceptable form for disclosure of brokerage fees
1859 received from the lender. The ~~mortgage broker~~ agreement must
1860 state the nature of the relationship with the lender, describe
1861 how compensation is paid by the lender, and describe how the
1862 mortgage interest rate affects the compensation paid to the
1863 mortgage broker ~~brokerage business~~.

1864 (a)~~(2)~~. The exact amount of any payment of any kind by the
1865 lender to the mortgage broker ~~brokerage business~~ must be
1866 disclosed in writing to the borrower within 3 business days
1867 after the mortgage broker ~~brokerage business~~ is made aware of
1868 the exact amount of the payment from the lender but not less
1869 than 3 business days before the execution of the closing or
1870 settlement statement. The licensee bears the burden of proving
1871 such notification was provided to the borrower. Notification is
1872 waived if the exact amount of the payment is accurately
1873 disclosed in the written mortgage broker agreement.

1874 (b)~~(e)~~ The commission may prescribe by rule the form of
1875 disclosure of brokerage fees.

1876 (3)~~(2)~~ At the time a written mortgage broker ~~brokerage~~
1877 agreement is signed ~~executed~~ by the borrower or forwarded to the
1878 borrower for signature ~~execution~~, or at the time the mortgage
1879 broker ~~brokerage business~~ accepts an application fee, credit
1880 report fee, property appraisal fee, or any other third-party
1881 fee, but at least ~~not less than~~ 3 business days before execution
1882 of the closing or settlement statement, the mortgage broker
1883 ~~brokerage business~~ shall disclose in writing to any applicant
1884 for a mortgage loan the following information:

1885 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may

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1886 not make mortgage loans or commitments. The mortgage broker
1887 ~~brokerage business~~ may make a commitment and may furnish a lock-
1888 in of the rate and program on behalf of the lender if ~~when~~ the
1889 mortgage broker ~~brokerage business~~ has obtained a written
1890 commitment or lock-in for the loan from the lender on behalf of
1891 the borrower for the loan. The commitment must be in the same
1892 form and substance as issued by the lender.

1893 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot
1894 guarantee acceptance into any particular loan program or promise
1895 any specific loan terms or conditions.

1896 (c) A good faith estimate, signed and dated by the
1897 borrower, which discloses the total amount of each of the fees
1898 ~~which~~ the borrower may reasonably expect to pay if the loan is
1899 closed, including, but not limited to, fees earned by the
1900 mortgage broker ~~brokerage business~~, lender fees, third-party
1901 fees, and official fees, together with the terms and conditions
1902 for obtaining a refund of such fees, if any. Any amount
1903 collected in excess of the actual cost shall be returned within
1904 60 days after rejection, withdrawal, or closing. The good faith
1905 estimate must identify the recipient of all payments charged the
1906 borrower and, except for all fees to be received by the mortgage
1907 broker ~~brokerage business~~, may be disclosed in generic terms,
1908 such as, but not limited to, paid to lender, appraiser,
1909 officials, title company, or any other third-party service
1910 provider. This requirement does not supplant or is not a
1911 substitute for the written mortgage broker ~~brokerage~~ agreement
1912 described in subsection (1).

1913 (4) ~~(3)~~ The disclosures required by this subsection must be
1914 furnished in writing at the time an adjustable rate mortgage

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1915 loan is offered to the borrower and whenever the terms of the
1916 adjustable rate mortgage loan offered materially change prior to
1917 closing. The mortgage broker shall furnish the disclosures
1918 relating to adjustable rate mortgages in a format prescribed by
1919 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
1920 of the Federal Reserve System, as amended; its commentary, as
1921 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
1922 1601 et seq., as amended; together with the Consumer Handbook on
1923 Adjustable Rate Mortgages, as amended; published by the Federal
1924 Reserve Board and the Federal Home Loan Bank Board. The licensee
1925 bears the burden of proving such disclosures were provided to
1926 the borrower.

1927 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes
1928 a nonrefundable application fee, the following requirements are
1929 applicable:

1930 (a) The amount of the application fee, which must be
1931 clearly denominated as such, must ~~shall~~ be clearly disclosed.

1932 (b) The specific services that will be performed in
1933 consideration for the application fee must ~~shall~~ be disclosed.

1934 (c) The application fee must be reasonably related to the
1935 services to be performed and may not be based upon a percentage
1936 of the principal amount of the loan or the amount financed.

1937 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
1938 any fee in connection with a mortgage loan other than an
1939 application fee, credit report fee, property appraisal fee, or
1940 other third-party fee ~~prior to obtaining a written commitment~~
1941 ~~from a qualified lender.~~

1942 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker
1943 must ~~brokerage business shall~~ immediately, upon receipt, be

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1944 placed into a segregated account with a financial institution
1945 located in the state the accounts of which are insured by the
1946 Federal Government. Such funds shall be held in trust for the
1947 payor and shall be kept in the account until disbursement. Such
1948 funds may be placed in one account if adequate accounting
1949 measures are taken to identify the source of the funds.

1950 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~
1951 ~~brokerage business licensee.~~

1952 (8) A mortgage broker may not pay a commission to any
1953 person not licensed pursuant to this chapter.

1954 (9)~~(8)~~ This section does not prohibit a mortgage broker
1955 ~~brokerage business~~ from offering products and services, in
1956 addition to those offered in conjunction with the loan
1957 origination process, for a fee or commission.

1958 Section 31. Section 494.0039, Florida Statutes, is amended
1959 to read:

1960 494.0039 Principal place of business requirements.—Each
1961 mortgage broker ~~brokerage business~~ licensee shall maintain and
1962 transact business from a principal place of business.

1963 Section 32. Section 494.004, Florida Statutes, is amended
1964 to read:

1965 494.004 Requirements of licensees.—

1966 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
1967 shall report to the office:

1968 (a) In writing, any conviction of, or plea of nolo
1969 contendere to, regardless of adjudication, any felony or any
1970 crime or administrative violation that involves fraud,
1971 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
1972 or any other act of moral turpitude, in any jurisdiction, by the

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1973 licensee or any control natural person within ~~named in s.~~
1974 ~~494.0031(2)(d), not later than~~ 30 days after the date of
1975 conviction, entry of a plea of nolo contendere, or final
1976 administrative action.

1977 ~~(b)(2) Each licensee under ss. 494.003-494.0043 shall~~
1978 ~~report,~~ In a form prescribed by rule of the commission, any
1979 conviction of, or plea of nolo contendere to, regardless of
1980 ~~whether~~ adjudication is ~~withheld,~~ any felony committed by the
1981 licensee or any control natural person within ~~named in s.~~
1982 ~~494.0031(2)(d), not later than~~ 30 days after the date of
1983 conviction or the date the plea of nolo contendere is entered.

1984 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~
1985 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
1986 within 30 ~~to the office not later than 7~~ business days after the
1987 action is instituted.

1988 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
1989 ~~report~~ On a form prescribed by rule of the commission, any
1990 change to the information contained in any initial application
1991 form or any amendment to the application within ~~not later than~~
1992 30 days after the change is effective.

1993 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
1994 ~~transferable or assignable.~~

1995 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
1996 ~~report~~ Any change in the principal loan originator broker, any
1997 addition or subtraction of a control person partners, officers,
1998 ~~members, joint venturers, directors, control persons of any~~
1999 ~~licensee, or any individual who is the ultimate equitable owner~~
2000 ~~of a 10-percent or greater interest in the licensee, or any~~
2001 change in the form of business organization, by written

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2002 amendment in the form and at the time the commission specifies
2003 by rule.

2004 ~~(a) In any case in which a person or a group of persons,~~
2005 ~~directly or indirectly or acting by or through one or more~~
2006 ~~persons, proposes to purchase or acquire a controlling interest~~
2007 ~~in a licensee, such person or group shall submit an initial~~
2008 ~~application for licensure as a mortgage brokerage business~~
2009 ~~before such purchase or acquisition and at the time and in the~~
2010 ~~form the commission prescribes by rule.~~

2011 ~~(b) As used in this subsection, the term "controlling~~
2012 ~~interest" means possession of the power to direct or cause the~~
2013 ~~direction of the management or policies of a company whether~~
2014 ~~through ownership of securities, by contract, or otherwise. Any~~
2015 ~~person who directly or indirectly has the right to vote 25~~
2016 ~~percent or more of the voting securities of a company or is~~
2017 ~~entitled to 25 percent or more of the company's profits is~~
2018 ~~presumed to possess a controlling interest.~~

2019 ~~(f)(e) Any addition of a partner, officer, member, joint~~
2020 ~~venturer, director, control person, or ultimate equitable owner~~
2021 ~~of the applicant who does not have a controlling interest and~~
2022 ~~who has not previously filed a Uniform Mortgage Biographical~~
2023 ~~Statement & Consent Form, MU2, or has not previously complied~~
2024 ~~with the fingerprinting and credit report requirements~~
2025 ~~provisions of ss. 494.00321 and 494.00322, s. 494.0031(2)(c) and~~
2026 ~~(d) is subject to the such provisions of these sections unless~~
2027 ~~required to file an initial application in accordance with~~
2028 ~~paragraph (a). If, after the addition of a control person, the~~
2029 office finds that the licensee does not continue to meet
2030 licensure requirements, the office may bring an administrative

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2031 action in accordance with s. 494.00255 ~~s. 494.0041~~ to enforce
2032 the provisions of this chapter.

2033 ~~(d) The commission shall adopt rules pursuant to ss.~~
2034 ~~120.536(1) and 120.54 providing for the waiver of the~~
2035 ~~application required by this subsection if the person or group~~
2036 ~~of persons proposing to purchase or acquire a controlling~~
2037 ~~interest in a licensee has previously complied with the~~
2038 ~~provisions of s. 494.0031(2) (c) and (d) with respect to the same~~
2039 ~~legal entity or is currently licensed by the office under this~~
2040 ~~chapter.~~

2041 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
2042 ~~business shall file an initial report stating the name, social~~
2043 ~~security number, date of birth, mortgage broker license number,~~
2044 ~~date of hire and, if applicable, date of termination for each~~
2045 ~~person who was an associate of the mortgage brokerage business~~
2046 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
2047 ~~brokerage business shall file a quarterly report only if a~~
2048 ~~person became an associate or ceased to be an associate of the~~
2049 ~~mortgage brokerage business during the immediate preceding~~
2050 ~~quarter. Such report shall be filed within 30 days after the~~
2051 ~~last day of each calendar quarter and shall contain the name,~~
2052 ~~social security number, date of birth, mortgage broker license~~
2053 ~~number, date of hire and, if applicable, the date of termination~~
2054 ~~of each person who became or ceased to be an associate of the~~
2055 ~~mortgage brokerage business during the immediate preceding~~
2056 ~~quarter. The commission shall prescribe, by rule, the procedures~~
2057 ~~for filing reports required by this subsection.~~

2058 (2)(8)(a) In every mortgage loan transaction, each licensee
2059 under this part must ~~ss. 494.003-494.0043~~ shall notify a

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2060 borrower of any material changes in the terms of a mortgage loan
2061 previously offered to the borrower within 3 business days after
2062 being made aware of such changes by the mortgage lender but at
2063 least ~~not less than~~ 3 business days before the signing of the
2064 settlement or closing statement. The licensee bears the burden
2065 of proving such notification was provided and accepted by the
2066 borrower.

2067 ~~(b)~~ A borrower may waive the right to receive notice of a
2068 material change ~~that is granted under paragraph (a)~~ if the
2069 borrower determines that the extension of credit is needed to
2070 meet a bona fide personal financial emergency and the right to
2071 receive notice would delay the closing of the mortgage loan. The
2072 imminent sale of the borrower's home at foreclosure during the
2073 3-day period before the signing of the settlement or closing
2074 statement is ~~constitutes~~ an example of a bona fide personal
2075 financial emergency. In order to waive the borrower's right to
2076 receive notice ~~not less than 3 business days before the signing~~
2077 ~~of the settlement or closing statement of any such material~~
2078 ~~change~~, the borrower must provide the licensee with a dated
2079 written statement that describes the personal financial
2080 emergency, waives the right to receive the notice, bears the
2081 borrower's signature, and is not on a printed form prepared by
2082 the licensee for the purpose of such a waiver.

2083 (3) Each mortgage broker shall submit to the registry
2084 reports of condition, which must be in such form and shall
2085 contain such information as the registry may require.

2086 (4) A license issued under this part is not transferable or
2087 assignable.

2088 Section 33. Section 494.0041, Florida Statutes, is

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2089 repealed.

2090 Section 34. Section 494.0042, Florida Statutes, is amended
2091 to read:

2092 494.0042 Loan originator ~~Brokerage~~ fees.—

2093 (1) A loan originator ~~mortgage brokerage~~ fee earned by a
2094 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not
2095 considered interest or a finance charge under chapter 687.

2096 (2) A person may not charge or exact, directly or
2097 indirectly, from the borrower ~~mortgager~~ a fee or commission in
2098 excess of the maximum fee or commission specified in this
2099 section. The maximum fees or commissions that may be charged for
2100 mortgage loans are as follows:

2101 (a) On a mortgage loan of \$1,000 or less: \$250.

2102 (b) On a mortgage loan exceeding \$1,000 and not exceeding
2103 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
2104 for each additional \$100 of the mortgage loan.

2105 (c) On a mortgage loan exceeding \$2,000 and not exceeding
2106 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
2107 for each additional \$100 of the mortgage loan.

2108 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
2109 percent of the entire mortgage loan.

2110
2111 For the purpose of determining the maximum fee, the amount of
2112 the mortgage loan is based on the amount of mortgage loan
2113 actually funded exclusive of the authorized maximum fees or
2114 commissions.

2115 (3) At the time of accepting a mortgage loan application, a
2116 mortgage broker ~~brokerage business~~ may receive from the borrower
2117 a nonrefundable application fee. If the mortgage loan is funded,

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2118 the nonrefundable application fee shall be credited against the
2119 amount owed as a result of the loan being funded. A person may
2120 not receive any form of compensation for acting as a loan
2121 originator ~~mortgage broker~~ other than a nonrefundable
2122 application fee, a fee based on the mortgage amount being
2123 funded, or a fee which complies with s. 494.00421.

2124 Section 35. Section 494.00421, Florida Statutes, is amended
2125 to read:

2126 494.00421 Fees earned upon obtaining a bona fide
2127 commitment.—Notwithstanding the provisions of ss. 494.001-
2128 494.0077, any mortgage broker ~~brokerage business~~ which contracts
2129 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from
2130 a borrower upon obtaining a bona fide commitment shall
2131 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

- 2132 (1) The gross loan amount.
- 2133 (2) In the case of a fixed-rate mortgage, the note rate.
- 2134 (3) In the case of an adjustable rate mortgage:
- 2135 (a) The initial note rate.
- 2136 (b) The length of time for which the initial note rate is
2137 effective.
- 2138 (c) The frequency of changes.
- 2139 (d) The limitation upon such changes including adjustment
2140 to adjustment cap and life cap.
- 2141 (e) Whether the loan has any potential for negative
2142 amortization.
- 2143 (f) Identification of the margin-interest rate
2144 differential.
- 2145 (g) Identification of a nationally recognized index which
2146 index must be free from control of the mortgage broker, ~~mortgage~~

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2147 ~~brokerage business, mortgage lender, or correspondent mortgage~~
2148 lender.

2149 (4) The estimated net proceeds to be paid directly to the
2150 borrower. "Estimated net proceeds" means the cash to be received
2151 by the borrower after payment of any fees, charges, debts,
2152 liens, or encumbrances to perfect the lien of the new mortgage
2153 and establish the agreed-upon priority of the new mortgage.

2154 (5) The lien priority of the new proposed mortgage.

2155 (6) The number of calendar days, which are mutually agreed
2156 upon, within which the mortgage broker ~~brokerage business~~ shall
2157 obtain a bona fide mortgage commitment.

2158 (7) (a) The following statement, in at least ~~no less than~~
2159 12-point boldface type immediately above the signature lines for
2160 the borrowers:

2161
2162 "You are entering into a contract with a mortgage broker
2163 ~~brokerage business~~ to obtain a bona fide mortgage loan
2164 commitment under the same terms and conditions as stated
2165 hereinabove or in a separate executed good faith estimate form.
2166 If the mortgage broker ~~brokerage business~~ obtains a bona fide
2167 commitment under the same terms and conditions, you will be
2168 obligated to pay the mortgage broker ~~brokerage business~~ fees,
2169 including, but not limited to, a mortgage broker ~~brokerage~~ fee,
2170 even if you choose not to complete the loan transaction. If the
2171 provisions of s. 494.00421, Florida Statutes, are not met, the
2172 mortgage broker ~~brokerage~~ fee can only be earned upon the
2173 funding of the mortgage loan. The borrower may contact the
2174 Department of Financial Services, Tallahassee, Florida,
2175 regarding any complaints that the borrower may have against the

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2176 mortgage broker ~~or the mortgage brokerage business~~. The
2177 telephone number of the department is: ...[insert telephone
2178 number]...."

2179 (b) Paragraph (a) does not apply to nonresidential mortgage
2180 loan commitments in excess of \$1 million.

2181 (8) Any other disclosure required pursuant to s. 494.0038.
2182 Section 36. Section 494.0043, Florida Statutes, is amended
2183 to read:

2184 494.0043 Requirements for brokering loans to
2185 noninstitutional investors.-

2186 (1) A loan originator ~~mortgage broker~~, when arranging a
2187 mortgage loan for a noninstitutional investor, shall:

2188 (a) Before any payment of money by the ~~a~~ noninstitutional
2189 investor, provide an opinion of value from an appraiser stating
2190 the value of the security property unless the opinion is waived
2191 in writing. The opinion must state the value of the property as
2192 it exists on the date of the opinion. If any relationship exists
2193 between the mortgage broker and the appraiser, that relationship
2194 shall be disclosed to the investor.

2195 (b) Provide to the noninstitutional investor a mortgagee's
2196 title insurance policy or an opinion of title by an attorney
2197 licensed to practice law in the state, or a copy thereof.

2198 1. If a title insurance policy is issued, it must insure
2199 the noninstitutional investor against the unmarketability of the
2200 mortgagee's interest in such title. It must ~~shall~~ also specify
2201 any superior liens that exist against the property. If an
2202 opinion of title is issued by an attorney ~~licensed to practice~~
2203 ~~law in the state~~, the opinion must include a statement as to the
2204 marketability of the title to the property described in the

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2205 mortgage and specify the priority of the mortgage being closed.

2206 2. If the title insurance policy or opinion of title is not
2207 available at the time of purchase, the licensee shall provide a
2208 binder of the title insurance or conditional opinion of title.
2209 This binder or opinion must include any conditions or
2210 requirements that need ~~needed~~ to be corrected before ~~prior to~~
2211 the issuance of the final title policy or opinion of title. The
2212 binder or opinion must also include information concerning the
2213 requirements specified in subparagraph 1. Any conditions must be
2214 eliminated or waived in writing by the investor before ~~prior to~~
2215 delivery to the noninstitutional investor. The policy or
2216 opinion, or a copy thereof, shall be delivered to the investor
2217 within a reasonable period of time, not exceeding 6 months,
2218 after closing.

2219 3. The requirements of this paragraph may be waived in
2220 writing. If the requirements are waived by the noninstitutional
2221 investor, the waiver must include the following statement
2222 ~~wording~~: "The noninstitutional investor acknowledges that the
2223 mortgage broker or mortgage lender brokering this mortgage loan
2224 is not providing a title insurance policy or opinion of title
2225 issued by an attorney who is licensed to practice law in the
2226 State of Florida. Any requirement for title insurance or for a
2227 legal opinion of title is the sole responsibility of the
2228 noninstitutional mortgage investor."

2229 (c) Provide, if the loan is other than a first mortgage, a
2230 statement showing the balance owed by the mortgagor on any
2231 existing mortgages prior to this investment and the status of
2232 such existing mortgages.

2233 (d) Provide a disclosure if the licensee is directly or

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2234 indirectly acting as a borrower or principal in the transaction.

2235 (2) Each original or certified copy of the mortgage, or
2236 other instrument securing a note or assignment thereof, must
2237 ~~shall~~ be recorded before being delivered to the noninstitutional
2238 investor. A loan originator ~~mortgage broker~~ shall cause the
2239 properly endorsed original note to be delivered to the
2240 noninstitutional investor.

2241 (3) Each mortgage and assignment must ~~shall~~ be recorded as
2242 soon as practical, but no later than 30 business days after the
2243 date of closing.

2244 (4) Any money from a noninstitutional investor for
2245 disbursement at a mortgage loan closing must ~~shall~~ be deposited
2246 with and disbursed by an attorney duly licensed in this state or
2247 by a title company duly licensed in this state. A person acting
2248 as a loan originator ~~mortgage broker~~ may not have control of any
2249 money from a noninstitutional investor. This subsection does not
2250 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from
2251 receiving a loan originator ~~mortgage brokerage~~ fee upon the
2252 closing of the mortgage loan funded by the noninstitutional
2253 investor.

2254 Section 37. Section 494.006, Florida Statutes, is amended
2255 to read:

2256 494.006 Exemptions.—

2257 (1) None of the following persons are subject to the
2258 requirements of this part ~~ss. 494.006-494.0077~~ in order to act
2259 as a mortgage lender ~~or correspondent mortgage lender~~:

2260 (a) Any person operating exclusively as a registered loan
2261 originator in accordance with the S.A.F.E. Mortgage Licensing
2262 Act of 2008.

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2263 (b) A depository institution; subsidiaries that are owned
2264 and controlled by a depository institution and regulated by the
2265 Board of Governors of the Federal Reserve System, the
2266 Comptroller of the Currency, the Director of the Office of
2267 Thrift Supervision, the National Credit Union Administration, or
2268 the Federal Deposit Insurance Corporation; or institutions
2269 regulated by the Farm Credit Administration

2270 (c) The Federal National Mortgage Association; the Federal
2271 Home Loan Mortgage Corporation; an agency of the Federal
2272 Government; any state, county, or municipal government; or any
2273 quasi-governmental agency that acts in such capacity under the
2274 specific authority of the laws of any state or the United
2275 States.

2276 (d)-(b) Any person acting in a fiduciary capacity conferred
2277 by the authority of any court.

2278 ~~(e) A wholly owned bank holding company subsidiary or a~~
2279 ~~wholly owned savings and loan association holding company~~
2280 ~~subsidiary that is formed and regulated under the laws of any~~
2281 ~~state or the United States and that is approved or certified by~~
2282 ~~the Department of Housing and Urban Development, the Veterans~~
2283 ~~Administration, the Government National Mortgage Association,~~
2284 ~~the Federal National Mortgage Association, or the Federal Home~~
2285 ~~Loan Mortgage Corporation.~~

2286 (e)-(d) Any person who, as a seller of his or her own real
2287 property, receives one or more mortgages in a purchase money
2288 transaction.

2289 ~~(e) Any person who receives a mortgage as security for an~~
2290 ~~obligation arising out of materials furnished or as services~~
2291 ~~rendered by the person in the improvement of the real property.~~

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2292 (f)~~(f)~~ Any person who makes only nonresidential mortgage
2293 loans and sells loans only to institutional investors.

2294 ~~(g) The Federal National Mortgage Association; the Federal
2295 Home Loan Mortgage Corporation; an agency of the Federal
2296 Government; any state, county, or municipal government; or any
2297 quasi-governmental agency that acts in such capacity under the
2298 specific authority of the laws of any state or the United
2299 States.~~

2300 ~~(h) A consumer finance company licensed pursuant to chapter
2301 516 as of October 1, 1991.~~

2302 (g)~~(i)~~ Any natural person making or acquiring a mortgage
2303 loan with his or her own funds for his or her own investment,
2304 and who does not hold himself or herself out to the public, in
2305 any manner, as being in the mortgage lending business.

2306 (h)~~(j)~~ Any natural person selling a mortgage that was made
2307 or purchased with that person's funds for his or her own
2308 investment, and who does not hold himself or herself out to the
2309 public, in any manner, as being in the mortgage lending
2310 business.

2311 (i)~~(k)~~ Any person who acts solely under contract and as an
2312 agent for federal, state, or municipal agencies in the servicing
2313 of mortgage loans.

2314 ~~(2)(a) A natural person employed by a mortgage lender or
2315 correspondent mortgage lender licensed under ss. 494.001-
2316 494.0077 is exempt from the licensure requirements of ss.
2317 494.001-494.0077 when acting within the scope of employment with
2318 the licensee.~~

2319 ~~(b) A corporation that is in existence on October 1, 1991,
2320 and that is a wholly owned subsidiary of a consumer finance~~

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2321 ~~company licensed pursuant to chapter 516 on October 1, 1991, is~~
2322 ~~not required to be licensed under ss. 494.006-494.0077 in order~~
2323 ~~to act as a mortgage lender or a correspondent mortgage lender.~~

2324 ~~(2)-(3)~~ It is unnecessary to negate any of the exemptions
2325 provided in this section ss. 494.001-494.0077 in any complaint,
2326 information, indictment, or other writ or proceeding brought
2327 under ss. 494.001-494.0077. The burden of establishing the right
2328 to an any exemption is upon the party claiming the benefit of
2329 the exemption.

2330 Section 38. Effective October 1, 2010, section 494.0061,
2331 Florida Statutes, is repealed.

2332 Section 39. Effective October 1, 2010, section 494.00611,
2333 Florida Statutes, is created to read:

2334 494.00611 Mortgage lender license.-

2335 (1) Each person who acts as a mortgage lender must be
2336 licensed under this section.

2337 (2) In order to apply for a mortgage lender license the
2338 applicant must:

2339 (a) Submit a completed application form as prescribed by
2340 the commission by rule.

2341 (b) Designate a qualified principal loan originator who
2342 meets the requirements of s. 494.0035 on the application form.

2343 (c) Submit a nonrefundable application fee of \$500, and the
2344 \$100 nonrefundable fee if required by s. 494.00172. Application
2345 fees may not be prorated for partial years of licensure.

2346 (d) Submit fingerprints for each of the applicant's control
2347 persons in accordance with rules adopted by the commission:

2348 1. The fingerprints may be submitted to the registry, the
2349 office, or a vendor acting on behalf of the registry or the

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2350 office.

2351 2. The office may contract with a third-party vendor to
2352 provide live-scan fingerprinting in lieu of a paper fingerprint
2353 card.

2354 3. A state criminal history background check must be
2355 conducted through the Department of Law Enforcement and a
2356 federal criminal history background check must be conducted
2357 through the Federal Bureau of Investigation.

2358 4. All fingerprints submitted to the Department of Law
2359 Enforcement must be submitted electronically and entered into
2360 the statewide automated fingerprint identification system
2361 established in s. 943.05(2) (b) and available for use in
2362 accordance with s. 943.05(2) (g) and (h). The office shall pay an
2363 annual fee to the department to participate in the system and
2364 inform the department of any person whose fingerprints are no
2365 longer required to be retained.

2366 5. The costs of fingerprint processing, including the cost
2367 of retaining the fingerprints, shall be borne by the person
2368 subject to the background check.

2369 6. The office is responsible for reviewing the results of
2370 the state and federal criminal history checks and determining
2371 whether the applicant meets licensure requirements.

2372 (e) Indicate whether the applicant will be seeking a
2373 servicing endorsement on the application form.

2374 (f) Submit a copy of the applicant's financial audit report
2375 for the most recent fiscal year which, pursuant to United States
2376 generally accepted accounting principles, documents that the
2377 applicant has a bona fide and verifiable net worth, of at least
2378 \$63,000 if the applicant is not seeking a servicing endorsement,

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2379 or at least \$250,000 if the applicant is seeking a servicing
2380 endorsement, which must be continuously maintained as a
2381 condition of licensure. If the applicant is a wholly owned
2382 subsidiary of another corporation, the financial audit report
2383 for the parent corporation's satisfies this requirement. The
2384 commission may establish by rule the form and procedures for
2385 filing the financial audit report, including the requirement to
2386 file the report with the registry when technology is available.

2387 (g) Authorize the registry to obtain an independent credit
2388 report on each of the applicant's control persons from a
2389 consumer reporting agency, and transmit or provide access to the
2390 report to the office. The cost of the credit report shall be
2391 borne by the applicant.

2392 (h) Submit additional information or documentation
2393 requested by the office and required by rule concerning the
2394 applicant or a control person of the applicant. Additional
2395 information may include documentation of pending and prior
2396 disciplinary and criminal history events, including arrest
2397 reports and certified copies of charging documents, plea
2398 agreements, judgments and sentencing documents, documents
2399 relating to pretrial intervention, orders terminating probation
2400 or supervised release, final administrative agency orders, or
2401 other comparable documents that may provide the office with the
2402 appropriate information to determine eligibility for licensure.

2403 (i) Submit any other information required by the registry
2404 for the processing of the application.

2405 (3) An application is considered received for the purposes
2406 of s. 120.60 upon the office's receipt of all documentation from
2407 the registry, including the completed application form, criminal

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2408 history information, and independent credit report, as well as
2409 the license application fee, the fee required under s.
2410 494.00172, and all applicable fingerprinting processing fees.

2411 (4) The office shall issue a mortgage lender license to
2412 each person who is not otherwise ineligible and who meets the
2413 requirements of this section. However, it is a ground for denial
2414 of licensure if the applicant or one of the applicant's control
2415 persons:

2416 (a) Has committed any violation specified in ss. 494.001-
2417 494.0077, or is the subject of a pending felony criminal
2418 prosecution or a prosecution or an administrative enforcement
2419 action, in any jurisdiction, which involves fraud, dishonesty,
2420 breach of trust, money laundering, or any other act of moral
2421 turpitude.

2422 (b) Demonstrates a lack of financial responsibility,
2423 character, and general fitness which would fail to command the
2424 confidence of the community and to warrant a determination that
2425 the loan originator will operate honestly, fairly, and
2426 efficiently.

2427 1. For purposes of this paragraph, a person has shown that
2428 he or she is not financially responsible if he or she has shown
2429 a disregard in the management of his or her own financial
2430 condition, which may include, but is not limited to:

2431 a. Current outstanding judgments, except judgments
2432 resulting solely from medical expenses;

2433 b. Current outstanding tax liens or other government liens
2434 and filings;

2435 c. Foreclosures within the past 3 years; or

2436 d. A pattern of seriously delinquent accounts within the

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2437 past 7 years.

2438 2. If an applicant's credit report would serve, in whole or
2439 in part, as the basis for denial of a license, before denying
2440 the license, the office must notify the applicant in writing of
2441 the specific items of concern found in the credit report. The
2442 applicant shall be provided an opportunity to submit any
2443 mitigating information with regard to the items identified by
2444 the office. The use of the terms "poor credit history," "poor
2445 credit rating," or similar language do not meet the requirements
2446 of this subsection. The office may not use an applicant's credit
2447 score as a basis for denying licensure.

2448 (5) The office may not issue a license if the applicant has
2449 had a mortgage lender license or its equivalent revoked in any
2450 jurisdiction, or any of the applicant's control persons has ever
2451 had a loan originator license or its equivalent revoked in any
2452 jurisdiction.

2453 (6) A person required to be licensed under this part, or an
2454 agent or employee thereof, is deemed to have consented to the
2455 venue of courts in this state regarding any matter within the
2456 authority of ss. 494.001-494.0077 regardless of where an act or
2457 violation was committed.

2458 (7) A license issued in accordance with this part is not
2459 transferable or assignable.

2460 (8) A mortgage lender or branch office license may be
2461 withdrawn pursuant to s. 120.60 if it was issued through mistake
2462 or inadvertence of the office. A license must be reinstated if
2463 the applicant demonstrates that the requirements for obtaining
2464 the license under this chapter have been satisfied.

2465 (9) Each lender, regardless of the number of branches it

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2466 operates, shall designate a principal loan originator
2467 representative who exercises control of the licensee's business,
2468 and a branch manager for each branch office. Each mortgage
2469 lender must keep the office informed of the persons designated
2470 as prescribed by commission rule, which includes documentation
2471 of the individual's acceptance of such responsibility. If the
2472 designation is inaccurate, the branch shall be deemed to be
2473 operated under the full charge, control, and supervision by each
2474 officer, director, or ultimate equitable owner of a 10 percent
2475 or greater interest in the mortgage lender business, or any
2476 other person in a similar capacity during that time.

2477 (10) All mortgage lender licenses must be renewed annually
2478 by December 31 pursuant to s. 494.00612. If a person holding an
2479 active mortgage broker license has not applied to renew the
2480 license annually on or before December 31, the mortgage broker
2481 license expires on December 31. If a person holding an active
2482 mortgage broker license has applied to renew the license on or
2483 before December 31, the mortgage broker license remains active
2484 until the renewal application is approved or denied. A mortgage
2485 broker is not precluded from reapplying for licensure upon
2486 expiration of a previous license.

2487 Section 40. Effective October 1, 2010, section 494.00612,
2488 Florida Statutes, is created to read:

2489 494.00612 Mortgage lender license renewal.-

2490 (1) In order to renew a mortgage lender license, a mortgage
2491 lender must:

2492 (a) Submit a completed license renewal form as prescribed
2493 by commission rule.

2494 (b) Submit a nonrefundable renewal fee of \$475, and the

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2495 \$100 nonrefundable fee if required by s. 494.00172.

2496 (c) Submit fingerprints in accordance with s.

2497 494.00611(2) (d) for any new control persons who have not been
2498 screened.

2499 (d) Provide proof that the mortgage lender continues to
2500 meet the applicable net worth requirement in a form prescribed
2501 by commission rule.

2502 (e) Authorize the registry to obtain an independent credit
2503 report on the mortgage lender from a consumer reporting agency,
2504 and transmit or provide access to the report to the office. The
2505 cost of the credit report shall be borne by the applicant.

2506 (f) Submit any additional information or documentation
2507 requested by the office and required by rule concerning the
2508 licensee. Additional information may include documentation of
2509 pending and prior disciplinary and criminal history events,
2510 including arrest reports and certified copies of charging
2511 documents, plea agreements, judgments and sentencing documents,
2512 documents relating to pretrial intervention, orders terminating
2513 probation or supervised release, final administrative agency
2514 orders, or other comparable documents that may provide the
2515 office with the appropriate information to determine eligibility
2516 for licensure.

2517 (2) The office may not renew a mortgage lender license
2518 unless the mortgage lender continues to meet the minimum
2519 standards for initial license issuance pursuant to s. 494.00611
2520 and adopted rule.

2521 Section 41. Effective October 1, 2010, section 494.0062,
2522 Florida Statutes, is repealed.

2523 Section 42. Section 494.0063, Florida Statutes, is amended

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2524 to read:

2525 494.0063 Audited financial statements.—All audited
2526 financial statements required by ss. 494.001-494.0077 must be
2527 prepared by an independent licensed certified public accountant.
2528 A mortgage lender must obtain an annual financial audit report
2529 as of the date of the licensee's fiscal year end, as disclosed
2530 to the office on the application or a subsequent amendment to
2531 the application. The mortgage lender shall submit a copy of the
2532 report to the office within 120 days after the end of the
2533 licensee's fiscal year. If the applicant is a wholly owned
2534 subsidiary of another corporation, the financial audit report of
2535 the parent corporation's satisfies this requirement. If the
2536 licensee changes its fiscal year, the licensee must file report
2537 within 18 months after the previously submitted report. The
2538 commission may establish by rule the procedures and form for
2539 filing a financial audit report, including the requirement to
2540 file the report with the registry when technology is available.

2541 Section 43. Effective October 1, 2010, section 494.0064,
2542 Florida Statutes, is repealed.

2543 Section 44. Effective October 1, 2010, section 494.0065,
2544 Florida Statutes, is repealed.

2545 Section 45. Section 494.0066, Florida Statutes, is amended
2546 to read:

2547 494.0066 Branch offices.—

2548 (1) Each branch office of a mortgage lender must be
2549 licensed under this section ~~A branch office license is required~~
2550 ~~for each branch office maintained by a licensee under ss.~~
2551 ~~494.006-494.0077.~~

2552 (2) The office shall issue a branch office license to a

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2553 mortgage lender licensee licensed under ss. 494.006-494.0077
2554 after the office determines that the mortgage lender licensee
2555 has submitted a completed branch office application form as
2556 prescribed by rule by the commission, ~~and~~ an initial
2557 nonrefundable branch office license fee of \$225 per branch
2558 office \$325. Application fees may not be prorated for partial
2559 years of licensure. The branch office application must include
2560 the name and license number of the mortgage lender licensee
2561 under this part ss. 494.006-494.0077, the name of the branch
2562 manager licensee's employee in charge of the branch office, and
2563 the address of the branch office. The branch office license
2564 shall be issued in the name of the mortgage lender licensee
2565 under ss. 494.006-494.0077 and must be renewed in conjunction
2566 with the license renewal. An application is considered received
2567 for purposes of s. 120.60 upon receipt of a completed branch
2568 office renewal form, as prescribed by commission rule, and the
2569 required fees.

2570 (3) A branch office license must be renewed at the time of
2571 renewing the mortgage lender license. A nonrefundable fee of
2572 \$225 per branch office must be submitted at the time of renewal.

2573 Section 46. Section 494.00665, Florida Statutes, is created
2574 to read:

2575 494.00665 Principal loan originator and branch manager for
2576 mortgage lender.-

2577 (1) Each mortgage lender business must be operated by a
2578 principal loan originator who shall have full charge, control,
2579 and supervision of the mortgage lender business. The principal
2580 loan originator must have been licensed as a loan originator
2581 pursuant to s. 494.00312. Each mortgage lender must keep the

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2582 office informed of the person designated as the principal loan
2583 originator as prescribed by commission rule. If the designation
2584 is inaccurate, the business shall be deemed to be operated under
2585 the full charge, control, and supervision of each officer,
2586 director, or ultimate equitable owner of a 10 percent or greater
2587 interest in the mortgage lender business, or any other person in
2588 a similar capacity during that time.

2589 (2) Each branch office of a mortgage lender must be
2590 operated by a branch manager who shall have full charge,
2591 control, and supervision of the branch office. The designated
2592 branch manager must be a licensed loan originator pursuant to s.
2593 494.00312. Each mortgage lender must keep the office informed of
2594 the person designated as the branch manager as prescribed by
2595 commission rule, which includes documentation of the
2596 individual's acceptance of such responsibility. If the
2597 designation is inaccurate, the branch office shall be deemed to
2598 be operated under the full charge, control, and supervision of
2599 each officer, director, or ultimate equitable owner of a 10
2600 percent or greater interest in the mortgage lender business, or
2601 any other person in a similar capacity during that time.

2602 Section 47. Section 494.0067, Florida Statutes, is amended
2603 to read:

2604 494.0067 Requirements of mortgage lenders ~~licensees~~ under
2605 ~~ss. 494.006-494.0077.~~

2606 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~
2607 ~~494.0077~~ which makes mortgage loans on real estate in this state
2608 shall transact business from a principal place of business. Each
2609 principal place of business and each branch office shall be
2610 operated under the full charge, control, and supervision of the

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2611 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2612 (2) A license issued under this part ~~ss. 494.006-494.0077~~
2613 is not transferable or assignable.

2614 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~
2615 ~~494.0077~~ shall report, on a form prescribed by rule of the
2616 commission, any change in the information contained in any
2617 initial application form, or any amendment thereto, within not
2618 ~~later than~~ 30 days after the change is effective.

2619 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
2620 ~~494.0077~~ shall report any changes in the principal loan
2621 originator, any addition or subtraction of a control person,
2622 ~~partners, officers, members, joint venturers, directors, or~~
2623 ~~control persons of any licensee or any change~~ changes in the
2624 form of business organization by written amendment in such form
2625 and at such time that the commission specifies by rule.

2626 (a) In any case in which a person or a group of persons,
2627 directly or indirectly or acting by or through one or more
2628 persons, proposes to purchase or acquire a controlling interest
2629 in a licensee, such person or group must submit an initial
2630 application for licensure as a mortgage lender ~~or correspondent~~
2631 ~~mortgage lender~~ before such purchase or acquisition and at the
2632 time and in the form prescribed by the commission by rule.

2633 (b) ~~As used in this subsection, the term "controlling~~
2634 ~~interest" means possession of the power to direct or cause the~~
2635 ~~direction of the management or policies of a company whether~~
2636 ~~through ownership of securities, by contract, or otherwise. Any~~
2637 ~~person who directly or indirectly has the right to vote 25~~
2638 ~~percent or more of the voting securities of a company or who is~~
2639 ~~entitled to 25 percent or more of the company's profits is~~

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2640 ~~presumed to possess a controlling interest.~~

2641 ~~(b)(c) Any addition of a designated principal~~
2642 ~~representative, partner, officer, member, joint venturer,~~
2643 ~~director, or control person of the applicant who does not have a~~
2644 ~~controlling interest and who has not previously filed a Uniform~~
2645 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~
2646 ~~previously complied with fingerprinting and credit report~~
2647 ~~requirements of s. 494.00611 is the provisions of s.~~
2648 ~~494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.~~
2649 ~~494.0065(5)(e) and (f) shall be subject to the such provisions~~
2650 ~~of this section unless required to file an initial application~~
2651 ~~in accordance with paragraph (a). If after the addition of a~~
2652 ~~control person, the office determines that the licensee does not~~
2653 ~~continue to meet licensure requirements, the office may bring~~
2654 ~~administrative action in accordance with s. 494.00255 s.~~
2655 ~~494.0072 to enforce the provisions of this section.~~

2656 ~~(d) The commission shall adopt rules pursuant to ss.~~
2657 ~~120.536(1) and 120.54 providing for the waiver of the~~
2658 ~~application required by this subsection if the person or group~~
2659 ~~of persons proposing to purchase or acquire a controlling~~
2660 ~~interest in a licensee has previously complied with the~~
2661 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~
2662 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~
2663 ~~is currently licensed with the office under this chapter.~~

2664 ~~(5) Each mortgage lender licensee under ss. 494.006-~~
2665 ~~494.0077 shall report in a form prescribed by rule by the~~
2666 ~~commission any indictment, information, charge, conviction, plea~~
2667 ~~of guilty or nolo contendere, regardless of adjudication, or~~
2668 ~~plea of guilty to any felony or any crime or administrative~~

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2669 violation that involves fraud, dishonesty, breach of trust,
 2670 money laundering ~~dishonest dealing~~, or any other act of moral
 2671 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
 2672 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
 2673 equitable owner of 10 percent or more of the licensed
 2674 corporation, within ~~not later than~~ 30 business days after the
 2675 indictment, information, charge, conviction, or final
 2676 administrative action.

2677 (6) Each mortgage lender ~~licensee under ss. 494.006-~~
 2678 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
 2679 involuntary, to the office, within ~~not later than~~ 7 business
 2680 days after the action is instituted.

2681 (7) Each mortgage lender ~~licensee under ss. 494.006-~~
 2682 ~~494.0077~~ shall designate a registered agent in this state for
 2683 service of process.

2684 (8) Each mortgage lender ~~licensee under ss. 494.006-~~
 2685 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
 2686 faith estimate of the costs the applicant can reasonably expect
 2687 to pay in obtaining a mortgage loan. The good faith estimate of
 2688 costs must ~~shall~~ be mailed or delivered to the applicant within
 2689 3 business days ~~a reasonable time~~ after the licensee receives a
 2690 written loan application from the applicant. The estimate of
 2691 costs may be provided to the applicant by a person other than
 2692 the licensee making the loan. The good faith estimate must
 2693 identify the recipient of all payments charged to the borrower
 2694 and, except for all fees to be received by the mortgage broker
 2695 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
 2696 ~~mortgage lender~~, may be disclosed in generic terms, such as, but
 2697 not limited to, paid to appraiser, officials, title company, or

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2698 any other third-party service provider. The licensee bears the
2699 burden of proving such disclosures were provided to the
2700 borrower. The commission may adopt rules that set forth the
2701 disclosure requirements of this section.

2702 ~~(9) On or before April 30, 2000, each mortgage lender or~~
2703 ~~correspondent mortgage lender shall file an initial report~~
2704 ~~stating the full legal name, residential address, social~~
2705 ~~security number, date of birth, mortgage broker license number,~~
2706 ~~date of hire, and, if applicable, date of termination for each~~
2707 ~~person who acted as a loan originator or an associate of the~~
2708 ~~mortgage lender or correspondent mortgage lender during the~~
2709 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
2710 ~~correspondent mortgage lender shall file a report only if a~~
2711 ~~person became or ceased to be a loan originator or an associate~~
2712 ~~of the mortgage lender or correspondent mortgage lender during~~
2713 ~~the immediate preceding quarter. Such report shall be filed~~
2714 ~~within 30 days after the last day of each calendar quarter and~~
2715 ~~shall contain the full legal name, residential address, social~~
2716 ~~security number, date of birth, date of hire and, if applicable,~~
2717 ~~the mortgage broker license number and date of termination of~~
2718 ~~each person who became or ceased to be a loan originator or an~~
2719 ~~associate of the mortgage lender or correspondent mortgage~~
2720 ~~lender during the immediate preceding quarter. The commission~~
2721 ~~shall prescribe, by rule, the procedures for filing reports~~
2722 ~~required by this subsection.~~

2723 ~~(10) (a) Each mortgage lender or correspondent mortgage~~
2724 ~~lender licensee shall require the principal representative and~~
2725 ~~all loan originators, not currently licensed as mortgage brokers~~
2726 ~~pursuant to s. 494.0033, who perform services for the licensee~~

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2727 ~~to complete 14 hours of professional continuing education during~~
2728 ~~each biennial license period. The education shall cover primary~~
2729 ~~and subordinate mortgage financing transactions and the~~
2730 ~~provisions of this chapter and the rules adopted under this~~
2731 ~~chapter.~~

2732 ~~(b) The licensee shall maintain records of such training~~
2733 ~~for a period of 4 years, including records of the content of and~~
2734 ~~hours designated for each program and the date and location of~~
2735 ~~the program.~~

2736 ~~(c) Evidence of completion of such programs shall be~~
2737 ~~included with the licensee's renewal application.~~

2738 ~~(9)(11)~~ The disclosures in this subsection must be
2739 furnished in writing at the time an adjustable rate mortgage
2740 loan is offered to the borrower and whenever the terms of the
2741 adjustable rate mortgage loan offered have a material change
2742 prior to closing. The lender shall furnish the disclosures
2743 relating to adjustable rate mortgages in a format prescribed by
2744 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2745 of the Federal Reserve System, as amended; its commentary, as
2746 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2747 1601 et seq., as amended; together with the Consumer Handbook on
2748 Adjustable Rate Mortgages, as amended; published by the Federal
2749 Reserve Board and the Federal Home Loan Bank Board. The licensee
2750 bears the burden of proving such disclosures were provided to
2751 the borrower.

2752 ~~(10)(12)(a)~~ In every mortgage loan transaction, each
2753 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify
2754 a borrower of any material changes in the terms of a mortgage
2755 loan previously offered to the borrower within 3 business days

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2756 after being made aware of such changes by the lender but at
2757 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the
2758 settlement or closing statement. The licensee bears the burden
2759 of proving such notification was provided and accepted by the
2760 borrower.

2761 ~~(b)~~ A borrower may waive the right to receive notice of a
2762 material change ~~that is granted under paragraph (a)~~ if the
2763 borrower determines that the extension of credit is needed to
2764 meet a bona fide personal financial emergency and the right to
2765 receive notice would delay the closing of the mortgage loan. The
2766 imminent sale of the borrower's home at foreclosure during the
2767 3-day period before the signing of the settlement or closing
2768 statement constitutes an example of a bona fide personal
2769 financial emergency. In order to waive the borrower's right to
2770 receive notice ~~not less than 3 business days before the signing~~
2771 ~~of the settlement or closing statement of any such material~~
2772 ~~change~~, the borrower must provide the licensee with a dated
2773 written statement that describes the personal financial
2774 emergency, waives the right to receive the notice, bears the
2775 borrower's signature, and is not on a printed form prepared by
2776 the licensee for the purpose of such a waiver.

2777 (11) A mortgage lender may close loans in its own name but
2778 may not service the loan for more than 4 months unless the
2779 lender has a servicing endorsement. Only a mortgage lender who
2780 continuously maintains a net worth of at least \$250,000 may
2781 obtain a servicing endorsement.

2782 (12) A mortgage lender must report to the office the
2783 failure to meet the applicable net worth requirements of s.
2784 494.00611 within 2 days after the mortgage lender's knowledge of

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2785 such failure or after the mortgage lender should have known of
2786 such failure.

2787 Section 48. Section 494.0068, Florida Statutes, is amended
2788 to read:

2789 494.0068 Loan application process.—

2790 (1) In addition to the requirements set forth in s.
2791 494.0067(8), before accepting an application fee in whole or in
2792 part, a credit report fee, an appraisal fee, or a fee charged as
2793 reimbursement for third-party charges, a mortgage lender shall
2794 make a written disclosure to the borrower, which disclosure may
2795 be contained in the application, setting forth:

2796 (a) Whether all or any part of such fees or charges is
2797 refundable.

2798 (b) The terms and conditions for the refund, if all or any
2799 part of the fees or charges is refundable.

2800 (c) A realistic estimate of the number of days required to
2801 issue a commitment following receipt of the application by the
2802 lender.

2803 (d) The name or title of a person within the lender's
2804 organization to whom the borrower may address written questions,
2805 comments, or complaints and who is required to promptly respond
2806 to such inquiries.

2807 (2) The disclosures required in subsection (1) must ~~shall~~
2808 be acknowledged in writing by the borrower and maintained by the
2809 mortgage lender, and a copy of such acknowledgment shall be
2810 given to the borrower.

2811 (3) The borrower may, without penalty or responsibility for
2812 paying additional fees and charges, withdraw an application at
2813 any time prior to acceptance of commitment. Upon such

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2814 withdrawal, the mortgage lender is responsible for refunding to
2815 the borrower only those fees and charges to which the borrower
2816 may be entitled pursuant to the terms set forth in the written
2817 disclosure required by subsection (1), except that:

2818 (a) If the lender failed to provide the borrower with the
2819 written disclosure required by subsection (1), the lender shall
2820 promptly refund to the borrower all funds paid to the lender; or

2821 (b) If the lender failed to make a good faith effort to
2822 approve the loan, the lender shall promptly refund to the
2823 borrower all funds paid to the lender.

2824 (4) The application fee must be reasonably related to the
2825 services to be performed and may not be based upon a percentage
2826 of the principal amount of the loan or the amount financed.

2827 (5) For the purposes of this section, the term "application
2828 fee" means any moneys advanced by the borrower upon filing an
2829 application with a mortgage lender to offset the lender's
2830 expenses for determining whether the borrower is qualified for
2831 the mortgage loan or whether the mortgage loan should be funded.

2832 Section 49. Section 494.0069, Florida Statutes, is amended
2833 to read:

2834 494.0069 Lock-in agreement.—

2835 (1) Each lock-in agreement must be in writing and must
2836 contain:

2837 (a) The expiration date of the lock-in, if any;

2838 (b) The interest rate locked in, if any;

2839 (c) The discount points locked in, if any;

2840 (d) The commitment fee locked in, if any;

2841 (e) The lock-in fee, if any; and

2842 (f) A statement advising of the provisions of ss. 494.006-

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2843 494.0077 regarding lock-in agreements.

2844 (2) The mortgage lender ~~or correspondent mortgage lender~~
2845 shall make a good faith effort to process the mortgage loan
2846 application and stand ready to fulfill the terms of its
2847 commitment before the expiration date of the lock-in agreement
2848 or any extension thereof.

2849 (3) Any lock-in agreement received by a mortgage lender ~~or~~
2850 ~~correspondent mortgage lender~~ by mail or through a mortgage
2851 broker must be signed by the mortgage lender ~~or correspondent~~
2852 ~~mortgage lender~~ in order to become effective. The borrower may
2853 rescind any lock-in agreement until a written confirmation of
2854 the agreement has been signed by the lender and mailed to the
2855 borrower or to the mortgage broker ~~brokerage business~~ pursuant
2856 to its contractual relationship with the borrower. If a borrower
2857 elects to so rescind, the mortgage lender ~~or correspondent~~
2858 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2859 (4) ~~(a) Before Any correspondent mortgage lender or mortgage~~
2860 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,
2861 a mortgage lender must have the ability to timely advance funds
2862 on all mortgage loans for which rate lock-in agreements have
2863 been issued. As used in this section, "ability to timely advance
2864 funds" means having sufficient liquid assets or a line of credit
2865 necessary to cover all rate lock-in agreements issued with
2866 respect to which a lock-in fee is collected.

2867 ~~(a)(b) A correspondent mortgage lender or mortgage lender~~
2868 that does not comply with this subsection ~~paragraph (a)~~ may
2869 issue mortgage rate lock-in agreements only if, prior to the
2870 issuance, the ~~correspondent mortgage lender or mortgage lender:~~

2871 1. Has received a written rate lock-in agreement from a

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2872 ~~correspondent mortgage lender~~ or mortgage lender that complies
2873 with this subsection ~~paragraph (a)~~; or

2874 2. Has received a written rate lock-in agreement from an
2875 institutional investor or an agency of the Federal Government or
2876 the state or local government that will be funding, making, or
2877 purchasing the mortgage loan.

2878 (b) ~~(e)~~ All rate lock-in fees collected by a mortgage lender
2879 ~~or correspondent mortgage lender~~ who is not in compliance with
2880 ~~paragraph (a)~~ must be deposited into an escrow account in a
2881 federally insured financial institution, and such fees may ~~shall~~
2882 not be removed from such escrow account until:

2883 1. The mortgage loan closes and is funded;

2884 2. The applicant cancels the loan application or the loan
2885 application is rejected; or

2886 3. The mortgage lender ~~or correspondent mortgage lender~~ is
2887 required to forward a portion of the lock-in fee to another
2888 ~~correspondent mortgage lender~~, mortgage lender, institutional
2889 investor, or agency that will be funding, making, or purchasing
2890 the loan. The mortgage lender ~~or correspondent mortgage lender~~
2891 may remove only the amount of the lock-in fee actually paid to
2892 another mortgage lender, ~~correspondent mortgage lender~~,
2893 institutional investor, or agency.

2894 (5) For purposes of this section, the term "lock-in fee"
2895 means any moneys advanced by the borrower to lock in for a
2896 specified period of time a specified interest rate or discount
2897 points.

2898 (6) The commission may adopt by rule a form for required
2899 lock-in agreement disclosures.

2900 Section 50. Section 494.007, Florida Statutes, is amended

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2901 to read:

2902 494.007 Commitment process.—

2903 (1) If a commitment is issued, the mortgage lender shall
2904 disclose in writing:

2905 (a) The expiration date of the commitment;

2906 (b) The mortgage amount, meaning the face amount of credit
2907 provided to the borrower or in the borrower's behalf;

2908 (c) If the interest rate or other terms are subject to
2909 change before expiration of the commitment:

2910 1. The basis, index, or method, if any, which will be used
2911 to determine the rate at closing. Such basis, index, or method
2912 shall be established and disclosed with direct reference to the
2913 movement of an interest rate index or of a national or regional
2914 index that is available to and verifiable by the borrower and
2915 beyond the control of the lender; or

2916 2. The following statement, in at least 10-point bold type:
2917 "The interest rate will be the rate established by the lender in
2918 its discretion as its prevailing rate . . . days before
2919 closing.";

2920 (d) The amount of the commitment fee, if any, and whether
2921 and under what circumstances the commitment fee is refundable;
2922 and

2923 (e) The time, if any, within which the commitment must be
2924 accepted by the borrower.

2925 (2) The provisions of a commitment cannot be changed prior
2926 to expiration of the specified period within which the borrower
2927 must accept it. If any information necessary for an accurate
2928 disclosure required by subsection (1) is unknown to the mortgage
2929 lender at the time disclosure is required, the lender shall make

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2930 the disclosure based upon the best information reasonably
2931 available to it and shall state that the disclosure is an
2932 estimate.

2933 (3) A commitment fee is refundable if:

2934 (a) The commitment is contingent upon approval by parties
2935 to whom the mortgage lender seeks to sell the loan.

2936 (b) The loan purchaser's requirements are not met due to
2937 circumstances beyond the borrower's control.

2938 (c) The borrower is willing but unable to comply with the
2939 loan purchaser's requirements.

2940 Section 51. Section 494.0071, Florida Statutes, is amended
2941 to read:

2942 494.0071 Expiration of lock-in agreement or commitment.—If
2943 a lock-in agreement has been executed and the loan does not
2944 close before the expiration date of ~~either~~ the lock-in agreement
2945 or any commitment issued consistent therewith through no
2946 substantial fault of the borrower, the borrower may withdraw the
2947 application or reject or terminate any commitment, whereupon the
2948 mortgage lender ~~or correspondent mortgage lender~~ shall promptly
2949 refund to the borrower any lock-in fee and any commitment fee
2950 paid by the borrower.

2951 Section 52. Section 494.0072, Florida Statutes, is
2952 repealed.

2953 Section 53. Section 494.00721, Florida Statutes, is amended
2954 to read:

2955 494.00721 Net worth.—

2956 (1) The net worth requirements ~~required~~ in s. 494.00611 ~~ss.~~
2957 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained
2958 as a condition of licensure.

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2959 (2) If a mortgage lender ~~or correspondent mortgage lender~~
2960 fails to satisfy the net worth requirements, the mortgage lender
2961 ~~or correspondent mortgage lender~~ shall immediately cease taking
2962 any new mortgage loan applications. Thereafter, the mortgage
2963 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
2964 within which to satisfy the net worth requirements. If the
2965 licensee makes the office aware, prior to an examination, that
2966 the licensee no longer meets the net worth requirements, the
2967 mortgage lender ~~or correspondent mortgage lender~~ shall have 120
2968 days within which to satisfy the net worth requirements. A
2969 mortgage lender may ~~or correspondent mortgage lender~~ shall not
2970 resume acting as a mortgage lender ~~or correspondent mortgage~~
2971 ~~lender~~ without written authorization from the office, which
2972 authorization shall be granted if the mortgage lender ~~or~~
2973 ~~correspondent mortgage lender~~ provides the office with
2974 documentation which satisfies the requirements of s. 494.00611
2975 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~
2976 whichever is applicable.

2977 (3) If the mortgage lender ~~or correspondent mortgage lender~~
2978 does not satisfy the net worth requirements within 120 days ~~the~~
2979 ~~120-day period~~, the license of the mortgage lender ~~or~~
2980 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
2981 and canceled and all servicing contracts shall be disposed of in
2982 a timely manner by the mortgage lender ~~or correspondent mortgage~~
2983 ~~lender~~.

2984 Section 54. Section 494.0073, Florida Statutes, is amended
2985 to read:

2986 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
2987 when acting as a mortgage broker ~~brokerage business.~~ The

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2988 provision of this part ~~Sections 494.006-494.0077~~ do not prohibit
2989 a mortgage lender ~~or correspondent mortgage lender~~ from acting
2990 as a mortgage broker ~~brokerage business~~. However, in mortgage
2991 transactions in which a mortgage lender ~~or correspondent~~
2992 ~~mortgage lender~~ acts as a mortgage broker ~~brokerage business~~,
2993 the provisions of ss. 494.0038, 494.004(2) ~~494.004(8)~~, 494.0042,
2994 and 494.0043(1), (2), and (3) apply.

2995 Section 55. Section 494.0075, Florida Statutes, is amended
2996 to read:

2997 494.0075 Requirements for selling loans to noninstitutional
2998 investors.—

2999 (1) A mortgage lender, when selling a mortgage loan to a
3000 noninstitutional investor, shall:

3001 (a) Before any payment of money by a noninstitutional
3002 investor, provide an opinion of value from an appraiser stating
3003 the value of the security property unless the opinion is waived
3004 in writing. The opinion must state the value of the property as
3005 it exists on the date of the opinion. If any relationship exists
3006 between the lender and the appraiser, that relationship must
3007 ~~shall~~ be disclosed.†

3008 (b) Provide to the noninstitutional investor a mortgagee's
3009 title insurance policy or an opinion of title by an attorney
3010 licensed to practice law in this state, or a copy thereof:

3011 1. If a title insurance policy is issued, it must insure
3012 the noninstitutional investor against the unmarketability of the
3013 mortgagee's interest in such title. It must also specify any
3014 superior liens that exist against the property. If an opinion of
3015 title is issued by an attorney ~~licensed to practice law in this~~
3016 ~~state~~, the opinion must include a statement as to the

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3017 marketability of the title to the property described in the
3018 mortgage and specify the priority of the mortgage being
3019 purchased.

3020 2. If the title insurance policy or opinion of title is not
3021 available at the time of purchase, the licensee shall provide a
3022 binder of the title insurance or conditional opinion of title.
3023 This binder or opinion must include any conditions or
3024 requirements needed to be corrected before ~~prior to~~ the issuance
3025 of the final title policy or opinion of title. The binder or
3026 opinion must also include information concerning the
3027 requirements specified in subparagraph 1. Any conditions must be
3028 eliminated or waived in writing by the investor before ~~prior to~~
3029 delivery to the noninstitutional investor. The policy or
3030 opinion, or a copy thereof, shall be delivered to the investor
3031 within a reasonable period of time, not exceeding 6 months,
3032 after purchase.

3033 3. The requirements of this paragraph may be waived in
3034 writing. If the requirements are waived by the noninstitutional
3035 investor, the waiver must include the following wording: "The
3036 noninstitutional investor acknowledges that the mortgage lender
3037 selling this mortgage loan is not providing a title insurance
3038 policy or opinion of title issued by an attorney who is licensed
3039 to practice law in the State of Florida. Any requirement for
3040 title insurance or for a legal opinion of title is the sole
3041 responsibility of the noninstitutional mortgage purchaser."

3042 (c) Provide, if the loan is other than a first mortgage, a
3043 statement showing the balance owed by the mortgagor on any
3044 existing mortgages prior to this investment and the status of
3045 such existing mortgages.

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3046 (d) Provide a disclosure if the licensee is directly or
3047 indirectly acting as a borrower or principal in the transaction.

3048 (2) Each mortgage, or other instrument securing a note or
3049 assignment thereof, must ~~shall~~ be recorded before being
3050 delivered to the noninstitutional investor.

3051 (3) Each mortgage and assignment shall be recorded as soon
3052 as practical, but within ~~no later than~~ 30 business days after
3053 the date of purchase.

3054 (4) If the loan is to be serviced by a licensee under this
3055 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
3056 shall be a written servicing agreement.

3057 ~~(5) The mortgage lender shall cause the original note to be~~
3058 ~~properly endorsed showing the assignment of the note to the~~
3059 ~~noninstitutional investor.~~

3060 Section 56. Section 494.0077, Florida Statutes, is amended
3061 to read:

3062 494.0077 Other products and services.—This part does
3063 ~~Sections 494.006-494.0077 do~~ not prohibit a mortgage lender from
3064 offering, for a fee or commission, products and services in
3065 addition to those offered in conjunction with making a mortgage
3066 loan.

3067 Section 57. Section 501.1377, Florida Statutes, is amended
3068 to read:

3069 501.1377 Violations involving homeowners during the course
3070 of residential foreclosure proceedings.—

3071 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
3072 that homeowners who are in default on their mortgages, in
3073 foreclosure, or at risk of losing their homes due to nonpayment
3074 of taxes may be vulnerable to fraud, deception, and unfair

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3075 ~~dealings with foreclosure rescue consultants or equity~~
 3076 ~~purchasers.~~ The intent of this section is to provide a homeowner
 3077 with information necessary to make an informed decision
 3078 regarding the sale or transfer of his or her home to an equity
 3079 purchaser. It is the further intent of this section ~~to require~~
 3080 ~~that foreclosure-related rescue services agreements be expressed~~
 3081 ~~in writing in order to safeguard homeowners against deceit and~~
 3082 ~~financial hardship;~~ to ensure, foster, and encourage fair
 3083 dealing in the sale and purchase of homes in foreclosure or
 3084 default; to prohibit representations that tend to mislead; to
 3085 prohibit or restrict unfair contract terms; to provide a
 3086 cooling-off period for homeowners who enter into contracts for
 3087 services related to saving their homes from foreclosure or
 3088 preserving their rights to possession of their homes; to afford
 3089 homeowners a reasonable and meaningful opportunity to rescind
 3090 sales to equity purchasers; and to preserve and protect home
 3091 equity for the homeowners of this state.

3092 (2) DEFINITIONS.—As used in this section, the term:

3093 (a) "Equity purchaser" means any person who acquires a
 3094 legal, equitable, or beneficial ownership interest in any
 3095 residential real property as a result of a foreclosure-rescue
 3096 transaction. The term does not apply to a person who acquires
 3097 the legal, equitable, or beneficial interest in such property:

- 3098 1. By a certificate of title from a foreclosure sale
 3099 conducted under chapter 45;
- 3100 2. At a sale of property authorized by statute;
- 3101 3. By order or judgment of any court;
- 3102 4. From a spouse, parent, grandparent, child, grandchild,
 3103 or sibling of the person or the person's spouse; or

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3104 5. As a deed in lieu of foreclosure, a workout agreement, a
3105 bankruptcy plan, or any other agreement between a foreclosing
3106 lender and a homeowner.

3107 ~~(b) "Foreclosure-rescue consultant" means a person who~~
3108 ~~directly or indirectly makes a solicitation, representation, or~~
3109 ~~offer to a homeowner to provide or perform, in return for~~
3110 ~~payment of money or other valuable consideration, foreclosure-~~
3111 ~~related rescue services. The term does not apply to:~~

3112 1. ~~A person excluded under s. 501.212.~~

3113 2. ~~A person acting under the express authority or written~~
3114 ~~approval of the United States Department of Housing and Urban~~
3115 ~~Development or other department or agency of the United States~~
3116 ~~or this state to provide foreclosure-related rescue services.~~

3117 3. ~~A charitable, not-for-profit agency or organization, as~~
3118 ~~determined by the United States Internal Revenue Service under~~
3119 ~~s. 501(c)(3) of the Internal Revenue Code, which offers~~
3120 ~~counseling or advice to an owner of residential real property in~~
3121 ~~foreclosure or loan default if the agency or organization does~~
3122 ~~not contract for foreclosure-related rescue services with a for-~~
3123 ~~profit lender or person facilitating or engaging in foreclosure-~~
3124 ~~rescue transactions.~~

3125 4. ~~A person who holds or is owed an obligation secured by a~~
3126 ~~lien on any residential real property in foreclosure if the~~
3127 ~~person performs foreclosure-related rescue services in~~
3128 ~~connection with this obligation or lien and the obligation or~~
3129 ~~lien was not the result of or part of a proposed foreclosure~~
3130 ~~reconveyance or foreclosure-rescue transaction.~~

3131 5. ~~A financial institution as defined in s. 655.005 and any~~
3132 ~~parent or subsidiary of the financial institution or of the~~

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3133 ~~parent or subsidiary.~~

3134 ~~6. A licensed mortgage broker, mortgage lender, or~~
 3135 ~~correspondent mortgage lender that provides mortgage counseling~~
 3136 ~~or advice regarding residential real property in foreclosure,~~
 3137 ~~which counseling or advice is within the scope of services set~~
 3138 ~~forth in chapter 494 and is provided without payment of money or~~
 3139 ~~other consideration other than a mortgage brokerage fee as~~
 3140 ~~defined in s. 494.001.~~

3141 ~~(c) "Foreclosure-related rescue services" means any good or~~
 3142 ~~service related to, or promising assistance in connection with:~~

3143 ~~1. Stopping, avoiding, or delaying foreclosure proceedings~~
 3144 ~~concerning residential real property; or~~

3145 ~~2. Curing or otherwise addressing a default or failure to~~
 3146 ~~timely pay with respect to a residential mortgage loan~~
 3147 ~~obligation.~~

3148 ~~(b)-(d)~~ (b) "Foreclosure-rescue transaction" means a
 3149 transaction:

3150 1. By which residential real property in foreclosure is
 3151 conveyed to an equity purchaser and the homeowner maintains a
 3152 legal or equitable interest in the residential real property
 3153 conveyed, including, without limitation, a lease option
 3154 interest, an option to acquire the property, an interest as
 3155 beneficiary or trustee to a land trust, or other interest in the
 3156 property conveyed; and

3157 2. That is designed or intended by the parties to stop,
 3158 avoid, or delay foreclosure proceedings against a homeowner's
 3159 residential real property.

3160 ~~(c)-(e)~~ (c) "Homeowner" means any record title owner of
 3161 residential real property that is the subject of foreclosure

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3162 proceedings.

3163 (d)~~(f)~~ "Residential real property" means real property
3164 consisting of one-family to four-family dwelling units, one of
3165 which is occupied by the owner as his or her principal place of
3166 residence.

3167 (e)~~(g)~~ "Residential real property in foreclosure" means
3168 residential real property against which there is an outstanding
3169 notice of the pendency of foreclosure proceedings recorded
3170 pursuant to s. 48.23.

3171 ~~(3) PROHIBITED ACTS. In the course of offering or providing~~
3172 ~~foreclosure-related rescue services, a foreclosure-rescue~~
3173 ~~consultant may not:~~

3174 ~~(a) Engage in or initiate foreclosure-related rescue~~
3175 ~~services without first executing a written agreement with the~~
3176 ~~homeowner for foreclosure-related rescue services; or~~

3177 ~~(b) Solicit, charge, receive, or attempt to collect or~~
3178 ~~secure payment, directly or indirectly, for foreclosure-related~~
3179 ~~rescue services before completing or performing all services~~
3180 ~~contained in the agreement for foreclosure-related rescue~~
3181 ~~services.~~

3182 ~~(4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN~~
3183 ~~AGREEMENT.—~~

3184 ~~(a) The written agreement for foreclosure-related rescue~~
3185 ~~services must be printed in at least 12-point uppercase type and~~
3186 ~~signed by both parties. The agreement must include the name and~~
3187 ~~address of the person providing foreclosure-related rescue~~
3188 ~~services, the exact nature and specific detail of each service~~
3189 ~~to be provided, the total amount and terms of charges to be paid~~
3190 ~~by the homeowner for the services, and the date of the~~

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3191 ~~agreement. The date of the agreement may not be earlier than the~~
3192 ~~date the homeowner signed the agreement. The foreclosure-rescue~~
3193 ~~consultant must give the homeowner a copy of the agreement to~~
3194 ~~review not less than 1 business day before the homeowner is to~~
3195 ~~sign the agreement.~~

3196 ~~(b) The homeowner has the right to cancel the written~~
3197 ~~agreement without any penalty or obligation if the homeowner~~
3198 ~~cancel the agreement within 3 business days after signing the~~
3199 ~~written agreement. The right to cancel may not be waived by the~~
3200 ~~homeowner or limited in any manner by the foreclosure-rescue~~
3201 ~~consultant. If the homeowner cancels the agreement, any payments~~
3202 ~~that have been given to the foreclosure-rescue consultant must~~
3203 ~~be returned to the homeowner within 10 business days after~~
3204 ~~receipt of the notice of cancellation.~~

3205 ~~(c) An agreement for foreclosure-related rescue services~~
3206 ~~must contain, immediately above the signature line, a statement~~
3207 ~~in at least 12 point uppercase type that substantially complies~~
3208 ~~with the following:~~

3209 ~~HOMEOWNER'S RIGHT OF CANCELLATION~~

3210
3211 ~~YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED~~
3212 ~~RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3~~
3213 ~~BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY~~
3214 ~~YOU.~~

3215 ~~THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM~~
3216 ~~ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU~~
3217 ~~UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU~~
3218 ~~HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST~~
3219 ~~BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE~~

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3220 ~~CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.~~

3221 ~~TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A~~
3222 ~~STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED~~
3223 ~~(POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO~~
3224 ~~LATER THAN MIDNIGHT OF ... (DATE)~~

3225 ~~IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER~~
3226 ~~OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER~~
3227 ~~OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN~~
3228 ~~OR A RESTRUCTURING WITH YOU FREE OF CHARGE.~~

3229 ~~(d) The inclusion of the statement does not prohibit the~~
3230 ~~foreclosure-rescue consultant from giving the homeowner more~~
3231 ~~time in which to cancel the agreement than is set forth in the~~
3232 ~~statement, provided all other requirements of this subsection~~
3233 ~~are met.~~

3234 ~~(e) The foreclosure-rescue consultant must give the~~
3235 ~~homeowner a copy of the signed agreement within 3 hours after~~
3236 ~~the homeowner signs the agreement.~~

3237 (3)~~(5)~~ FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.-

3238 ~~(a)1.~~ A foreclosure-rescue transaction must include a
3239 written agreement prepared in at least 12-point uppercase type
3240 that is completed, signed, and dated by the homeowner and the
3241 equity purchaser before executing any instrument from the
3242 homeowner to the equity purchaser quitclaiming, assigning,
3243 transferring, conveying, or encumbering an interest in the
3244 residential real property in foreclosure. The equity purchaser
3245 must give the homeowner a copy of the completed agreement within
3246 3 hours after the homeowner signs the agreement.

3247 1. The agreement must contain the entire understanding of
3248 the parties and must include:

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- 3249 a. The name, business address, and telephone number of the
3250 equity purchaser.
- 3251 b. The street address and full legal description of the
3252 property.
- 3253 c. Clear and conspicuous disclosure of any financial or
3254 legal obligations of the homeowner which ~~that~~ will be assumed by
3255 the equity purchaser.
- 3256 d. The total consideration to be paid by the equity
3257 purchaser in connection with or incident to the acquisition of
3258 the property by the equity purchaser.
- 3259 e. The terms of payment or other consideration, including,
3260 but not limited to, any services that the equity purchaser
3261 represents will be performed for the homeowner before or after
3262 the sale.
- 3263 f. The date and time when possession of the property is to
3264 be transferred to the equity purchaser.
- 3265 2. A foreclosure-rescue transaction agreement must contain,
3266 above the signature line, a statement in at least 12-point
3267 uppercase type that substantially complies with the following:
3268
- 3269 I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY
3270 HOME TO THE OTHER UNDERSIGNED PARTY.
- 3271 3. A foreclosure-rescue transaction agreement must state
3272 the specifications of any option or right to repurchase the
3273 residential real property in foreclosure, including the specific
3274 amounts of any escrow payments or deposit, down payment,
3275 purchase price, closing costs, commissions, or other fees or
3276 costs.
- 3277 4. A foreclosure-rescue transaction agreement must comply

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3278 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and
3279 related regulations.

3280 (b) The homeowner may cancel the foreclosure-rescue
3281 transaction agreement without penalty if the homeowner notifies
3282 the equity purchaser of such cancellation no later than 5 p.m.
3283 on the 3rd business day after signing the written agreement. Any
3284 moneys paid by the equity purchaser to the homeowner or by the
3285 homeowner to the equity purchaser must be returned at
3286 cancellation. The right to cancel does not limit or otherwise
3287 affect the homeowner's right to cancel the transaction under any
3288 other law. The right to cancel may not be waived by the
3289 homeowner or limited ~~in any way~~ by the equity purchaser. The
3290 equity purchaser must give the homeowner, at the time the
3291 written agreement is signed, a notice of the homeowner's right
3292 to cancel the foreclosure-rescue transaction as set forth in
3293 this subsection. The notice, which must be set forth on a
3294 separate cover sheet to the written agreement that contains no
3295 other written or pictorial material, must be in at least 12-
3296 point uppercase type, double-spaced, and read as follows:

3297 NOTICE TO THE HOMEOWNER/SELLER

3298
3299 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
3300 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

3301 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
3302 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
3303 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

3304 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
3305 YOU OR BY THE PURCHASER.

3306 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE

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3307 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU
 3308 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

3309 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
 3310 5:00 P.M. ON ... (DATE)... AT ... (ADDRESS)... IT IS BEST TO MAIL
 3311 IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT
 3312 REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR
 3313 POST OFFICE RECEIPT.

3314 I (we) hereby cancel this transaction.

3315 ...Seller's Signature...

3316 ...Printed Name of Seller...

3317 ...Seller's Signature...

3318 ...Printed Name of Seller...

3319 ...Date...

3320 (c) In any foreclosure-rescue transaction in which the
 3321 homeowner has ~~is provided~~ the right to repurchase the
 3322 residential real property, the homeowner has a 30-day right to
 3323 cure any default of the terms of the contract with the equity
 3324 purchaser, and this right to cure may be exercised on up to
 3325 three separate occasions. The homeowner's right to cure must be
 3326 included in any written agreement required by this subsection.

3327 (d) In any foreclosure-rescue transaction, before or at the
 3328 time of conveyance, the equity purchaser must fully assume or
 3329 discharge any lien in foreclosure as well as any prior liens
 3330 that are ~~will not be~~ extinguished by the foreclosure.

3331 (e) If the homeowner has the right to repurchase the
 3332 residential real property, the equity purchaser must verify and
 3333 be able to demonstrate that the homeowner has or will have a
 3334 reasonable ability to make the required payments to exercise the
 3335 option to repurchase under the written agreement. For purposes

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3336 of this subsection, there is a rebuttable presumption that the
3337 homeowner has a reasonable ability to make the payments required
3338 to repurchase the property if the homeowner's monthly payments
3339 for primary housing expenses and regular monthly principal and
3340 interest payments on other personal debt do not exceed 60
3341 percent of the homeowner's monthly gross income.

3342 (f) If the homeowner has the right to repurchase the
3343 residential real property, the price the homeowner pays may not
3344 be unconscionable, unfair, or commercially unreasonable. A
3345 rebuttable presumption, solely between the equity purchaser and
3346 the homeowner, arises that the foreclosure-rescue transaction
3347 was unconscionable if the homeowner's repurchase price is
3348 greater than 17 percent per annum more than the total amount
3349 paid by the equity purchaser to acquire, improve, maintain, and
3350 hold the property. Unless the repurchase agreement or a
3351 memorandum of the repurchase agreement is recorded in accordance
3352 with s. 695.01, the presumption does ~~arising under this~~
3353 ~~subsection shall~~ not apply against creditors or subsequent
3354 purchasers for a valuable consideration and without notice.

3355 (4) ~~(6)~~ REBUTTABLE PRESUMPTION.—Any foreclosure-rescue
3356 transaction involving a lease option or other repurchase
3357 agreement creates a rebuttable presumption, solely between the
3358 equity purchaser and the homeowner, that the transaction is a
3359 loan transaction and the conveyance from the homeowner to the
3360 equity purchaser is a mortgage under s. 697.01. Unless the lease
3361 option or other repurchase agreement, or a memorandum of the
3362 lease option or other repurchase agreement, is recorded in
3363 accordance with s. 695.01, the presumption does ~~created under~~
3364 ~~this subsection shall~~ not apply against creditors or subsequent

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3365 purchasers for a valuable consideration and without notice.

3366 ~~(5)-(7)~~ VIOLATIONS.—A person who violates any provision of
3367 this section commits an unfair and deceptive trade practice as
3368 defined in part II of this chapter. Violators are subject to the
3369 penalties and remedies provided in part II of this chapter,
3370 including a monetary penalty not to exceed \$15,000 per
3371 violation.

3372 Section 58. Effective October 1, 2009:

3373 (1) All mortgage business school permits issued pursuant to
3374 s. 494.0029, Florida Statutes, expire on September 30, 2010.

3375 (2) All mortgage brokerage business licenses issued before
3376 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida
3377 Statutes, expire on December 31, 2010. However, if a person
3378 holding an active mortgage brokerage business license issued
3379 before October 1, 2010, applies for a mortgage broker license
3380 through the Nationwide Mortgage Licensing System and Registry
3381 between October 1, 2010, and December 31, 2010, the mortgage
3382 brokerage business license does not expire until the Office of
3383 Financial Regulation approves or denies the mortgage broker
3384 license application. A mortgage broker license approved on or
3385 after October 1, 2010, is effective until December 31, 2011.
3386 Application fees may not be prorated for partial years of
3387 licensure.

3388 (3) All mortgage broker licenses issued before October 1,
3389 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3390 expire on December 31, 2010. However, if a person holding an
3391 active mortgage broker license issued before October 1, 2010,
3392 applies for a loan originator license through the Nationwide
3393 Mortgage Licensing System and Registry between October 1, 2010,

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3394 and December 31, 2010, the mortgage broker license does not
3395 expire until the Office of Financial Regulation approves or
3396 denies the loan originator license application. Notwithstanding
3397 s. 120.60, Florida Statutes, for mortgage broker applications
3398 submitted between July 1, 2009, and December 31, 2009, or loan
3399 originator applications submitted between October 1, 2010, and
3400 December 31, 2010, the office has 60 days to notify the
3401 applicant of any apparent errors or omissions in an application
3402 and to request any additional information that the agency may
3403 require, and the office has 180 days to approve or deny a
3404 completed application. Application fees may not be prorated for
3405 partial years of licensure.

3406 (4) All mortgage lender licenses issued before October 1,
3407 2010, pursuant to s. 494.0061 or 494.0064, Florida Statutes,
3408 expire on December 31, 2010. However, if a person holding an
3409 active mortgage lender license applies for a mortgage broker
3410 license or mortgage lender license through the Nationwide
3411 Mortgage Licensing System and Registry between October 1, 2010,
3412 and December 31, 2010, the mortgage lender license does not
3413 expire until the Office of Financial Regulation approves or
3414 denies the mortgage broker license or mortgage lender license
3415 application. Application fees may not be prorated for partial
3416 years of licensure.

3417 (5) All mortgage lender licenses issued before October 1,
3418 2010, pursuant to s. 494.0065 or s. 494.0064, Florida Statutes,
3419 expire on December 31, 2010. However, if a person holding such
3420 license applies for a mortgage broker license or mortgage lender
3421 license through the Nationwide Mortgage Licensing System and
3422 Registry between October 1, 2010, and December 31, 2010, the

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3423 mortgage lender license does not expire until the Office of
3424 Financial Regulation approves or denies the mortgage broker
3425 license or mortgage lender license application. Application fees
3426 may not be prorated for partial years of licensure.

3427 (6) All correspondent mortgage lender licenses issued
3428 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,
3429 Florida Statutes, expire on on December 31, 2010. However, if a
3430 person holding an active correspondent mortgage lender license
3431 issued before October 1, 2010, applies for a mortgage broker or
3432 mortgage lender license through the Nationwide Mortgage
3433 Licensing System and Registry between October 1, 2010, and
3434 December 31, 2010, the correspondent mortgage lender license
3435 does not expire until the Office of Financial Regulation
3436 approves or denies the mortgage broker or mortgage lender
3437 license application. Application fees may not be prorated for
3438 partial years of licensure.

3439 Section 59. Except as otherwise expressly provided in this
3440 act and except for this section, which shall take effect July 1,
3441 2009, this act shall take effect January 1, 2010.