

By the Committees on Judiciary; 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 mortgage  
3           lending; amending s. 494.001, F.S.; redefining terms,  
4           defining new terms, and deleting terms; amending s.  
5           494.0011, F.S.; authorizing the Financial Services  
6           Commission to adopt rules relating to compliance with  
7           the S.A.F.E. Mortgage Licensing Act of 2008; requiring  
8           the commission to adopt rules establishing time  
9           periods for barring licensure for certain misdemeanors  
10          and felonies; authorizing the Office of Financial  
11          Regulation to participate in the Nationwide Mortgage  
12          Licensing System and Registry; creating s. 494.00115,  
13          F.S.; providing exemptions from part I, II, and III of  
14          ch. 494, F.S., relating to the licensing and  
15          regulation of loan originators, mortgage brokers, and  
16          mortgage lenders; creating s. 494.00135, F.S.;  
17          providing for the issuance of subpoenas; amending s.  
18          494.0014, F.S.; revising provisions relating to the  
19          refund of fees; deleting an obsolete provision;  
20          amending s. 494.00165, F.S.; prohibiting unfair and  
21          deceptive advertising relating to mortgage brokering  
22          and lending; repealing s. 494.0017, F.S., relating to  
23          claims paid from the Regulatory Trust Fund; creating  
24          s. 494.00172, F.S.; providing for a \$20 fee to be  
25          assessed against loan originators and a \$100 fee to be  
26          assessed against mortgage brokers and lenders at the  
27          time of license application or renewal; providing that  
28          such fees shall be deposited into the Mortgage  
29          Guaranty Trust Fund and used to pay claims against

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30 licensees; providing for a cap on the amount collected  
31 and deposited; providing requirements for seeking  
32 recovery from the trust fund; providing limitations on  
33 the amount paid; providing for the assignment of  
34 certain rights to the office; providing that payment  
35 for a claim is prima facie grounds for the revocation  
36 of a license; amending s. 494.0018, F.S.; conforming  
37 cross-references; amending ss. 494.0019 and 494.002,  
38 F.S.; conforming terms; amending s. 494.0023, F.S.;  
39 deleting the statutory disclosure form and revising  
40 the disclosure that must be provided to a borrower in  
41 writing; providing that there is a conflicting  
42 interest if a licensee or the licensee's relatives  
43 have a 1 percent or more interest in the person  
44 providing additional products or services; authorizing  
45 the commission to adopt rules; amending s. 494.0025,  
46 F.S.; prohibiting the alteration, withholding,  
47 concealment, or destruction of records relevant to  
48 regulated activities; creating s. 494.255, F.S.;  
49 providing for license violations and administrative  
50 penalties; authorizing a fine of \$1,000 for each day  
51 of unlicensed activity up to \$25,000; amending s.  
52 494.0026, F.S.; conforming cross-references; amending  
53 s. 494.0028, F.S.; conforming terms; repealing ss.  
54 494.0029 and 494.00295, F.S., relating to mortgage  
55 business schools and continuing education  
56 requirements; creating s. 494.00296, F.S.; providing  
57 for loan modification services; prohibiting certain  
58 related acts by a mortgage broker, mortgage brokerage

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59 business, correspondent mortgage lender, or mortgage  
60 lender; providing for a loan modification agreement  
61 and for the inclusion of a borrower's right of  
62 cancellation statement; providing remedies; amending  
63 s. 494.00295, F.S.; deleting references to a mortgage  
64 brokerage business and a correspondent mortgage  
65 lender, and adding reference to a loan originator;  
66 providing a directive to the Division of Statutory  
67 Revision; repealing s. 494.003, F.S., relating to  
68 exemptions from mortgage broker licensing and  
69 regulation; repealing s. 494.0031, F.S., relating to  
70 licensure as a mortgage brokerage business; creating  
71 s. 494.00312, F.S.; providing for the licensure of  
72 loan originators; providing license application  
73 requirements; providing grounds for license denial  
74 based on a failure to demonstrate character, general  
75 fitness, or financial responsibility sufficient to  
76 command community confidence; requiring the denial of  
77 a license under certain circumstances; requiring  
78 licenses to be renewed annually by a certain date;  
79 creating s. 494.00313, F.S.; providing for the renewal  
80 of a loan originator license; repealing s. 494.0032,  
81 F.S., relating to renewal of a mortgage brokerage  
82 business license or branch office license; creating s.  
83 494.00321, F.S.; providing for the licensure of  
84 mortgage brokers; providing license application  
85 requirements; providing grounds for license denial  
86 based on a failure to demonstrate character, general  
87 fitness, or financial responsibility sufficient to

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88 command community confidence; requiring the denial of  
89 a license under certain circumstances; requiring  
90 licenses to be renewed by a certain date; creating s.  
91 494.00322, F.S.; providing for the annual renewal of a  
92 mortgage broker license; providing license renewal  
93 requirements; repealing s. 494.0033, F.S., relating to  
94 a mortgage broker license; amending s. 494.00331,  
95 F.S.; requiring a loan originator to be an employee or  
96 independent contractor for a mortgage broker or  
97 mortgage lender; repealing s. 494.0034, F.S., relating  
98 to renewal of mortgage broker license; amending s.  
99 494.0035, F.S.; providing for the management of a  
100 mortgage broker by a principal loan originator and a  
101 branch office by a loan originator; providing minimum  
102 requirements; amending s. 494.0036, F.S.; revising  
103 provisions relating to the licensure of a mortgage  
104 broker's branch office; amending s. 494.0038, F.S.;  
105 revising provisions relating to loan origination and  
106 mortgage broker fees; amending s. 494.0039, F.S.;  
107 conforming terms; amending s. 494.004, F.S.; revising  
108 provisions relating to licensees; providing for  
109 registry requirements; deleting obsolete provisions;  
110 repealing s. 494.0041, F.S., relating to license  
111 violations and administrative penalties; providing  
112 additional grounds for assessing fines and penalties;  
113 amending s. 494.0042, F.S.; providing for loan  
114 origination fees; conforming terms; amending ss.  
115 494.00421 and 494.0043, F.S.; conforming terms;  
116 repealing s. 494.006, F.S., relating to mortgage

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117 lender licensing and regulation; repealing s.  
118 494.0061, F.S., relating to mortgage lender license  
119 requirements; creating s. 494.00611, F.S.; providing  
120 for the licensure of mortgage lenders; providing  
121 license application requirements; providing grounds  
122 for license denial based on a failure to demonstrate  
123 character, general fitness, or financial  
124 responsibility sufficient to command community  
125 confidence; requiring the denial of a license under  
126 certain circumstances; requiring licenses to be  
127 renewed annually by a certain date; creating s.  
128 494.00612, F.S.; providing for the renewal of a  
129 mortgage lender license; repealing s. 494.0062, F.S.,  
130 relating to correspondent mortgage lender license  
131 requirements; amending s. 494.0063, F.S.; requiring a  
132 mortgage lender to obtain an annual financial audit  
133 report and submit a copy to the office within certain  
134 time periods; repealing s. 494.0064, F.S., relating to  
135 renewal of mortgage lender license; repealing s.  
136 494.0065, F.S., relating to certain licenses and  
137 registrations that were converted into mortgage lender  
138 licenses; amending s. 494.0066, F.S.; revising  
139 provisions relating to a mortgage lender branch office  
140 license; creating s. 494.00665, F.S.; providing for a  
141 principal loan originator and branch manager for a  
142 mortgage lender; providing requirements and  
143 limitations; amending s. 494.0067, F.S.; revising  
144 requirements of mortgage lenders; providing for  
145 registry requirements; deleting obsolete provisions;

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146 providing for servicing agreements; amending ss.  
147 494.0068, 494.0069, 494.007, and 494.0071, F.S.;  
148 conforming terms; repealing s. 494.0072, F.S.,  
149 relating to license violations and administrative  
150 penalties; amending ss. 494.00721, 494.0073, 494.0075,  
151 494.0076, 494.0077, and 501.1377 F.S.; redefining  
152 terms and conforming cross-references; amending ss.  
153 201.23, 420.507, 520.52, 520.63, 607.0505, and 687.12,  
154 F.S.; conforming cross-references; providing for the  
155 termination of mortgage business school licenses;  
156 providing for the expiration of mortgage brokerage  
157 business licenses, mortgage broker licenses, and  
158 correspondent mortgage lender licenses; providing  
159 requirements for applying for a loan originator,  
160 mortgage broker and mortgage lender license by a  
161 certain date; providing effective dates.

162  
163

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

165

166 Section 1. Section 494.001, Florida Statutes, is amended to  
167 read:

168 494.001 Definitions.—As used in ss. 494.001-494.0077, the  
169 term:

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

172 ~~(2) "Act as a loan originator" means being employed by a~~  
173 ~~mortgage lender or correspondent mortgage lender, for~~  
174 ~~compensation or gain or in the expectation of compensation or~~

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175 ~~gain, to negotiate, offer to negotiate, or assist any licensed~~  
176 ~~or exempt entity in negotiating the making of a mortgage loan,~~  
177 ~~including, but not limited to, working with a licensed or exempt~~  
178 ~~entity to structure a loan or discussing terms and conditions~~  
179 ~~necessary for the delivery of a loan product. A natural person~~  
180 ~~whose activities are ministerial and clerical, which may include~~  
181 ~~quoting available interest rates, is not acting as a loan~~  
182 ~~originator.~~

183 ~~(3) "Act as a mortgage broker" means, for compensation or~~  
184 ~~gain, or in the expectation of compensation or gain, either~~  
185 ~~directly or indirectly, accepting or offering to accept an~~  
186 ~~application for a mortgage loan, soliciting or offering to~~  
187 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~  
188 ~~offering to negotiate the terms or conditions of a mortgage loan~~  
189 ~~on behalf of a lender, or negotiating or offering to negotiate~~  
190 ~~the sale of an existing mortgage loan to a noninstitutional~~  
191 ~~investor. An employee whose activities are ministerial and~~  
192 ~~clerical, which may include quoting available interest rates or~~  
193 ~~loan terms and conditions, is not acting as a mortgage broker.~~

194 ~~(4) "Act as a mortgage lender" means to make a mortgage~~  
195 ~~loan or to service a mortgage loan for others or, for~~  
196 ~~compensation or gain, or in the expectation of compensation or~~  
197 ~~gain, either directly or indirectly, to sell or offer to sell a~~  
198 ~~mortgage loan to a noninstitutional investor.~~

199 ~~(5) "Associate" means a person required to be licensed as a~~  
200 ~~mortgage broker under this chapter who is employed by or acting~~  
201 ~~as an independent contractor for a mortgage brokerage business~~  
202 ~~or a person acting as an independent contractor for a mortgage~~  
203 ~~lender or correspondent mortgage lender. The use of the term~~

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204 ~~associate, in contexts other than in the administration of ss.~~  
205 ~~494.003-494.0077, shall not be construed to impose or effect the~~  
206 ~~common-law or statutory liability of the employer.~~

207 (1) "Borrower" means a person obligated to repay a mortgage  
208 loan and includes, but is not limited to, a coborrower,  
209 cosignor, or guarantor.

210 (2)-(6) "Branch manager ~~broker~~" means the licensed loan  
211 originator licensee in charge of, and responsible for, the  
212 operation of the a branch office of a mortgage broker or  
213 mortgage lender ~~brokerage business~~.

214 (3)-(7) "Branch office" means a location, other than a  
215 mortgage broker's or mortgage lender's licensee's principal  
216 place of business:

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

220 (b) At which the licensee's name, advertising or  
221 promotional materials, or signage suggests ~~suggest~~ that mortgage  
222 loans are originated, negotiated, funded, or serviced; or

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

227 (4)-(8) "Commission" means the Financial Services  
228 Commission.

229 (5)-(9) "Control person" means an individual, partnership,  
230 corporation, trust, or other organization that possesses the  
231 power, directly or indirectly, to direct the management or  
232 policies of a company, whether through ownership of securities,



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233 by contract, or otherwise. The term includes, but is not limited  
234 to ~~A person is presumed to control a company if, with respect to~~  
235 ~~a particular company, that person:~~

236 (a) A company's executive officers, including the  
237 president, chief executive officer, chief financial officer,  
238 chief operations officer, chief legal officer, chief compliance  
239 officer, director, and other individuals having similar status  
240 or functions.

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

245 (c) For a partnership, all general partners and limited or  
246 special partners that have contributed 10 percent or more or  
247 that have the right to receive, upon dissolution, 10 percent or  
248 more of the partnership's capital.

249 (d) For a trust, each trustee.

250 (e) For a limited liability company, all elected managers  
251 and those members that have contributed 10 percent or more or  
252 that have the right to receive, upon dissolution, 10 percent or  
253 more of the partnership's capital.

254 (f) Principal loan originators.

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

261 (7) "Credit score" means a score, grade, or value that is

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262 derived by using data from a credit report in any type of model,  
263 method, or program, whether electronically, in an algorithm, in  
264 a computer software or program, or by any other process for the  
265 purpose of grading or ranking credit report data.

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

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

271 ~~(b) Directly or indirectly may vote 10 percent or more of a~~  
272 ~~class of voting securities or sell or direct the sale of 10~~  
273 ~~percent or more of a class of voting securities; or~~

274 ~~(c) In the case of a partnership, may receive upon~~  
275 ~~dissolution or has contributed 10 percent or more of the~~  
276 ~~capital.~~

277 ~~(10) "Office" means the Office of Financial Regulation of~~  
278 ~~the commission.~~

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

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

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

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

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

292 ~~(c) Probation of a license or registration for an offense~~  
293 ~~involving fraud, dishonest dealing, or an act of moral~~  
294 ~~turpitude.~~

295 (9) "Financial audit report" means a report prepared in  
296 connection with a financial audit that is conducted in  
297 accordance with generally accepted auditing standards prescribed  
298 by the American Institute of Certified Public Accountants by a  
299 certified public accountant licensed to do business in the  
300 United States, and which must include:

301 (a) Financial statements, including notes related to the  
302 financial statements and required supplementary information,  
303 prepared in conformity with United States generally accepted  
304 accounting principles.

305 (b) An expression of opinion regarding whether the  
306 financial statements are presented in conformity with United  
307 States generally accepted accounting principles, or an assertion  
308 to the effect that such an opinion cannot be expressed and the  
309 reasons.

310 (10)~~(14)~~ "Institutional investor" means a depository  
311 institution ~~state or national bank, state or federal savings and~~  
312 ~~loan association or savings bank,~~ real estate investment trust,  
313 insurance company, real estate company, accredited investor as  
314 defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or  
315 mortgage lender ~~business~~ licensed under this chapter ~~ss.~~  
316 ~~494.001-494.0077,~~ or other business entity that invests in  
317 mortgage loans, including a secondary mortgage market  
318 institution including, without limitation, the Federal National  
319 Mortgage Association, the Federal Home Loan Mortgage

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320 Corporation, and the Government National Mortgage Association,  
321 conduits, investment bankers, and any subsidiary of such  
322 entities.

323 ~~(11)-(15)~~ "Loan commitment" or "commitment" means a  
324 statement by the lender setting forth the terms and conditions  
325 upon which the lender is willing to make a particular mortgage  
326 loan to a particular borrower.

327 (12) "Loan modification" means a modification to an  
328 existing loan. The term does not include a refinancing  
329 transaction.

330 (13) "Loan origination fee" means the total compensation  
331 from any source received by a mortgage broker acting as a loan  
332 originator. Any payment for processing mortgage loan  
333 applications must be included in the fee and must be paid to the  
334 mortgage broker.

335 (14) "Loan originator" means an individual who, directly or  
336 indirectly, solicits or offers to solicit a mortgage loan,  
337 accepts or offers to accept an application for a mortgage loan,  
338 negotiates or offers to negotiate the terms or conditions of a  
339 new or existing mortgage loan on behalf of a borrower or lender,  
340 processes a mortgage loan application, or negotiates or offers  
341 to negotiate the sale of an existing mortgage loan to a  
342 noninstitutional investor for compensation or gain. The term  
343 includes the activities of a loan originator as that term is  
344 defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an  
345 individual acting as a loan originator pursuant to that  
346 definition is acting as a loan originator for purposes of this  
347 definition. The term does not include an employee of a mortgage  
348 broker or mortgage lender who performs only administrative or

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349 clerical tasks, including quoting available interest rates,  
350 physically handling a completed application form, or  
351 transmitting a completed form to a lender on behalf of a  
352 prospective borrower.

353 ~~(15)~~(16) "Lock-in agreement" means an agreement whereby the  
354 lender guarantees for a specified number of days or until a  
355 specified date the availability of a specified rate of interest  
356 or specified formula by which the rate of interest will be  
357 determined or ~~and/or~~ specific number of discount points will be  
358 given, if the loan is approved and closed within the stated  
359 period of time.

360 ~~(16)~~(17) "Making ~~Make~~ a mortgage loan" means closing to  
361 close a mortgage loan in a person's name, advancing or to  
362 advance funds, offering offer to advance funds, or making make a  
363 commitment to advance funds to an applicant for a mortgage loan.

364 (17) "Material change" means a change that would be  
365 important to a reasonable borrower in making a borrowing  
366 decision, and includes a change in the interest rate previously  
367 offered a borrower, a change in the type of loan offered to a  
368 borrower, or a change in fees to be charged to a borrower  
369 resulting in total fees greater than \$100.

370 (18) "Mortgage broker" means a person conducting loan  
371 originator activities through one or more licensed loan  
372 originators employed by the mortgage broker or as independent  
373 contractors to the mortgage broker.

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

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

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378       (19) "Mortgage lender" means a person making a mortgage  
379 loan or servicing a mortgage loan for others, or, for  
380 compensation or gain, directly or indirectly, selling or  
381 offering to sell a mortgage loan to a noninstitutional investor.

382       (20)~~(20)~~ "Mortgage loan" means any:

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

389       (b) Loan on commercial real property if the borrower is an  
390 individual ~~a natural person~~ or the lender is a noninstitutional  
391 investor; or

392       (c) Loan on improved real property consisting of five or  
393 more dwelling units if the borrower is an individual ~~a natural~~  
394 ~~person~~ or the lender is a noninstitutional investor.

395       (21) "Mortgage loan application" means the submission of a  
396 borrower's financial information in anticipation of a credit  
397 decision, which includes the borrower's name, the borrower's  
398 monthly income, the borrower's social security number to obtain  
399 a credit report, the property address, an estimate of the value  
400 of the property, the mortgage loan amount sought, and any other  
401 information deemed necessary by the loan originator. An  
402 application may be in writing or electronically submitted,  
403 including a written record of an oral application.

404       (22)~~(21)~~ "Net worth" means total assets minus total  
405 liabilities pursuant to United States generally accepted  
406 accounting principles.

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407 (23)~~(22)~~ "Noninstitutional investor" means an investor  
408 other than an institutional investor.

409 ~~(23) "Nonresidential mortgage loan" means a mortgage loan  
410 other than a residential mortgage loan.~~

411 (24) "Office" means the Office of Financial Regulation.

412 (25)~~(24)~~ "Person" has the same meaning as in s. 1.01 means  
413 ~~an individual, partnership, corporation, association, or other  
414 group, however organized.~~

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

418 (26) "Principal loan originator" means the licensed loan  
419 originator in charge of, and responsible for, the operation of a  
420 mortgage lender or mortgage broker, including all of the  
421 activities of the mortgage lender's or mortgage broker's loan  
422 originators and branch managers, whether employees or  
423 independent contractors.

424 (27)~~(26)~~ "Principal place of business" means a mortgage  
425 broker's or mortgage lender's licensee's primary business  
426 office, the street address, or physical location that ~~of which~~  
427 is designated on the application for licensure or any amendment  
428 to such application.

429 (28) "Registered loan originator" means a loan originator  
430 who is employed by a depository institution, by a subsidiary  
431 that is owned and controlled by a depository institution and  
432 regulated by a federal banking agency, or by an institution  
433 regulated by the Farm Credit Administration, and who is  
434 registered with and maintains a unique identifier through the  
435 registry.

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436       (29) "Registry" means the Nationwide Mortgage Licensing  
437 System and Registry, which is the mortgage licensing system  
438 developed and maintained by the Conference of State Bank  
439 Supervisors and the American Association of Residential Mortgage  
440 Regulators for the licensing and registration of loan  
441 originators.

442       (30) "Relative" means any of the following, whether by the  
443 full or half blood or by adoption:

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

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

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

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

453       (31) "Servicing endorsement" means authorizing a mortgage  
454 lender to service a loan for more than 4 months.

455       (32)~~(28)~~ "Servicing Service a mortgage loan" means to  
456 receive, or cause to be received, or transferred for another,  
457 installment payments of principal, interest, or other payments  
458 pursuant to a mortgage loan.

459       (33)~~(29)~~ "Substantial fault of the borrower" means that the  
460 borrower:

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

463       (b) Provided information, in the application or  
464 subsequently, which upon verification proved to be significantly



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465 inaccurate, causing the need for review or further investigation  
466 by the lender or broker;

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

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

472

473 For purposes of this definition, a borrower is considered to  
474 have provided information or documentation in a timely manner if  
475 such information and documentation was received by the lender  
476 within 7 days after the borrower received a request for same,  
477 and information is considered significantly inaccurate if the  
478 correct information materially affects the eligibility of the  
479 borrower for the loan for which application is made.

480 ~~(34)~~ ~~(30)~~ "Ultimate equitable owner" means an individual ~~a~~  
481 ~~natural person~~ who, directly or indirectly, owns or controls an  
482 ownership interest in a corporation, a foreign corporation, an  
483 alien business organization, or any other form of business  
484 organization, regardless of whether the individual ~~such natural~~  
485 ~~person~~ owns or controls such ~~ownership~~ interest through one or  
486 more individuals ~~natural persons~~ or one or more proxies, powers  
487 of attorney, nominees, corporations, associations, partnerships,  
488 trusts, joint stock companies, or other entities or devices, or  
489 any combination thereof.

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

492 ~~(32)~~ "Mortgage loan application" ~~means a submission of a~~  
493 ~~borrower's financial information in anticipation of a credit~~

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494 ~~decision, whether written or computer-generated, relating to a~~  
495 ~~mortgage loan. If the submission does not state or identify a~~  
496 ~~specific property, the submission is an application for a~~  
497 ~~prequalification and not an application for a mortgage loan~~  
498 ~~under this part. The subsequent addition of an identified~~  
499 ~~property to the submission converts the submission to an~~  
500 ~~application for a mortgage loan.~~

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

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

506 Section 2. Section 494.0011, Florida Statutes, is amended  
507 to read:

508 494.0011 Powers and duties of the commission and office.—

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

511 ~~(2) The commission may adopt rules pursuant to ss.~~  
512 ~~120.536(1) and 120.54 To administer ~~implement~~ ss. 494.001-~~  
513 ~~494.0077, the commission may adopt rules:~~

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

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

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

521 2. Require the use of uniform forms that have been approved  
522 by the registry, and any subsequent amendments to such forms if

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523 the forms are substantially in compliance with the provisions of  
524 this chapter. Uniform forms that the commission may adopt  
525 include, but are not limited to:

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

527 b. Uniform Mortgage Biographical Statement & Consent Form,  
528 MU2.

529 c. Uniform Mortgage Branch Office Form, MU3.

530 d. Uniform Individual Mortgage License/Registration &  
531 Consent Form, MU4.

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

534 4. Prescribe requirements for amending or surrendering a  
535 license or other activities as the commission deems necessary  
536 for the office's participation in the registry.

537 5. Prescribe procedures that allow a licensee to challenge  
538 information contained in the registry.

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

541 ~~The commission may prescribe by rule requirements and procedures~~  
542 ~~for obtaining an exemption due to a technological or financial~~  
543 ~~hardship. The commission may also adopt rules to accept~~  
544 ~~certification of compliance with requirements of this act in~~  
545 ~~lieu of requiring submission of documents.~~

546 (c) Establishing time periods during which a loan  
547 originator, mortgage broker, or mortgage lender license  
548 applicant under part II or part III is barred from licensure due  
549 to prior criminal convictions of, or guilty or nolo contendere  
550 pleas by, any of the applicant's control persons, regardless of  
551 adjudication.

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- 552       1. The rules must provide:
- 553       a. Permanent bars for felonies involving fraud, dishonesty,  
554 breach of trust, or money laundering;
- 555       b. A 15-year disqualifying period for felonies involving  
556 moral turpitude;
- 557       c. A 7-year disqualifying period for all other felonies;  
558 and
- 559       d. A 5-year disqualifying period for misdemeanors involving  
560 fraud, dishonesty, or any other act of moral turpitude.
- 561       2. The rules may provide for an additional waiting period  
562 due to dates of imprisonment or community supervision, the  
563 commitment of multiple crimes, and other factors reasonably  
564 related to the applicant's criminal history.
- 565       3. The rules may provide for mitigating factors for crimes  
566 identified in sub-subparagraph 1.b. However, the mitigation may  
567 not result in a period of disqualification less than 7 years.  
568 The rule may not mitigate the disqualifying periods in sub-  
569 subparagraphs 1.a., 1.c., and 1.d.
- 570       4. An applicant is not eligible for licensure until the  
571 expiration of the disqualifying period set by rule.
- 572       5. Section 112.011 is not applicable to eligibility for  
573 licensure under this part.
- 574       (3) Except as provided in s. 494.00172, all fees, charges,  
575 and fines collected pursuant to ss. 494.001-494.0077 shall be  
576 deposited in ~~the State Treasury to the credit of the Regulatory~~  
577 Trust Fund ~~of~~ under the office.
- 578       (4) The office shall participate in the registry and shall  
579 regularly report to the registry violations of this chapter,  
580 disciplinary actions, and other information deemed relevant by

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581 the office under this chapter.

582 ~~(4) (a) The office has the power to issue and to serve~~  
583 ~~subpoenas and subpoenas duces tecum to compel the attendance of~~  
584 ~~witnesses and the production of all books, accounts, records,~~  
585 ~~and other documents and materials relevant to an examination or~~  
586 ~~investigation. The office, or its duly authorized~~  
587 ~~representative, has the power to administer oaths and~~  
588 ~~affirmations to any person.~~

589 ~~(b) The office may, in its discretion, seek subpoenas or~~  
590 ~~subpoenas duces tecum from any court of competent jurisdiction~~  
591 ~~commanding the appearance of witnesses and the production of~~  
592 ~~books, accounts, records, and other documents or materials at a~~  
593 ~~time and place named in the subpoenas; and any authorized~~  
594 ~~representative of the office may serve any subpoena.~~

595 ~~(5) (a) In the event of substantial noncompliance with a~~  
596 ~~subpoena or subpoena duces tecum issued or caused to be issued~~  
597 ~~by the office, the office may petition the circuit court or any~~  
598 ~~other court of competent jurisdiction of the county in which the~~  
599 ~~person subpoenaed resides or has its principal place of business~~  
600 ~~for an order requiring the subpoenaed person to appear and~~  
601 ~~testify and to produce such books, accounts, records, and other~~  
602 ~~documents as are specified in the subpoena duces tecum. The~~  
603 ~~court may grant injunctive relief restraining the person from~~  
604 ~~advertising, promoting, soliciting, entering into, offering to~~  
605 ~~enter into, continuing, or completing any mortgage loan~~  
606 ~~transaction or mortgage loan servicing transaction. The court~~  
607 ~~may grant such other relief, including, but not limited to, the~~  
608 ~~restraint, by injunction or appointment of a receiver, of any~~  
609 ~~transfer, pledge, assignment, or other disposition of the~~

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610 ~~person's assets or any concealment, alteration, destruction, or~~  
611 ~~other disposition of books, accounts, records, or other~~  
612 ~~documents and materials as the court deems appropriate, until~~  
613 ~~the person has fully complied with the subpoena duces tecum and~~  
614 ~~the office has completed its investigation or examination. In~~  
615 ~~addition, the court may order the refund of any fees collected~~  
616 ~~in a mortgage loan transaction whenever books and documents~~  
617 ~~substantiating the transaction are not produced or cannot be~~  
618 ~~produced. The office is entitled to the summary procedure~~  
619 ~~provided in s. 51.011, and the court shall advance such cause on~~  
620 ~~its calendar. Attorney's fees and any other costs incurred by~~  
621 ~~the office to obtain an order granting, in whole or part, a~~  
622 ~~petition for enforcement of a subpoena or subpoena duces tecum~~  
623 ~~shall be taxed against the subpoenaed person, and failure to~~  
624 ~~comply with such order is a contempt of court.~~

625 ~~(b) When it appears to the office that the compliance with~~  
626 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~  
627 ~~by the office pursuant to this section is essential and~~  
628 ~~otherwise unavailable to an investigation or examination, the~~  
629 ~~office, in addition to the other remedies provided for in this~~  
630 ~~section, may apply to the circuit court or any other court of~~  
631 ~~competent jurisdiction of the county in which the subpoenaed~~  
632 ~~person resides or has its principal place of business for a writ~~  
633 ~~of ne exeat. The court shall thereupon direct the issuance of~~  
634 ~~the writ against the subpoenaed person requiring sufficient bond~~  
635 ~~conditioned on compliance with the subpoena or subpoena duces~~  
636 ~~tecum. The court shall cause to be endorsed on the writ a~~  
637 ~~suitable amount of bond upon the payment of which the person~~  
638 ~~named in the writ shall be freed, having a due regard to the~~

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639 ~~nature of the case.~~

640 ~~(c) Alternatively, the office may seek a writ of attachment~~  
641 ~~from the court having jurisdiction over the person who has~~  
642 ~~refused to obey a subpoena, who has refused to give testimony,~~  
643 ~~or who has refused to produce the matters described in the~~  
644 ~~subpoena duces tecum.~~

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

647 Section 3. Effective January 1, 2010, section 494.00115,  
648 Florida Statutes, is created to read:

649 494.00115 Exemptions.—

650 (1) The following are exempt from regulation under part I,  
651 part II, or part III of this chapter:

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

655 (b) A depository institution; subsidiaries that are owned  
656 and controlled by a depository institution and regulated by the  
657 Board of Governors of the Federal Reserve System, the  
658 Comptroller of the Currency, the Director of the Office of  
659 Thrift Supervision, the National Credit Union Administration, or  
660 the Federal Deposit Insurance Corporation; or institutions  
661 regulated by the Farm Credit Administration.

662 (c) The Federal National Mortgage Association; the Federal  
663 Home Loan Mortgage Corporation; any agency of the Federal  
664 Government; any state, county, or municipal government; or any  
665 quasi-governmental agency that acts in such capacity under the  
666 specific authority of the laws of any state or the United  
667 States.

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668 (d) An attorney licensed in this state who negotiates the  
669 terms of a mortgage loan on behalf of a client as an ancillary  
670 matter to the attorney's representation of the client.

671 (e) A person involved solely in the extension of credit  
672 relating to the purchase of a timeshare plan, as that term is  
673 defined in 11 U.S.C. s. 101(53D)

674 (2) The following persons are exempt from regulation under  
675 part III of this chapter:

676 (a) A person acting in a fiduciary capacity conferred by  
677 the authority of a court.

678 (b) A person who, as a seller of his or her own real  
679 property, receives one or more mortgages in a purchase money  
680 transaction.

681 (c) A person who acts solely under contract and as an agent  
682 for federal, state, or municipal agencies for the purpose of  
683 servicing mortgage loans.

684 (d) A person who makes only nonresidential mortgage loans  
685 and sells loans only to institutional investors.

686 (e) An individual making or acquiring a mortgage loan using  
687 his or her own funds for his or her own investment, and who does  
688 not hold himself or herself out to the public as being in the  
689 mortgage lending business.

690 (f) An individual selling a mortgage that was made or  
691 purchased with that individual's funds for his or her own  
692 investment, and who does not hold himself or herself out to the  
693 public as being in the mortgage lending business.

694 (3) It is not necessary to negate any of the exemptions  
695 provided in this section in any complaint, information,  
696 indictment, or other writ or proceeding brought under ss.



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697 494.001-494.0077. The burden of establishing the right to an  
698 exemption is on the party claiming the benefit of the exemption.

699 Section 4. Section 494.00135, Florida Statutes, is created  
700 to read:

701 494.00135 Subpoenas.—

702 (1) The office may:

703 (a) Issue and serve subpoenas and subpoenas duces tecum to  
704 compel the attendance of witnesses and the production of all  
705 books, accounts, records, and other documents and materials  
706 relevant to an examination or investigation conducted by the  
707 office. The office, or its authorized representative, may  
708 administer oaths and affirmations to any person.

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

714 (2) If there is substantial noncompliance with a subpoena  
715 or subpoena duces tecum issued by the office, the office may  
716 petition the court in the county where the person subpoenaed  
717 resides or has his or her principal place of business for an  
718 order requiring the person to appear, testify, or produce such  
719 books, accounts, records, and other documents as are specified  
720 in the subpoena or subpoena duces tecum.

721 (a) The court may grant injunctive relief restraining the  
722 person from advertising, promoting, soliciting, entering into,  
723 offering to enter into, continuing, or completing a mortgage  
724 loan or servicing a mortgage loan.

725 (b) The court may grant such other relief, including, but

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726 not limited to, the restraint, by injunction or appointment of a  
727 receiver, of any transfer, pledge, assignment, or other  
728 disposition of the person's assets or any concealment,  
729 alteration, destruction, or other disposition of books,  
730 accounts, records, or other documents and materials as the court  
731 deems appropriate, until the person has fully complied with the  
732 subpoena duces tecum and the office has completed its  
733 investigation or examination.

734 (c) The court may order the refund of any fees collected in  
735 a mortgage loan transaction if books and documents  
736 substantiating the transaction are not produced or cannot be  
737 produced.

738 (d) If it appears to the office that compliance with a  
739 subpoena or subpoena duces tecum issued is essential and  
740 otherwise unavailable to an investigation or examination, the  
741 office may apply to the court for a writ of ne exeat pursuant to  
742 s. 68.02.

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

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

753 Section 5. Section 494.0014, Florida Statutes, is amended  
754 to read:

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755 494.0014 Cease and desist orders; ~~administrative fines;~~  
756 refund orders.-

757 (1) The office may ~~has the power to~~ issue and serve upon  
758 any person an order to cease and desist and to take corrective  
759 action if ~~whenever~~ it has reason to believe the person is  
760 violating, has violated, or is about to violate any provision of  
761 ss. 494.001-494.0077, any rule or order issued under ss.  
762 494.001-494.0077, or any written agreement between the person  
763 and the office. All procedural matters relating to issuance and  
764 enforcement of such a ~~cease and desist~~ order are governed by the  
765 Administrative Procedure Act.

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

772 ~~(3) The office may prohibit the association by a mortgage~~  
773 ~~broker business, or the employment by a mortgage lender or~~  
774 ~~correspondent mortgage lender, of any person who has engaged in~~  
775 ~~a pattern of misconduct while an associate of a mortgage~~  
776 ~~brokerage business or an employee of a mortgage lender or~~  
777 ~~correspondent mortgage lender. For the purpose of this~~  
778 ~~subsection, the term "pattern of misconduct" means the~~  
779 ~~commission of three or more violations of ss. 494.001-494.0077~~  
780 ~~or the provisions of chapter 494 in effect prior to October 1,~~  
781 ~~1991, during any 1-year period or any criminal conviction for~~  
782 ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~  
783 ~~in effect prior to October 1, 1991.~~

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

789       Section 6. Effective July 1, 2009, section 494.00165,  
790 Florida Statutes, is amended to read:

791       494.00165 Prohibited advertising; record requirements.—

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

793       (a) Advertise that an applicant shall ~~will~~ have unqualified  
794 access to credit without disclosing the ~~what~~ material  
795 limitations on the availability of such credit ~~exist~~. ~~Such~~  
796 Material limitations include, but are not limited to, the  
797 percentage of down payment required, that a higher rate or  
798 points could be required, or that restrictions on ~~as to~~ the  
799 maximum principal amount of the loan offered could apply.

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

803       (c) Advertise mortgage loans, including rates, margins,  
804 discounts, points, fees, commissions, or other material  
805 information, including material limitations on such loans,  
806 unless the ~~such~~ person is able to make such mortgage loans  
807 available to a reasonable number of qualified applicants.

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

810       (e) Engage in unfair, deceptive, or misleading advertising  
811 regarding mortgage loans, brokering services, or lending  
812 services.

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

818 Section 7. Section 494.0017, Florida Statutes, is repealed.

819 Section 8. Section 494.00172, Florida Statutes, is created  
820 to read:

821 494.00172 Mortgage Guaranty Trust Fund; payment of fees and  
822 claims.—A nonrefundable fee is imposed on each application for a  
823 mortgage broker, mortgage lender, or loan originator license and  
824 on each annual application for a renewal of such license. For a  
825 loan originator, the initial and renewal fee is \$20. For  
826 mortgage brokers and lenders, the initial and renewal fee is  
827 \$100. This fee is in addition to the regular application or  
828 renewal fee assessed and shall be deposited into the Mortgage  
829 Guaranty Trust Fund of the office for the payment of claims in  
830 accordance with this section.

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

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

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

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842       (b) The borrower has caused a writ of execution to be  
843 issued upon such judgment, and the officer executing the  
844 judgment has made a return showing that no personal or real  
845 property of the judgment debtor liable to be levied upon in  
846 satisfaction of the judgment can be found or that the amount  
847 realized on the sale of the judgment debtor's property pursuant  
848 to such execution is insufficient to satisfy the judgment.

849       (c) The borrower has made all reasonable searches and  
850 inquiries to ascertain whether the judgment debtor possesses  
851 real or personal property or other assets subject to being sold  
852 or applied in satisfaction of the judgment, and has discovered  
853 no such property or assets; or he or she has discovered property  
854 and assets and has taken all necessary action and proceedings  
855 for the application thereof to the judgment, but the amount  
856 realized is insufficient to satisfy the judgment.

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

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

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

866       (3) The requirements of subsection (2) are not applicable  
867 if the licensee upon which the claim is sought has filed for  
868 bankruptcy or has been adjudicated bankrupt. However, the  
869 claimant must file a proof of claim in the bankruptcy  
870 proceedings and must notify the office by certified mail of the

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871 claim by enclosing a copy of the proof of claim and all  
872 supporting documents.

873 (4) Any person who meets all of the conditions in  
874 subsection (2) may apply to the office for payment from the  
875 trust fund equal to the unsatisfied portion of that person's  
876 judgment or \$50,000, whichever is less, but only to the extent  
877 that the amount reflected in the judgment is for actual or  
878 compensatory damages, plus any attorney's fees and costs awarded  
879 by the trial court which have been determined by the court, and  
880 the documented costs associated with attempting to collect the  
881 judgment. Actual or compensatory damages may not include  
882 postjudgment interest. Attorney's fees may not exceed \$5,000 or  
883 20 percent of the actual or compensatory damages, whichever is  
884 less. If actual or compensatory damages, plus attorney's fees  
885 and costs, exceed \$50,000, actual or compensatory damages must  
886 be paid first. The cumulative payment for actual or compensatory  
887 damages, plus attorney's fees and costs, may not exceed \$50,000  
888 as described in this section.

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

892 (b) Payments for claims are limited in the aggregate to  
893 \$250,000 against any one licensee under this chapter. If the  
894 total claims exceed the aggregate limit of \$250,000, the office  
895 shall prorate payments based on the ratio that a claim bears to  
896 the total claims filed.

897 (c) Payments shall be made to all persons meeting the  
898 requirements of subsection (2) 2 years after the date the first  
899 complete and valid notice is received by the office. Persons who

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900 give notice after 2 years and who otherwise comply with the  
901 conditions precedent to recovery may recover from any remaining  
902 portion of the \$250,000 aggregate as provided in this  
903 subsection, with claims being paid in the order notice was  
904 received until the \$250,000 aggregate has been disbursed.

905 (d) The claimant shall assign his or her right, title, and  
906 interest in the judgment, to the extent of his or her recovery  
907 from the fund, to the office and shall record, at his or her own  
908 expense, the assignment of judgment in every county where the  
909 judgment is recorded.

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

916 (f) The payment of any amount from the fund in settlement  
917 of a claim or in satisfaction of a judgment against a licensee  
918 constitutes prima facie grounds for the revocation of the  
919 license.

920 Section 9. Section 494.0018, Florida Statutes, is amended  
921 to read:

922 494.0018 Penalties.—

923 (1) Whoever knowingly violates any provision of s.  
924 494.00255(1) (a), (b), or (c) ~~s. 494.0041(2) (e), (f), or (g); s.~~  
925 ~~494.0072(2) (e), (f), or (g);~~ or s. 494.0025(1), (2), (3), (4),  
926 or (5), except as provided in subsection (2) of this section,  
927 commits ~~is guilty of~~ a felony of the third degree, punishable as  
928 provided in s. 775.082, s. 775.083, or s. 775.084. Each such



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929 violation constitutes a separate offense.

930 (2) Any person who violates ~~convicted of a violation of~~ any  
931 provision of ss. 494.001-494.0077, in which ~~violation~~ the total  
932 value of money and property unlawfully obtained exceeds ~~exceeded~~  
933 \$50,000 and there are ~~were~~ five or more victims, commits ~~is~~  
934 ~~guilty of~~ a felony of the first degree, punishable as provided  
935 in s. 775.082, s. 775.083, or s. 775.084.

936 Section 10. Effective July 1, 2009, section 494.0019,  
937 Florida Statutes, is amended to read:

938 494.0019 Liability in case of unlawful transaction.—

939 (1) If a mortgage loan transaction is made in violation of  
940 any provision of ss. 494.001-494.0077, the person making the  
941 transaction and every licensee, director, or officer who  
942 participated in making the transaction are jointly and severally  
943 liable to every party to the transaction in an action for  
944 damages incurred by the party or parties.

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

951 Section 11. Effective July 1, 2009, section 494.002,  
952 Florida Statutes, is amended to read:

953 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~  
954 ~~in ss.~~ 494.001-494.0077 do not limit ~~limits~~ any statutory or  
955 common-law right of any person to bring any action in any court  
956 for any act involved in the mortgage loan business or the right  
957 of the state to punish any person for any violation of any law.

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958 Section 12. Section 494.0023, Florida Statutes, is amended  
959 to read:

960 494.0023 Conflicting interest.—

961 (1) If, in a mortgage transaction, a licensee has a  
962 conflicting interest as specified in subsection (2), the  
963 licensee shall, at a minimum, provide the following disclosures  
964 to the borrower in writing:

965 (a) The nature of the relationship, ownership, or financial  
966 interest between the provider of products or services, or  
967 business incident thereto, and the licensee making the referral;  
968 ~~The type of conflicting interest shall be fully and fairly~~  
969 ~~disclosed.~~

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

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

975 (d) ~~(e)~~ ~~The borrower shall be informed~~ That alternative  
976 sources may be chosen by the borrower to provide the any  
977 required products or services. ~~The following language must be~~  
978 ~~contained in 12-point type in any agreement between a mortgage~~  
979 ~~broker, mortgage lender, or correspondent mortgage lender and a~~  
980 ~~borrower in substantially this form:~~

981  
982 ~~You are not required to purchase additional products or services~~  
983 ~~from any person or entity suggested or recommended by~~  
984 ~~(Broker/Lender/Correspondent Lender).~~ ~~However, the~~  
985 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~  
986 ~~to approve the entity selected by the borrower, which approval~~

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987 ~~may not be unreasonably withheld.~~

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

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

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

996 (c) The person providing the additional products or  
997 services, ~~either~~ directly or indirectly, owns, controls, or  
998 holds the power to vote, or holds proxies representing, 1 ~~10~~  
999 percent or more of any class of equity securities or other  
1000 beneficial interest in the licensee;

1001 (d) A holding company, ~~either~~ directly or indirectly, owns,  
1002 controls, or holds with power to vote, or holds proxies  
1003 representing, 1 ~~10~~ percent or more of any class of equity  
1004 securities or other beneficial interest in both the licensee and  
1005 the person providing the additional products or services;

1006 (e) One or more persons, or such person's relative, sits as  
1007 an officer or director, or performs similar functions as an  
1008 officer or director, for both the licensee and the person  
1009 providing the additional products or services; or

1010 (f) The licensee or the licensee's relative sits as an  
1011 officer or director, or performs similar functions as an officer  
1012 or director, of the person providing the additional products or  
1013 services.

1014 (3) The commission may adopt rules to administer the  
1015 disclosure requirements of this section. The rules must consider

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1016 the disclosure requirements of the federal Real Estate  
1017 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the  
1018 federal Truth in Lending Act, 15 U.S.C. et seq.; and related  
1019 federal regulations.

1020 ~~(3) As used in this section, the term "relative" of any~~  
1021 ~~natural person means any of the following persons, whether by~~  
1022 ~~the full or half blood or by adoption:~~

1023 ~~(a) Such person's spouse, father, mother, children,~~  
1024 ~~brothers, and sisters.~~

1025 ~~(b) The father, mother, brothers, and sisters of such~~  
1026 ~~person's spouse.~~

1027 ~~(c) The spouses of children, brothers, or sisters of such~~  
1028 ~~person.~~

1029 Section 13. Section 494.0025, Florida Statutes, is amended  
1030 to read:

1031 494.0025 Prohibited practices.—It is unlawful for any  
1032 person:

1033 ~~(1) To act as a mortgage lender in this state without a~~  
1034 ~~current, active license issued by the office pursuant to ss.~~  
1035 ~~494.006-494.0077.~~

1036 (1)~~(2)~~ To act as a loan originator ~~correspondent mortgage~~  
1037 ~~lender~~ in this state without a current, active license issued by  
1038 the office pursuant to part II of this chapter ~~ss. 494.006-~~  
1039 ~~494.0077.~~

1040 (2)~~(3)~~ To act as a mortgage broker in this state without a  
1041 current, active license issued by the office pursuant to part II  
1042 of this chapter ~~ss. 494.003-494.0043.~~

1043 (3) To act as a mortgage lender in this state without a  
1044 current, active license issued by the office pursuant to part

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1045 III of this chapter.

1046 (4) In any practice or transaction or course of business  
1047 relating to the sale, purchase, negotiation, promotion,  
1048 advertisement, or hypothecation of mortgage loan transactions,  
1049 directly or indirectly:

1050 (a) To knowingly or willingly employ any device, scheme, or  
1051 artifice to defraud;

1052 (b) To engage in any transaction, practice, or course of  
1053 business which operates as a fraud upon any person in connection  
1054 with the purchase or sale of any mortgage loan; or

1055 (c) To obtain property by fraud, willful misrepresentation  
1056 of a future act, or false promise.

1057 (5) In any matter within the jurisdiction of the office, to  
1058 knowingly and willfully falsify, conceal, or cover up by a  
1059 trick, scheme, or device a material fact, make any false or  
1060 fraudulent statement or representation, or make or use any false  
1061 writing or document, knowing the same to contain any false or  
1062 fraudulent statement or entry.

1063 (6) To violate s. 655.922(2), subject to ss. 494.001-  
1064 494.0077.

1065 ~~(7) Who is required to be licensed under ss. 494.006-~~  
1066 ~~494.0077, to fail to report to the office the failure to meet~~  
1067 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~  
1068 ~~494.0065 within 48 hours after the person's knowledge of such~~  
1069 ~~failure or within 48 hours after the person should have known of~~  
1070 ~~such failure.~~

1071 (7)(8) To pay a fee or commission in any mortgage loan  
1072 transaction to any person or entity other than a licensed  
1073 mortgage broker ~~brokerage business, mortgage lender, or~~

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1074 ~~correspondent~~ mortgage lender, ~~operating under an active~~  
1075 ~~license~~, or a person exempt from licensure under this chapter.

1076 (8) ~~(9)~~ To record a mortgage broker ~~brokerage~~ agreement or  
1077 any other document, not rendered by a court of competent  
1078 jurisdiction, which purports to enforce the terms of the  
1079 ~~mortgage brokerage~~ agreement.

1080 (9) ~~(10)~~ To use the name or logo of a financial institution,  
1081 as defined in s. 655.005(1), or its affiliates or subsidiaries  
1082 when marketing or soliciting existing or prospective customers  
1083 if such marketing materials are used without the written consent  
1084 of the financial institution and in a manner that would lead a  
1085 reasonable person to believe that the material or solicitation  
1086 originated from, was endorsed by, or is related to or the  
1087 responsibility of the financial institution or its affiliates or  
1088 subsidiaries.

1089 (10) Subject to investigation or examination under this  
1090 chapter, to knowingly alter, withhold, conceal, or destroy any  
1091 books, records, computer records, or other information relating  
1092 to a person's activities which subject the person to the  
1093 jurisdiction of this chapter.

1094 Section 14. Section 494.00255, Florida Statutes, is created  
1095 to read:

1096 494.00255 Administrative penalties and fines; license  
1097 violations.-

1098 (1) Each of the following acts constitutes a ground for  
1099 which the disciplinary actions specified in subsection (2) may  
1100 be taken against a person licensed or required to be licensed  
1101 under part II or part III of this chapter:

1102 (a) Failure to immediately place upon receipt, and maintain

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1103 until authorized to disburse, any money entrusted to the  
1104 licensee as a licensee in a segregated account of a federally  
1105 insured financial institution in this state.

1106 (b) Failure to account or deliver to any person any  
1107 property that is not the licensee's, or that the licensee is not  
1108 entitled to retain, under the circumstances and at the time that  
1109 has been agreed upon or as required by law or, in the absence of  
1110 a fixed time, upon demand of the person entitled to such  
1111 accounting and delivery.

1112 (c) Failure to disburse funds in accordance with  
1113 agreements.

1114 (d) Any misuse, misapplication, or misappropriation of  
1115 personal property entrusted to the licensee's care to which the  
1116 licensee had no current property right at the time of  
1117 entrustment.

1118 (e) Fraud, misrepresentation, deceit, negligence, or  
1119 incompetence in any mortgage financing transaction.

1120 (f) Requesting a specific valuation, orally or in writing,  
1121 from an appraiser for a particular property, implying to an  
1122 appraiser that a specific valuation is needed for a particular  
1123 property, or in any manner conditioning the order for an  
1124 appraisal on the appraisal meeting a specific valuation. The  
1125 numeric value of the specific valuation sought need not be  
1126 stated, but rather the mere statement that a specific valuation  
1127 is sought, violates this section.

1128 (g) Consistently and materially underestimating maximum  
1129 closing costs.

1130 (h) Disbursement, or an act which has caused or will cause  
1131 disbursement, to any person in any amount from the Mortgage

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1132 Guaranty Trust Fund, the Securities Guaranty Fund, or the  
1133 Florida Real Estate Recovery Fund, regardless of any repayment  
1134 or restitution to the disbursed fund by the licensee or any  
1135 person acting on behalf of the licensee.

1136 (i) Commission of fraud, misrepresentation, concealment, or  
1137 dishonest dealing by trick, scheme, or device; culpable  
1138 negligence; breach of trust in any business transaction in any  
1139 state, nation, or territory; or aiding, assisting, or conspiring  
1140 with any other person engaged in any such misconduct and in  
1141 furtherance thereof.

1142 (j) Being convicted of, or entering a plea of guilty or  
1143 nolo contendere to, regardless of adjudication, any felony or  
1144 any crime involving fraud, dishonesty, breach of trust, money  
1145 laundering, or act of moral turpitude.

1146 (k) Having a final judgment entered against the licensee in  
1147 a civil action upon grounds of fraud, embezzlement,  
1148 misrepresentation, or deceit.

1149 (l) Having been the subject of any:

1150 1. Decision, finding, injunction, suspension, prohibition,  
1151 revocation, denial, judgment, or administrative order by any  
1152 court, administrative law judge, state or federal agency,  
1153 national securities exchange, national commodities exchange,  
1154 national option exchange, national securities association,  
1155 national commodities association, or national option association  
1156 involving a violation of any federal or state securities or  
1157 commodities law or rule or regulation adopted under such law or  
1158 involving a violation of any rule or regulation of any national  
1159 securities, commodities, or options exchange or association.

1160 2. Injunction or adverse administrative order by a state or



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1161 federal agency regulating banking, insurance, finance or small  
1162 loan companies, real estate, mortgage brokers or lenders, money  
1163 transmitters, or other related or similar industries.

1164 (m) In any mortgage transaction, violating any provision of  
1165 the federal Real Estate Settlement Procedure Act, as amended, 12  
1166 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as  
1167 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted  
1168 under such acts.

1169 (n) Having a loan originator, mortgage broker, or mortgage  
1170 lender license, or the equivalent of such license, revoked in  
1171 any jurisdiction.

1172 (o) Having a license, or the equivalent of such license, to  
1173 practice any profession or occupation revoked, suspended, or  
1174 otherwise acted against, including the denial of licensure by a  
1175 licensing authority of this state or another state, territory,  
1176 or country.

1177 (p) Acting as a loan originator, mortgage broker, or  
1178 mortgage lender without a current license issued under part II  
1179 or part III of this chapter.

1180 (q) Operating a mortgage broker or mortgage lender branch  
1181 office without a current license issued under part II or part  
1182 III of this chapter.

1183 (r) Conducting any mortgage brokering or mortgage lending  
1184 activities in the absence of a properly designated principal  
1185 loan originator or mortgage brokering or mortgage lending  
1186 activities at any particular branch office without a properly  
1187 designated branch manager.

1188 (s) A material misstatement or omission of fact on an  
1189 initial or renewal license application.

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1190       (t) Payment to the office for a license or permit with a  
1191 check or electronic transmission of funds which is dishonored by  
1192 the applicant's or licensee's financial institution.

1193       (u) Failure to comply with, or violations of, any provision  
1194 of ss. 494.001-494.0077, or any rule or order made or issued  
1195 under ss. 494.001-494.0077.

1196       (v) Failure to maintain, preserve, and keep available for  
1197 examination all books, accounts, or other documents required by  
1198 ss. 494.001-494.0077 and the rules of the commission.

1199       (w) Refusal to permit an investigation or examination of  
1200 books and records, or refusal to comply with an office subpoena  
1201 or subpoena duces tecum.

1202       (x) Failure to timely pay any fee, charge, or fine imposed  
1203 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1204       (2) If the office finds a person in violation of any act  
1205 specified in this section, it may enter an order imposing one or  
1206 more of the following penalties:

1207           (a) Issuance of a reprimand.

1208           (b) Suspension of a license, subject to reinstatement upon  
1209 satisfying all reasonable conditions imposed by the office.

1210           (c) Revocation of a license.

1211           (d) Denial of a license.

1212           (e) Imposition of a fine in an amount up to \$25,000 for  
1213 each count or separate offense.

1214           (f) An administrative fine of up to \$1,000 per day, but not  
1215 to exceed \$25,000 cumulatively, for each day that

1216               1. A mortgage broker or mortgage lender conducts business  
1217 at an unlicensed branch office.

1218               2. An unlicensed person acts as a loan originator, a

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1219 mortgage broker, or a mortgage lender.

1220 (3) A mortgage broker or mortgage lender, as applicable, is  
1221 subject to the disciplinary actions specified in subsection (2)  
1222 for a violation of subsection (1) by:

1223 (a) A control person of the mortgage broker or mortgage  
1224 lender; or

1225 (b) A loan originator employed by or contracting with the  
1226 mortgage broker or mortgage lender.

1227 (4) A principal loan originator of a mortgage broker is  
1228 subject to the disciplinary actions specified in subsection (2)  
1229 for violations of subsection (1) by a loan originator in the  
1230 course of an association with the mortgage broker if there is a  
1231 pattern of repeated violations by the loan originator or if the  
1232 principal loan originator has knowledge of the violations.

1233 (5) A principal loan originator of a mortgage lender is  
1234 subject to the disciplinary actions specified in subsection (2)  
1235 for violations of subsection (1) by an associate of a mortgage  
1236 lender if there is a pattern of repeated violations by the  
1237 associate or if the principal loan originator has knowledge of  
1238 the violations.

1239 (6) A branch manager is subject to the disciplinary actions  
1240 specified in subsection (2) for violations of subsection (1) by  
1241 a loan originator in the course of an association with the  
1242 mortgage broker or mortgage lender if there is a pattern of  
1243 repeated violations by the loan originator or if the branch  
1244 manager has knowledge of the violations.

1245 (7) An individual who is associated with a mortgage broker  
1246 is subject to the disciplinary actions specified in subsection  
1247 (2) for a violation of subsection (1) with respect to an action

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1248 in which such person was involved.

1249 (8) Pursuant to s. 120.60(6), the office may summarily  
1250 suspend the license of a loan originator, mortgage broker, or  
1251 mortgage lender if the office has reason to believe that a  
1252 licensee poses an immediate, serious danger to the public's  
1253 health, safety, or welfare. The arrest of the licensee, or the  
1254 mortgage broker or the mortgage lender's control person, for any  
1255 felony or any crime involving fraud, dishonesty, breach of  
1256 trust, money laundering, or any other act of moral turpitude is  
1257 deemed sufficient to constitute an immediate danger to the  
1258 public's health, safety, or welfare. Any proceeding for the  
1259 summary suspension of a license must be conducted by the  
1260 commissioner of the office, or designee, who shall issue the  
1261 final summary order.

1262 (9) The office may deny any request to terminate or  
1263 withdraw any license application or license if the office  
1264 believes that an act that would be a ground for license denial,  
1265 suspension, restriction, or revocation under this chapter has  
1266 been committed.

1267 Section 15. Effective July 1, 2009, section 494.0026,  
1268 Florida Statutes, is amended to read:

1269 494.0026 Disposition of insurance proceeds.—The following  
1270 provisions apply to mortgage loans held by a mortgagee or  
1271 assignee that is subject to part II or part III of this chapter  
1272 ss. ~~494.003-494.0077.~~

1273 (1) The mortgagee or assignee must promptly endorse a  
1274 check, draft, or other negotiable instrument payable jointly to  
1275 the mortgagee or assignee and the insured by the insurance  
1276 company. However, the mortgagee or assignee is not required to

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1277 endorse such instrument if the insured or a payee who is not  
1278 subject to part II or part III of this chapter ~~ss. 494.003-~~  
1279 ~~494.0077~~ refuses to endorse the instrument.

1280 (2) Insurance proceeds received by a mortgagee or assignee  
1281 that relate to compensation for damage to property or contents  
1282 insurance coverage in which the mortgagee or assignee has a  
1283 security interest must be promptly deposited ~~by the mortgagee or~~  
1284 ~~assignee~~ into a segregated account of a federally insured  
1285 financial institution.

1286 (3) Insurance proceeds received by a mortgagee or assignee  
1287 that relate to contents insurance coverage in which the  
1288 mortgagee or assignee does not have a security interest in the  
1289 contents must be promptly distributed to the insured ~~by the~~  
1290 ~~mortgagee or assignee~~.

1291 (4) Insurance proceeds received by a mortgagee or assignee  
1292 that relate to additional living expenses must be promptly  
1293 distributed to the insured ~~by the mortgagee or assignee~~.

1294 (5) The mortgagee or assignee is not required to remit the  
1295 portion of the proceeds relating to additional living expenses  
1296 and contents insurance if the mortgagee or assignee is not able  
1297 to determine which part of the proceeds relates to additional  
1298 living expenses and contents insurance.

1299  
1300 ~~Nothing in~~ This section may not ~~shall~~ be construed to prevent an  
1301 insurance company from paying the insured directly for  
1302 additional living expenses or paying the insured directly for  
1303 contents insurance coverage if the mortgagee or assignee does  
1304 not have a security interest in the contents.

1305 Section 16. Section 494.0028, Florida Statutes, is amended

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1306 to read:

1307 494.0028 Arbitration.—

1308 (1) This section applies to any mortgage broker ~~brokerage~~  
1309 agreement, servicing agreement, loan application, or purchase  
1310 agreement that ~~which~~ provides for arbitration between:

1311 (a) A noninstitutional investor and a mortgage lender  
1312 servicing ~~or correspondent mortgage lender to service~~ a mortgage  
1313 loan.

1314 (b) A borrower and a mortgage broker ~~brokerage business,~~  
1315 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a  
1316 mortgage loan.

1317 (c) A noninstitutional investor and a mortgage broker  
1318 ~~brokerage business, mortgage lender,~~ or ~~correspondent~~ mortgage  
1319 lender to fund or purchase a mortgage loan.

1320 (2) All agreements subject to this section must ~~shall~~  
1321 provide that, at the voluntary election of the noninstitutional  
1322 investor or borrower, disputes shall be handled by ~~either~~ a  
1323 court ~~of competent jurisdiction~~ or by binding arbitration.

1324 (3) All agreements subject to this section must ~~shall~~  
1325 provide the noninstitutional investor or borrower with the  
1326 option to elect arbitration before the American Arbitration  
1327 Association or other independent nonindustry arbitration forum.  
1328 Any other nonindustry arbitration forum may apply to the office  
1329 to allow such forum to provide arbitration services. The office  
1330 shall grant the application if the applicant's fees, practices,  
1331 and procedures do not materially differ from those of the  
1332 American Arbitration Association.

1333 (4) At the election of the noninstitutional investor or  
1334 borrower, venue shall be in the county in which the

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1335 noninstitutional investor or borrower entered into the agreement  
1336 or at a business location of the mortgage broker or brokerage  
1337 ~~business, mortgage lender, or correspondent lender.~~

1338 (5) Any fees or charges must be in accordance with ~~shall be~~  
1339 ~~made as provided in~~ the rules of the American Arbitration  
1340 Association or other approved nonindustry arbitration forum and  
1341 may ~~shall~~ not be set in the agreement.

1342 (6) Any election made under this section is ~~shall be~~  
1343 irrevocable.

1344 (7) This section does ~~shall~~ not be ~~construed to~~ require an  
1345 agreement that ~~which~~ is subject to this section to contain an  
1346 arbitration clause.

1347 Section 17. Sections 494.0029 and 494.00295, Florida  
1348 Statutes, are repealed.

1349 Section 18. Effective January 1, 2010, section 494.00296,  
1350 Florida Statutes, is created to read:

1351 494.00296 Loan modification.—

1352 (1) PROHIBITED ACTS.—When offering or providing loan  
1353 modification services, a mortgage broker, mortgage brokerage  
1354 business, mortgage lender, or correspondent mortgage lender  
1355 licensed, or required to be licensed, under ss. 494.001-494.0077  
1356 may not:

1357 (a) Engage in or initiate loan modification services  
1358 without first executing a written agreement for loan  
1359 modification services with the borrower;

1360 (b) Execute a loan modification without the consent of the  
1361 borrower after the borrower is made aware of each modified term;  
1362 or

1363 (c) Solicit, charge, receive, or attempt to collect or

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1364 secure payment, directly or indirectly, for loan modification  
1365 services before completing or performing all services included  
1366 in the agreement for loan modification services. A fee may be  
1367 charged only if the loan modification results in a material  
1368 benefit to the borrower. The commission may adopt rules to  
1369 provide guidance on what constitutes a material benefit to the  
1370 borrower.

1371 (2) LOAN MODIFICATION AGREEMENT.-

1372 (a) The written agreement for loan modification services  
1373 must be printed in at least 12-point uppercase type and signed  
1374 by both parties. The agreement must include the name and address  
1375 of the person providing loan modification services, the exact  
1376 nature and specific detail of each service to be provided, the  
1377 total amount and terms of charges to be paid by the borrower for  
1378 the services, and the date of the agreement. The date of the  
1379 agreement may not be earlier than the date the borrower signed  
1380 the agreement. The mortgage brokerage business, mortgage lender,  
1381 or correspondent mortgage lender must give the borrower a copy  
1382 of the agreement to review at least 1 business day before the  
1383 borrower is to sign the agreement.

1384 (b) The borrower has the right to cancel the written  
1385 agreement without any penalty or obligation if the borrower  
1386 cancels the agreement within 3 business days after signing the  
1387 agreement. The right to cancel may not be waived by the borrower  
1388 or limited in any manner by the mortgage broker, mortgage  
1389 brokerage business, mortgage lender, or correspondent mortgage  
1390 lender. If the borrower cancels the agreement, any payments made  
1391 must be returned to the borrower within 10 business days after  
1392 receipt of the notice of cancellation.



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1393       (c) An agreement for loan modification services must  
1394 contain, immediately above the signature line, a statement in at  
1395 least 12-point uppercase type which substantially complies with  
1396 the following:

1397                   BORROWER'S RIGHT OF CANCELLATION

1398  
1399       YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION  
1400 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS  
1401 DAYS AFER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1402       THE MORTGAGE BROKER, MORTGAGE BROKERAGE BUSINESS, MORTGAGE  
1403 LENDER, OR CORRESPONDENT MORTGAGE LENDER IS PROHIBITED BY LAW  
1404 FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT  
1405 FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR  
1406 ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION,  
1407 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10 BUSINESS DAYS  
1408 AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

1409       TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
1410 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED  
1411 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO  
1412 LATER THAN MIDNIGHT OF ... (DATE) ....

1413       IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE  
1414 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR  
1415 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR  
1416 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1417  
1418       (d) The inclusion of the statement does not prohibit a  
1419 mortgage broker, mortgage brokerage business, mortgage lender,  
1420 or correspondent mortgage lender from giving the homeowner more  
1421 time to cancel the agreement than is set forth in the statement

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1422 if all other requirements of this subsection are met.

1423 (e) The person offering or providing the loan modification  
1424 services must give the borrower a copy of the signed agreement  
1425 within 3 hours after the borrower signs the agreement.

1426 (3) REMEDIES.—

1427 (a) Without regard to any other remedy or relief to which a  
1428 person is entitled, anyone aggrieved by a violation of this  
1429 section may bring an action to obtain a declaratory judgment  
1430 that an act or practice violates this section and to enjoin a  
1431 person who has violated, is violating, or is otherwise likely to  
1432 violate this section.

1433 (b) In any action brought by a person who has suffered a  
1434 loss as a result of a violation of this section, such person may  
1435 recover actual damages, plus attorney's fees and court costs, as  
1436 follows:

1437 1. In any action brought under this section, upon motion of  
1438 the party against whom such action is filed alleging that the  
1439 action is frivolous, without legal or factual merit, or brought  
1440 for the purpose of harassment, the court may, after hearing  
1441 evidence as to the necessity therefore, require the party  
1442 instituting the action to post a bond in the amount that the  
1443 court finds reasonable to indemnify the defendant for any  
1444 damages incurred, including reasonable attorney's fees.

1445 2. In any civil litigation resulting from an act or  
1446 practice involving a violation of this section, the prevailing  
1447 party, after judgment in the trial court and exhaustion of all  
1448 appeals, if any, may receive reasonable attorney's fees and  
1449 costs from the nonprevailing party.

1450 3. The attorney for the prevailing party shall submit a

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1451 sworn affidavit of time spent on the case and costs incurred for  
1452 all the motions, hearings, and appeals to the trial judge who  
1453 presided over the civil case.

1454 4. The trial judge may award the prevailing party the sum  
1455 of reasonable costs incurred in the action plus a reasonable  
1456 legal fee for the hours actually spent on the case as sworn to  
1457 in an affidavit.

1458 5. Any award of attorney's fees or costs becomes part of  
1459 the judgment and is subject to execution as the law allows.

1460 (c) The provisions of this subsection do not apply to any  
1461 action initiated by the enforcing authority.

1462 (4) DEFINITIONS.—Notwithstanding s. 494.001, as used in  
1463 this section, the term:

1464 (a) "Borrower" means a person who is obligated to repay a  
1465 mortgage loan and includes, but is not limited to, a coborrower,  
1466 cosignor, or guarantor.

1467 (b) "Loan modification" means a modification to an existing  
1468 loan. The term does not include a refinancing transaction.

1469 (c) "Mortgage broker" means a person who, for compensation  
1470 or gain, directly or indirectly, accepts or offers to accept an  
1471 application for a mortgage loan, solicits or offers to solicit a  
1472 mortgage loan on behalf of a borrower, negotiates or offers to  
1473 negotiate the terms or conditions of a new or existing mortgage  
1474 loan on behalf of a borrower or lender, or negotiates or offers  
1475 to negotiate the sale of an existing mortgage loan to a  
1476 noninstitutional investor. An employee whose activities are  
1477 ministerial and clerical, which may include quoting available  
1478 interest rates or loan terms and conditions, is not acting as a  
1479 mortgage broker.

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1480 Section 19. Subsection (1), (2), and (4) of section  
1481 494.00296, Florida Statutes, as created by this act, are amended  
1482 to read:

1483 494.00296 Loan modification.—

1484 (1) PROHIBITED ACTS.—When offering or providing loan  
1485 modification services, a loan originator, mortgage broker,  
1486 ~~mortgage brokerage business, mortgage lender, or correspondent~~  
1487 ~~mortgage lender licensed or required to be licensed under ss.~~  
1488 ~~494.001-494.0077~~ may not:

1489 (a) Engage in or initiate loan modification services  
1490 without first executing a written agreement for loan  
1491 modification services with the borrower;

1492 (b) Execute a loan modification without the consent of the  
1493 borrower after the borrower is made aware of each modified term;  
1494 or

1495 (c) Solicit, charge, receive, or attempt to collect or  
1496 secure payment, directly or indirectly, for loan modification  
1497 services before completing or performing all services included  
1498 in the agreement for loan modification services. A fee may be  
1499 charged only if the loan modification results in a material  
1500 benefit to the borrower. The commission may adopt rules to  
1501 provide guidance on what constitutes a material benefit to the  
1502 borrower

1503 (2) LOAN MODIFICATION AGREEMENT.—

1504 (a) The written agreement for loan modification services  
1505 must be printed in at least 12-point uppercase type and signed  
1506 by both parties. The agreement must include the name and address  
1507 of the person providing loan modification services, the exact  
1508 nature and specific detail of each service to be provided, the

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1509 total amount and terms of charges to be paid by the borrower for  
1510 the services, and the date of the agreement. The date of the  
1511 agreement may not be earlier than the date the borrower signed  
1512 the agreement. The mortgage broker or ~~brokerage business,~~  
1513 ~~mortgage lender, or correspondent~~ mortgage lender must give the  
1514 borrower a copy of the agreement to review at least 1 business  
1515 day before the borrower is to sign the agreement.

1516 (b) The borrower has the right to cancel the written  
1517 agreement without any penalty or obligation if the borrower  
1518 cancels the agreement within 3 business days after signing the  
1519 agreement. The right to cancel may not be waived by the borrower  
1520 or limited in any manner by the loan originator, mortgage  
1521 broker, ~~mortgage brokerage business, mortgage lender,~~ or  
1522 ~~correspondent~~ mortgage lender. If the borrower cancels the  
1523 agreement, any payments made must be returned to the borrower  
1524 within 10 business days after receipt of the notice of  
1525 cancellation.

1526 (c) An agreement for loan modification services must  
1527 contain, immediately above the signature line, a statement in at  
1528 least 12-point uppercase type which substantially complies with  
1529 the following:

1530 BORROWER'S RIGHT OF CANCELLATION

1531  
1532 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION  
1533 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS  
1534 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1535 THE LOAN ORIGINATOR, MORTGAGE BROKER, ~~MORTGAGE BROKERAGE~~  
1536 ~~BUSINESS, MORTGAGE LENDER,~~ OR ~~CORRESPONDENT~~ MORTGAGE LENDER IS  
1537 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER

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1538 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN  
1539 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE  
1540 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
1541 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION  
1542 NOTICE.

1543 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
1544 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED  
1545 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO  
1546 LATER THAN MIDNIGHT OF ... (DATE) ....

1547 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE  
1548 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR  
1549 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR  
1550 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1551  
1552 (d) The inclusion of the statement does not prohibit a loan  
1553 originator, mortgage broker, ~~mortgage brokerage business,~~  
1554 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender from giving  
1555 the homeowner more time to cancel the agreement than is set  
1556 forth in the statement if all other requirements of this  
1557 subsection are met.

1558 (e) The person offering or providing the loan modification  
1559 services must give the borrower a copy of the signed agreement  
1560 within 3 hours after the borrower signs the agreement.

1561 ~~(4) DEFINITIONS. Notwithstanding s. 494.001, as used in~~  
1562 ~~this section, the term:~~

1563 ~~(a) "Borrower" means a person obligated to repay a mortgage~~  
1564 ~~loan and includes, but is not limited to, a coborrower,~~  
1565 ~~co-signor, or guarantor.~~

1566 ~~(b) "Loan modification" means a modification to an existing~~

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1567 ~~loan. The term does not include a refinancing transaction.~~

1568 ~~(c) "Mortgage broker" means for compensation or gain,~~  
1569 ~~directly or indirectly, accepting or offering to accept an~~  
1570 ~~application for a mortgage loan, soliciting or offering to~~  
1571 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~  
1572 ~~offering to negotiate the terms or conditions of a new or~~  
1573 ~~existing mortgage loan on behalf of a borrower or lender, or~~  
1574 ~~negotiating or offering to negotiate the sale of an existing~~  
1575 ~~mortgage loan to a noninstitutional investor. An employee whose~~  
1576 ~~activities are ministerial and clerical, which may include~~  
1577 ~~quoting available interest rates or loan terms and conditions,~~  
1578 ~~is not acting as a mortgage broker.~~

1579 Section 20. The Division of Statutory Revision is requested  
1580 to rename part II of chapter 494, Florida Statutes, consisting  
1581 of ss. 494.00312-491.0043, Florida Statutes, as "Loan  
1582 Originators and Mortgage Brokers."

1583 Section 21. Effective January 1, 2010, section 494.003,  
1584 Florida Statutes, is repealed.

1585 Section 22. Section 494.0031, Florida Statutes, is  
1586 repealed.

1587 Section 23. Section 494.00312, Florida Statutes, is created  
1588 to read:

1589 494.00312 Loan originator license.—

1590 (1) An individual who acts as a loan originator must be  
1591 licensed under this section.

1592 (2) In order to apply for loan originator license, an  
1593 applicant must:

1594 (a) Be at least 18 years of age and have a high school  
1595 diploma or its equivalent.

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1596 (b) Complete a 20-hour prelicensing class approved by the  
1597 registry.

1598 (c) Pass a written test developed by the registry and  
1599 administered by a provider approved by the registry.

1600 (d) Submit a completed license application form as  
1601 prescribed by commission rule.

1602 (e) Submit a nonrefundable application fee of \$195, and the  
1603 \$20 nonrefundable fee if required by s. 494.00172. Application  
1604 fees may not be prorated for partial years of licensure.

1605 (f) Submit fingerprints in accordance with rules adopted by  
1606 the commission:

1607 1. The fingerprints may be submitted to the registry, the  
1608 office, or a vendor acting on behalf of the registry or the  
1609 office.

1610 2. The office may contract with a third-party vendor to  
1611 provide live-scan fingerprinting in lieu of a paper fingerprint  
1612 card.

1613 3. A state criminal history background check must be  
1614 conducted through the Department of Law Enforcement and a  
1615 federal criminal history background check must be conducted  
1616 through the Federal Bureau of Investigation.

1617 4. All fingerprints submitted to the Department of Law  
1618 Enforcement must be submitted electronically and entered into  
1619 the statewide automated fingerprint identification system  
1620 established in s. 943.05(2) (b) and available for use in  
1621 accordance with s. 943.05(2) (g) and (h). The office shall pay an  
1622 annual fee to the department to participate in the system and  
1623 inform the department of any person whose fingerprints are no  
1624 longer required to be retained.



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1625 5. The costs of fingerprint processing, including the cost  
1626 of retaining the fingerprints, shall be borne by the person  
1627 subject to the background check.

1628 6. The office is responsible for reviewing the results of  
1629 the state and federal criminal history checks and determining  
1630 whether the applicant meets licensure requirements.

1631 (g) Authorize the registry to obtain an independent credit  
1632 report on the applicant from a consumer reporting agency, and  
1633 transmit or provide access to the report to the office. The cost  
1634 of the credit report shall be borne by the applicant.

1635 (h) Submit additional information or documentation  
1636 requested by the office and required by rule concerning the  
1637 applicant. Additional information may include documentation of  
1638 pending and prior disciplinary and criminal history events,  
1639 including arrest reports and certified copies of charging  
1640 documents, plea agreements, judgments and sentencing documents,  
1641 documents relating to pretrial intervention, orders terminating  
1642 probation or supervised release, final administrative agency  
1643 orders, or other comparable documents that may provide the  
1644 office with the appropriate information to determine eligibility  
1645 for licensure.

1646 (i) Submit any other information required by the registry  
1647 for the processing of the application.

1648 (3) An application is considered received for the purposes  
1649 of s. 120.60 upon the office's receipt of all documentation from  
1650 the registry, including the completed application form,  
1651 documentation of completion of the prelicensure class, test  
1652 results, criminal history information, and independent credit  
1653 report, as well as the license application fee, the fee required

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1654 by s. 494.00172, and all applicable fingerprinting processing  
1655 fees.

1656 (4) The office shall issue a loan originator license to  
1657 each person who is not otherwise ineligible and who meets the  
1658 requirements of this section. However, it is a ground for denial  
1659 of licensure if the applicant:

1660 (a) Has committed any violation specified in ss. 494.001-  
1661 494.0077, or is the subject of a pending felony criminal  
1662 prosecution or a prosecution or an administrative enforcement  
1663 action, in any jurisdiction, which involves fraud, dishonesty,  
1664 breach of trust, money laundering, or any other act of moral  
1665 turpitude.

1666 (b) Has failed to demonstrate the character, general  
1667 fitness, and financial responsibility necessary to command the  
1668 confidence of the community and warrant a determination that the  
1669 applicant will operate honestly, fairly, and efficiently.

1670 1. If the office has information that could form the basis  
1671 for license denial under this paragraph, before denying the  
1672 license, the office must notify the applicant in writing of the  
1673 specific items of concern and provide the applicant with an  
1674 opportunity to explain the circumstances surrounding the  
1675 specific items and provide any information that the applicant  
1676 believes is relevant to the office's determination.

1677 2. For purposes of evaluating adverse information found in  
1678 an applicant's credit report, the information must be considered  
1679 within the totality of the circumstances. Information provided  
1680 by the applicant under subparagraph 1., or information obtained  
1681 by the office by other means, may be used to provide a context  
1682 for the adverse items. For example, the adverse items may have

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1683 resulted from factors that do not necessarily reflect negatively  
1684 upon the applicant's character, general fitness, or financial  
1685 responsibility.

1686 3. The office may not use a credit score or the absence or  
1687 insufficiency of credit history information to determine  
1688 character, general fitness, or financial responsibility.

1689 4. If information contained in a credit report is used as  
1690 the basis for denying a license, the office shall, in accordance  
1691 with s. 120.60(3), provide with particularity the grounds or  
1692 basis for denial. The use of the terms "poor credit history,"  
1693 "poor credit rating," or similar language do not meet the  
1694 requirements of this paragraph.

1695 (5) The office may not issue a license to an applicant who  
1696 has had a loan originator license or its equivalent revoked in  
1697 any jurisdiction.

1698 (6) A loan originator license shall be annulled pursuant to  
1699 s. 120.60 if it was issued by the office by mistake. A license  
1700 must be reinstated if the applicant demonstrates that the  
1701 requirements for obtaining the license under this chapter have  
1702 been satisfied.

1703 (7) All loan originator licenses must be renewed annually  
1704 by December 31 pursuant to s. 494.00313. If a person holding an  
1705 active loan originator license has not applied to renew the  
1706 license on or before December 31, the loan originator license  
1707 expires on December 31. If a person holding an active loan  
1708 originator license has applied to renew the license on or before  
1709 December 31, the loan originator license remains active until  
1710 the renewal application is approved or denied. A loan originator  
1711 is not precluded from reapplying for licensure upon expiration

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1712 of a previous license.

1713 Section 24. Section 494.00313, Florida Statutes, is created  
1714 to read:

1715 494.00313 Loan originator license renewal.-

1716 (1) In order to renew a loan originator license, a loan  
1717 originator must:

1718 (a) Submit a completed license renewal form as prescribed  
1719 by commission rule.

1720 (b) Submit a nonrefundable renewal fee of \$150, the \$20  
1721 nonrefundable fee if required by s. 494.00172, and nonrefundable  
1722 fees to cover the cost of further fingerprint processing and  
1723 retention as set forth in commission rule.

1724 (c) Provide documentation of completion of at least 8 hours  
1725 of continuing education in courses reviewed and approved by the  
1726 registry.

1727 (d) Authorize the registry to obtain an independent credit  
1728 report on the licensee from a consumer reporting agency, and  
1729 transmit or provide access to the report to the office. The cost  
1730 of the credit report shall be borne by the licensee.

1731 (e) Submit any additional information or documentation  
1732 requested by the office and required by rule concerning the  
1733 licensee. Additional information may include documentation of  
1734 pending and prior disciplinary and criminal history events,  
1735 including arrest reports and certified copies of charging  
1736 documents, plea agreements, judgments and sentencing documents,  
1737 documents relating to pretrial intervention, orders terminating  
1738 probation or supervised release, final administrative agency  
1739 orders, or other comparable documents that may provide the  
1740 office with the appropriate information to determine eligibility

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1741 for renewal of licensure.

1742 (2) The office may not renew a loan originator license  
1743 unless the loan originator continues to meet the minimum  
1744 requirements for initial licensure pursuant to s. 494.00312 and  
1745 adopted rule.

1746 Section 25. Section 494.0032, Florida Statutes, is  
1747 repealed.

1748 Section 26. Section 494.00321, Florida Statutes, is created  
1749 to read:

1750 494.00321 Mortgage broker license.—

1751 (1) Each person who acts as a mortgage broker must be  
1752 licensed in accordance with this section.

1753 (2) In order to apply for a mortgage broker license an  
1754 applicant must:

1755 (a) Submit a completed license application form as  
1756 prescribed by commission rule.

1757 (b) Designate a qualified principal loan originator on the  
1758 application form who meets the requirements of s. 494.0035.

1759 (c) Submit a nonrefundable application fee of \$425, and the  
1760 \$100 nonrefundable fee if required by s. 494.00172. Application  
1761 fees may not be prorated for partial years of licensure.

1762 (d) Submit fingerprints for each of the applicant's control  
1763 persons in accordance with rules adopted by the commission:

1764 1. The fingerprints may be submitted to the registry, the  
1765 office, or a vendor acting on behalf of the registry or the  
1766 office.

1767 2. The office may contract with a third-party vendor to  
1768 provide live-scan fingerprinting in lieu of a paper fingerprint  
1769 card.

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1770 3. A state criminal history background check must be  
1771 conducted through the Department of Law Enforcement and a  
1772 federal criminal history background check must be conducted  
1773 through the Federal Bureau of Investigation.

1774 4. All fingerprints submitted to the Department of Law  
1775 Enforcement must be submitted electronically and entered into  
1776 the statewide automated fingerprint identification system  
1777 established in s. 943.05(2)(b) and available for use in  
1778 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
1779 annual fee to the department to participate in the system and  
1780 inform the department of any person whose fingerprints are no  
1781 longer required to be retained.

1782 5. The costs of fingerprint processing, including the cost  
1783 of retaining the fingerprints, shall be borne by the person  
1784 subject to the background check.

1785 6. The office is responsible for reviewing the results of  
1786 the state and federal criminal history checks and determining  
1787 whether the applicant meets licensure requirements.

1788 (e) Authorize the registry to obtain an independent credit  
1789 report on each of the applicant's control persons from a  
1790 consumer reporting agency, and transmit or provide access to the  
1791 report to the office. The cost of the credit report shall be  
1792 borne by the applicant.

1793 (f) Submit additional information or documentation  
1794 requested by the office and required by rule concerning the  
1795 applicant or a control person of the applicant. Additional  
1796 information may include documentation of pending and prior  
1797 disciplinary and criminal history events, including arrest  
1798 reports and certified copies of charging documents, plea

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1799 agreements, judgments and sentencing documents, documents  
1800 relating to pretrial intervention, orders terminating probation  
1801 or supervised release, final administrative agency orders, or  
1802 other comparable documents that may provide the office with the  
1803 appropriate information to determine eligibility for licensure.

1804 (g) Submit any other information required by the registry  
1805 for the processing of the application.

1806 (3) An application is considered received for the purposes  
1807 of s. 120.60 upon the office's receipt of all documentation from  
1808 the registry, including the completed application form, criminal  
1809 history information, and independent credit report, as well as  
1810 the license application fee, the fee required by s. 492.00172,  
1811 and all applicable fingerprinting processing fees.

1812 (4) The office shall issue a mortgage broker license to  
1813 each person who is not otherwise ineligible and who meets the  
1814 requirements of this section. However, it is a ground for denial  
1815 of licensure if the applicant or one of the applicant's control  
1816 persons:

1817 (a) Has committed any violation specified in ss. 494.001-  
1818 494.0077, or is the subject of a pending felony criminal  
1819 prosecution or a prosecution or an administrative enforcement  
1820 action, in any jurisdiction, which involves fraud, dishonesty,  
1821 breach of trust, money laundering, or any other act of moral  
1822 turpitude.

1823 (b) Has failed to demonstrate the character, general  
1824 fitness, and financial responsibility necessary to command the  
1825 confidence of the community and warrant a determination that the  
1826 applicant will operate honestly, fairly, and efficiently.

1827 1. If the office has information that could form the basis

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1828 for license denial under this paragraph, before denying the  
1829 license, the office must notify the applicant in writing of the  
1830 specific items of concern and provide the applicant with an  
1831 opportunity to explain the circumstances surrounding the  
1832 specific items and provide any information that the applicant  
1833 believes is relevant to the office's determination.

1834 2. For purposes of evaluating adverse information found in  
1835 an applicant's credit report, the information must be considered  
1836 within the totality of the circumstances. Information provided  
1837 by the applicant under subparagraph 1., or information obtained  
1838 by the office by other means, may be used to provide a context  
1839 for the adverse items. For example, the adverse items may have  
1840 resulted from factors that do not necessarily reflect negatively  
1841 upon the applicant's character, general fitness, or financial  
1842 responsibility.

1843 3. The office may not use a credit score or the absence or  
1844 insufficiency of credit history information to determine  
1845 character, general fitness, or financial responsibility.

1846 4. If information contained in a credit report is used as  
1847 the basis for denying a license, the office shall, in accordance  
1848 with s. 120.60(3), provide with particularity the grounds or  
1849 basis for denial. The use of the terms "poor credit history,"  
1850 "poor credit rating," or similar language do not meet the  
1851 requirements of this paragraph.

1852 (5) The office shall deny a license if the applicant has  
1853 had a mortgage broker license, or its equivalent, revoked in any  
1854 jurisdiction, or if any of the applicant's control persons has  
1855 had a loan originator license, or its equivalent, revoked in any  
1856 jurisdiction.



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1857       (6) A mortgage broker license shall be annulled pursuant to  
1858 s. 120.60 if it was issued by the office by mistake. A license  
1859 must be reinstated if the applicant demonstrates that the  
1860 requirements for obtaining the license under this chapter have  
1861 been satisfied.

1862       (7) All mortgage broker licenses must be renewed annually  
1863 by December 31 pursuant to s. 494.00322. If a person holding an  
1864 active mortgage broker license has not applied to renew the  
1865 license on or before December 31, the mortgage broker license  
1866 expires on December 31. If a person holding an active mortgage  
1867 broker license has applied to renew the license on or before  
1868 December 31, the mortgage broker license remains active until  
1869 the renewal application is approved or denied. A mortgage broker  
1870 is not precluded from reapplying for licensure upon expiration  
1871 of a previous license.

1872       Section 27. Section 494.00322, Florida Statutes, is created  
1873 to read:

1874       494.00322 Mortgage broker license renewal.-

1875       (1) In order to renew a mortgage broker license, a mortgage  
1876 broker must:

1877       (a) Submit a completed license renewal form as prescribed  
1878 by commission rule.

1879       (b) Submit a nonrefundable renewal fee of \$375, the \$100  
1880 nonrefundable fee if required by s. 494.00172, and nonrefundable  
1881 fees to cover the cost of further fingerprint processing and  
1882 retention as set forth in commission rule.

1883       (c) Submit fingerprints in accordance with s.  
1884 494.00321(2) (d) for any new control persons who have not been  
1885 screened.

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1886 (d) Authorize the registry to obtain an independent credit  
1887 report on each of the licensee's control persons from a consumer  
1888 reporting agency, and transmit or provide access to the report  
1889 to the office. The cost of the credit report shall be borne by  
1890 the licensee.

1891 (e) Submit any additional information or documentation  
1892 requested by the office and required by rule concerning the  
1893 licensee or a control person of the licensee. Additional  
1894 information may include documentation of pending and prior  
1895 disciplinary and criminal history events, including arrest  
1896 reports and certified copies of charging documents, plea  
1897 agreements, judgments and sentencing documents, documents  
1898 relating to pretrial intervention, orders terminating probation  
1899 or supervised release, final administrative agency orders, or  
1900 other comparable documents that may provide the office with the  
1901 appropriate information to determine eligibility for renewal of  
1902 licensure.

1903 (2) The office may not renew a mortgage broker license  
1904 unless the licensee continues to meet the minimum requirements  
1905 for initial licensure pursuant to s. 494.00321 and adopted rule.

1906 Section 28. Section 494.0033, Florida Statutes, is  
1907 repealed.

1908 Section 29. Section 494.00331, Florida Statutes, is amended  
1909 to read:

1910 494.00331 ~~Loan originator employment Mortgage broker~~  
1911 ~~association.~~ An individual may not act as a loan originator  
1912 unless he or she is an employee of, or an independent contractor  
1913 for, a mortgage broker or a mortgage lender, and may not be  
1914 employed by or contract with more than one mortgage broker or

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1915 mortgage lender, or either simultaneously. ~~No person required to~~  
1916 ~~be licensed as a mortgage broker under this chapter shall be~~  
1917 ~~simultaneously an associate of more than one licensed mortgage~~  
1918 ~~brokerage business, licensed mortgage lender, or licensed~~  
1919 ~~correspondent mortgage lender.~~

1920 Section 30. Section 494.0034, Florida Statutes, is  
1921 repealed.

1922 Section 31. Section 494.0035, Florida Statutes, is amended  
1923 to read:

1924 494.0035 Principal loan originator ~~broker~~ and branch  
1925 manager for mortgage broker requirements.-

1926 (1) Each mortgage broker ~~brokerage business~~ must be  
1927 operated by a principal loan originator who shall have a  
1928 ~~principal broker who shall operate the business under such~~  
1929 ~~broker's~~ full charge, control, and supervision of the mortgage  
1930 broker business. The principal loan originator must have been  
1931 licensed as a loan originator ~~broker~~ ~~must have been a licensed~~  
1932 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year  
1933 before ~~prior to~~ being designated as the ~~a~~ principal loan  
1934 originator ~~broker~~, or must ~~shall~~ demonstrate to the satisfaction  
1935 of the office that he or she ~~such principal broker~~ has been  
1936 actively engaged in a mortgage broker-related ~~mortgage-related~~  
1937 business for at least 1 year before ~~prior to~~ being designated as  
1938 a principal loan originator ~~broker~~. Each mortgage broker must  
1939 keep the office informed of the person designated as the  
1940 principal loan originator as prescribed by commission rule  
1941 ~~brokerage business shall maintain a form as prescribed by the~~  
1942 ~~commission indicating the business's designation of principal~~  
1943 ~~broker and the individual's acceptance of such responsibility.~~

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1944 If the designation is inaccurate, the business shall be deemed  
1945 to be operated under ~~form is unavailable, inaccurate, or~~  
1946 ~~incomplete, it is deemed that the business was operated in the~~  
1947 full charge, control, and supervision of ~~by~~ each officer,  
1948 director, or ultimate equitable owner of a 10-percent or greater  
1949 interest in the mortgage broker ~~brokerage business~~, or any other  
1950 person in a similar capacity. A loan originator may not be a  
1951 principal loan originator for more than one mortgage broker at  
1952 any given time.

1953 (2) Each branch office of a mortgage broker ~~brokerage~~  
1954 ~~business~~ must be operated by a ~~have a designated~~ branch manager  
1955 ~~broker~~ who shall have ~~operate the business under such broker's~~  
1956 full charge, control, and supervision of the branch office. The  
1957 designated branch manager ~~broker~~ must be a licensed loan  
1958 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033~~.  
1959 Each branch office must keep the office informed of the person  
1960 designated as the branch manager as prescribed by commission  
1961 rule, which includes documentation of ~~shall maintain a form as~~  
1962 ~~prescribed by the commission logging the branch's designation of~~  
1963 ~~a branch broker and the individual's acceptance of such~~  
1964 responsibility. If the designation is inaccurate, the branch  
1965 office shall be deemed to be operated under ~~form is unavailable,~~  
1966 ~~inaccurate, or incomplete, it is deemed that the branch was~~  
1967 ~~operated in the full charge, control, and supervision of~~ by each  
1968 officer, director, or ultimate equitable owner of a 10-percent  
1969 or greater interest in the mortgage broker ~~brokerage business~~,  
1970 or any other person in a similar capacity.

1971 Section 32. Section 494.0036, Florida Statutes, is amended  
1972 to read:

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1973 494.0036 Mortgage broker branch office license ~~brokerage~~  
 1974 ~~business branch offices.~~-

1975 (1) Each branch office of a mortgage broker must be  
 1976 licensed under this section. ~~A mortgage brokerage business~~  
 1977 ~~branch office license is required for each branch office~~  
 1978 ~~maintained by a mortgage brokerage business.~~

1979 (2) The office shall issue a mortgage broker ~~brokerage~~  
 1980 ~~business~~ branch office license to a mortgage broker ~~brokerage~~  
 1981 ~~business~~ licensee after the office determines that the licensee  
 1982 has submitted a completed application for a branch office in a  
 1983 form ~~as~~ prescribed by commission rule and payment of an initial  
 1984 nonrefundable branch office license fee of \$225 per branch  
 1985 office. Application fees may not be prorated for partial years  
 1986 of licensure. The branch office license shall be issued in the  
 1987 name of the mortgage broker ~~brokerage business~~ that maintains  
 1988 the branch office. An application is considered received for  
 1989 purposes of s. 120.60 upon receipt of a completed application  
 1990 form as prescribed by commission rule, and the required fees ~~a~~  
 1991 ~~nonrefundable application fee of \$225, and any other fee~~  
 1992 ~~prescribed by law.~~

1993 (3) A branch office license must be renewed annually at the  
 1994 time of renewing the mortgage broker license under s. 494.00322.  
 1995 A nonrefundable branch renewal fee of \$225 per branch office  
 1996 must be submitted at the time of renewal.

1997 Section 33. Section 494.0038, Florida Statutes, is amended  
 1998 to read:

1999 494.0038 Loan origination and mortgage broker fees and  
 2000 ~~Mortgage broker~~ disclosures.-

2001 (1) ~~(a)1.~~ A loan origination fee may not be paid ~~person may~~

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2002 ~~not receive a mortgage brokerage fee~~ except pursuant to a  
2003 written mortgage broker ~~brokerage~~ agreement between the mortgage  
2004 broker ~~brokerage business~~ and the borrower which is signed and  
2005 dated by the principal loan originator or branch manager, ~~the~~  
2006 ~~business~~ and the borrower. The unique registry identifier of  
2007 each loan originator responsible for providing loan originator  
2008 services must be printed on the mortgage broker agreement.

2009 (a)2- The written mortgage broker ~~brokerage~~ agreement must  
2010 describe the services to be provided by the mortgage broker  
2011 ~~brokerage business~~ and specify the amount and terms of the loan  
2012 origination ~~mortgage brokerage~~ fee that the mortgage broker  
2013 ~~brokerage business~~ is to receive.

2014 1. Except for application and third-party fees, all fees  
2015 received by a mortgage broker from a borrower must be identified  
2016 as a loan origination fee.

2017 2. All fees on the mortgage broker agreement must be  
2018 disclosed in dollar amounts.

2019 3. All loan origination fees must be paid to a mortgage  
2020 broker.

2021 (b) The ~~written mortgage brokerage~~ agreement must be  
2022 executed within 3 business days after a mortgage loan  
2023 application is accepted if the borrower is present when the  
2024 mortgage loan application is accepted. If the borrower is not  
2025 present ~~when such an application is accepted,~~ the licensee shall  
2026 forward the ~~written mortgage brokerage~~ agreement to the borrower  
2027 within 3 business days after the licensee's acceptance of the  
2028 application and the licensee bears the burden of proving that  
2029 the borrower received and approved the ~~written mortgage~~  
2030 ~~brokerage~~ agreement.

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2031        (2)~~(b)~~1. If the mortgage broker ~~brokerage~~ business is to  
2032 receive any payment of any kind from the mortgage lender, the  
2033 maximum total dollar amount of the payment must be disclosed to  
2034 the borrower in the written mortgage broker ~~brokerage~~ agreement  
2035 as described in paragraph (1) (a). The commission may prescribe  
2036 by rule an acceptable form for disclosure of brokerage fees  
2037 received from the lender. The ~~mortgage~~ ~~brokerage~~ agreement must  
2038 state the nature of the relationship with the lender, describe  
2039 how compensation is paid by the lender, and describe how the  
2040 mortgage interest rate affects the compensation paid to the  
2041 mortgage broker ~~brokerage~~ business.

2042        (a)~~2~~. The exact amount of any payment of any kind by the  
2043 lender to the mortgage broker ~~brokerage~~ business must be  
2044 disclosed in writing to the borrower within 3 business days  
2045 after the mortgage broker ~~brokerage~~ business is made aware of  
2046 the exact amount of the payment from the lender but not less  
2047 than 3 business days before the execution of the closing or  
2048 settlement statement. The licensee bears the burden of proving  
2049 such notification was provided to the borrower. Notification is  
2050 waived if the exact amount of the payment is accurately  
2051 disclosed in the written mortgage broker agreement.

2052        (b)~~(e)~~ The commission may prescribe by rule the form of  
2053 disclosure of brokerage fees.

2054        (3)~~(2)~~ At the time a written mortgage broker ~~brokerage~~  
2055 agreement is signed ~~executed~~ by the borrower or forwarded to the  
2056 borrower for signature ~~execution~~, or at the time the mortgage  
2057 broker ~~brokerage~~ business accepts an application fee, credit  
2058 report fee, property appraisal fee, or any other third-party  
2059 fee, but at least ~~not less than~~ 3 business days before execution

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2060 of the closing or settlement statement, the mortgage broker  
2061 ~~brokerage business~~ shall disclose in writing to any applicant  
2062 for a mortgage loan the following information:

2063 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may  
2064 not make mortgage loans or commitments. The mortgage broker  
2065 ~~brokerage business~~ may make a commitment and may furnish a lock-  
2066 in of the rate and program on behalf of the lender if ~~when~~ the  
2067 mortgage broker ~~brokerage business~~ has obtained a written  
2068 commitment or lock-in for the loan from the lender on behalf of  
2069 the borrower for the loan. The commitment must be in the same  
2070 form and substance as issued by the lender.

2071 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot  
2072 guarantee acceptance into any particular loan program or promise  
2073 any specific loan terms or conditions.

2074 (c) A good faith estimate, signed and dated by the  
2075 borrower, which discloses the total amount of each of the fees  
2076 ~~which~~ the borrower may reasonably expect to pay if the loan is  
2077 closed, including, but not limited to, fees earned by the  
2078 mortgage broker ~~brokerage business~~, lender fees, third-party  
2079 fees, and official fees, together with the terms and conditions  
2080 for obtaining a refund of such fees, if any. Any amount  
2081 collected in excess of the actual cost shall be returned within  
2082 60 days after rejection, withdrawal, or closing. The good faith  
2083 estimate must identify the recipient of all payments charged the  
2084 borrower and, except for all fees to be received by the mortgage  
2085 broker ~~brokerage business~~, may be disclosed in generic terms,  
2086 such as, but not limited to, paid to lender, appraiser,  
2087 officials, title company, or any other third-party service  
2088 provider. This requirement does not supplant or is not a



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2089 substitute for the written mortgage broker ~~brokerage~~ agreement  
2090 described in subsection (1).

2091 (4)~~(3)~~ The disclosures required by this subsection must be  
2092 furnished in writing at the time an adjustable rate mortgage  
2093 loan is offered to the borrower and whenever the terms of the  
2094 adjustable rate mortgage loan offered materially change prior to  
2095 closing. The mortgage broker shall furnish the disclosures  
2096 relating to adjustable rate mortgages in a format prescribed by  
2097 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors  
2098 of the Federal Reserve System, as amended; its commentary, as  
2099 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.  
2100 1601 et seq., as amended; together with the Consumer Handbook on  
2101 Adjustable Rate Mortgages, as amended; published by the Federal  
2102 Reserve Board and the Federal Home Loan Bank Board. The licensee  
2103 bears the burden of proving such disclosures were provided to  
2104 the borrower.

2105 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes  
2106 a nonrefundable application fee, the following requirements are  
2107 applicable:

2108 (a) The amount of the application fee, which must be  
2109 clearly denominated as such, must ~~shall~~ be clearly disclosed.

2110 (b) The specific services that will be performed in  
2111 consideration for the application fee must ~~shall~~ be disclosed.

2112 (c) The application fee must be reasonably related to the  
2113 services to be performed and may not be based upon a percentage  
2114 of the principal amount of the loan or the amount financed.

2115 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept  
2116 any fee in connection with a mortgage loan other than an  
2117 application fee, credit report fee, property appraisal fee, or

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2118 other third-party fee before ~~prior to~~ obtaining a written  
2119 commitment from a qualified lender.

2120 (7) ~~(6)~~ Any third-party fee entrusted to a mortgage broker  
2121 must ~~brokerage business shall~~ immediately, upon receipt, be  
2122 placed into a segregated account with a financial institution  
2123 located in the state the accounts of which are insured by the  
2124 Federal Government. Such funds shall be held in trust for the  
2125 payor and shall be kept in the account until disbursement. Such  
2126 funds may be placed in one account if adequate accounting  
2127 measures are taken to identify the source of the funds.

2128 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~  
2129 ~~brokerage business licensee.~~

2130 (8) A mortgage broker may not pay a commission to any  
2131 person not licensed pursuant to this chapter.

2132 (9) ~~(8)~~ This section does not prohibit a mortgage broker  
2133 ~~brokerage business~~ from offering products and services, in  
2134 addition to those offered in conjunction with the loan  
2135 origination process, for a fee or commission.

2136 Section 34. Section 494.0039, Florida Statutes, is amended  
2137 to read:

2138 494.0039 Principal place of business requirements.—Each  
2139 mortgage broker ~~brokerage business~~ licensee shall maintain and  
2140 transact business from a principal place of business.

2141 Section 35. Section 494.004, Florida Statutes, is amended  
2142 to read:

2143 494.004 Requirements of licensees.—

2144 (1) Each licensee under this part ~~ss. 494.003-494.0043~~  
2145 shall report to the office:

2146 (a) In writing, any conviction of, or plea of nolo

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2147 contendere to, regardless of adjudication, any felony or any  
2148 crime or administrative violation that involves fraud,  
2149 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~  
2150 or any other act of moral turpitude, in any jurisdiction, by the  
2151 licensee or any control natural person within ~~named in s.~~  
2152 ~~494.0031(2) (d), not later than~~ 30 days after the date of  
2153 conviction, entry of a plea of nolo contendere, or final  
2154 administrative action.

2155 ~~(b)(2) Each licensee under ss. 494.003-494.0043 shall~~  
2156 ~~report,~~ In a form prescribed by rule of the commission, any  
2157 conviction of, or plea of nolo contendere to, regardless of  
2158 ~~whether~~ adjudication is withheld, any felony committed by the  
2159 licensee or any control natural person within ~~named in s.~~  
2160 ~~494.0031(2) (d), not later than~~ 30 days after the date of  
2161 conviction or the date the plea of nolo contendere is entered.

2162 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~  
2163 ~~report~~ Any action in bankruptcy, voluntary or involuntary,  
2164 within 30 ~~to the office not later than 7~~ business days after the  
2165 action is instituted.

2166 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~  
2167 ~~report~~ On a form prescribed by rule of the commission, any  
2168 change to the information contained in any initial application  
2169 form or any amendment to the application within ~~not later than~~  
2170 30 days after the change is effective.

2171 ~~(5) A license issued under ss. 494.003-494.0043 is not~~  
2172 ~~transferable or assignable.~~

2173 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~  
2174 ~~report~~ Any change in the principal loan originator ~~broker,~~ any  
2175 addition or subtraction of a control person ~~partners, officers,~~

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2176 ~~members, joint venturers, directors, control persons of any~~  
2177 ~~licensee, or any individual who is the ultimate equitable owner~~  
2178 ~~of a 10-percent or greater interest in the licensee, or any~~  
2179 ~~change in the form of business organization, by written~~  
2180 ~~amendment in the form and at the time the commission specifies~~  
2181 ~~by rule.~~

2182 ~~(a) In any case in which a person or a group of persons,~~  
2183 ~~directly or indirectly or acting by or through one or more~~  
2184 ~~persons, proposes to purchase or acquire a controlling interest~~  
2185 ~~in a licensee, such person or group shall submit an initial~~  
2186 ~~application for licensure as a mortgage brokerage business~~  
2187 ~~before such purchase or acquisition and at the time and in the~~  
2188 ~~form the commission prescribes by rule.~~

2189 ~~(b) As used in this subsection, the term "controlling~~  
2190 ~~interest" means possession of the power to direct or cause the~~  
2191 ~~direction of the management or policies of a company whether~~  
2192 ~~through ownership of securities, by contract, or otherwise. Any~~  
2193 ~~person who directly or indirectly has the right to vote 25~~  
2194 ~~percent or more of the voting securities of a company or is~~  
2195 ~~entitled to 25 percent or more of the company's profits is~~  
2196 ~~presumed to possess a controlling interest.~~

2197 ~~(f)(e) Any addition of a partner, officer, member, joint~~  
2198 ~~venturer, director, control person, or ultimate equitable owner~~  
2199 ~~of the applicant who does not have a controlling interest and~~  
2200 ~~who has not previously filed a Uniform Mortgage Biographical~~  
2201 ~~Statement & Consent Form, MU2, or has not previously complied~~  
2202 ~~with the fingerprinting and credit report requirements~~  
2203 ~~provisions of ss. 494.00321 and 494.00322, s. 494.0031(2)(c) and~~  
2204 ~~(d) is subject to the such provisions of these sections unless~~

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2205 ~~required to file an initial application in accordance with~~  
2206 ~~paragraph (a).~~ If, after the addition of a control person, the  
2207 office finds that the licensee does not continue to meet  
2208 licensure requirements, the office may bring an administrative  
2209 action in accordance with s. 494.00255 ~~s. 494.0041~~ to enforce  
2210 the provisions of this chapter.

2211 ~~(d) The commission shall adopt rules pursuant to ss.~~  
2212 ~~120.536(1) and 120.54 providing for the waiver of the~~  
2213 ~~application required by this subsection if the person or group~~  
2214 ~~of persons proposing to purchase or acquire a controlling~~  
2215 ~~interest in a licensee has previously complied with the~~  
2216 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~  
2217 ~~legal entity or is currently licensed by the office under this~~  
2218 ~~chapter.~~

2219 ~~(7) On or before April 30, 2000, each mortgage brokerage~~  
2220 ~~business shall file an initial report stating the name, social~~  
2221 ~~security number, date of birth, mortgage broker license number,~~  
2222 ~~date of hire and, if applicable, date of termination for each~~  
2223 ~~person who was an associate of the mortgage brokerage business~~  
2224 ~~during the immediate preceding quarter. Thereafter, A mortgage~~  
2225 ~~brokerage business shall file a quarterly report only if a~~  
2226 ~~person became an associate or ceased to be an associate of the~~  
2227 ~~mortgage brokerage business during the immediate preceding~~  
2228 ~~quarter. Such report shall be filed within 30 days after the~~  
2229 ~~last day of each calendar quarter and shall contain the name,~~  
2230 ~~social security number, date of birth, mortgage broker license~~  
2231 ~~number, date of hire and, if applicable, the date of termination~~  
2232 ~~of each person who became or ceased to be an associate of the~~  
2233 ~~mortgage brokerage business during the immediate preceding~~

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2234 ~~quarter. The commission shall prescribe, by rule, the procedures~~  
2235 ~~for filing reports required by this subsection.~~

2236 (2) ~~(8)(a)~~ In every mortgage loan transaction, each licensee  
2237 under this part ~~must ss. 494.003-494.0043 shall~~ notify a  
2238 borrower of any material changes in the terms of a mortgage loan  
2239 previously offered to the borrower within 3 business days after  
2240 being made aware of such changes by the mortgage lender but at  
2241 least ~~not less than~~ 3 business days before the signing of the  
2242 settlement or closing statement. The licensee bears the burden  
2243 of proving such notification was provided and accepted by the  
2244 borrower.

2245 ~~(b)~~ A borrower may waive the right to receive notice of a  
2246 material change ~~that is granted under paragraph (a)~~ if the  
2247 borrower determines that the extension of credit is needed to  
2248 meet a bona fide personal financial emergency and the right to  
2249 receive notice would delay the closing of the mortgage loan. The  
2250 imminent sale of the borrower's home at foreclosure during the  
2251 3-day period before the signing of the settlement or closing  
2252 statement is ~~constitutes~~ an example of a bona fide personal  
2253 financial emergency. In order to waive the borrower's right to  
2254 receive notice ~~not less than 3 business days before the signing~~  
2255 ~~of the settlement or closing statement of any such material~~  
2256 ~~change~~, the borrower must provide the licensee with a dated  
2257 written statement that describes the personal financial  
2258 emergency, waives the right to receive the notice, bears the  
2259 borrower's signature, and is not on a printed form prepared by  
2260 the licensee for the purpose of such a waiver.

2261 (3) Each mortgage broker shall submit to the registry  
2262 reports of condition, which must be in such form and shall

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2263 contain such information as the registry may require.

2264 (4) A license issued under this part is not transferable or  
2265 assignable.

2266 Section 36. Section 494.0041, Florida Statutes, is  
2267 repealed.

2268 Section 37. Section 494.0042, Florida Statutes, is amended  
2269 to read:

2270 494.0042 Loan origination ~~Brokerage~~ fees.-

2271 (1) A loan origination ~~mortgage brokerage~~ fee earned by a  
2272 licensee, pursuant to this part ss. 494.003-494.0043, is not  
2273 considered interest or a finance charge under chapter 687.

2274 (2) A person may not charge or exact, directly or  
2275 indirectly, from the borrower ~~mortgager~~ a fee or commission in  
2276 excess of the maximum fee or commission specified in this  
2277 section. The maximum fees or commissions that may be charged for  
2278 mortgage loans are as follows:

2279 (a) On a mortgage loan of \$1,000 or less: \$250.

2280 (b) On a mortgage loan exceeding \$1,000 and not exceeding  
2281 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10  
2282 for each additional \$100 of the mortgage loan.

2283 (c) On a mortgage loan exceeding \$2,000 and not exceeding  
2284 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10  
2285 for each additional \$100 of the mortgage loan.

2286 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10  
2287 percent of the entire mortgage loan.

2288  
2289 For the purpose of determining the maximum fee, the amount of  
2290 the mortgage loan is based on the amount of mortgage loan  
2291 actually funded exclusive of the authorized maximum fees or

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2292 commissions.

2293 (3) At the time of accepting a mortgage loan application, a  
2294 mortgage broker ~~brokerage business~~ may receive from the borrower  
2295 a nonrefundable application fee. If the mortgage loan is funded,  
2296 the nonrefundable application fee shall be credited against the  
2297 amount owed as a result of the loan being funded. A person may  
2298 not receive any form of compensation for acting as a loan  
2299 originator ~~mortgage broker~~ other than a nonrefundable  
2300 application fee, a fee based on the mortgage amount being  
2301 funded, or a fee which complies with s. 494.00421.

2302 Section 38. Section 494.00421, Florida Statutes, is amended  
2303 to read:

2304 494.00421 Fees earned upon obtaining a bona fide  
2305 commitment.—Notwithstanding the provisions of ss. 494.001-  
2306 494.0077, any mortgage broker ~~brokerage business~~ which contracts  
2307 to receive ~~from a borrower~~ a loan origination ~~mortgage brokerage~~  
2308 fee from a borrower upon obtaining a bona fide commitment shall  
2309 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

2310 (1) The gross loan amount.

2311 (2) In the case of a fixed-rate mortgage, the note rate.

2312 (3) In the case of an adjustable rate mortgage:

2313 (a) The initial note rate.

2314 (b) The length of time for which the initial note rate is  
2315 effective.

2316 (c) The frequency of changes.

2317 (d) The limitation upon such changes including adjustment  
2318 to adjustment cap and life cap.

2319 (e) Whether the loan has any potential for negative  
2320 amortization.



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2321 (f) Identification of the margin-interest rate  
2322 differential.

2323 (g) Identification of a nationally recognized index which  
2324 index must be free from control of the mortgage broker, ~~mortgage~~  
2325 ~~brokerage business, mortgage lender, or correspondent mortgage~~  
2326 lender.

2327 (4) The estimated net proceeds to be paid directly to the  
2328 borrower. "Estimated net proceeds" means the cash to be received  
2329 by the borrower after payment of any fees, charges, debts,  
2330 liens, or encumbrances to perfect the lien of the new mortgage  
2331 and establish the agreed-upon priority of the new mortgage.

2332 (5) The lien priority of the new proposed mortgage.

2333 (6) The number of calendar days, which are mutually agreed  
2334 upon, within which the mortgage broker ~~brokerage business~~ shall  
2335 obtain a bona fide mortgage commitment.

2336 (7) (a) The following statement, in at least ~~no less than~~  
2337 12-point boldface type immediately above the signature lines for  
2338 the borrowers:

2339  
2340 "You are entering into a contract with a mortgage broker  
2341 ~~brokerage business~~ to obtain a bona fide mortgage loan  
2342 commitment under the same terms and conditions as stated  
2343 hereinabove or in a separate executed good faith estimate form.  
2344 If the mortgage broker ~~brokerage business~~ obtains a bona fide  
2345 commitment under the same terms and conditions, you will be  
2346 obligated to pay the loan origination ~~mortgage brokerage~~  
2347 ~~business fees, including, but not limited to, a mortgage~~  
2348 ~~brokerage fee,~~ even if you choose not to complete the loan  
2349 transaction. If the provisions of s. 494.00421, Florida

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2350 Statutes, are not met, the loan origination ~~mortgage brokerage~~  
2351 fee can only be earned upon the funding of the mortgage loan.  
2352 The borrower may contact the Department of Financial Services,  
2353 Tallahassee, Florida, regarding any complaints that the borrower  
2354 may have against the loan originator ~~mortgage broker or the~~  
2355 ~~mortgage brokerage business~~. The telephone number of the  
2356 department is: ...(insert telephone number)...."

2357 (b) Paragraph (a) does not apply to nonresidential mortgage  
2358 loan commitments in excess of \$1 million.

2359 (8) Any other disclosure required pursuant to s. 494.0038.  
2360 Section 39. Section 494.0043, Florida Statutes, is amended  
2361 to read:

2362 494.0043 Requirements for brokering loans to  
2363 noninstitutional investors.-

2364 (1) A loan originator ~~mortgage broker~~, when arranging a  
2365 mortgage loan for a noninstitutional investor, shall:

2366 (a) Before any payment of money by the ~~a~~ noninstitutional  
2367 investor, provide an opinion of value from an appraiser stating  
2368 the value of the security property unless the opinion is waived  
2369 in writing. The opinion must state the value of the property as  
2370 it exists on the date of the opinion. If any relationship exists  
2371 between the loan originator or mortgage broker and the  
2372 appraiser, that relationship shall be disclosed to the investor.

2373 (b) Provide to the noninstitutional investor a mortgagee's  
2374 title insurance policy or an opinion of title by an attorney  
2375 licensed to practice law in the state, or a copy thereof.

2376 1. If a title insurance policy is issued, it must insure  
2377 the noninstitutional investor against the unmarketability of the  
2378 mortgagee's interest in such title. It must ~~shall~~ also specify

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2379 any superior liens that exist against the property. If an  
2380 opinion of title is issued by an attorney ~~licensed to practice~~  
2381 ~~law in the state~~, the opinion must include a statement as to the  
2382 marketability of the title to the property described in the  
2383 mortgage and specify the priority of the mortgage being closed.

2384 2. If the title insurance policy or opinion of title is not  
2385 available at the time of purchase, the licensee shall provide a  
2386 binder of the title insurance or conditional opinion of title.  
2387 This binder or opinion must include any conditions or  
2388 requirements that need ~~needed~~ to be corrected before ~~prior to~~  
2389 the issuance of the final title policy or opinion of title. The  
2390 binder or opinion must also include information concerning the  
2391 requirements specified in subparagraph 1. Any conditions must be  
2392 eliminated or waived in writing by the investor before ~~prior to~~  
2393 delivery to the noninstitutional investor. The policy or  
2394 opinion, or a copy thereof, shall be delivered to the investor  
2395 within a reasonable period of time, not exceeding 6 months,  
2396 after closing.

2397 3. The requirements of this paragraph may be waived in  
2398 writing. If the requirements are waived by the noninstitutional  
2399 investor, the waiver must include the following statement  
2400 ~~wording~~: "The noninstitutional investor acknowledges that the  
2401 mortgage broker or mortgage lender brokering this mortgage loan  
2402 is not providing a title insurance policy or opinion of title  
2403 issued by an attorney who is licensed to practice law in the  
2404 State of Florida. Any requirement for title insurance or for a  
2405 legal opinion of title is the sole responsibility of the  
2406 noninstitutional mortgage investor."

2407 (c) Provide, if the loan is other than a first mortgage, a

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2408 statement showing the balance owed by the mortgagor on any  
2409 existing mortgages prior to this investment and the status of  
2410 such existing mortgages.

2411 (d) Provide a disclosure if the licensee is directly or  
2412 indirectly acting as a borrower or principal in the transaction.

2413 (2) Each original or certified copy of the mortgage, or  
2414 other instrument securing a note or assignment thereof, must  
2415 ~~shall~~ be recorded before being delivered to the noninstitutional  
2416 investor. A mortgage broker shall cause the properly endorsed  
2417 original note to be delivered to the noninstitutional investor.

2418 (3) Each mortgage and assignment must ~~shall~~ be recorded as  
2419 soon as practical, but no later than 30 business days after the  
2420 date of closing.

2421 (4) Any money from a noninstitutional investor for  
2422 disbursement at a mortgage loan closing must ~~shall~~ be deposited  
2423 with and disbursed by an attorney duly licensed in this state or  
2424 by a title company duly licensed in this state. A person acting  
2425 as a loan originator ~~mortgage broker~~ may not have control of any  
2426 money from a noninstitutional investor. This subsection does not  
2427 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from  
2428 receiving a loan origination ~~mortgage brokerage~~ fee upon the  
2429 closing of the mortgage loan funded by the noninstitutional  
2430 investor.

2431 Section 40. Effective January 1, 2010, section 494.006,  
2432 Florida Statutes, is repealed.

2433 Section 41. Section 494.0061, Florida Statutes, is  
2434 repealed.

2435 Section 42. Section 494.00611, Florida Statutes, is created  
2436 to read:

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2437 494.00611 Mortgage lender license.-

2438 (1) Each person who acts as a mortgage lender must be  
2439 licensed under this section.

2440 (2) In order to apply for a mortgage lender license an  
2441 applicant must:

2442 (a) Submit a completed application form as prescribed by  
2443 the commission by rule.

2444 (b) Designate a qualified principal loan originator who  
2445 meets the requirements of s. 494.0035 on the application form.

2446 (c) Submit a nonrefundable application fee of \$500, and the  
2447 \$100 nonrefundable fee if required by s. 494.00172. Application  
2448 fees may not be prorated for partial years of licensure.

2449 (d) Submit fingerprints for each of the applicant's control  
2450 persons in accordance with rules adopted by the commission:

2451 1. The fingerprints may be submitted to the registry, the  
2452 office, or a vendor acting on behalf of the registry or the  
2453 office.

2454 2. The office may contract with a third-party vendor to  
2455 provide live-scan fingerprinting in lieu of a paper fingerprint  
2456 card.

2457 3. A state criminal history background check must be  
2458 conducted through the Department of Law Enforcement and a  
2459 federal criminal history background check must be conducted  
2460 through the Federal Bureau of Investigation.

2461 4. All fingerprints submitted to the Department of Law  
2462 Enforcement must be submitted electronically and entered into  
2463 the statewide automated fingerprint identification system  
2464 established in s. 943.05(2) (b) and available for use in  
2465 accordance with s. 943.05(2) (g) and (h). The office shall pay an

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2466 annual fee to the department to participate in the system and  
2467 inform the department of any person whose fingerprints are no  
2468 longer required to be retained.

2469 5. The costs of fingerprint processing, including the cost  
2470 of retaining the fingerprints, shall be borne by the person  
2471 subject to the background check.

2472 6. The office is responsible for reviewing the results of  
2473 the state and federal criminal history checks and determining  
2474 whether the applicant meets licensure requirements.

2475 (e) Indicate whether the applicant will be seeking a  
2476 servicing endorsement on the application form.

2477 (f) Submit a copy of the applicant's financial audit report  
2478 for the most recent fiscal year which, pursuant to United States  
2479 generally accepted accounting principles. If the applicant is a  
2480 wholly owned subsidiary of another corporation, the financial  
2481 audit report for the parent corporation satisfies this  
2482 requirement. The commission may establish by rule the form and  
2483 procedures for filing the financial audit report, including the  
2484 requirement to file the report with the registry when technology  
2485 is available. The financial audit report must document that the  
2486 applicant has a bona fide and verifiable net worth, of at least  
2487 \$63,000 if the applicant is not seeking a servicing endorsement,  
2488 or at least \$250,000 if the applicant is seeking a servicing  
2489 endorsement, which must be continuously maintained as a  
2490 condition of licensure. However, if the applicant held an active  
2491 license issued before October 1, 2010, pursuant to former s.  
2492 494.0065, and the applicant is seeking a servicing endorsement,  
2493 the minimum net worth requirement:

2494 1. Until September 30, 2011, is \$63,000.

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2495 2. Between October 1, 2011, and September 30, 2012, is  
2496 \$125,000.

2497 3. On or after October 1, 2012, is \$250,000.

2498 (g) Authorize the registry to obtain an independent credit  
2499 report on each of the applicant's control persons from a  
2500 consumer reporting agency, and transmit or provide access to the  
2501 report to the office. The cost of the credit report shall be  
2502 borne by the applicant.

2503 (h) Submit additional information or documentation  
2504 requested by the office and required by rule concerning the  
2505 applicant or a control person of the applicant. Additional  
2506 information may include documentation of pending and prior  
2507 disciplinary and criminal history events, including arrest  
2508 reports and certified copies of charging documents, plea  
2509 agreements, judgments and sentencing documents, documents  
2510 relating to pretrial intervention, orders terminating probation  
2511 or supervised release, final administrative agency orders, or  
2512 other comparable documents that may provide the office with the  
2513 appropriate information to determine eligibility for licensure.

2514 (i) Submit any other information required by the registry  
2515 for the processing of the application.

2516 (3) An application is considered received for the purposes  
2517 of s. 120.60 upon the office's receipt of all documentation from  
2518 the registry, including the completed application form, criminal  
2519 history information, and independent credit report, as well as  
2520 the license application fee, the fee required under s.  
2521 494.00172, and all applicable fingerprinting processing fees.

2522 (4) The office shall issue a mortgage lender license to  
2523 each person who is not otherwise ineligible and who meets the

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2524 requirements of this section. However, it is a ground for denial  
2525 of licensure if the applicant or one of the applicant's control  
2526 persons:

2527 (a) Has committed any violation specified in ss. 494.001-  
2528 494.0077, or is the subject of a pending felony criminal  
2529 prosecution or a prosecution or an administrative enforcement  
2530 action, in any jurisdiction, which involves fraud, dishonesty,  
2531 breach of trust, money laundering, or any other act of moral  
2532 turpitude.

2533 (b) Has failed to demonstrate the character, general  
2534 fitness, and financial responsibility necessary to command the  
2535 confidence of the community and warrant a determination that the  
2536 applicant will operate honestly, fairly, and efficiently.

2537 1. If the office has information that could form the basis  
2538 for license denial under this paragraph, before denying the  
2539 license, the office must notify the applicant in writing of the  
2540 specific items of concern and provide the applicant with an  
2541 opportunity to explain the circumstances surrounding the  
2542 specific items and provide any information that the applicant  
2543 believes is relevant to the office's determination.

2544 2. For purposes of evaluating adverse information found in  
2545 an applicant's credit report, the information must be considered  
2546 within the totality of the circumstances. Information provided  
2547 by the applicant under subparagraph 1., or information obtained  
2548 by the office by other means, may be used to provide a context  
2549 for the adverse items. For example, the adverse items may have  
2550 resulted from factors that do not necessarily reflect negatively  
2551 upon the applicant's character, general fitness, or financial  
2552 responsibility.



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2553       3. The office may not use a credit score or the absence or  
2554 insufficiency of credit history information to determine  
2555 character, general fitness, or financial responsibility.

2556       4. If information contained in a credit report is used as  
2557 the basis for denying a license, the office shall, in accordance  
2558 with s. 120.60(3), provide with particularity the grounds or  
2559 basis for denial. The use of the terms "poor credit history,"  
2560 "poor credit rating," or similar language do not meet the  
2561 requirements of this paragraph.

2562       (5) The office may not issue a license if the applicant has  
2563 had a mortgage lender license or its equivalent revoked in any  
2564 jurisdiction, or any of the applicant's control persons has ever  
2565 had a loan originator license or its equivalent revoked in any  
2566 jurisdiction.

2567       (6) A person required to be licensed under this part, or an  
2568 agent or employee thereof, is deemed to have consented to the  
2569 venue of courts in this state regarding any matter within the  
2570 authority of ss. 494.001-494.0077 regardless of where an act or  
2571 violation was committed.

2572       (7) A license issued in accordance with this part is not  
2573 transferable or assignable.

2574       (8) A mortgage lender or branch office license may be  
2575 annulled pursuant to s. 120.60 if it was issued by the office by  
2576 mistake. A license must be reinstated if the applicant  
2577 demonstrates that the requirements for obtaining the license  
2578 under this chapter have been satisfied.

2579       (9) Each lender, regardless of the number of branches it  
2580 operates, shall designate a principal loan originator  
2581 representative who exercises control of the licensee's business,

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

2591 (10) All mortgage lender licenses must be renewed annually  
2592 by December 31 pursuant to s. 494.00612. If a person holding an  
2593 active mortgage lender license has not applied to renew the  
2594 license on or before December 31, the mortgage lender license  
2595 expires on December 31. If a person holding an active mortgage  
2596 lender license has applied to renew the license on or before  
2597 December 31, the mortgage lender license remains active until  
2598 the renewal application is approved or denied. A mortgage lender  
2599 is not precluded from reapplying for licensure upon expiration  
2600 of a previous license.

2601 Section 43. Section 494.00612, Florida Statutes, is created  
2602 to read:

2603 494.00612 Mortgage lender license renewal.-

2604 (1) In order to renew a mortgage lender license, a mortgage  
2605 lender must:

2606 (a) Submit a completed license renewal form as prescribed  
2607 by commission rule.

2608 (b) Submit a nonrefundable renewal fee of \$475, the \$100  
2609 nonrefundable fee if required by s. 494.00172, and nonrefundable  
2610 fees to cover the cost of further fingerprint processing and

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2611 retention as set forth in commission rule.

2612 (c) Submit fingerprints in accordance with s.

2613 494.00611(2) (d) for any new control persons who have not been  
2614 screened.

2615 (d) Provide proof that the mortgage lender continues to  
2616 meet the applicable net worth requirement in a form prescribed  
2617 by commission rule.

2618 (e) Authorize the registry to obtain an independent credit  
2619 report on the mortgage lender from a consumer reporting agency,  
2620 and transmit or provide access to the report to the office. The  
2621 cost of the credit report shall be borne by the licensee.

2622 (f) Submit any additional information or documentation  
2623 requested by the office and required by rule concerning the  
2624 licensee. Additional information may include documentation of  
2625 pending and prior disciplinary and criminal history events,  
2626 including arrest reports and certified copies of charging  
2627 documents, plea agreements, judgments and sentencing documents,  
2628 documents relating to pretrial intervention, orders terminating  
2629 probation or supervised release, final administrative agency  
2630 orders, or other comparable documents that may provide the  
2631 office with the appropriate information to determine eligibility  
2632 for renewal of licensure.

2633 (2) The office may not renew a mortgage lender license  
2634 unless the mortgage lender continues to meet the minimum  
2635 requirements for initial licensure pursuant to s. 494.00611 and  
2636 adopted rule.

2637 Section 44. Section 494.0062, Florida Statutes, is  
2638 repealed.

2639 Section 45. Section 494.0063, Florida Statutes, is amended

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2640 to read:

2641       494.0063 Audited financial statements.—All audited  
2642 financial statements required by ss. 494.001-494.0077 must be  
2643 prepared by an independent licensed certified public accountant.  
2644 A mortgage lender must obtain an annual financial audit report  
2645 as of the date of the licensee's fiscal year end, as disclosed  
2646 to the office on the application or a subsequent amendment to  
2647 the application. The mortgage lender shall submit a copy of the  
2648 report to the office within 120 days after the end of the  
2649 licensee's fiscal year. If the licensee is a wholly owned  
2650 subsidiary of another corporation, the financial audit report of  
2651 the parent corporation's satisfies this requirement. If the  
2652 licensee changes its fiscal year, the licensee must file a  
2653 report within 18 months after the previously submitted report.  
2654 The commission may establish by rule the procedures and form for  
2655 filing a financial audit report, including the requirement to  
2656 file the report with the registry when technology is available.

2657       Section 46. Section 494.0064, Florida Statutes, is  
2658 repealed.

2659       Section 47. Section 494.0065, Florida Statutes, is  
2660 repealed.

2661       Section 48. Section 494.0066, Florida Statutes, is amended  
2662 to read:

2663       494.0066 Branch offices.—

2664       (1) Each branch office of a mortgage lender must be  
2665 licensed under this section ~~A branch office license is required~~  
2666 ~~for each branch office maintained by a licensee under ss.~~  
2667 ~~494.006-494.0077.~~

2668       (2) The office shall issue a branch office license to a

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2669 mortgage lender licensee licensed under ss. ~~494.006-494.0077~~  
2670 after the office determines that the mortgage lender licensee  
2671 has submitted a completed branch office application form as  
2672 prescribed by rule by the commission, ~~and~~ an initial  
2673 nonrefundable branch office license fee of \$225 per branch  
2674 office \$325. Application fees may not be prorated for partial  
2675 years of licensure. The branch office application must include  
2676 the name and license number of the mortgage lender licensee  
2677 under this part ss. ~~494.006-494.0077~~, the name of the branch  
2678 manager licensee's employee in charge of the branch office, and  
2679 the address of the branch office. The branch office license  
2680 shall be issued in the name of the mortgage lender licensee  
2681 under ss. ~~494.006-494.0077~~ and must be renewed in conjunction  
2682 with the license renewal. An application is considered received  
2683 for purposes of s. 120.60 upon receipt of a completed branch  
2684 office renewal form, as prescribed by commission rule, and the  
2685 required fees.

2686 (3) A branch office license must be renewed at the time of  
2687 renewing the mortgage lender license. A nonrefundable fee of  
2688 \$225 per branch office must be submitted at the time of renewal.

2689 Section 49. Section 494.00665, Florida Statutes, is created  
2690 to read:

2691 494.00665 Principal loan originator and branch manager for  
2692 mortgage lender.-

2693 (1) Each mortgage lender business must be operated by a  
2694 principal loan originator who shall have full charge, control,  
2695 and supervision of the mortgage lender business. The principal  
2696 loan originator must be licensed as a loan originator pursuant  
2697 to s. 494.00312. Each mortgage lender must keep the office

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2698 informed of the person designated as the principal loan  
2699 originator as prescribed by commission rule. If the designation  
2700 is inaccurate, the business shall be deemed to be operated under  
2701 the full charge, control, and supervision of each officer,  
2702 director, or ultimate equitable owner of a 10 percent or greater  
2703 interest in the mortgage lender business, or any other person in  
2704 a similar capacity during that time.

2705 (2) Each branch office of a mortgage lender must be  
2706 operated by a branch manager who shall have full charge,  
2707 control, and supervision of the branch office. The designated  
2708 branch manager must be a licensed loan originator pursuant to s.  
2709 494.00312. Each mortgage lender must keep the office informed of  
2710 the person designated as the branch manager as prescribed by  
2711 commission rule, which includes documentation of the  
2712 individual's acceptance of such responsibility. If the  
2713 designation is inaccurate, the branch office shall be deemed to  
2714 be operated under the full charge, control, and supervision of  
2715 each officer, director, or ultimate equitable owner of a 10  
2716 percent or greater interest in the mortgage lender business, or  
2717 any other person in a similar capacity during that time.

2718 Section 50. Section 494.0067, Florida Statutes, is amended  
2719 to read:

2720 494.0067 Requirements of mortgage lenders ~~licensees~~ under  
2721 ~~ss. 494.006-494.0077.~~

2722 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~  
2723 ~~494.0077~~ which makes mortgage loans on real estate in this state  
2724 shall transact business from a principal place of business. Each  
2725 principal place of business and each branch office shall be  
2726 operated under the full charge, control, and supervision of the

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2727 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2728 (2) A license issued under this part ~~ss. 494.006-494.0077~~  
2729 is not transferable or assignable.

2730 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~  
2731 ~~494.0077~~ shall report, on a form prescribed by rule of the  
2732 commission, any change in the information contained in any  
2733 initial application form, or any amendment thereto, within not  
2734 ~~later than~~ 30 days after the change is effective.

2735 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~  
2736 ~~494.0077~~ shall report any changes in the principal loan  
2737 originator, any addition or subtraction of a control person,  
2738 ~~partners, officers, members, joint venturers, directors, or~~  
2739 ~~control persons of any licensee or any change~~ changes in the  
2740 form of business organization by written amendment in such form  
2741 and at such time that the commission specifies by rule.

2742 (a) In any case in which a person or a group of persons,  
2743 directly or indirectly or acting by or through one or more  
2744 persons, proposes to purchase or acquire a controlling interest  
2745 in a licensee, such person or group must submit an initial  
2746 application for licensure as a mortgage lender ~~or correspondent~~  
2747 ~~mortgage lender~~ before such purchase or acquisition and at the  
2748 time and in the form prescribed by the commission by rule.

2749 (b) ~~As used in this subsection, the term "controlling~~  
2750 ~~interest" means possession of the power to direct or cause the~~  
2751 ~~direction of the management or policies of a company whether~~  
2752 ~~through ownership of securities, by contract, or otherwise. Any~~  
2753 ~~person who directly or indirectly has the right to vote 25~~  
2754 ~~percent or more of the voting securities of a company or who is~~  
2755 ~~entitled to 25 percent or more of the company's profits is~~

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2756 ~~presumed to possess a controlling interest.~~

2757 ~~(b)(e) Any addition of a designated principal~~  
2758 ~~representative, partner, officer, member, joint venturer,~~  
2759 ~~director, or control person of the applicant who does not have a~~  
2760 ~~controlling interest and who has not previously filed a Uniform~~  
2761 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~  
2762 ~~previously complied with the fingerprinting and credit report~~  
2763 ~~requirements of s. 494.00611 is the provisions of s.~~  
2764 ~~494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.~~  
2765 ~~494.0065(5)(e) and (f) shall be subject to the such provisions~~  
2766 ~~of this section unless required to file an initial application~~  
2767 ~~in accordance with paragraph (a). If after the addition of a~~  
2768 ~~control person, the office determines that the licensee does not~~  
2769 ~~continue to meet licensure requirements, the office may bring~~  
2770 ~~administrative action in accordance with s. 494.00255 s.~~  
2771 ~~494.0072 to enforce the provisions of this section.~~

2772 ~~(d) The commission shall adopt rules pursuant to ss.~~  
2773 ~~120.536(1) and 120.54 providing for the waiver of the~~  
2774 ~~application required by this subsection if the person or group~~  
2775 ~~of persons proposing to purchase or acquire a controlling~~  
2776 ~~interest in a licensee has previously complied with the~~  
2777 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~  
2778 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~  
2779 ~~is currently licensed with the office under this chapter.~~

2780 ~~(5) Each mortgage lender licensee under ss. 494.006-~~  
2781 ~~494.0077 shall report in a form prescribed by rule of by the~~  
2782 ~~commission any indictment, information, charge, conviction, or~~  
2783 ~~plea of guilty or nolo contendere, regardless of adjudication,~~  
2784 ~~or plea of guilty to any felony or any crime or administrative~~



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2785 violation that involves fraud, dishonesty, breach of trust,  
2786 money laundering ~~dishonest dealing~~, or any other act of moral  
2787 turpitude, in any jurisdiction, by the licensee ~~under ss.~~  
2788 ~~494.006-494.0077~~ or any principal officer, director, or ultimate  
2789 equitable owner of 10 percent or more of the licensed  
2790 corporation, within ~~not later than~~ 30 business days after the  
2791 indictment, information, charge, conviction, or final  
2792 administrative action.

2793 (6) Each mortgage lender ~~licensee under ss. 494.006-~~  
2794 ~~494.0077~~ shall report any action in bankruptcy, voluntary or  
2795 involuntary, to the office, within 30 ~~not later than 7~~ business  
2796 days after the action is instituted.

2797 (7) Each mortgage lender ~~licensee under ss. 494.006-~~  
2798 ~~494.0077~~ shall designate a registered agent in this state for  
2799 service of process.

2800 (8) Each mortgage lender ~~licensee under ss. 494.006-~~  
2801 ~~494.0077~~ shall provide an applicant for a mortgage loan a good  
2802 faith estimate of the costs the applicant can reasonably expect  
2803 to pay in obtaining a mortgage loan. The good faith estimate of  
2804 costs must ~~shall~~ be mailed or delivered to the applicant within  
2805 3 business days ~~a reasonable time~~ after the licensee receives a  
2806 written loan application from the applicant. The estimate of  
2807 costs may be provided to the applicant by a person other than  
2808 the licensee making the loan. The good faith estimate must  
2809 identify the recipient of all payments charged to the borrower  
2810 and, except for all fees to be received by the mortgage broker  
2811 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~  
2812 ~~mortgage lender~~, may be disclosed in generic terms, such as, but  
2813 not limited to, paid to appraiser, officials, title company, or

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2814 any other third-party service provider. The licensee bears the  
2815 burden of proving such disclosures were provided to the  
2816 borrower. The commission may adopt rules that set forth the  
2817 disclosure requirements of this section.

2818 ~~(9) On or before April 30, 2000, each mortgage lender or~~  
2819 ~~correspondent mortgage lender shall file an initial report~~  
2820 ~~stating the full legal name, residential address, social~~  
2821 ~~security number, date of birth, mortgage broker license number,~~  
2822 ~~date of hire, and, if applicable, date of termination for each~~  
2823 ~~person who acted as a loan originator or an associate of the~~  
2824 ~~mortgage lender or correspondent mortgage lender during the~~  
2825 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~  
2826 ~~correspondent mortgage lender shall file a report only if a~~  
2827 ~~person became or ceased to be a loan originator or an associate~~  
2828 ~~of the mortgage lender or correspondent mortgage lender during~~  
2829 ~~the immediate preceding quarter. Such report shall be filed~~  
2830 ~~within 30 days after the last day of each calendar quarter and~~  
2831 ~~shall contain the full legal name, residential address, social~~  
2832 ~~security number, date of birth, date of hire and, if applicable,~~  
2833 ~~the mortgage broker license number and date of termination of~~  
2834 ~~each person who became or ceased to be a loan originator or an~~  
2835 ~~associate of the mortgage lender or correspondent mortgage~~  
2836 ~~lender during the immediate preceding quarter. The commission~~  
2837 ~~shall prescribe, by rule, the procedures for filing reports~~  
2838 ~~required by this subsection.~~

2839 ~~(10) (a) Each mortgage lender or correspondent mortgage~~  
2840 ~~lender licensee shall require the principal representative and~~  
2841 ~~all loan originators, not currently licensed as mortgage brokers~~  
2842 ~~pursuant to s. 494.0033, who perform services for the licensee~~

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2843 ~~to complete 14 hours of professional continuing education during~~  
2844 ~~each biennial license period. The education shall cover primary~~  
2845 ~~and subordinate mortgage financing transactions and the~~  
2846 ~~provisions of this chapter and the rules adopted under this~~  
2847 ~~chapter.~~

2848 ~~(b) The licensee shall maintain records of such training~~  
2849 ~~for a period of 4 years, including records of the content of and~~  
2850 ~~hours designated for each program and the date and location of~~  
2851 ~~the program.~~

2852 ~~(c) Evidence of completion of such programs shall be~~  
2853 ~~included with the licensee's renewal application.~~

2854 ~~(9)(11)~~ The disclosures in this subsection must be  
2855 furnished in writing at the time an adjustable rate mortgage  
2856 loan is offered to the borrower and whenever the terms of the  
2857 adjustable rate mortgage loan offered have a material change  
2858 prior to closing. The lender shall furnish the disclosures  
2859 relating to adjustable rate mortgages in a format prescribed by  
2860 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors  
2861 of the Federal Reserve System, as amended; its commentary, as  
2862 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.  
2863 1601 et seq., as amended; together with the Consumer Handbook on  
2864 Adjustable Rate Mortgages, as amended; published by the Federal  
2865 Reserve Board and the Federal Home Loan Bank Board. The licensee  
2866 bears the burden of proving such disclosures were provided to  
2867 the borrower.

2868 ~~(10)(12)(a)~~ In every mortgage loan transaction, each  
2869 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify  
2870 a borrower of any material changes in the terms of a mortgage  
2871 loan previously offered to the borrower within 3 business days

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2872 after being made aware of such changes by the lender but at  
2873 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the  
2874 settlement or closing statement. The licensee bears the burden  
2875 of proving such notification was provided and accepted by the  
2876 borrower.

2877 ~~(b)~~ A borrower may waive the right to receive notice of a  
2878 material change ~~that is granted under paragraph (a)~~ if the  
2879 borrower determines that the extension of credit is needed to  
2880 meet a bona fide personal financial emergency and the right to  
2881 receive notice would delay the closing of the mortgage loan. The  
2882 imminent sale of the borrower's home at foreclosure during the  
2883 3-day period before the signing of the settlement or closing  
2884 statement constitutes an example of a bona fide personal  
2885 financial emergency. In order to waive the borrower's right to  
2886 receive notice ~~not less than 3 business days before the signing~~  
2887 ~~of the settlement or closing statement of any such material~~  
2888 ~~change~~, the borrower must provide the licensee with a dated  
2889 written statement that describes the personal financial  
2890 emergency, waives the right to receive the notice, bears the  
2891 borrower's signature, and is not on a printed form prepared by  
2892 the licensee for the purpose of such a waiver.

2893 (11) A mortgage lender may close loans in its own name but  
2894 may not service the loan for more than 4 months unless the  
2895 lender has a servicing endorsement. Only a mortgage lender who  
2896 continuously maintains a net worth of at least \$250,000 may  
2897 obtain a servicing endorsement.

2898 (12) A mortgage lender must report to the office the  
2899 failure to meet the applicable net worth requirements of s.  
2900 494.00611 within 2 days after the mortgage lender's knowledge of

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2901 such failure or after the mortgage lender should have known of  
2902 such failure.

2903 Section 51. Section 494.0068, Florida Statutes, is amended  
2904 to read:

2905 494.0068 Loan application process.—

2906 (1) In addition to the requirements set forth in s.  
2907 494.0067(8), before accepting an application fee in whole or in  
2908 part, a credit report fee, an appraisal fee, or a fee charged as  
2909 reimbursement for third-party charges, a mortgage lender shall  
2910 make a written disclosure to the borrower, which disclosure may  
2911 be contained in the application, setting forth:

2912 (a) Whether all or any part of such fees or charges is  
2913 refundable.

2914 (b) The terms and conditions for the refund, if all or any  
2915 part of the fees or charges is refundable.

2916 (c) A realistic estimate of the number of days required to  
2917 issue a commitment following receipt of the application by the  
2918 lender.

2919 (d) The name or title of a person within the lender's  
2920 organization to whom the borrower may address written questions,  
2921 comments, or complaints and who is required to promptly respond  
2922 to such inquiries.

2923 (2) The disclosures required in subsection (1) must ~~shall~~  
2924 be acknowledged in writing by the borrower and maintained by the  
2925 mortgage lender, and a copy of such acknowledgment shall be  
2926 given to the borrower.

2927 (3) The borrower may, without penalty or responsibility for  
2928 paying additional fees and charges, withdraw an application at  
2929 any time prior to acceptance of commitment. Upon such

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2930 withdrawal, the mortgage lender is responsible for refunding to  
2931 the borrower only those fees and charges to which the borrower  
2932 may be entitled pursuant to the terms set forth in the written  
2933 disclosure required by subsection (1), except that:

2934 (a) If the lender failed to provide the borrower with the  
2935 written disclosure required by subsection (1), the lender shall  
2936 promptly refund to the borrower all funds paid to the lender; or

2937 (b) If the lender failed to make a good faith effort to  
2938 approve the loan, the lender shall promptly refund to the  
2939 borrower all funds paid to the lender.

2940 (4) The application fee must be reasonably related to the  
2941 services to be performed and may not be based upon a percentage  
2942 of the principal amount of the loan or the amount financed.

2943 (5) For the purposes of this section, the term "application  
2944 fee" means any moneys advanced by the borrower upon filing an  
2945 application with a mortgage lender to offset the lender's  
2946 expenses for determining whether the borrower is qualified for  
2947 the mortgage loan or whether the mortgage loan should be funded.

2948 Section 52. Section 494.0069, Florida Statutes, is amended  
2949 to read:

2950 494.0069 Lock-in agreement.—

2951 (1) Each lock-in agreement must be in writing and must  
2952 contain:

2953 (a) The expiration date of the lock-in, if any;

2954 (b) The interest rate locked in, if any;

2955 (c) The discount points locked in, if any;

2956 (d) The commitment fee locked in, if any;

2957 (e) The lock-in fee, if any; and

2958 (f) A statement advising of the provisions of this part ~~ss.~~

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2959 ~~494.006-494.0077~~ regarding lock-in agreements.

2960 (2) The mortgage lender ~~or correspondent mortgage lender~~  
2961 shall make a good faith effort to process the mortgage loan  
2962 application and stand ready to fulfill the terms of its  
2963 commitment before the expiration date of the lock-in agreement  
2964 or any extension thereof.

2965 (3) Any lock-in agreement received by a mortgage lender ~~or~~  
2966 ~~correspondent mortgage lender~~ by mail or through a mortgage  
2967 broker must be signed by the mortgage lender ~~or correspondent~~  
2968 ~~mortgage lender~~ in order to become effective. The borrower may  
2969 rescind any lock-in agreement until a written confirmation of  
2970 the agreement has been signed by the lender and mailed to the  
2971 borrower or to the mortgage broker ~~brokerage business~~ pursuant  
2972 to its contractual relationship with the borrower. If a borrower  
2973 elects to so rescind, the mortgage lender ~~or correspondent~~  
2974 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2975 (4) ~~(a) Before~~ Any ~~correspondent mortgage lender or mortgage~~  
2976 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,  
2977 a mortgage lender must have the ability to timely advance funds  
2978 on all mortgage loans for which rate lock-in agreements have  
2979 been issued. As used in this section, "ability to timely advance  
2980 funds" means having sufficient liquid assets or a line of credit  
2981 necessary to cover all rate lock-in agreements issued with  
2982 respect to which a lock-in fee is collected.

2983 ~~(a)(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender  
2984 that does not comply with this subsection ~~paragraph (a)~~ may  
2985 issue mortgage rate lock-in agreements only if, prior to the  
2986 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2987 1. Has received a written rate lock-in agreement from a

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2988 ~~correspondent mortgage lender or~~ mortgage lender that complies  
2989 with this subsection ~~paragraph (a)~~; or

2990 2. Has received a written rate lock-in agreement from an  
2991 institutional investor or an agency of the Federal Government or  
2992 the state or local government that will be funding, making, or  
2993 purchasing the mortgage loan.

2994 (b) ~~(e)~~ All rate lock-in fees collected by a mortgage lender  
2995 ~~or correspondent mortgage lender~~ who is not in compliance with  
2996 ~~paragraph (a)~~ must be deposited into an escrow account in a  
2997 federally insured financial institution, and such fees may ~~shall~~  
2998 not be removed from such escrow account until:

2999 1. The mortgage loan closes and is funded;

3000 2. The applicant cancels the loan application or the loan  
3001 application is rejected; or

3002 3. The mortgage lender ~~or correspondent mortgage lender~~ is  
3003 required to forward a portion of the lock-in fee to another  
3004 ~~correspondent mortgage lender~~, mortgage lender, institutional  
3005 investor, or agency that will be funding, making, or purchasing  
3006 the loan. The mortgage lender ~~or correspondent mortgage lender~~  
3007 may remove only the amount of the lock-in fee actually paid to  
3008 another mortgage lender, ~~correspondent mortgage lender~~,  
3009 institutional investor, or agency.

3010 (5) For purposes of this section, the term "lock-in fee"  
3011 means any moneys advanced by the borrower to lock in for a  
3012 specified period of time a specified interest rate or discount  
3013 points.

3014 (6) The commission may adopt by rule a form for required  
3015 lock-in agreement disclosures.

3016 Section 53. Effective July 1, 2009, section 494.007,



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3017 Florida Statutes, is amended to read:

3018 494.007 Commitment process.—

3019 (1) If a commitment is issued, the mortgage lender shall  
3020 disclose in writing:

3021 (a) The expiration date of the commitment;

3022 (b) The mortgage amount, meaning the face amount of credit  
3023 provided to the borrower or in the borrower's behalf;

3024 (c) If the interest rate or other terms are subject to  
3025 change before expiration of the commitment:

3026 1. The basis, index, or method, if any, which will be used  
3027 to determine the rate at closing. Such basis, index, or method  
3028 shall be established and disclosed with direct reference to the  
3029 movement of an interest rate index or of a national or regional  
3030 index that is available to and verifiable by the borrower and  
3031 beyond the control of the lender; or

3032 2. The following statement, in at least 10-point bold type:  
3033 "The interest rate will be the rate established by the lender in  
3034 its discretion as its prevailing rate . . . days before  
3035 closing.";

3036 (d) The amount of the commitment fee, if any, and whether  
3037 and under what circumstances the commitment fee is refundable;  
3038 and

3039 (e) The time, if any, within which the commitment must be  
3040 accepted by the borrower.

3041 (2) The provisions of a commitment cannot be changed prior  
3042 to expiration of the specified period within which the borrower  
3043 must accept it. If any information necessary for an accurate  
3044 disclosure required by subsection (1) is unknown to the mortgage  
3045 lender at the time disclosure is required, the lender shall make

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3046 the disclosure based upon the best information reasonably  
3047 available to it and shall state that the disclosure is an  
3048 estimate.

3049 (3) A commitment fee is refundable if:

3050 (a) The commitment is contingent upon approval by parties  
3051 to whom the mortgage lender seeks to sell the loan.

3052 (b) The loan purchaser's requirements are not met due to  
3053 circumstances beyond the borrower's control.

3054 (c) The borrower is willing but unable to comply with the  
3055 loan purchaser's requirements.

3056 Section 54. Section 494.0071, Florida Statutes, is amended  
3057 to read:

3058 494.0071 Expiration of lock-in agreement or commitment.—If  
3059 a lock-in agreement has been executed and the loan does not  
3060 close before the expiration date of ~~either~~ the lock-in agreement  
3061 or any commitment issued consistent therewith through no  
3062 substantial fault of the borrower, the borrower may withdraw the  
3063 application or reject or terminate any commitment, whereupon the  
3064 mortgage lender ~~or correspondent mortgage lender~~ shall promptly  
3065 refund to the borrower any lock-in fee and any commitment fee  
3066 paid by the borrower.

3067 Section 55. Section 494.0072, Florida Statutes, is  
3068 repealed.

3069 Section 56. Section 494.00721, Florida Statutes, is amended  
3070 to read:

3071 494.00721 Net worth.—

3072 (1) The net worth requirements ~~required~~ in s. 494.00611 ~~ss.~~  
3073 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained  
3074 as a condition of licensure.

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3075 (2) If a mortgage lender ~~or correspondent mortgage lender~~  
3076 fails to satisfy the net worth requirements, the mortgage lender  
3077 ~~or correspondent mortgage lender~~ shall immediately cease taking  
3078 any new mortgage loan applications. Thereafter, the mortgage  
3079 lender ~~or correspondent mortgage lender~~ shall have up to 60 days  
3080 within which to satisfy the net worth requirements. If the  
3081 licensee makes the office aware, prior to an examination, that  
3082 the licensee no longer meets the net worth requirements, the  
3083 mortgage lender ~~or correspondent mortgage lender~~ shall have 120  
3084 days within which to satisfy the net worth requirements. A  
3085 mortgage lender may ~~or correspondent mortgage lender~~ shall not  
3086 resume acting as a mortgage lender ~~or correspondent mortgage~~  
3087 ~~lender~~ without written authorization from the office, which  
3088 authorization shall be granted if the mortgage lender ~~or~~  
3089 ~~correspondent mortgage lender~~ provides the office with  
3090 documentation which satisfies the requirements of s. 494.00611  
3091 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~  
3092 whichever is applicable.

3093 (3) If the mortgage lender ~~or correspondent mortgage lender~~  
3094 does not satisfy the net worth requirements within 120 days ~~the~~  
3095 ~~120-day period~~, the license of the mortgage lender ~~or~~  
3096 ~~correspondent mortgage lender~~ shall be deemed to be relinquished  
3097 and canceled and all servicing contracts shall be disposed of in  
3098 a timely manner by the mortgage lender ~~or correspondent mortgage~~  
3099 ~~lender~~.

3100 Section 57. Section 494.0073, Florida Statutes, is amended  
3101 to read:

3102 494.0073 Mortgage lender ~~or correspondent mortgage lender~~  
3103 when acting as a mortgage broker ~~brokerage business.~~ The

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3104 provisions of this part ~~Sections 494.006-494.0077~~ do not  
3105 prohibit a mortgage lender ~~or correspondent mortgage lender~~ from  
3106 acting as a mortgage broker ~~brokerage business~~. However, in  
3107 mortgage transactions in which a mortgage lender ~~or~~  
3108 ~~correspondent mortgage lender~~ acts as a mortgage broker  
3109 ~~brokerage business~~, the provisions of ss. 494.0038, 494.004(2)  
3110 ~~494.004(8)~~, 494.0042, and 494.0043(1), (2), and (3) apply.

3111 Section 58. Effective July 1, 2009, section 494.0075,  
3112 Florida Statutes, is amended to read:

3113 494.0075 Requirements for selling loans to noninstitutional  
3114 investors.—

3115 (1) A mortgage lender, when selling a mortgage loan to a  
3116 noninstitutional investor, shall:

3117 (a) Before any payment of money by a noninstitutional  
3118 investor, provide an opinion of value from an appraiser stating  
3119 the value of the security property unless the opinion is waived  
3120 in writing. The opinion must state the value of the property as  
3121 it exists on the date of the opinion. If any relationship exists  
3122 between the lender and the appraiser, that relationship must  
3123 ~~shall~~ be disclosed.†

3124 (b) Provide to the noninstitutional investor a mortgagee's  
3125 title insurance policy or an opinion of title by an attorney  
3126 licensed to practice law in this state, or a copy thereof:

3127 1. If a title insurance policy is issued, it must insure  
3128 the noninstitutional investor against the unmarketability of the  
3129 mortgagee's interest in such title. It must also specify any  
3130 superior liens that exist against the property. If an opinion of  
3131 title is issued by an attorney ~~licensed to practice law in this~~  
3132 ~~state~~, the opinion must include a statement as to the

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3133 marketability of the title to the property described in the  
3134 mortgage and specify the priority of the mortgage being  
3135 purchased.

3136 2. If the title insurance policy or opinion of title is not  
3137 available at the time of purchase, the licensee shall provide a  
3138 binder of the title insurance or conditional opinion of title.  
3139 This binder or opinion must include any conditions or  
3140 requirements needed to be corrected before ~~prior to~~ the issuance  
3141 of the final title policy or opinion of title. The binder or  
3142 opinion must also include information concerning the  
3143 requirements specified in subparagraph 1. Any conditions must be  
3144 eliminated or waived in writing by the investor before ~~prior to~~  
3145 delivery to the noninstitutional investor. The policy or  
3146 opinion, or a copy thereof, shall be delivered to the investor  
3147 within a reasonable period of time, not exceeding 6 months,  
3148 after purchase.

3149 3. The requirements of this paragraph may be waived in  
3150 writing. If the requirements are waived by the noninstitutional  
3151 investor, the waiver must include the following wording: "The  
3152 noninstitutional investor acknowledges that the mortgage lender  
3153 selling this mortgage loan is not providing a title insurance  
3154 policy or opinion of title issued by an attorney who is licensed  
3155 to practice law in the State of Florida. Any requirement for  
3156 title insurance or for a legal opinion of title is the sole  
3157 responsibility of the noninstitutional mortgage purchaser."

3158 (c) Provide, if the loan is other than a first mortgage, a  
3159 statement showing the balance owed by the mortgagor on any  
3160 existing mortgages prior to this investment and the status of  
3161 such existing mortgages.

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3162 (d) Provide a disclosure if the licensee is directly or  
3163 indirectly acting as a borrower or principal in the transaction.

3164 (2) Each mortgage, or other instrument securing a note or  
3165 assignment thereof, must ~~shall~~ be recorded before being  
3166 delivered to the noninstitutional investor.

3167 (3) Each mortgage and assignment shall be recorded as soon  
3168 as practical, but within ~~no later than~~ 30 business days after  
3169 the date of purchase.

3170 (4) If the loan is to be serviced by a licensee under this  
3171 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there  
3172 shall be a written servicing agreement.

3173 (5) The mortgage lender shall cause the original note to be  
3174 properly endorsed showing the assignment of the note to the  
3175 noninstitutional investor.

3176 Section 59. Effective July 1, 2009, paragraph (a) of  
3177 subsection (1) of section 494.0076, Florida Statutes, is amended  
3178 to read:

3179 494.0076 Servicing audits.—

3180 (1) (a) Each licensee under part III of chapter ~~who~~ ~~ss.~~  
3181 ~~494.006-494.0077~~ ~~which~~ services mortgage loans shall:

3182 1. Maintain a segregated set of records for accounts that  
3183 are serviced by the licensee.

3184 2. Have a separate, segregated depository account for all  
3185 receipts relating to servicing.

3186 Section 60. Effective July 1, 2009, section 494.0077,  
3187 Florida Statutes, is amended to read:

3188 494.0077 Other products and services.—This part does  
3189 ~~Sections 494.006-494.0077~~ ~~do~~ not prohibit a mortgage lender from  
3190 offering, for a fee or commission, products and services in

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3191 addition to those offered in conjunction with making a mortgage  
3192 loan.

3193 Section 61. Effective July 1, 2009, subsection (2) of  
3194 section 501.1377, Florida Statutes, is amended to read:

3195 501.1377 Violations involving homeowners during the course  
3196 of residential foreclosure proceedings.—

3197 (2) DEFINITIONS.—As used in this section, the term:

3198 (a) "Equity purchaser" means a ~~any~~ person who acquires a  
3199 legal, equitable, or beneficial ownership interest in any  
3200 residential real property as a result of a foreclosure-rescue  
3201 transaction. The term does not apply to a person who acquires  
3202 the legal, equitable, or beneficial interest in such property:

3203 1. By a certificate of title from a foreclosure sale  
3204 conducted under chapter 45;

3205 2. At a sale of property authorized by statute;

3206 3. By order or judgment of any court;

3207 4. From a spouse, parent, grandparent, child, grandchild,  
3208 or sibling of the person or the person's spouse; or

3209 5. As a deed in lieu of foreclosure, a workout agreement, a  
3210 bankruptcy plan, or any other agreement between a foreclosing  
3211 lender and a homeowner.

3212 (b) "Foreclosure-rescue consultant" means a person who  
3213 directly or indirectly makes a solicitation, representation, or  
3214 offer to a homeowner to provide or perform, in return for  
3215 payment of money or other valuable consideration, foreclosure-  
3216 related rescue services. The term does not apply to:

3217 1. A person excluded under s. 501.212.

3218 2. A person acting under the express authority or written  
3219 approval of the United States Department of Housing and Urban

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3220 Development or other department or agency of the United States  
3221 or this state to provide foreclosure-related rescue services.

3222 3. A charitable, not-for-profit agency or organization, as  
3223 determined by the United States Internal Revenue Service under  
3224 s. 501(c)(3) of the Internal Revenue Code, which offers  
3225 counseling or advice to an owner of residential real property in  
3226 foreclosure or loan default if the agency or organization does  
3227 not contract for foreclosure-related rescue services with a for-  
3228 profit lender or person facilitating or engaging in foreclosure-  
3229 rescue transactions.

3230 4. A person who holds or is owed an obligation secured by a  
3231 lien on any residential real property in foreclosure if the  
3232 person performs foreclosure-related rescue services in  
3233 connection with this obligation or lien and the obligation or  
3234 lien was not the result of or part of a proposed foreclosure  
3235 reconveyance or foreclosure-rescue transaction.

3236 5. A financial institution as defined in s. 655.005 and any  
3237 parent or subsidiary of the financial institution or of the  
3238 parent or subsidiary.

3239 6. A licensed mortgage broker, mortgage lender, or  
3240 correspondent mortgage lender that provides mortgage counseling  
3241 or advice regarding residential real property in foreclosure,  
3242 which counseling or advice is within the scope of services set  
3243 forth in chapter 494 and is provided without payment of money or  
3244 other consideration other than a loan origination mortgage  
3245 ~~brokerage fee as defined in s. 494.001.~~

3246 7. A licensed attorney who negotiates the terms of a  
3247 mortgage loan on behalf of a client as an ancillary matter to  
3248 the attorney's representation of the client.



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3249 (c) "Foreclosure-related rescue services" means any good or  
3250 service related to, or promising assistance in connection with:

3251 1. Stopping, avoiding, or delaying foreclosure proceedings  
3252 concerning residential real property; or

3253 2. Curing or otherwise addressing a default or failure to  
3254 timely pay with respect to a residential mortgage loan  
3255 obligation.

3256 (d) "Foreclosure-rescue transaction" means a transaction:

3257 1. By which residential real property in foreclosure is  
3258 conveyed to an equity purchaser and the homeowner maintains a  
3259 legal or equitable interest in the residential real property  
3260 conveyed, including, without limitation, a lease option  
3261 interest, an option to acquire the property, an interest as  
3262 beneficiary or trustee to a land trust, or other interest in the  
3263 property conveyed; and

3264 2. That is designed or intended by the parties to stop,  
3265 avoid, or delay foreclosure proceedings against a homeowner's  
3266 residential real property.

3267 (e) "Homeowner" means the ~~any~~ record title owner of  
3268 residential real property ~~that is the subject of foreclosure~~  
3269 ~~proceedings.~~

3270 (f) "Residential real property" means real property  
3271 consisting of one-family to four-family dwelling units, ~~one of~~  
3272 ~~which is occupied by the owner as his or her principal place of~~  
3273 ~~residence.~~

3274 (g) "Residential real property in foreclosure" means  
3275 residential real property against which there is an outstanding  
3276 notice of the pendency of foreclosure proceedings recorded  
3277 pursuant to s. 48.23.

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3278 Section 62. Paragraph (b) of subsection (2) of section  
3279 501.1377, Florida Statutes, as amended by this act, is amended  
3280 to read:

3281 (2) DEFINITIONS.—As used in this section, the term:

3282 (b) "Foreclosure-rescue consultant" means a person who  
3283 directly or indirectly makes a solicitation, representation, or  
3284 offer to a homeowner to provide or perform, in return for  
3285 payment of money or other valuable consideration, foreclosure-  
3286 related rescue services. The term does not apply to:

3287 1. A person excluded under s. 501.212.

3288 2. A person acting under the express authority or written  
3289 approval of the United States Department of Housing and Urban  
3290 Development or other department or agency of the United States  
3291 or this state to provide foreclosure-related rescue services.

3292 3. A charitable, not-for-profit agency or organization, as  
3293 determined by the United States Internal Revenue Service under  
3294 s. 501(c)(3) of the Internal Revenue Code, which offers  
3295 counseling or advice to an owner of residential real property in  
3296 foreclosure or loan default if the agency or organization does  
3297 not contract for foreclosure-related rescue services with a for-  
3298 profit lender or person facilitating or engaging in foreclosure-  
3299 rescue transactions.

3300 4. A person who holds or is owed an obligation secured by a  
3301 lien on any residential real property in foreclosure if the  
3302 person performs foreclosure-related rescue services in  
3303 connection with this obligation or lien and the obligation or  
3304 lien was not the result of or part of a proposed foreclosure  
3305 reconveyance or foreclosure-rescue transaction.

3306 5. A financial institution as defined in s. 655.005 and any

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3307 parent or subsidiary of the financial institution or of the  
3308 parent or subsidiary.

3309 6. A licensed mortgage broker, ~~mortgage lender,~~ or  
3310 ~~correspondent~~ mortgage lender that provides mortgage counseling  
3311 or advice regarding residential real property in foreclosure,  
3312 which counseling or advice is within the scope of services set  
3313 forth in chapter 494 and is provided without payment of money or  
3314 other consideration other than a loan origination mortgage  
3315 ~~brokerage fee as defined in s. 494.001.~~

3316 7. A licensed attorney who negotiates the terms of a  
3317 mortgage loan on behalf of a client as an ancillary matter to  
3318 the attorney's representation of the client.

3319 Section 63. Paragraph (b) of subsection (2) of section  
3320 501.0377, Florida Statutes, as amended by this act, is amended  
3321 to read:

3322 (2) DEFINITIONS.—As used in this section, the term:

3323 (b) "Foreclosure-rescue consultant" means a person who  
3324 directly or indirectly makes a solicitation, representation, or  
3325 offer to a homeowner to provide or perform, in return for  
3326 payment of money or other valuable consideration, foreclosure-  
3327 related rescue services. The term does not apply to:

3328 1. A person excluded under s. 501.212.

3329 2. A person acting under the express authority or written  
3330 approval of the United States Department of Housing and Urban  
3331 Development or other department or agency of the United States  
3332 or this state to provide foreclosure-related rescue services.

3333 3. A charitable, not-for-profit agency or organization, as  
3334 determined by the United States Internal Revenue Service under  
3335 s. 501(c) (3) of the Internal Revenue Code, which offers

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3336 counseling or advice to an owner of residential real property in  
3337 foreclosure or loan default if the agency or organization does  
3338 not contract for foreclosure-related rescue services with a for-  
3339 profit lender or person facilitating or engaging in foreclosure-  
3340 rescue transactions.

3341 4. A person who holds or is owed an obligation secured by a  
3342 lien on any residential real property in foreclosure if the  
3343 person performs foreclosure-related rescue services in  
3344 connection with this obligation or lien and the obligation or  
3345 lien was not the result of or part of a proposed foreclosure  
3346 reconveyance or foreclosure-rescue transaction.

3347 5. A financial institution as defined in s. 655.005 and any  
3348 parent or subsidiary of the financial institution or of the  
3349 parent or subsidiary.

3350 6. A licensed mortgage broker, ~~mortgage lender,~~ or  
3351 ~~correspondent~~ mortgage lender that provides mortgage counseling  
3352 or advice regarding residential real property in foreclosure,  
3353 which counseling or advice is within the scope of services set  
3354 forth in chapter 494 and is provided without payment of money or  
3355 other consideration other than a mortgage broker ~~brokerage~~ fee  
3356 ~~as defined in s. 494.001.~~

3357 7. A licensed attorney who negotiates the terms of a  
3358 mortgage loan on behalf of a client as an ancillary matter to  
3359 the attorney's representation of the client.

3360 Section 64. Effective July 1, 2009, paragraph (c) of  
3361 subsection (1) of section 201.23, Florida Statutes, is amended  
3362 to read:

3363 201.23 Foreign notes and other written obligations exempt.—

3364 (1) There shall be exempt from all excise taxes imposed by

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3365 this chapter:

3366 (c) Any promissory note, nonnegotiable note, or other  
3367 written obligation to pay money if the ~~said~~ note or obligation  
3368 is executed and delivered outside this state and at the time of  
3369 its making is secured only by a mortgage, deed of trust, or  
3370 similar security agreement encumbering real estate located  
3371 outside this state and if such promissory note, nonnegotiable  
3372 note, or other written obligation for payment of money is  
3373 brought into this state for deposit as collateral security under  
3374 a wholesale warehouse mortgage agreement or for inclusion in a  
3375 pool of mortgages deposited with a custodian as security for  
3376 obligations issued by an agency of the United States Government  
3377 or for inclusion in a pool of mortgages to be serviced for the  
3378 account of a customer by a mortgage lender licensed or exempt  
3379 from licensing under part III of chapter 494 ss. 494.006-  
3380 494.0077.

3381 Section 65. Effective July 1, 2009, paragraph (a) of  
3382 subsection (21) of section 420.507, Florida Statutes, is amended  
3383 to read:

3384 420.507 Powers of the corporation.—The corporation shall  
3385 have all the powers necessary or convenient to carry out and  
3386 effectuate the purposes and provisions of this part, including  
3387 the following powers which are in addition to all other powers  
3388 granted by other provisions of this part:

3389 (21) Review all reverse mortgage provisions proposed to be  
3390 used by an individual lender or a consortium to determine that  
3391 such provisions are consistent with the purposes and intent of  
3392 this act. If the corporation finds that the provisions are  
3393 consistent, it shall approve those provisions. If the

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3394 corporation finds that the provisions are inconsistent, it shall  
3395 state its objections and give the parties an opportunity to  
3396 amend the provisions to overcome such objections. In approving  
3397 these provisions, the corporation must determine:

3398 (a) That the mortgagee is ~~either~~ licensed pursuant to part  
3399 II of chapter 494 ss. 494.006-494.0077 or specifically exempt  
3400 from part III of chapter 494 ss. 494.006-494.0077.

3401 Section 66. Effective July 1, 2009, subsection (1) of  
3402 section 520.52, Florida Statutes, is amended to read:

3403 520.52 Licensees.—

3404 (1) A person may not engage in the business of a sales  
3405 finance company or operate a branch of such business without a  
3406 license as provided in this section; however, a bank, trust  
3407 company, savings and loan association, or credit union  
3408 authorized to do business in this state is not required to  
3409 obtain a license under this part. Any person authorized as a  
3410 licensee or registrant pursuant to part III of chapter 494 ss.  
3411 494.006-494.0077 is not required to obtain a license under this  
3412 part in order to become an assignee of a home improvement  
3413 finance seller.

3414 Section 67. Effective July 1, 2009, subsection (1) of  
3415 section 520.63, Florida Statutes, is amended to read:

3416 520.63 Licensees.—

3417 (1) A person may not engage in or transact any business as  
3418 a home improvement finance seller or operate a branch without  
3419 first obtaining a license from the office, except that a banking  
3420 institution, trust company, savings and loan association, credit  
3421 union authorized to do business in this state, or licensee under  
3422 part III of chapter 494 ss. 494.006-494.0077 is not required to

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3423 obtain a license to engage in home improvement financing.

3424 Section 68. Effective July 1, 2009, paragraph (b) of  
3425 subsection (11) of section 607.0505, Florida Statutes, is  
3426 amended to read:

3427 607.0505 Registered agent; duties.—

3428 (11) As used in this section, the term:

3429 (b) "Financial institution" means:

3430 1. A bank, banking organization, or savings association, as  
3431 defined in s. 220.62;

3432 2. An insurance company, trust company, credit union, or  
3433 industrial savings bank, any of which is licensed or regulated  
3434 by an agency of the United States or any state of the United  
3435 States; or

3436 3. Any person licensed under part III of chapter 494 ~~the~~  
3437 ~~provisions of ss. 494.006-494.0077.~~

3438 Section 69. Effective July 1, 2009, subsection (1) of  
3439 section 687.12, Florida Statutes, is amended to read:

3440 687.12 Interest rates; parity among licensed lenders or  
3441 creditors.—

3442 (1) Any lender or creditor licensed or chartered under ~~the~~  
3443 ~~provisions of~~ chapter 516, chapter 520, chapter 657, chapter 658  
3444 or former chapter 659, former chapter 664 or former chapter 656,  
3445 chapter 665, or part XV of chapter 627; any lender or creditor  
3446 located in this state ~~the State of Florida~~ and licensed or  
3447 chartered under the laws of the United States and authorized to  
3448 conduct a lending business; or any lender or creditor lending  
3449 through a licensee under part III of chapter 494, ~~is ss.~~  
3450 ~~494.006-494.0077~~, shall be authorized to charge interest on  
3451 loans or extensions of credit to any person as defined in s.

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3452 1.01~~(3)~~, or to any firm or corporation, at the maximum rate of  
3453 interest permitted by law to be charged on similar loans or  
3454 extensions of credit made by any lender or creditor in this  
3455 state ~~the State of Florida~~, except that the statutes governing  
3456 the maximum permissible interest rate on any loan or extension  
3457 of credit, and other statutory restrictions relating thereto,  
3458 ~~shall~~ also govern the amount, term, permissible charges, rebate  
3459 requirements, and restrictions for a similar loan or extension  
3460 of credit made by any lender or creditor.

3461 Section 70. Effective September 1, 2010:

3462 (1) All mortgage business school permits issued pursuant to  
3463 s. 494.0029, Florida Statutes, expire on September 30, 2010.

3464 (2) All mortgage brokerage business licenses issued before  
3465 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida  
3466 Statutes, expire on December 31, 2010. However, if a person  
3467 holding an active mortgage brokerage business license issued  
3468 before October 1, 2010, applies for a mortgage broker license  
3469 through the Nationwide Mortgage Licensing System and Registry  
3470 between October 1, 2010, and December 31, 2010, the mortgage  
3471 brokerage business license does not expire until the Office of  
3472 Financial Regulation approves or denies the mortgage broker  
3473 license application. A mortgage broker license approved on or  
3474 after October 1, 2010, is effective until December 31, 2011.  
3475 Application fees may not be prorated for partial years of  
3476 licensure.

3477 (3) All mortgage broker licenses issued before October 1,  
3478 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,  
3479 expire on December 31, 2010. However, if a person holding an  
3480 active mortgage broker license issued before October 1, 2010,



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3481 applies for a loan originator license through the Nationwide  
3482 Mortgage Licensing System and Registry between October 1, 2010,  
3483 and December 31, 2010, the mortgage broker license does not  
3484 expire until the Office of Financial Regulation approves or  
3485 denies the loan originator license application. Notwithstanding  
3486 s. 120.60, Florida Statutes, for mortgage broker applications  
3487 submitted between July 1, 2009, and December 31, 2009, or loan  
3488 originator applications submitted between October 1, 2010, and  
3489 December 31, 2010, the office has 60 days to notify the  
3490 applicant of any apparent errors or omissions in an application  
3491 and to request any additional information that the office may  
3492 require, and the office has 180 days to approve or deny a  
3493 completed application. Application fees may not be prorated for  
3494 partial years of licensure.

3495 (4) All mortgage lender licenses issued before October 1,  
3496 2010, pursuant to s. 494.0061 or s. 494.0064, Florida Statutes,  
3497 expire on December 31, 2010. However, if a person holding an  
3498 active mortgage lender license applies for a mortgage broker  
3499 license or mortgage lender license through the Nationwide  
3500 Mortgage Licensing System and Registry between October 1, 2010,  
3501 and December 31, 2010, the mortgage lender license does not  
3502 expire until the Office of Financial Regulation approves or  
3503 denies the mortgage broker license or mortgage lender license  
3504 application. Application fees may not be prorated for partial  
3505 years of licensure.

3506 (5) All mortgage lender licenses issued before October 1,  
3507 2010, pursuant to s. 494.0065 or s. 494.0064, Florida Statutes,  
3508 expire on December 31, 2010. However, if a person holding such  
3509 license applies for a mortgage broker license or mortgage lender

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3510 license through the Nationwide Mortgage Licensing System and  
3511 Registry between October 1, 2010, and December 31, 2010, the  
3512 mortgage lender license does not expire until the Office of  
3513 Financial Regulation approves or denies the mortgage broker  
3514 license or mortgage lender license application. Application fees  
3515 may not be prorated for partial years of licensure.

3516 (6) All correspondent mortgage lender licenses issued  
3517 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,  
3518 Florida Statutes, expire on December 31, 2010. However, if a  
3519 person holding an active correspondent mortgage lender license  
3520 issued before October 1, 2010, applies for a mortgage broker or  
3521 mortgage lender license through the Nationwide Mortgage  
3522 Licensing System and Registry between October 1, 2010, and  
3523 December 31, 2010, the correspondent mortgage lender license  
3524 does not expire until the Office of Financial Regulation  
3525 approves or denies the mortgage broker or mortgage lender  
3526 license application. Application fees may not be prorated for  
3527 partial years of licensure.

3528 Section 71. Except as otherwise expressly provided in this  
3529 act and except for this section, which shall take effect July 1,  
3530 2009, this act shall take effect October 1, 2010.