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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, and 494.0077, F.S.; conforming terms and
152 cross-references; amending s. 501.1377, F.S.; revising
153 definitions and conforming terms; exempting certain
154 attorneys from the definition of "foreclosure-rescue
155 consultant"; amending ss. 201.23, 420.507, 520.52,
156 520.63, 607.0505, and 687.12, F.S.; conforming cross-
157 references; providing for the termination of mortgage
158 business school licenses; providing for the expiration
159 of mortgage brokerage business licenses, mortgage
160 broker licenses, and correspondent mortgage lender
161 licenses; providing requirements for applying for a
162 loan originator, mortgage broker and mortgage lender
163 license by a certain date; providing effective dates.

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

166
167 Section 1. Effective January 1, 2010, subsection (3) of
168 section 494.001, Florida Statutes, is amended to read:

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

171 (3) "Act as a mortgage broker" means, for compensation or
172 gain, or in the expectation of compensation or gain, ~~either~~
173 directly or indirectly, accepting or offering to accept an
174 application for a mortgage loan, soliciting or offering to

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175 solicit a mortgage loan on behalf of a borrower, negotiating or
176 offering to negotiate the terms or conditions of a new or
177 existing mortgage loan on behalf of a borrower or lender, or
178 negotiating or offering to negotiate the sale of an existing
179 mortgage loan to a noninstitutional investor. An employee whose
180 activities are ministerial and clerical, which may include
181 quoting available interest rates or loan terms and conditions,
182 is not acting as a mortgage broker.

183 Section 2. Section 494.001, Florida Statutes, as amended by
184 this act, is amended to read:

185 494.001 Definitions.—As used in ss. 494.001-494.0077, the
186 term:

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

189 ~~(2) "Act as a loan originator" means being employed by a~~
190 ~~mortgage lender or correspondent mortgage lender, for~~
191 ~~compensation or gain or in the expectation of compensation or~~
192 ~~gain, to negotiate, offer to negotiate, or assist any licensed~~
193 ~~or exempt entity in negotiating the making of a mortgage loan,~~
194 ~~including, but not limited to, working with a licensed or exempt~~
195 ~~entity to structure a loan or discussing terms and conditions~~
196 ~~necessary for the delivery of a loan product. A natural person~~
197 ~~whose activities are ministerial and clerical, which may include~~
198 ~~quoting available interest rates, is not acting as a loan~~
199 ~~originator.~~

200 ~~(3) "Act as a mortgage broker" means, for compensation or~~
201 ~~gain, or in the expectation of compensation or gain, directly or~~
202 ~~indirectly, accepting or offering to accept an application for a~~
203 ~~mortgage loan, soliciting or offering to solicit a mortgage loan~~

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204 ~~on behalf of a borrower, negotiating or offering to negotiate~~
205 ~~the terms or conditions of a new or existing mortgage loan on~~
206 ~~behalf of a borrower or lender, or negotiating or offering to~~
207 ~~negotiate the sale of an existing mortgage loan to a~~
208 ~~noninstitutional investor. An employee whose activities are~~
209 ~~ministerial and clerical, which may include quoting available~~
210 ~~interest rates or loan terms and conditions, is not acting as a~~
211 ~~mortgage broker.~~

212 ~~(4) "Act as a mortgage lender" means to make a mortgage~~
213 ~~loan or to service a mortgage loan for others or, for~~
214 ~~compensation or gain, or in the expectation of compensation or~~
215 ~~gain, either directly or indirectly, to sell or offer to sell a~~
216 ~~mortgage loan to a noninstitutional investor.~~

217 ~~(5) "Associate" means a person required to be licensed as a~~
218 ~~mortgage broker under this chapter who is employed by or acting~~
219 ~~as an independent contractor for a mortgage brokerage business~~
220 ~~or a person acting as an independent contractor for a mortgage~~
221 ~~lender or correspondent mortgage lender. The use of the term~~
222 ~~associate, in contexts other than in the administration of ss.~~
223 ~~494.003-494.0077, shall not be construed to impose or effect the~~
224 ~~common law or statutory liability of the employer.~~

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

228 (2)~~(6)~~ "Branch manager ~~broker"~~ means the licensed loan
229 originator ~~licensee~~ in charge of, and responsible for, the
230 operation of the ~~a~~ branch office of a mortgage broker or
231 mortgage lender ~~brokerage business~~.

232 (3)~~(7)~~ "Branch office" means a location, other than a

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233 mortgage broker's or mortgage lender's licensee's principal
234 place of business:

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

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

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

245 (4) ~~(8)~~ "Commission" means the Financial Services
246 Commission.

247 (5) ~~(9)~~ "Control person" means an individual, partnership,
248 corporation, trust, or other organization that possesses the
249 power, directly or indirectly, to direct the management or
250 policies of a company, whether through ownership of securities,
251 by contract, or otherwise. The term includes, but is not limited
252 to ~~A person is presumed to control a company if, with respect to~~
253 ~~a particular company, that person:~~

254 (a) A company's executive officers, including the
255 president, chief executive officer, chief financial officer,
256 chief operations officer, chief legal officer, chief compliance
257 officer, director, and other individuals having similar status
258 or functions.

259 (b) For a corporation, each shareholder that, directly or
260 indirectly, owns 10 percent or more or that has the power to
261 vote 10 percent or more, of a class of voting securities unless

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262 the applicant is a publicly traded company.

263 (c) For a partnership, all general partners and limited or
264 special partners that have contributed 10 percent or more or
265 that have the right to receive, upon dissolution, 10 percent or
266 more of the partnership's capital.

267 (d) For a trust, each trustee.

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

272 (f) Principal loan originators.

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

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

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

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

289 ~~(b) Directly or indirectly may vote 10 percent or more of a~~
290 ~~class of voting securities or sell or direct the sale of 10~~

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291 ~~percent or more of a class of voting securities; or~~

292 ~~(c) In the case of a partnership, may receive upon~~
293 ~~dissolution or has contributed 10 percent or more of the~~
294 ~~capital.~~

295 ~~(10) "Office" means the Office of Financial Regulation of~~
296 ~~the commission.~~

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

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

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

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

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

310 ~~(c) Probation of a license or registration for an offense~~
311 ~~involving fraud, dishonest dealing, or an act of moral~~
312 ~~turpitude.~~

313 (9) "Financial audit report" means a report prepared in
314 connection with a financial audit that is conducted in
315 accordance with generally accepted auditing standards prescribed
316 by the American Institute of Certified Public Accountants by a
317 certified public accountant licensed to do business in the
318 United States, and which must include:

319 (a) Financial statements, including notes related to the

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320 financial statements and required supplementary information,
321 prepared in conformity with United States generally accepted
322 accounting principles.

323 (b) An expression of opinion regarding whether the
324 financial statements are presented in conformity with United
325 States generally accepted accounting principles, or an assertion
326 to the effect that such an opinion cannot be expressed and the
327 reasons.

328 (10)~~(14)~~ "Institutional investor" means a depository
329 institution ~~state or national bank, state or federal savings and~~
330 ~~loan association or savings bank,~~ real estate investment trust,
331 insurance company, real estate company, accredited investor as
332 defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or
333 mortgage lender ~~business~~ licensed under this chapter ~~ss.~~
334 ~~494.001-494.0077,~~ or other business entity that invests in
335 mortgage loans, including a secondary mortgage market
336 institution including, without limitation, the Federal National
337 Mortgage Association, the Federal Home Loan Mortgage
338 Corporation, and the Government National Mortgage Association,
339 conduits, investment bankers, and any subsidiary of such
340 entities.

341 (11)~~(15)~~ "Loan commitment" or "commitment" means a
342 statement by the lender setting forth the terms and conditions
343 upon which the lender is willing to make a particular mortgage
344 loan to a particular borrower.

345 (12) "Loan modification" means a modification to an
346 existing loan. The term does not include a refinancing
347 transaction.

348 (13) "Loan origination fee" means the total compensation

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349 from any source received by a mortgage broker acting as a loan
350 originator. Any payment for processing mortgage loan
351 applications must be included in the fee and must be paid to the
352 mortgage broker.

353 (14) "Loan originator" means an individual who, directly or
354 indirectly, solicits or offers to solicit a mortgage loan,
355 accepts or offers to accept an application for a mortgage loan,
356 negotiates or offers to negotiate the terms or conditions of a
357 new or existing mortgage loan on behalf of a borrower or lender,
358 processes a mortgage loan application, or negotiates or offers
359 to negotiate the sale of an existing mortgage loan to a
360 noninstitutional investor for compensation or gain. The term
361 includes the activities of a loan originator as that term is
362 defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an
363 individual acting as a loan originator pursuant to that
364 definition is acting as a loan originator for purposes of this
365 definition. The term does not include an employee of a mortgage
366 broker or mortgage lender who performs only administrative or
367 clerical tasks, including quoting available interest rates,
368 physically handling a completed application form, or
369 transmitting a completed form to a lender on behalf of a
370 prospective borrower.

371 (15)~~(16)~~ "Lock-in agreement" means an agreement whereby the
372 lender guarantees for a specified number of days or until a
373 specified date the availability of a specified rate of interest
374 or specified formula by which the rate of interest will be
375 determined or and/or specific number of discount points will be
376 given, if the loan is approved and closed within the stated
377 period of time.

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378 (16)~~(17)~~ "Making ~~Make~~ a mortgage loan" means closing to
379 close a mortgage loan in a person's name, advancing or to
380 advance funds, offering offer to advance funds, or making make a
381 commitment to advance funds to an applicant for a mortgage loan.

382 (17) "Material change" means a change that would be
383 important to a reasonable borrower in making a borrowing
384 decision, and includes a change in the interest rate previously
385 offered a borrower, a change in the type of loan offered to a
386 borrower, or a change in fees to be charged to a borrower
387 resulting in total fees greater than \$100.

388 (18) "Mortgage broker" means a person conducting loan
389 originator activities through one or more licensed loan
390 originators employed by the mortgage broker or as independent
391 contractors to the mortgage broker.

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

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

396 (19) "Mortgage lender" means a person making a mortgage
397 loan or servicing a mortgage loan for others, or, for
398 compensation or gain, directly or indirectly, selling or
399 offering to sell a mortgage loan to a noninstitutional investor.

400 (20)~~(20)~~ "Mortgage loan" means any:

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

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407 (b) Loan on commercial real property if the borrower is an
408 individual ~~a natural person~~ or the lender is a noninstitutional
409 investor; or

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

413 (21) "Mortgage loan application" means the submission of a
414 borrower's financial information in anticipation of a credit
415 decision, which includes the borrower's name, the borrower's
416 monthly income, the borrower's social security number to obtain
417 a credit report, the property address, an estimate of the value
418 of the property, the mortgage loan amount sought, and any other
419 information deemed necessary by the loan originator. An
420 application may be in writing or electronically submitted,
421 including a written record of an oral application.

422 (22) ~~(21)~~ "Net worth" means total assets minus total
423 liabilities pursuant to United States generally accepted
424 accounting principles.

425 (23) ~~(22)~~ "Noninstitutional investor" means an investor
426 other than an institutional investor.

427 ~~(23) "Nonresidential mortgage loan" means a mortgage loan~~
428 ~~other than a residential mortgage loan.~~

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

430 (25) ~~(24)~~ "Person" has the same meaning as in s. 1.01 ~~means~~
431 ~~an individual, partnership, corporation, association, or other~~
432 ~~group, however organized.~~

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

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436 (26) "Principal loan originator" means the licensed loan
437 originator in charge of, and responsible for, the operation of a
438 mortgage lender or mortgage broker, including all of the
439 activities of the mortgage lender's or mortgage broker's loan
440 originators and branch managers, whether employees or
441 independent contractors.

442 (27)~~(26)~~ "Principal place of business" means a mortgage
443 broker's or mortgage lender's licensee's primary business
444 office, the street address, or physical location that ~~of which~~
445 is designated on the application for licensure or any amendment
446 to such application.

447 (28) "Registered loan originator" means a loan originator
448 who is employed by a depository institution, by a subsidiary
449 that is owned and controlled by a depository institution and
450 regulated by a federal banking agency, or by an institution
451 regulated by the Farm Credit Administration, and who is
452 registered with and maintains a unique identifier through the
453 registry.

454 (29) "Registry" means the Nationwide Mortgage Licensing
455 System and Registry, which is the mortgage licensing system
456 developed and maintained by the Conference of State Bank
457 Supervisors and the American Association of Residential Mortgage
458 Regulators for the licensing and registration of loan
459 originators.

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

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

464 (b) The father, mother, brothers, and sisters of the

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465 person's spouse.

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

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

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

473 (32)~~(28)~~ "Servicing Service a mortgage loan" means to
474 receive, ~~or~~ cause to be received, or transferred for another,
475 installment payments of principal, interest, or other payments
476 pursuant to a mortgage loan.

477 (33)~~(29)~~ "Substantial fault of the borrower" means that the
478 borrower:

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

481 (b) Provided information, in the application or
482 subsequently, which upon verification proved to be significantly
483 inaccurate, causing the need for review or further investigation
484 by the lender or broker;

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

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

490

491 For purposes of this definition, a borrower is considered to
492 have provided information or documentation in a timely manner if
493 such information and documentation was received by the lender

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494 within 7 days after the borrower received a request for same,
495 and information is considered significantly inaccurate if the
496 correct information materially affects the eligibility of the
497 borrower for the loan for which application is made.

498 ~~(34)~~ ~~(30)~~ "Ultimate equitable owner" means an individual a
499 ~~natural person~~ who, directly or indirectly, owns or controls an
500 ownership interest in a corporation, a foreign corporation, an
501 alien business organization, or any other form of business
502 organization, regardless of whether the individual ~~such natural~~
503 ~~person~~ owns or controls such ~~ownership~~ interest through one or
504 more individuals ~~natural persons~~ or one or more proxies, powers
505 of attorney, nominees, corporations, associations, partnerships,
506 trusts, joint stock companies, or other entities or devices, or
507 any combination thereof.

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

510 ~~(32)~~ "Mortgage loan application" means ~~a submission of a~~
511 ~~borrower's financial information in anticipation of a credit~~
512 ~~decision, whether written or computer-generated, relating to a~~
513 ~~mortgage loan. If the submission does not state or identify a~~
514 ~~specific property, the submission is an application for a~~
515 ~~prequalification and not an application for a mortgage loan~~
516 ~~under this part. The subsequent addition of an identified~~
517 ~~property to the submission converts the submission to an~~
518 ~~application for a mortgage loan.~~

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

522 ~~(34)~~ "Business day" means ~~any calendar day except Sunday or~~

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523 ~~a legal holiday.~~

524 Section 3. Section 494.0011, Florida Statutes, is amended
525 to read:

526 494.0011 Powers and duties of the commission and office.—

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

529 ~~(2) The commission may adopt rules pursuant to ss.~~
530 ~~120.536(1) and 120.54 To~~ administer ~~implement~~ ss. 494.001-
531 494.0077, ~~the~~ the commission may adopt rules:

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

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

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

539 2. Require the use of uniform forms that have been approved
540 by the registry, and any subsequent amendments to such forms if
541 the forms are substantially in compliance with the provisions of
542 this chapter. Uniform forms that the commission may adopt
543 include, but are not limited to:

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

545 b. Uniform Mortgage Biographical Statement & Consent Form,
546 MU2.

547 c. Uniform Mortgage Branch Office Form, MU3.

548 d. Uniform Individual Mortgage License/Registration &
549 Consent Form, MU4.

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

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552 4. Prescribe requirements for amending or surrendering a
553 license or other activities as the commission deems necessary
554 for the office's participation in the registry.

555 5. Prescribe procedures that allow a licensee to challenge
556 information contained in the registry.

557 6. Prescribe procedures for reporting violations of this
558 chapter and disciplinary actions on licensees to the registry.
559 ~~The commission may prescribe by rule requirements and procedures~~
560 ~~for obtaining an exemption due to a technological or financial~~
561 ~~hardship. The commission may also adopt rules to accept~~
562 ~~certification of compliance with requirements of this act in~~
563 ~~lieu of requiring submission of documents.~~

564 (c) Establishing time periods during which a loan
565 originator, mortgage broker, or mortgage lender license
566 applicant under part II or part III is barred from licensure due
567 to prior criminal convictions of, or guilty or nolo contendere
568 pleas by, any of the applicant's control persons, regardless of
569 adjudication.

570 1. The rules must provide:

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

573 b. A 15-year disqualifying period for felonies involving
574 moral turpitude;

575 c. A 7-year disqualifying period for all other felonies;
576 and

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

579 2. The rules may provide for an additional waiting period
580 due to dates of imprisonment or community supervision, the

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581 commitment of multiple crimes, and other factors reasonably
582 related to the applicant's criminal history.

583 3. The rules may provide for mitigating factors for crimes
584 identified in sub-subparagraph 1.b. However, the mitigation may
585 not result in a period of disqualification less than 7 years.
586 The rule may not mitigate the disqualifying periods in sub-
587 subparagraphs 1.a., 1.c., and 1.d.

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

590 5. Section 112.011 is not applicable to eligibility for
591 licensure under this part.

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

596 (4) The office shall participate in the registry and shall
597 regularly report to the registry violations of this chapter,
598 disciplinary actions, and other information deemed relevant by
599 the office under this chapter.

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

607 ~~(b) The office may, in its discretion, seek subpoenas or~~
608 ~~subpoenas duces tecum from any court of competent jurisdiction~~
609 ~~commanding the appearance of witnesses and the production of~~

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610 ~~books, accounts, records, and other documents or materials at a~~
611 ~~time and place named in the subpoenas; and any authorized~~
612 ~~representative of the office may serve any subpoena.~~

613 ~~(5) (a) In the event of substantial noncompliance with a~~
614 ~~subpoena or subpoena duces tecum issued or caused to be issued~~
615 ~~by the office, the office may petition the circuit court or any~~
616 ~~other court of competent jurisdiction of the county in which the~~
617 ~~person subpoenaed resides or has its principal place of business~~
618 ~~for an order requiring the subpoenaed person to appear and~~
619 ~~testify and to produce such books, accounts, records, and other~~
620 ~~documents as are specified in the subpoena duces tecum. The~~
621 ~~court may grant injunctive relief restraining the person from~~
622 ~~advertising, promoting, soliciting, entering into, offering to~~
623 ~~enter into, continuing, or completing any mortgage loan~~
624 ~~transaction or mortgage loan servicing transaction. The court~~
625 ~~may grant such other relief, including, but not limited to, the~~
626 ~~restraint, by injunction or appointment of a receiver, of any~~
627 ~~transfer, pledge, assignment, or other disposition of the~~
628 ~~person's assets or any concealment, alteration, destruction, or~~
629 ~~other disposition of books, accounts, records, or other~~
630 ~~documents and materials as the court deems appropriate, until~~
631 ~~the person has fully complied with the subpoena duces tecum and~~
632 ~~the office has completed its investigation or examination. In~~
633 ~~addition, the court may order the refund of any fees collected~~
634 ~~in a mortgage loan transaction whenever books and documents~~
635 ~~substantiating the transaction are not produced or cannot be~~
636 ~~produced. The office is entitled to the summary procedure~~
637 ~~provided in s. 51.011, and the court shall advance such cause on~~
638 ~~its calendar. Attorney's fees and any other costs incurred by~~

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639 ~~the office to obtain an order granting, in whole or part, a~~
640 ~~petition for enforcement of a subpoena or subpoena duces tecum~~
641 ~~shall be taxed against the subpoenaed person, and failure to~~
642 ~~comply with such order is a contempt of court.~~

643 ~~(b) When it appears to the office that the compliance with~~
644 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~
645 ~~by the office pursuant to this section is essential and~~
646 ~~otherwise unavailable to an investigation or examination, the~~
647 ~~office, in addition to the other remedies provided for in this~~
648 ~~section, may apply to the circuit court or any other court of~~
649 ~~competent jurisdiction of the county in which the subpoenaed~~
650 ~~person resides or has its principal place of business for a writ~~
651 ~~of ne exeat. The court shall thereupon direct the issuance of~~
652 ~~the writ against the subpoenaed person requiring sufficient bond~~
653 ~~conditioned on compliance with the subpoena or subpoena duces~~
654 ~~tecum. The court shall cause to be endorsed on the writ a~~
655 ~~suitable amount of bond upon the payment of which the person~~
656 ~~named in the writ shall be freed, having a due regard to the~~
657 ~~nature of the case.~~

658 ~~(c) Alternatively, the office may seek a writ of attachment~~
659 ~~from the court having jurisdiction over the person who has~~
660 ~~refused to obey a subpoena, who has refused to give testimony,~~
661 ~~or who has refused to produce the matters described in the~~
662 ~~subpoena duces tecum.~~

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

665 Section 4. Effective January 1, 2010, section 494.00115,
666 Florida Statutes, is created to read:

667 494.00115 Exemptions.-

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668 (1) The following are exempt from regulation under parts I,
669 II, and III of this chapter.

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

673 (b) A depository institution; subsidiaries that are owned
674 and controlled by a depository institution and regulated by the
675 Board of Governors of the Federal Reserve System, the
676 Comptroller of the Currency, the Director of the Office of
677 Thrift Supervision, the National Credit Union Administration, or
678 the Federal Deposit Insurance Corporation; or institutions
679 regulated by the Farm Credit Administration.

680 (c) The Federal National Mortgage Association; the Federal
681 Home Loan Mortgage Corporation; any agency of the Federal
682 Government; any state, county, or municipal government; or any
683 quasi-governmental agency that acts in such capacity under the
684 specific authority of the laws of any state or the United
685 States.

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

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

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

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

696 (b) A person who, as a seller of his or her own real

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697 property, receives one or more mortgages in a purchase money
698 transaction.

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

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

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

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

712 (3) It is not necessary to negate any of the exemptions
713 provided in this section in any complaint, information,
714 indictment, or other writ or proceeding brought under ss.
715 494.001-494.0077. The burden of establishing the right to an
716 exemption is on the party claiming the benefit of the exemption.

717 Section 5. Section 494.00135, Florida Statutes, is created
718 to read:

719 494.00135 Subpoenas.—

720 (1) The office may:

721 (a) Issue and serve subpoenas and subpoenas duces tecum to
722 compel the attendance of witnesses and the production of all
723 books, accounts, records, and other documents and materials
724 relevant to an examination or investigation conducted by the
725 office. The office, or its authorized representative, may

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726 administer oaths and affirmations to any person.

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

732 (2) If there is substantial noncompliance with a subpoena
733 or subpoena duces tecum issued by the office, the office may
734 petition the court in the county where the person subpoenaed
735 resides or has his or her principal place of business for an
736 order requiring the person to appear, testify, or produce such
737 books, accounts, records, and other documents as are specified
738 in the subpoena or subpoena duces tecum.

739 (a) The court may grant injunctive relief restraining the
740 person from advertising, promoting, soliciting, entering into,
741 offering to enter into, continuing, or completing a mortgage
742 loan or servicing a mortgage loan.

743 (b) The court may grant such other relief, including, but
744 not limited to, the restraint, by injunction or appointment of a
745 receiver, of any transfer, pledge, assignment, or other
746 disposition of the person's assets or any concealment,
747 alteration, destruction, or other disposition of books,
748 accounts, records, or other documents and materials as the court
749 deems appropriate, until the person has fully complied with the
750 subpoena duces tecum and the office has completed its
751 investigation or examination.

752 (c) The court may order the refund of any fees collected in
753 a mortgage loan transaction if books and documents
754 substantiating the transaction are not produced or cannot be

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755 produced.

756 (d) If it appears to the office that compliance with a
757 subpoena or subpoena duces tecum issued is essential and
758 otherwise unavailable to an investigation or examination, the
759 office may apply to the court for a writ of ne exeat pursuant to
760 s. 68.02.

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

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

771 Section 6. Section 494.0014, Florida Statutes, is amended
772 to read:

773 494.0014 Cease and desist orders; ~~administrative fines;~~
774 refund orders.—

775 (1) The office may ~~has the power to~~ issue and serve upon
776 any person an order to cease and desist and to take corrective
777 action if ~~whenever~~ it has reason to believe the person is
778 violating, has violated, or is about to violate any provision of
779 ss. 494.001-494.0077, any rule or order issued under ss.
780 494.001-494.0077, or any written agreement between the person
781 and the office. All procedural matters relating to issuance and
782 enforcement of such a ~~cease and desist~~ order are governed by the
783 Administrative Procedure Act.

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

790 ~~(3) The office may prohibit the association by a mortgage~~
791 ~~broker business, or the employment by a mortgage lender or~~
792 ~~correspondent mortgage lender, of any person who has engaged in~~
793 ~~a pattern of misconduct while an associate of a mortgage~~
794 ~~brokerage business or an employee of a mortgage lender or~~
795 ~~correspondent mortgage lender. For the purpose of this~~
796 ~~subsection, the term "pattern of misconduct" means the~~
797 ~~commission of three or more violations of ss. 494.001-494.0077~~
798 ~~or the provisions of chapter 494 in effect prior to October 1,~~
799 ~~1991, during any 1-year period or any criminal conviction for~~
800 ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~
801 ~~in effect prior to October 1, 1991.~~

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

807 Section 7. Effective July 1, 2009, section 494.00165,
808 Florida Statutes, is amended to read:

809 494.00165 Prohibited advertising; record requirements.—

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

811 (a) Advertise that an applicant shall ~~will~~ have unqualified
812 access to credit without disclosing the ~~what~~ material

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813 limitations on the availability of such credit ~~exist~~. Such
814 Material limitations include, but are not limited to, the
815 percentage of down payment required, that a higher rate or
816 points could be required, or that restrictions on ~~as to~~ the
817 maximum principal amount of the loan offered could apply.

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

821 (c) Advertise mortgage loans, including rates, margins,
822 discounts, points, fees, commissions, or other material
823 information, including material limitations on such loans,
824 unless the ~~such~~ person is able to make such mortgage loans
825 available to a reasonable number of qualified applicants.

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

828 (e) Engage in unfair, deceptive, or misleading advertising
829 regarding mortgage loans, brokering services, or lending
830 services.

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

836 Section 8. Section 494.0017, Florida Statutes, is repealed.

837 Section 9. Section 494.00172, Florida Statutes, is created
838 to read:

839 494.00172 Mortgage Guaranty Trust Fund; payment of fees and
840 claims.—A nonrefundable fee is imposed on each application for a
841 mortgage broker, mortgage lender, or loan originator license and

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842 on each annual application for a renewal of such license. For a
843 loan originator, the initial and renewal fee is \$20. For
844 mortgage brokers and lenders, the initial and renewal fee is
845 \$100. This fee is in addition to the regular application or
846 renewal fee assessed and shall be deposited into the Mortgage
847 Guaranty Trust Fund of the office for the payment of claims in
848 accordance with this section.

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

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

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

860 (b) The borrower has caused a writ of execution to be
861 issued upon such judgment, and the officer executing the
862 judgment has made a return showing that no personal or real
863 property of the judgment debtor liable to be levied upon in
864 satisfaction of the judgment can be found or that the amount
865 realized on the sale of the judgment debtor's property pursuant
866 to such execution is insufficient to satisfy the judgment.

867 (c) The borrower has made all reasonable searches and
868 inquiries to ascertain whether the judgment debtor possesses
869 real or personal property or other assets subject to being sold
870 or applied in satisfaction of the judgment, and has discovered

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871 no such property or assets; or he or she has discovered property
872 and assets and has taken all necessary action and proceedings
873 for the application thereof to the judgment, but the amount
874 realized is insufficient to satisfy the judgment.

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

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

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

884 (3) The requirements of subsection (2) are not applicable
885 if the licensee upon which the claim is sought has filed for
886 bankruptcy or has been adjudicated bankrupt. However, the
887 claimant must file a proof of claim in the bankruptcy
888 proceedings and must notify the office by certified mail of the
889 claim by enclosing a copy of the proof of claim and all
890 supporting documents.

891 (4) Any person who meets all of the conditions in
892 subsection (2) may apply to the office for payment from the
893 trust fund equal to the unsatisfied portion of that person's
894 judgment or \$50,000, whichever is less, but only to the extent
895 that the amount reflected in the judgment is for actual or
896 compensatory damages, plus any attorney's fees and costs awarded
897 by the trial court which have been determined by the court, and
898 the documented costs associated with attempting to collect the
899 judgment. Actual or compensatory damages may not include

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900 postjudgment interest. Attorney's fees may not exceed \$5,000 or
901 20 percent of the actual or compensatory damages, whichever is
902 less. If actual or compensatory damages, plus attorney's fees
903 and costs, exceed \$50,000, actual or compensatory damages must
904 be paid first. The cumulative payment for actual or compensatory
905 damages, plus attorney's fees and costs, may not exceed \$50,000
906 as described in this section.

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

910 (b) Payments for claims are limited in the aggregate to
911 \$250,000 against any one licensee under this chapter. If the
912 total claims exceed the aggregate limit of \$250,000, the office
913 shall prorate payments based on the ratio that a claim bears to
914 the total claims filed.

915 (c) Payments shall be made to all persons meeting the
916 requirements of subsection (2) 2 years after the date the first
917 complete and valid notice is received by the office. Persons who
918 give notice after 2 years and who otherwise comply with the
919 conditions precedent to recovery may recover from any remaining
920 portion of the \$250,000 aggregate as provided in this
921 subsection, with claims being paid in the order notice was
922 received until the \$250,000 aggregate has been disbursed.

923 (d) The claimant shall assign his or her right, title, and
924 interest in the judgment, to the extent of his or her recovery
925 from the fund, to the office and shall record, at his or her own
926 expense, the assignment of judgment in every county where the
927 judgment is recorded.

928 (e) If the money in the fund is insufficient to satisfy any

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929 valid claim or portion thereof, the office shall satisfy such
930 unpaid claim or portion as soon as a sufficient amount of money
931 has been deposited in the trust fund. If there is more than one
932 unsatisfied claim outstanding, such claims shall be paid in the
933 order in which the claims were filed with the office.

934 (f) The payment of any amount from the fund in settlement
935 of a claim or in satisfaction of a judgment against a licensee
936 constitutes prima facie grounds for the revocation of the
937 license.

938 Section 10. Section 494.0018, Florida Statutes, is amended
939 to read:

940 494.0018 Penalties.—

941 (1) Whoever knowingly violates any provision of s.
942 494.00255(1) (a), (b), or (c) s. 494.0041(2) (e), (f), or (g); s.
943 494.0072(2) (e), (f), or (g); or s. 494.0025(1), (2), (3), (4),
944 or (5), except as provided in subsection (2) of this section,
945 commits is guilty of a felony of the third degree, punishable as
946 provided in s. 775.082, s. 775.083, or s. 775.084. Each such
947 violation constitutes a separate offense.

948 (2) Any person who violates ~~convicted of a violation of~~ any
949 provision of ss. 494.001-494.0077, in which ~~violation~~ the total
950 value of money and property unlawfully obtained exceeds ~~exceeded~~
951 \$50,000 and there are ~~were~~ five or more victims, commits is
952 ~~guilty of~~ a felony of the first degree, punishable as provided
953 in s. 775.082, s. 775.083, or s. 775.084.

954 Section 11. Effective July 1, 2009, section 494.0019,
955 Florida Statutes, is amended to read:

956 494.0019 Liability in case of unlawful transaction.—

957 (1) If a mortgage loan transaction is made in violation of

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958 any provision of ss. 494.001-494.0077, the person making the
959 transaction and every licensee, director, or officer who
960 participated in making the transaction are jointly and severally
961 liable to every party to the transaction in an action for
962 damages incurred by the party or parties.

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

969 Section 12. Effective July 1, 2009, section 494.002,
970 Florida Statutes, is amended to read:

971 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~
972 ~~in ss. 494.001-494.0077~~ do not limit ~~limits~~ any statutory or
973 common-law right of any person to bring any action in any court
974 for any act involved in the mortgage loan business or the right
975 of the state to punish any person for any violation of any law.

976 Section 13. Section 494.0023, Florida Statutes, is amended
977 to read:

978 494.0023 Conflicting interest.—

979 (1) If, in a mortgage transaction, a licensee has a
980 conflicting interest as specified in subsection (2), the
981 licensee shall, at a minimum, provide the following disclosures
982 to the borrower in writing:

983 (a) The nature of the relationship, ownership, or financial
984 interest between the provider of products or services, or
985 business incident thereto, and the licensee making the referral;
986 ~~The type of conflicting interest shall be fully and fairly~~

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987 ~~disclosed.~~

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

991 (c) That a financial benefit may be received by the
992 licensee as a result of the conflicting interest; and-

993 (d) ~~(c)~~ ~~The borrower shall be informed~~ That alternative
994 sources may be chosen by the borrower to provide the any
995 required products or services. ~~The following language must be~~
996 ~~contained in 12-point type in any agreement between a mortgage~~
997 ~~broker, mortgage lender, or correspondent mortgage lender and a~~
998 ~~borrower in substantially this form:~~

999
1000 ~~You are not required to purchase additional products or services~~
1001 ~~from any person or entity suggested or recommended by~~
1002 ~~(Broker/Lender/Correspondent Lender). However, the~~
1003 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~
1004 ~~to approve the entity selected by the borrower, which approval~~
1005 ~~may not be unreasonably withheld.~~

1006 (2) A licensee has a conflicting interest if:

1007 (a) The licensee or the licensee's relative provides the
1008 borrower with additional products or services;

1009 (b) The licensee or licensee's relative, ~~either~~ directly or
1010 indirectly, owns, controls, or holds with power to vote, or
1011 holds proxies representing, 1 ~~10~~ percent or more of any class of
1012 equity securities or other beneficial interest in the ~~such~~
1013 person providing the additional products or services;

1014 (c) The person providing the additional products or
1015 services, ~~either~~ directly or indirectly, owns, controls, or

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1016 holds the power to vote, or holds proxies representing, 1 ~~10~~
1017 percent or more of any class of equity securities or other
1018 beneficial interest in the licensee;

1019 (d) A holding company, ~~either~~ directly or indirectly, owns,
1020 controls, or holds with power to vote, or holds proxies
1021 representing, 1 ~~10~~ percent or more of any class of equity
1022 securities or other beneficial interest in both the licensee and
1023 the person providing the additional products or services;

1024 (e) One or more persons, or such person's relative, sits as
1025 an officer or director, or performs similar functions as an
1026 officer or director, for both the licensee and the person
1027 providing the additional products or services; or

1028 (f) The licensee or the licensee's relative sits as an
1029 officer or director, or performs similar functions as an officer
1030 or director, of the person providing the additional products or
1031 services.

1032 (3) The commission may adopt rules to administer the
1033 disclosure requirements of this section. The rules must consider
1034 the disclosure requirements of the federal Real Estate
1035 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the
1036 federal Truth in Lending Act, 15 U.S.C. et seq.; and related
1037 federal regulations.

1038 ~~(3) As used in this section, the term "relative" of any~~
1039 ~~natural person means any of the following persons, whether by~~
1040 ~~the full or half blood or by adoption:~~

1041 ~~(a) Such person's spouse, father, mother, children,~~
1042 ~~brothers, and sisters.~~

1043 ~~(b) The father, mother, brothers, and sisters of such~~
1044 ~~person's spouse.~~

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1045 ~~(c) The spouses of children, brothers, or sisters of such~~
1046 ~~person.~~

1047 Section 14. Section 494.0025, Florida Statutes, is amended
1048 to read:

1049 494.0025 Prohibited practices.—It is unlawful for any
1050 person:

1051 ~~(1) To act as a mortgage lender in this state without a~~
1052 ~~current, active license issued by the office pursuant to ss.~~
1053 ~~494.006–494.0077.~~

1054 (1)(2) To act as a loan originator ~~correspondent mortgage~~
1055 ~~lender~~ in this state without a current, active license issued by
1056 the office pursuant to part II of this chapter ~~ss. 494.006–~~
1057 ~~494.0077.~~

1058 (2)(3) To act as a mortgage broker in this state without a
1059 current, active license issued by the office pursuant to part II
1060 of this chapter ~~ss. 494.003–494.0043.~~

1061 (3) To act as a mortgage lender in this state without a
1062 current, active license issued by the office pursuant to part
1063 III of this chapter.

1064 (4) In any practice or transaction or course of business
1065 relating to the sale, purchase, negotiation, promotion,
1066 advertisement, or hypothecation of mortgage loan transactions,
1067 directly or indirectly:

1068 (a) To knowingly or willingly employ any device, scheme, or
1069 artifice to defraud;

1070 (b) To engage in any transaction, practice, or course of
1071 business which operates as a fraud upon any person in connection
1072 with the purchase or sale of any mortgage loan; or

1073 (c) To obtain property by fraud, willful misrepresentation

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1074 of a future act, or false promise.

1075 (5) In any matter within the jurisdiction of the office, to
1076 knowingly and willfully falsify, conceal, or cover up by a
1077 trick, scheme, or device a material fact, make any false or
1078 fraudulent statement or representation, or make or use any false
1079 writing or document, knowing the same to contain any false or
1080 fraudulent statement or entry.

1081 (6) To violate s. 655.922(2), subject to ss. 494.001-
1082 494.0077.

1083 ~~(7) Who is required to be licensed under ss. 494.006-~~
1084 ~~494.0077, to fail to report to the office the failure to meet~~
1085 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~
1086 ~~494.0065 within 48 hours after the person's knowledge of such~~
1087 ~~failure or within 48 hours after the person should have known of~~
1088 ~~such failure.~~

1089 ~~(7)-(8)~~ To pay a fee or commission in any mortgage loan
1090 transaction to any person or entity other than a licensed
1091 mortgage broker ~~brokerage business, mortgage lender, or~~
1092 ~~correspondent mortgage lender, operating under an active~~
1093 ~~license, or a person exempt from licensure under this chapter.~~

1094 ~~(8)-(9)~~ To record a mortgage broker ~~brokerage~~ agreement or
1095 any other document, not rendered by a court of competent
1096 jurisdiction, which purports to enforce the terms of the
1097 ~~mortgage brokerage~~ agreement.

1098 ~~(9)-(10)~~ To use the name or logo of a financial institution,
1099 as defined in s. 655.005(1), or its affiliates or subsidiaries
1100 when marketing or soliciting existing or prospective customers
1101 if such marketing materials are used without the written consent
1102 of the financial institution and in a manner that would lead a

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1103 reasonable person to believe that the material or solicitation
1104 originated from, was endorsed by, or is related to or the
1105 responsibility of the financial institution or its affiliates or
1106 subsidiaries.

1107 (10) Subject to investigation or examination under this
1108 chapter, to knowingly alter, withhold, conceal, or destroy any
1109 books, records, computer records, or other information relating
1110 to a person's activities which subject the person to the
1111 jurisdiction of this chapter.

1112 Section 15. Section 494.00255, Florida Statutes, is created
1113 to read:

1114 494.00255 Administrative penalties and fines; license
1115 violations.-

1116 (1) Each of the following acts constitutes a ground for
1117 which the disciplinary actions specified in subsection (2) may
1118 be taken against a person licensed or required to be licensed
1119 under part II or part III of this chapter:

1120 (a) Failure to immediately place upon receipt, and maintain
1121 until authorized to disburse, any money entrusted to the
1122 licensee as a licensee in a segregated account of a federally
1123 insured financial institution in this state.

1124 (b) Failure to account or deliver to any person any
1125 property that is not the licensee's, or that the licensee is not
1126 entitled to retain, under the circumstances and at the time that
1127 has been agreed upon or as required by law or, in the absence of
1128 a fixed time, upon demand of the person entitled to such
1129 accounting and delivery.

1130 (c) Failure to disburse funds in accordance with
1131 agreements.

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1132 (d) Any misuse, misapplication, or misappropriation of
1133 personal property entrusted to the licensee's care to which the
1134 licensee had no current property right at the time of
1135 entrustment.

1136 (e) Fraud, misrepresentation, deceit, negligence, or
1137 incompetence in any mortgage financing transaction.

1138 (f) Requesting a specific valuation, orally or in writing,
1139 from an appraiser for a particular property, implying to an
1140 appraiser that a specific valuation is needed for a particular
1141 property, or in any manner conditioning the order for an
1142 appraisal on the appraisal meeting a specific valuation. The
1143 numeric value of the specific valuation sought need not be
1144 stated, but rather the mere statement that a specific valuation
1145 is sought, violates this section.

1146 (g) Consistently and materially underestimating maximum
1147 closing costs.

1148 (h) Disbursement, or an act which has caused or will cause
1149 disbursement, to any person in any amount from the Mortgage
1150 Guaranty Trust Fund, the Securities Guaranty Fund, or the
1151 Florida Real Estate Recovery Fund, regardless of any repayment
1152 or restitution to the disbursed fund by the licensee or any
1153 person acting on behalf of the licensee.

1154 (i) Commission of fraud, misrepresentation, concealment, or
1155 dishonest dealing by trick, scheme, or device; culpable
1156 negligence; breach of trust in any business transaction in any
1157 state, nation, or territory; or aiding, assisting, or conspiring
1158 with any other person engaged in any such misconduct and in
1159 furtherance thereof.

1160 (j) Being convicted of, or entering a plea of guilty or

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1161 nolo contendere to, regardless of adjudication, any felony or
1162 any crime involving fraud, dishonesty, breach of trust, money
1163 laundering, or act of moral turpitude.

1164 (k) Having a final judgment entered against the licensee in
1165 a civil action upon grounds of fraud, embezzlement,
1166 misrepresentation, or deceit.

1167 (l) Having been the subject of any:

1168 1. Decision, finding, injunction, suspension, prohibition,
1169 revocation, denial, judgment, or administrative order by any
1170 court, administrative law judge, state or federal agency,
1171 national securities exchange, national commodities exchange,
1172 national option exchange, national securities association,
1173 national commodities association, or national option association
1174 involving a violation of any federal or state securities or
1175 commodities law or rule or regulation adopted under such law or
1176 involving a violation of any rule or regulation of any national
1177 securities, commodities, or options exchange or association.

1178 2. Injunction or adverse administrative order by a state or
1179 federal agency regulating banking, insurance, finance or small
1180 loan companies, real estate, mortgage brokers or lenders, money
1181 transmitters, or other related or similar industries.

1182 (m) In any mortgage transaction, violating any provision of
1183 the federal Real Estate Settlement Procedure Act, as amended, 12
1184 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
1185 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
1186 under such acts.

1187 (n) Having a loan originator, mortgage broker, or mortgage
1188 lender license, or the equivalent of such license, revoked in
1189 any jurisdiction.

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1190 (o) Having a license, or the equivalent of such license, to
1191 practice any profession or occupation revoked, suspended, or
1192 otherwise acted against, including the denial of licensure by a
1193 licensing authority of this state or another state, territory,
1194 or country.

1195 (p) Acting as a loan originator, mortgage broker, or
1196 mortgage lender without a current license issued under part II
1197 or part III of this chapter.

1198 (q) Operating a mortgage broker or mortgage lender branch
1199 office without a current license issued under part II or part
1200 III of this chapter.

1201 (r) Conducting any mortgage brokering or mortgage lending
1202 activities in the absence of a properly designated principal
1203 loan originator or mortgage brokering or mortgage lending
1204 activities at any particular branch office without a properly
1205 designated branch manager.

1206 (s) A material misstatement or omission of fact on an
1207 initial or renewal license application.

1208 (t) Payment to the office for a license or permit with a
1209 check or electronic transmission of funds which is dishonored by
1210 the applicant's or licensee's financial institution.

1211 (u) Failure to comply with, or violations of, any provision
1212 of ss. 494.001-494.0077, or any rule or order made or issued
1213 under ss. 494.001-494.0077.

1214 (v) Failure to maintain, preserve, and keep available for
1215 examination all books, accounts, or other documents required by
1216 ss. 494.001-494.0077 and the rules of the commission.

1217 (w) Refusal to permit an investigation or examination of
1218 books and records, or refusal to comply with an office subpoena

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1219 or subpoena duces tecum.

1220 (x) Failure to timely pay any fee, charge, or fine imposed
1221 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1222 (2) If the office finds a person in violation of any act
1223 specified in this section, it may enter an order imposing one or
1224 more of the following penalties:

1225 (a) Issuance of a reprimand.

1226 (b) Suspension of a license, subject to reinstatement upon
1227 satisfying all reasonable conditions imposed by the office.

1228 (c) Revocation of a license.

1229 (d) Denial of a license.

1230 (e) Imposition of a fine in an amount up to \$25,000 for
1231 each count or separate offense.

1232 (f) An administrative fine of up to \$1,000 per day, but not
1233 to exceed \$25,000 cumulatively, for each day that

1234 1. A mortgage broker or mortgage lender conducts business
1235 at an unlicensed branch office.

1236 2. An unlicensed person acts as a loan originator, a
1237 mortgage broker, or a mortgage lender.

1238 (3) A mortgage broker or mortgage lender, as applicable, is
1239 subject to the disciplinary actions specified in subsection (2)
1240 for a violation of subsection (1) by:

1241 (a) A control person of the mortgage broker or mortgage
1242 lender; or

1243 (b) A loan originator employed by or contracting with the
1244 mortgage broker or mortgage lender.

1245 (4) A principal loan originator of a mortgage broker is
1246 subject to the disciplinary actions specified in subsection (2)
1247 for violations of subsection (1) by a loan originator in the

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1248 course of an association with the mortgage broker if there is a
1249 pattern of repeated violations by the loan originator or if the
1250 principal loan originator has knowledge of the violations.

1251 (5) A principal loan originator of a mortgage lender is
1252 subject to the disciplinary actions specified in subsection (2)
1253 for violations of subsection (1) by an associate of a mortgage
1254 lender if there is a pattern of repeated violations by the
1255 associate or if the principal loan originator has knowledge of
1256 the violations.

1257 (6) A branch manager is subject to the disciplinary actions
1258 specified in subsection (2) for violations of subsection (1) by
1259 a loan originator in the course of an association with the
1260 mortgage broker or mortgage lender if there is a pattern of
1261 repeated violations by the loan originator or if the branch
1262 manager has knowledge of the violations.

1263 (7) An individual who is associated with a mortgage broker
1264 is subject to the disciplinary actions specified in subsection
1265 (2) for a violation of subsection (1) with respect to an action
1266 in which such person was involved.

1267 (8) Pursuant to s. 120.60(6), the office may summarily
1268 suspend the license of a loan originator, mortgage broker, or
1269 mortgage lender if the office has reason to believe that a
1270 licensee poses an immediate, serious danger to the public's
1271 health, safety, or welfare. The arrest of the licensee, or the
1272 mortgage broker or the mortgage lender's control person, for any
1273 felony or any crime involving fraud, dishonesty, breach of
1274 trust, money laundering, or any other act of moral turpitude is
1275 deemed sufficient to constitute an immediate danger to the
1276 public's health, safety, or welfare. Any proceeding for the

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1277 summary suspension of a license must be conducted by the
1278 commissioner of the office, or designee, who shall issue the
1279 final summary order.

1280 (9) The office may deny any request to terminate or
1281 withdraw any license application or license if the office
1282 believes that an act that would be a ground for license denial,
1283 suspension, restriction, or revocation under this chapter has
1284 been committed.

1285 Section 16. Effective July 1, 2009, section 494.0026,
1286 Florida Statutes, is amended to read:

1287 494.0026 Disposition of insurance proceeds.—The following
1288 provisions apply to mortgage loans held by a mortgagee or
1289 assignee that is subject to part II or part III of this chapter
1290 ~~ss. 494.003–494.0077.~~

1291 (1) The mortgagee or assignee must promptly endorse a
1292 check, draft, or other negotiable instrument payable jointly to
1293 the mortgagee or assignee and the insured by the insurance
1294 company. However, the mortgagee or assignee is not required to
1295 endorse such instrument if the insured or a payee who is not
1296 subject to part II or part III of this chapter ~~ss. 494.003–~~
1297 ~~494.0077~~ refuses to endorse the instrument.

1298 (2) Insurance proceeds received by a mortgagee or assignee
1299 that relate to compensation for damage to property or contents
1300 insurance coverage in which the mortgagee or assignee has a
1301 security interest must be promptly deposited ~~by the mortgagee or~~
1302 ~~assignee~~ into a segregated account of a federally insured
1303 financial institution.

1304 (3) Insurance proceeds received by a mortgagee or assignee
1305 that relate to contents insurance coverage in which the

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1306 mortgagee or assignee does not have a security interest in the
1307 contents must be promptly distributed to the insured ~~by the~~
1308 ~~mortgagee or assignee.~~

1309 (4) Insurance proceeds received by a mortgagee or assignee
1310 that relate to additional living expenses must be promptly
1311 distributed to the insured ~~by the mortgagee or assignee.~~

1312 (5) The mortgagee or assignee is not required to remit the
1313 portion of the proceeds relating to additional living expenses
1314 and contents insurance if the mortgagee or assignee is not able
1315 to determine which part of the proceeds relates to additional
1316 living expenses and contents insurance.

1317
1318 ~~Nothing in~~ This section may not ~~shall~~ be construed to prevent an
1319 insurance company from paying the insured directly for
1320 additional living expenses or paying the insured directly for
1321 contents insurance coverage if the mortgagee or assignee does
1322 not have a security interest in the contents.

1323 Section 17. Section 494.0028, Florida Statutes, is amended
1324 to read:

1325 494.0028 Arbitration.—

1326 (1) This section applies to any mortgage broker ~~brokerage~~
1327 agreement, servicing agreement, loan application, or purchase
1328 agreement that ~~which~~ provides for arbitration between:

1329 (a) A noninstitutional investor and a mortgage lender
1330 servicing ~~or correspondent mortgage lender to service~~ a mortgage
1331 loan.

1332 (b) A borrower and a mortgage broker ~~brokerage business,~~
1333 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a
1334 mortgage loan.

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1335 (c) A noninstitutional investor and a mortgage broker
1336 ~~brokerage business, mortgage lender, or correspondent~~ mortgage
1337 lender to fund or purchase a mortgage loan.

1338 (2) All agreements subject to this section must ~~shall~~
1339 provide that, at the voluntary election of the noninstitutional
1340 investor or borrower, disputes shall be handled by ~~either~~ a
1341 court ~~of competent jurisdiction~~ or by binding arbitration.

1342 (3) All agreements subject to this section must ~~shall~~
1343 provide the noninstitutional investor or borrower with the
1344 option to elect arbitration before the American Arbitration
1345 Association or other independent nonindustry arbitration forum.
1346 Any other nonindustry arbitration forum may apply to the office
1347 to allow such forum to provide arbitration services. The office
1348 shall grant the application if the applicant's fees, practices,
1349 and procedures do not materially differ from those of the
1350 American Arbitration Association.

1351 (4) At the election of the noninstitutional investor or
1352 borrower, venue shall be in the county in which the
1353 noninstitutional investor or borrower entered into the agreement
1354 or at a business location of the mortgage broker or ~~brokerage~~
1355 ~~business, mortgage lender, or correspondent lender.~~

1356 (5) Any fees or charges must be in accordance with ~~shall be~~
1357 ~~made as provided in~~ the rules of the American Arbitration
1358 Association or other approved nonindustry arbitration forum and
1359 may ~~shall~~ not be set in the agreement.

1360 (6) Any election made under this section is ~~shall be~~
1361 irrevocable.

1362 (7) This section does ~~shall not be construed to~~ require an
1363 agreement that ~~which~~ is subject to this section to contain an

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1364 arbitration clause.

1365 Section 18. Sections 494.0029 and 494.00295, Florida
1366 Statutes, are repealed.

1367 Section 19. Effective January 1, 2010, section 494.00296,
1368 Florida Statutes, is created to read:

1369 494.00296 Loan modification.—

1370 (1) PROHIBITED ACTS.—When offering or providing loan
1371 modification services, a mortgage broker, mortgage brokerage
1372 business, mortgage lender, or correspondent mortgage lender
1373 licensed, or required to be licensed, under ss. 494.001-494.0077
1374 may not:

1375 (a) Engage in or initiate loan modification services
1376 without first executing a written agreement for loan
1377 modification services with the borrower;

1378 (b) Execute a loan modification without the consent of the
1379 borrower after the borrower is made aware of each modified term;
1380 or

1381 (c) Solicit, charge, receive, or attempt to collect or
1382 secure payment, directly or indirectly, for loan modification
1383 services before completing or performing all services included
1384 in the agreement for loan modification services. A fee may be
1385 charged only if the loan modification results in a material
1386 benefit to the borrower. The commission may adopt rules to
1387 provide guidance on what constitutes a material benefit to the
1388 borrower.

1389 (2) LOAN MODIFICATION AGREEMENT.—

1390 (a) The written agreement for loan modification services
1391 must be printed in at least 12-point uppercase type and signed
1392 by both parties. The agreement must include the name and address

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1393 of the person providing loan modification services, the exact
1394 nature and specific detail of each service to be provided, the
1395 total amount and terms of charges to be paid by the borrower for
1396 the services, and the date of the agreement. The date of the
1397 agreement may not be earlier than the date the borrower signed
1398 the agreement. The mortgage brokerage business, mortgage lender,
1399 or correspondent mortgage lender must give the borrower a copy
1400 of the agreement to review at least 1 business day before the
1401 borrower is to sign the agreement.

1402 (b) The borrower has the right to cancel the written
1403 agreement without any penalty or obligation if the borrower
1404 cancels the agreement within 3 business days after signing the
1405 agreement. The right to cancel may not be waived by the borrower
1406 or limited in any manner by the mortgage broker, mortgage
1407 brokerage business, mortgage lender, or correspondent mortgage
1408 lender. If the borrower cancels the agreement, any payments made
1409 must be returned to the borrower within 10 business days after
1410 receipt of the notice of cancellation.

1411 (c) An agreement for loan modification services must
1412 contain, immediately above the signature line, a statement in at
1413 least 12-point uppercase type which substantially complies with
1414 the following:

1415 BORROWER'S RIGHT OF CANCELLATION

1416
1417 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
1418 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS
1419 DAYS AFER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1420 THE MORTGAGE BROKER, MORTGAGE BROKERAGE BUSINESS, MORTGAGE
1421 LENDER, OR CORRESPONDENT MORTGAGE LENDER IS PROHIBITED BY LAW

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1422 FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT
1423 FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR
1424 ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION,
1425 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10 BUSINESS DAYS
1426 AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

1427 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
1428 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
1429 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO
1430 LATER THAN MIDNIGHT OF ... (DATE) ...

1431 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE
1432 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR
1433 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
1434 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1435
1436 (d) The inclusion of the statement does not prohibit a
1437 mortgage broker, mortgage brokerage business, mortgage lender,
1438 or correspondent mortgage lender from giving the homeowner more
1439 time to cancel the agreement than is set forth in the statement
1440 if all other requirements of this subsection are met.

1441 (e) The person offering or providing the loan modification
1442 services must give the borrower a copy of the signed agreement
1443 within 3 hours after the borrower signs the agreement.

1444 (3) REMEDIES.—

1445 (a) Without regard to any other remedy or relief to which a
1446 person is entitled, anyone aggrieved by a violation of this
1447 section may bring an action to obtain a declaratory judgment
1448 that an act or practice violates this section and to enjoin a
1449 person who has violated, is violating, or is otherwise likely to
1450 violate this section.

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1451 (b) In any action brought by a person who has suffered a
1452 loss as a result of a violation of this section, such person may
1453 recover actual damages, plus attorney's fees and court costs, as
1454 follows:

1455 1. In any action brought under this section, upon motion of
1456 the party against whom such action is filed alleging that the
1457 action is frivolous, without legal or factual merit, or brought
1458 for the purpose of harassment, the court may, after hearing
1459 evidence as to the necessity therefore, require the party
1460 instituting the action to post a bond in the amount that the
1461 court finds reasonable to indemnify the defendant for any
1462 damages incurred, including reasonable attorney's fees.

1463 2. In any civil litigation resulting from an act or
1464 practice involving a violation of this section, the prevailing
1465 party, after judgment in the trial court and exhaustion of all
1466 appeals, if any, may receive reasonable attorney's fees and
1467 costs from the nonprevailing party.

1468 3. The attorney for the prevailing party shall submit a
1469 sworn affidavit of time spent on the case and costs incurred for
1470 all the motions, hearings, and appeals to the trial judge who
1471 presided over the civil case.

1472 4. The trial judge may award the prevailing party the sum
1473 of reasonable costs incurred in the action plus a reasonable
1474 legal fee for the hours actually spent on the case as sworn to
1475 in an affidavit.

1476 5. Any award of attorney's fees or costs becomes part of
1477 the judgment and is subject to execution as the law allows.

1478 (c) The provisions of this subsection do not apply to any
1479 action initiated by the enforcing authority.

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1480 (4) DEFINITIONS.—As used in this section, the term:

1481 (a) "Borrower" means a person who is obligated to repay a
1482 mortgage loan and includes, but is not limited to, a coborrower,
1483 cosignor, or guarantor.

1484 (b) "Loan modification" means a modification to an existing
1485 loan. The term does not include a refinancing transaction.

1486 Section 20. Subsections (1), (2), and (4) of section
1487 494.00296, Florida Statutes, as created by this act, are amended
1488 to read:

1489 494.00296 Loan modification.—

1490 (1) PROHIBITED ACTS.—When offering or providing loan
1491 modification services, a loan originator, mortgage broker,
1492 ~~mortgage brokerage business, mortgage lender, or correspondent~~
1493 ~~mortgage lender licensed or required to be licensed under ss.~~
1494 ~~494.001–494.0077~~ may not:

1495 (a) Engage in or initiate loan modification services
1496 without first executing a written agreement for loan
1497 modification services with the borrower;

1498 (b) Execute a loan modification without the consent of the
1499 borrower after the borrower is made aware of each modified term;
1500 or

1501 (c) Solicit, charge, receive, or attempt to collect or
1502 secure payment, directly or indirectly, for loan modification
1503 services before completing or performing all services included
1504 in the agreement for loan modification services. A fee may be
1505 charged only if the loan modification results in a material
1506 benefit to the borrower. The commission may adopt rules to
1507 provide guidance on what constitutes a material benefit to the
1508 borrower

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1509 (2) LOAN MODIFICATION AGREEMENT.—

1510 (a) The written agreement for loan modification services
1511 must be printed in at least 12-point uppercase type and signed
1512 by both parties. The agreement must include the name and address
1513 of the person providing loan modification services, the exact
1514 nature and specific detail of each service to be provided, the
1515 total amount and terms of charges to be paid by the borrower for
1516 the services, and the date of the agreement. The date of the
1517 agreement may not be earlier than the date the borrower signed
1518 the agreement. The mortgage broker or ~~brokerage business,~~
1519 ~~mortgage lender, or correspondent~~ mortgage lender must give the
1520 borrower a copy of the agreement to review at least 1 business
1521 day before the borrower is to sign the agreement.

1522 (b) The borrower has the right to cancel the written
1523 agreement without any penalty or obligation if the borrower
1524 cancels the agreement within 3 business days after signing the
1525 agreement. The right to cancel may not be waived by the borrower
1526 or limited in any manner by the loan originator, mortgage
1527 broker, ~~mortgage brokerage business, mortgage lender,~~ or
1528 ~~correspondent~~ mortgage lender. If the borrower cancels the
1529 agreement, any payments made must be returned to the borrower
1530 within 10 business days after receipt of the notice of
1531 cancellation.

1532 (c) An agreement for loan modification services must
1533 contain, immediately above the signature line, a statement in at
1534 least 12-point uppercase type which substantially complies with
1535 the following:

1536 BORROWER'S RIGHT OF CANCELLATION

1537

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1538 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION
1539 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS
1540 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1541 THE LOAN ORIGINATOR, MORTGAGE BROKER, ~~MORTGAGE BROKERAGE~~
1542 ~~BUSINESS, MORTGAGE LENDER,~~ OR ~~CORRESPONDENT~~ MORTGAGE LENDER IS
1543 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER
1544 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN
1545 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE
1546 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
1547 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION
1548 NOTICE.

1549 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
1550 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
1551 (POSTMARKED) OR DELIVERED TO ...(NAME)... AT ...(ADDRESS)... NO
1552 LATER THAN MIDNIGHT OF ...(DATE)....

1553 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE
1554 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR
1555 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
1556 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1557
1558 (d) The inclusion of the statement does not prohibit a loan
1559 originator, mortgage broker, ~~mortgage brokerage business,~~
1560 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender from giving
1561 the homeowner more time to cancel the agreement than is set
1562 forth in the statement if all other requirements of this
1563 subsection are met.

1564 (e) The person offering or providing the loan modification
1565 services must give the borrower a copy of the signed agreement
1566 within 3 hours after the borrower signs the agreement.

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1567 ~~(4) DEFINITIONS. As used in this section, the term:~~

1568 ~~(a) "Borrower" means a person obligated to repay a mortgage~~
1569 ~~loan and includes, but is not limited to, a coborrower,~~
1570 ~~co-signor, or guarantor.~~

1571 ~~(b) "Loan modification" means a modification to an existing~~
1572 ~~loan. The term does not include a refinancing transaction.~~

1573 Section 21. The Division of Statutory Revision is requested
1574 to rename part II of chapter 494, Florida Statutes, consisting
1575 of ss. 494.00312-491.0043, Florida Statutes, as "Loan
1576 Originators and Mortgage Brokers."

1577 Section 22. Effective January 1, 2010, section 494.003,
1578 Florida Statutes, is repealed.

1579 Section 23. Section 494.0031, Florida Statutes, is
1580 repealed.

1581 Section 24. Section 494.00312, Florida Statutes, is created
1582 to read:

1583 494.00312 Loan originator license.—

1584 (1) An individual who acts as a loan originator must be
1585 licensed under this section.

1586 (2) In order to apply for loan originator license, an
1587 applicant must:

1588 (a) Be at least 18 years of age and have a high school
1589 diploma or its equivalent.

1590 (b) Complete a 20-hour prelicensing class approved by the
1591 registry.

1592 (c) Pass a written test developed by the registry and
1593 administered by a provider approved by the registry.

1594 (d) Submit a completed license application form as
1595 prescribed by commission rule.

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1596 (e) Submit a nonrefundable application fee of \$195, and the
1597 \$20 nonrefundable fee if required by s. 494.00172. Application
1598 fees may not be prorated for partial years of licensure.

1599 (f) Submit fingerprints in accordance with rules adopted by
1600 the commission:

1601 1. The fingerprints may be submitted to the registry, the
1602 office, or a vendor acting on behalf of the registry or the
1603 office.

1604 2. The office may contract with a third-party vendor to
1605 provide live-scan fingerprinting in lieu of a paper fingerprint
1606 card.

1607 3. A state criminal history background check must be
1608 conducted through the Department of Law Enforcement and a
1609 federal criminal history background check must be conducted
1610 through the Federal Bureau of Investigation.

1611 4. All fingerprints submitted to the Department of Law
1612 Enforcement must be submitted electronically and entered into
1613 the statewide automated fingerprint identification system
1614 established in s. 943.05(2) (b) and available for use in
1615 accordance with s. 943.05(2) (g) and (h). The office shall pay an
1616 annual fee to the department to participate in the system and
1617 inform the department of any person whose fingerprints are no
1618 longer required to be retained.

1619 5. The costs of fingerprint processing, including the cost
1620 of retaining the fingerprints, shall be borne by the person
1621 subject to the background check.

1622 6. The office is responsible for reviewing the results of
1623 the state and federal criminal history checks and determining
1624 whether the applicant meets licensure requirements.

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1625 (g) Authorize the registry to obtain an independent credit
1626 report on the applicant from a consumer reporting agency, and
1627 transmit or provide access to the report to the office. The cost
1628 of the credit report shall be borne by the applicant.

1629 (h) Submit additional information or documentation
1630 requested by the office and required by rule concerning the
1631 applicant. Additional information may include documentation of
1632 pending and prior disciplinary and criminal history events,
1633 including arrest reports and certified copies of charging
1634 documents, plea agreements, judgments and sentencing documents,
1635 documents relating to pretrial intervention, orders terminating
1636 probation or supervised release, final administrative agency
1637 orders, or other comparable documents that may provide the
1638 office with the appropriate information to determine eligibility
1639 for licensure.

1640 (i) Submit any other information required by the registry
1641 for the processing of the application.

1642 (3) An application is considered received for the purposes
1643 of s. 120.60 upon the office's receipt of all documentation from
1644 the registry, including the completed application form,
1645 documentation of completion of the prelicensure class, test
1646 results, criminal history information, and independent credit
1647 report, as well as the license application fee, the fee required
1648 by s. 494.00172, and all applicable fingerprinting processing
1649 fees.

1650 (4) The office shall issue a loan originator license to
1651 each person who is not otherwise ineligible and who meets the
1652 requirements of this section. However, it is a ground for denial
1653 of licensure if the applicant:

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1654 (a) Has committed any violation specified in ss. 494.001-
1655 494.0077, or is the subject of a pending felony criminal
1656 prosecution or a prosecution or an administrative enforcement
1657 action, in any jurisdiction, which involves fraud, dishonesty,
1658 breach of trust, money laundering, or any other act of moral
1659 turpitude.

1660 (b) Has failed to demonstrate the character, general
1661 fitness, and financial responsibility necessary to command the
1662 confidence of the community and warrant a determination that the
1663 applicant will operate honestly, fairly, and efficiently.

1664 1. If the office has information that could form the basis
1665 for license denial under this paragraph, before denying the
1666 license, the office must notify the applicant in writing of the
1667 specific items of concern and provide the applicant with an
1668 opportunity to explain the circumstances surrounding the
1669 specific items and provide any information that the applicant
1670 believes is relevant to the office's determination.

1671 2. For purposes of evaluating adverse information found in
1672 an applicant's credit report, the information must be considered
1673 within the totality of the circumstances. Information provided
1674 by the applicant under subparagraph 1., or information obtained
1675 by the office by other means, may be used to provide a context
1676 for the adverse items. For example, the adverse items may have
1677 resulted from factors that do not necessarily reflect negatively
1678 upon the applicant's character, general fitness, or financial
1679 responsibility.

1680 3. The office may not use a credit score or the absence or
1681 insufficiency of credit history information to determine
1682 character, general fitness, or financial responsibility.

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1683 4. If information contained in a credit report is used as
1684 the basis for denying a license, the office shall, in accordance
1685 with s. 120.60(3), provide with particularity the grounds or
1686 basis for denial. The use of the terms "poor credit history,"
1687 "poor credit rating," or similar language do not meet the
1688 requirements of this paragraph.

1689 (5) The office may not issue a license to an applicant who
1690 has had a loan originator license or its equivalent revoked in
1691 any jurisdiction.

1692 (6) A loan originator license shall be annulled pursuant to
1693 s. 120.60 if it was issued by the office by mistake. A license
1694 must be reinstated if the applicant demonstrates that the
1695 requirements for obtaining the license under this chapter have
1696 been satisfied.

1697 (7) All loan originator licenses must be renewed annually
1698 by December 31 pursuant to s. 494.00313. If a person holding an
1699 active loan originator license has not applied to renew the
1700 license on or before December 31, the loan originator license
1701 expires on December 31. If a person holding an active loan
1702 originator license has applied to renew the license on or before
1703 December 31, the loan originator license remains active until
1704 the renewal application is approved or denied. A loan originator
1705 is not precluded from reapplying for licensure upon expiration
1706 of a previous license.

1707 Section 25. Section 494.00313, Florida Statutes, is created
1708 to read:

1709 494.00313 Loan originator license renewal.-

1710 (1) In order to renew a loan originator license, a loan
1711 originator must:

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1712 (a) Submit a completed license renewal form as prescribed
1713 by commission rule.

1714 (b) Submit a nonrefundable renewal fee of \$150, the \$20
1715 nonrefundable fee if required by s. 494.00172, and nonrefundable
1716 fees to cover the cost of further fingerprint processing and
1717 retention as set forth in commission rule.

1718 (c) Provide documentation of completion of at least 8 hours
1719 of continuing education in courses reviewed and approved by the
1720 registry.

1721 (d) Authorize the registry to obtain an independent credit
1722 report on the licensee from a consumer reporting agency, and
1723 transmit or provide access to the report to the office. The cost
1724 of the credit report shall be borne by the licensee.

1725 (e) Submit any additional information or documentation
1726 requested by the office and required by rule concerning the
1727 licensee. Additional information may include documentation of
1728 pending and prior disciplinary and criminal history events,
1729 including arrest reports and certified copies of charging
1730 documents, plea agreements, judgments and sentencing documents,
1731 documents relating to pretrial intervention, orders terminating
1732 probation or supervised release, final administrative agency
1733 orders, or other comparable documents that may provide the
1734 office with the appropriate information to determine eligibility
1735 for renewal of licensure.

1736 (2) The office may not renew a loan originator license
1737 unless the loan originator continues to meet the minimum
1738 requirements for initial licensure pursuant to s. 494.00312 and
1739 adopted rule.

1740 Section 26. Section 494.0032, Florida Statutes, is

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1741 repealed.

1742 Section 27. Section 494.00321, Florida Statutes, is created
1743 to read:

1744 494.00321 Mortgage broker license.—

1745 (1) Each person who acts as a mortgage broker must be
1746 licensed in accordance with this section.

1747 (2) In order to apply for a mortgage broker license an
1748 applicant must:

1749 (a) Submit a completed license application form as
1750 prescribed by commission rule.

1751 (b) Designate a qualified principal loan originator on the
1752 application form who meets the requirements of s. 494.0035.

1753 (c) Submit a nonrefundable application fee of \$425, and the
1754 \$100 nonrefundable fee if required by s. 494.00172. Application
1755 fees may not be prorated for partial years of licensure.

1756 (d) Submit fingerprints for each of the applicant's control
1757 persons in accordance with rules adopted by the commission:

1758 1. The fingerprints may be submitted to the registry, the
1759 office, or a vendor acting on behalf of the registry or the
1760 office.

1761 2. The office may contract with a third-party vendor to
1762 provide live-scan fingerprinting in lieu of a paper fingerprint
1763 card.

1764 3. A state criminal history background check must be
1765 conducted through the Department of Law Enforcement and a
1766 federal criminal history background check must be conducted
1767 through the Federal Bureau of Investigation.

1768 4. All fingerprints submitted to the Department of Law
1769 Enforcement must be submitted electronically and entered into

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1770 the statewide automated fingerprint identification system
1771 established in s. 943.05(2)(b) and available for use in
1772 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1773 annual fee to the department to participate in the system and
1774 inform the department of any person whose fingerprints are no
1775 longer required to be retained.

1776 5. The costs of fingerprint processing, including the cost
1777 of retaining the fingerprints, shall be borne by the person
1778 subject to the background check.

1779 6. The office is responsible for reviewing the results of
1780 the state and federal criminal history checks and determining
1781 whether the applicant meets licensure requirements.

1782 (e) Authorize the registry to obtain an independent credit
1783 report on each of the applicant's control persons from a
1784 consumer reporting agency, and transmit or provide access to the
1785 report to the office. The cost of the credit report shall be
1786 borne by the applicant.

1787 (f) Submit additional information or documentation
1788 requested by the office and required by rule concerning the
1789 applicant or a control person of the applicant. Additional
1790 information may include documentation of pending and prior
1791 disciplinary and criminal history events, including arrest
1792 reports and certified copies of charging documents, plea
1793 agreements, judgments and sentencing documents, documents
1794 relating to pretrial intervention, orders terminating probation
1795 or supervised release, final administrative agency orders, or
1796 other comparable documents that may provide the office with the
1797 appropriate information to determine eligibility for licensure.

1798 (g) Submit any other information required by the registry

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1799 for the processing of the application.

1800 (3) An application is considered received for the purposes
1801 of s. 120.60 upon the office's receipt of all documentation from
1802 the registry, including the completed application form, criminal
1803 history information, and independent credit report, as well as
1804 the license application fee, the fee required by s. 492.00172,
1805 and all applicable fingerprinting processing fees.

1806 (4) The office shall issue a mortgage broker license to
1807 each person who is not otherwise ineligible and who meets the
1808 requirements of this section. However, it is a ground for denial
1809 of licensure if the applicant or one of the applicant's control
1810 persons:

1811 (a) Has committed any violation specified in ss. 494.001-
1812 494.0077, or is the subject of a pending felony criminal
1813 prosecution or a prosecution or an administrative enforcement
1814 action, in any jurisdiction, which involves fraud, dishonesty,
1815 breach of trust, money laundering, or any other act of moral
1816 turpitude.

1817 (b) Has failed to demonstrate the character, general
1818 fitness, and financial responsibility necessary to command the
1819 confidence of the community and warrant a determination that the
1820 applicant will operate honestly, fairly, and efficiently.

1821 1. If the office has information that could form the basis
1822 for license denial under this paragraph, before denying the
1823 license, the office must notify the applicant in writing of the
1824 specific items of concern and provide the applicant with an
1825 opportunity to explain the circumstances surrounding the
1826 specific items and provide any information that the applicant
1827 believes is relevant to the office's determination.

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1828 2. For purposes of evaluating adverse information found in
1829 an applicant's credit report, the information must be considered
1830 within the totality of the circumstances. Information provided
1831 by the applicant under subparagraph 1., or information obtained
1832 by the office by other means, may be used to provide a context
1833 for the adverse items. For example, the adverse items may have
1834 resulted from factors that do not necessarily reflect negatively
1835 upon the applicant's character, general fitness, or financial
1836 responsibility.

1837 3. The office may not use a credit score or the absence or
1838 insufficiency of credit history information to determine
1839 character, general fitness, or financial responsibility.

1840 4. If information contained in a credit report is used as
1841 the basis for denying a license, the office shall, in accordance
1842 with s. 120.60(3), provide with particularity the grounds or
1843 basis for denial. The use of the terms "poor credit history,"
1844 "poor credit rating," or similar language do not meet the
1845 requirements of this paragraph.

1846 (5) The office shall deny a license if the applicant has
1847 had a mortgage broker license, or its equivalent, revoked in any
1848 jurisdiction, or if any of the applicant's control persons has
1849 had a loan originator license, or its equivalent, revoked in any
1850 jurisdiction.

1851 (6) A mortgage broker license shall be annulled pursuant to
1852 s. 120.60 if it was issued by the office by mistake. A license
1853 must be reinstated if the applicant demonstrates that the
1854 requirements for obtaining the license under this chapter have
1855 been satisfied.

1856 (7) All mortgage broker licenses must be renewed annually

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1857 by December 31 pursuant to s. 494.00322. If a person holding an
1858 active mortgage broker license has not applied to renew the
1859 license on or before December 31, the mortgage broker license
1860 expires on December 31. If a person holding an active mortgage
1861 broker license has applied to renew the license on or before
1862 December 31, the mortgage broker license remains active until
1863 the renewal application is approved or denied. A mortgage broker
1864 is not precluded from reapplying for licensure upon expiration
1865 of a previous license.

1866 Section 28. Section 494.00322, Florida Statutes, is created
1867 to read:

1868 494.00322 Mortgage broker license renewal.—

1869 (1) In order to renew a mortgage broker license, a mortgage
1870 broker must:

1871 (a) Submit a completed license renewal form as prescribed
1872 by commission rule.

1873 (b) Submit a nonrefundable renewal fee of \$375, the \$100
1874 nonrefundable fee if required by s. 494.00172, and nonrefundable
1875 fees to cover the cost of further fingerprint processing and
1876 retention as set forth in commission rule.

1877 (c) Submit fingerprints in accordance with s.
1878 494.00321(2) (d) for any new control persons who have not been
1879 screened.

1880 (d) Authorize the registry to obtain an independent credit
1881 report on each of the licensee's control persons from a consumer
1882 reporting agency, and transmit or provide access to the report
1883 to the office. The cost of the credit report shall be borne by
1884 the licensee.

1885 (e) Submit any additional information or documentation

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1886 requested by the office and required by rule concerning the
1887 licensee or a control person of the licensee. Additional
1888 information may include documentation of pending and prior
1889 disciplinary and criminal history events, including arrest
1890 reports and certified copies of charging documents, plea
1891 agreements, judgments and sentencing documents, documents
1892 relating to pretrial intervention, orders terminating probation
1893 or supervised release, final administrative agency orders, or
1894 other comparable documents that may provide the office with the
1895 appropriate information to determine eligibility for renewal of
1896 licensure.

1897 (2) The office may not renew a mortgage broker license
1898 unless the licensee continues to meet the minimum requirements
1899 for initial licensure pursuant to s. 494.00321 and adopted rule.

1900 Section 29. Section 494.0033, Florida Statutes, is
1901 repealed.

1902 Section 30. Section 494.00331, Florida Statutes, is amended
1903 to read:

1904 494.00331 ~~Loan originator employment Mortgage broker~~
1905 ~~association.~~ An individual may not act as a loan originator
1906 unless he or she is an employee of, or an independent contractor
1907 for, a mortgage broker or a mortgage lender, and may not be
1908 employed by or contract with more than one mortgage broker or
1909 mortgage lender, or either simultaneously. ~~No person required to~~
1910 be licensed as a mortgage broker under this chapter shall be
1911 simultaneously an associate of more than one licensed mortgage
1912 brokerage business, licensed mortgage lender, or licensed
1913 correspondent mortgage lender.

1914 Section 31. Section 494.0034, Florida Statutes, is

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1915 repealed.

1916 Section 32. Section 494.0035, Florida Statutes, is amended
1917 to read:

1918 494.0035 Principal loan originator ~~broker~~ and branch
1919 manager for mortgage broker requirements.-

1920 (1) Each mortgage broker ~~brokerage business~~ must be
1921 operated by a principal loan originator who shall have a
1922 principal broker who shall operate the business under such
1923 broker's full charge, control, and supervision of the mortgage
1924 broker business. The principal loan originator must have been
1925 licensed as a loan originator ~~broker~~ must have been a licensed
1926 mortgage broker pursuant to s. 494.0033 for at least 1 year
1927 before ~~prior to~~ being designated as the a principal loan
1928 originator ~~broker~~, or must ~~shall~~ demonstrate to the satisfaction
1929 of the office that he or she ~~such principal broker~~ has been
1930 actively engaged in a mortgage broker-related ~~mortgage-related~~
1931 business for at least 1 year before ~~prior to~~ being designated as
1932 a principal loan originator ~~broker~~. Each mortgage broker must
1933 keep the office informed of the person designated as the
1934 principal loan originator as prescribed by commission rule
1935 ~~brokerage business shall maintain a form as prescribed by the~~
1936 ~~commission indicating the business's designation of principal~~
1937 ~~broker and the individual's acceptance of such responsibility.~~
1938 If the designation is inaccurate, the business shall be deemed
1939 to be operated under ~~form is unavailable, inaccurate, or~~
1940 ~~incomplete, it is deemed that the business was operated in the~~
1941 ~~full charge, control, and supervision of~~ by each officer,
1942 director, or ultimate equitable owner of a 10-percent or greater
1943 interest in the mortgage broker ~~brokerage business~~, or any other

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1944 person in a similar capacity. A loan originator may not be a
1945 principal loan originator for more than one mortgage broker at
1946 any given time.

1947 (2) Each branch office of a mortgage broker ~~brokerage~~
1948 ~~business~~ must be operated by a have a designated branch manager
1949 ~~broker~~ who shall have ~~operate the business under such broker's~~
1950 full charge, control, and supervision of the branch office. The
1951 designated branch manager ~~broker~~ must be a licensed loan
1952 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033.~~
1953 Each branch office must keep the office informed of the person
1954 designated as the branch manager as prescribed by commission
1955 rule, which includes documentation of ~~shall maintain a form as~~
1956 ~~prescribed by the commission logging the branch's designation of~~
1957 ~~a branch broker and the individual's acceptance of such~~
1958 responsibility. If the designation is inaccurate, the branch
1959 office shall be deemed to be operated under ~~form is unavailable,~~
1960 ~~inaccurate, or incomplete, it is deemed that the branch was~~
1961 ~~operated in the full charge, control, and supervision of~~ by each
1962 officer, director, or ultimate equitable owner of a 10-percent
1963 or greater interest in the mortgage broker ~~brokerage~~ business,
1964 or any other person in a similar capacity.

1965 Section 33. Section 494.0036, Florida Statutes, is amended
1966 to read:

1967 494.0036 Mortgage broker branch office license ~~brokerage~~
1968 ~~business branch offices.~~

1969 (1) Each branch office of a mortgage broker must be
1970 licensed under this section. ~~A mortgage brokerage business~~
1971 ~~branch office license is required for each branch office~~
1972 ~~maintained by a mortgage brokerage business.~~

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1973 (2) The office shall issue a mortgage broker ~~brokerage~~
 1974 ~~business~~ branch office license to a mortgage broker ~~brokerage~~
 1975 ~~business~~ licensee after the office determines that the licensee
 1976 has submitted a completed application for a branch office in a
 1977 form ~~as~~ prescribed by commission rule and payment of an initial
 1978 nonrefundable branch office license fee of \$225 per branch
 1979 office. Application fees may not be prorated for partial years
 1980 of licensure. The branch office license shall be issued in the
 1981 name of the mortgage broker ~~brokerage-business~~ that maintains
 1982 the branch office. An application is considered received for
 1983 purposes of s. 120.60 upon receipt of a completed application
 1984 form as prescribed by commission rule, and the required fees a
 1985 ~~nonrefundable application fee of \$225, and any other fee~~
 1986 ~~prescribed by law.~~

1987 (3) A branch office license must be renewed annually at the
 1988 time of renewing the mortgage broker license under s. 494.00322.
 1989 A nonrefundable branch renewal fee of \$225 per branch office
 1990 must be submitted at the time of renewal.

1991 Section 34. Section 494.0038, Florida Statutes, is amended
 1992 to read:

1993 494.0038 Loan origination and mortgage broker fees and
 1994 ~~Mortgage broker~~ disclosures.-

1995 (1) ~~(a)1.~~ A loan origination fee may not be paid ~~person may~~
 1996 ~~not receive a mortgage brokerage fee~~ except pursuant to a
 1997 written mortgage broker ~~brokerage~~ agreement between the mortgage
 1998 broker ~~brokerage-business~~ and the borrower which is signed and
 1999 dated by the principal loan originator or branch manager, ~~the~~
 2000 ~~business~~ and the borrower. The unique registry identifier of
 2001 each loan originator responsible for providing loan originator

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2002 services must be printed on the mortgage broker agreement.

2003 (a)2. The written mortgage broker ~~brokerage~~ agreement must
2004 describe the services to be provided by the mortgage broker
2005 ~~brokerage business~~ and specify the amount and terms of the loan
2006 origination mortgage brokerage fee that the mortgage broker
2007 ~~brokerage business~~ is to receive.

2008 1. Except for application and third-party fees, all fees
2009 received by a mortgage broker from a borrower must be identified
2010 as a loan origination fee.

2011 2. All fees on the mortgage broker agreement must be
2012 disclosed in dollar amounts.

2013 3. All loan origination fees must be paid to a mortgage
2014 broker.

2015 (b) The ~~written mortgage brokerage~~ agreement must be
2016 executed within 3 business days after a mortgage loan
2017 application is accepted if the borrower is present when the
2018 mortgage loan application is accepted. If the borrower is not
2019 present ~~when such an application is accepted~~, the licensee shall
2020 forward the ~~written mortgage brokerage~~ agreement to the borrower
2021 within 3 business days after the licensee's acceptance of the
2022 application and the licensee bears the burden of proving that
2023 the borrower received and approved the ~~written mortgage~~
2024 ~~brokerage~~ agreement.

2025 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to
2026 receive any payment of any kind from the mortgage lender, the
2027 maximum total dollar amount of the payment must be disclosed to
2028 the borrower in the written mortgage broker ~~brokerage~~ agreement
2029 as described in paragraph (1) (a). The commission may prescribe
2030 by rule an acceptable form for disclosure of brokerage fees

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2031 received from the lender. The ~~mortgage brokerage~~ agreement must
2032 state the nature of the relationship with the lender, describe
2033 how compensation is paid by the lender, and describe how the
2034 mortgage interest rate affects the compensation paid to the
2035 mortgage broker ~~brokerage business~~.

2036 (a)2. The exact amount of any payment of any kind by the
2037 lender to the mortgage broker ~~brokerage business~~ must be
2038 disclosed in writing to the borrower within 3 business days
2039 after the mortgage broker ~~brokerage business~~ is made aware of
2040 the exact amount of the payment from the lender but not less
2041 than 3 business days before the execution of the closing or
2042 settlement statement. The licensee bears the burden of proving
2043 such notification was provided to the borrower. Notification is
2044 waived if the exact amount of the payment is accurately
2045 disclosed in the written mortgage broker agreement.

2046 (b)(e) The commission may prescribe by rule the form of
2047 disclosure of brokerage fees.

2048 (3)(2) At the time a written mortgage broker ~~brokerage~~
2049 agreement is signed ~~executed~~ by the borrower or forwarded to the
2050 borrower for signature ~~execution~~, or at the time the mortgage
2051 broker ~~brokerage business~~ accepts an application fee, credit
2052 report fee, property appraisal fee, or any other third-party
2053 fee, but at least ~~not less than~~ 3 business days before execution
2054 of the closing or settlement statement, the mortgage broker
2055 ~~brokerage business~~ shall disclose in writing to any applicant
2056 for a mortgage loan the following information:

2057 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may
2058 not make mortgage loans or commitments. The mortgage broker
2059 ~~brokerage business~~ may make a commitment and may furnish a lock-

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2060 in of the rate and program on behalf of the lender if ~~when~~ the
2061 mortgage broker ~~brokerage business~~ has obtained a written
2062 commitment or lock-in for the loan from the lender on behalf of
2063 the borrower for the loan. The commitment must be in the same
2064 form and substance as issued by the lender.

2065 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot
2066 guarantee acceptance into any particular loan program or promise
2067 any specific loan terms or conditions.

2068 (c) A good faith estimate, signed and dated by the
2069 borrower, which discloses the total amount of each of the fees
2070 ~~which~~ the borrower may reasonably expect to pay if the loan is
2071 closed, including, but not limited to, fees earned by the
2072 mortgage broker ~~brokerage business~~, lender fees, third-party
2073 fees, and official fees, together with the terms and conditions
2074 for obtaining a refund of such fees, if any. Any amount
2075 collected in excess of the actual cost shall be returned within
2076 60 days after rejection, withdrawal, or closing. The good faith
2077 estimate must identify the recipient of all payments charged the
2078 borrower and, except for all fees to be received by the mortgage
2079 broker ~~brokerage business~~, may be disclosed in generic terms,
2080 such as, but not limited to, paid to lender, appraiser,
2081 officials, title company, or any other third-party service
2082 provider. This requirement does not supplant or is not a
2083 substitute for the written mortgage broker ~~brokerage~~ agreement
2084 described in subsection (1).

2085 (4) ~~(3)~~ The disclosures required by this subsection must be
2086 furnished in writing at the time an adjustable rate mortgage
2087 loan is offered to the borrower and whenever the terms of the
2088 adjustable rate mortgage loan offered materially change prior to

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2089 closing. The mortgage broker shall furnish the disclosures
2090 relating to adjustable rate mortgages in a format prescribed by
2091 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2092 of the Federal Reserve System, as amended; its commentary, as
2093 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2094 1601 et seq., as amended; together with the Consumer Handbook on
2095 Adjustable Rate Mortgages, as amended; published by the Federal
2096 Reserve Board and the Federal Home Loan Bank Board. The licensee
2097 bears the burden of proving such disclosures were provided to
2098 the borrower.

2099 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes
2100 a nonrefundable application fee, the following requirements are
2101 applicable:

2102 (a) The amount of the application fee, which must be
2103 clearly denominated as such, must ~~shall~~ be clearly disclosed.

2104 (b) The specific services that will be performed in
2105 consideration for the application fee must ~~shall~~ be disclosed.

2106 (c) The application fee must be reasonably related to the
2107 services to be performed and may not be based upon a percentage
2108 of the principal amount of the loan or the amount financed.

2109 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
2110 any fee in connection with a mortgage loan other than an
2111 application fee, credit report fee, property appraisal fee, or
2112 other third-party fee before ~~prior to~~ obtaining a written
2113 commitment from a qualified lender.

2114 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker
2115 must ~~brokerage business shall~~ immediately, upon receipt, be
2116 placed into a segregated account with a financial institution
2117 located in the state the accounts of which are insured by the

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2118 Federal Government. Such funds shall be held in trust for the
2119 payor and shall be kept in the account until disbursement. Such
2120 funds may be placed in one account if adequate accounting
2121 measures are taken to identify the source of the funds.

2122 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~
2123 ~~brokerage business licensee.~~

2124 (8) A mortgage broker may not pay a commission to any
2125 person not licensed pursuant to this chapter.

2126 (9)~~(8)~~ This section does not prohibit a mortgage broker
2127 ~~brokerage business~~ from offering products and services, in
2128 addition to those offered in conjunction with the loan
2129 origination process, for a fee or commission.

2130 Section 35. Section 494.0039, Florida Statutes, is amended
2131 to read:

2132 494.0039 Principal place of business requirements.—Each
2133 mortgage broker ~~brokerage business~~ licensee shall maintain and
2134 transact business from a principal place of business.

2135 Section 36. Section 494.004, Florida Statutes, is amended
2136 to read:

2137 494.004 Requirements of licensees.—

2138 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
2139 shall report to the office:

2140 (a) In writing, any conviction of, or plea of nolo
2141 contendere to, regardless of adjudication, any felony or any
2142 crime or administrative violation that involves fraud,
2143 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
2144 or any other act of moral turpitude, in any jurisdiction, by the
2145 licensee or any control ~~natural~~ person within ~~named in s.~~
2146 ~~494.0031(2)(d), not later than~~ 30 days after the date of

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2147 conviction, entry of a plea of nolo contendere, or final
2148 administrative action.

2149 ~~(b)(2) Each licensee under ss. 494.003-494.0043 shall~~
2150 ~~report,~~ In a form prescribed by rule of the commission, any
2151 conviction of, or plea of nolo contendere to, regardless of
2152 ~~whether~~ adjudication is ~~withheld~~, any felony committed by the
2153 licensee or any control natural person within ~~named in s.~~
2154 ~~494.0031(2) (d), not later than~~ 30 days after the date of
2155 conviction or the date the plea of nolo contendere is entered.

2156 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~
2157 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
2158 within 30 ~~to the office not later than 7 business~~ days after the
2159 action is instituted.

2160 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
2161 ~~report~~ On a form prescribed by rule of the commission, any
2162 change to the information contained in any initial application
2163 form or any amendment to the application within ~~not later than~~
2164 30 days after the change is effective.

2165 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
2166 ~~transferable or assignable.~~

2167 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
2168 ~~report~~ Any change in the principal loan originator broker, any
2169 addition or subtraction of a control person partners, officers,
2170 members, joint venturers, directors, control persons of any
2171 licensee, or any individual who is the ultimate equitable owner
2172 of a 10-percent or greater interest in the licensee, or any
2173 change in the form of business organization, by written
2174 amendment in the form and at the time the commission specifies
2175 by rule.

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2176 ~~(a) In any case in which a person or a group of persons,~~
2177 ~~directly or indirectly or acting by or through one or more~~
2178 ~~persons, proposes to purchase or acquire a controlling interest~~
2179 ~~in a licensee, such person or group shall submit an initial~~
2180 ~~application for licensure as a mortgage brokerage business~~
2181 ~~before such purchase or acquisition and at the time and in the~~
2182 ~~form the commission prescribes by rule.~~

2183 ~~(b) As used in this subsection, the term "controlling~~
2184 ~~interest" means possession of the power to direct or cause the~~
2185 ~~direction of the management or policies of a company whether~~
2186 ~~through ownership of securities, by contract, or otherwise. Any~~
2187 ~~person who directly or indirectly has the right to vote 25~~
2188 ~~percent or more of the voting securities of a company or is~~
2189 ~~entitled to 25 percent or more of the company's profits is~~
2190 ~~presumed to possess a controlling interest.~~

2191 ~~(f)(e)~~ Any addition of a ~~partner, officer, member, joint~~
2192 ~~venturer, director, control person, or ultimate equitable owner~~
2193 ~~of the applicant who does not have a controlling interest and~~
2194 ~~who has not previously filed a Uniform Mortgage Biographical~~
2195 ~~Statement & Consent Form, MU2, or has not previously complied~~
2196 ~~with the fingerprinting and credit report requirements~~
2197 ~~provisions of ss. 494.00321 and 494.00322, s. 494.0031(2)(c) and~~
2198 ~~(d) is subject to the such provisions of these sections unless~~
2199 ~~required to file an initial application in accordance with~~
2200 ~~paragraph (a). If, after the addition of a control person, the~~
2201 ~~office finds that the licensee does not continue to meet~~
2202 ~~licensure requirements, the office may bring an administrative~~
2203 ~~action in accordance with s. 494.00255 s. 494.0041 to enforce~~
2204 ~~the provisions of this chapter.~~

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2205 ~~(d) The commission shall adopt rules pursuant to ss.~~
2206 ~~120.536(1) and 120.54 providing for the waiver of the~~
2207 ~~application required by this subsection if the person or group~~
2208 ~~of persons proposing to purchase or acquire a controlling~~
2209 ~~interest in a licensee has previously complied with the~~
2210 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~
2211 ~~legal entity or is currently licensed by the office under this~~
2212 ~~chapter.~~

2213 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
2214 ~~business shall file an initial report stating the name, social~~
2215 ~~security number, date of birth, mortgage broker license number,~~
2216 ~~date of hire and, if applicable, date of termination for each~~
2217 ~~person who was an associate of the mortgage brokerage business~~
2218 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
2219 ~~brokerage business shall file a quarterly report only if a~~
2220 ~~person became an associate or ceased to be an associate of the~~
2221 ~~mortgage brokerage business during the immediate preceding~~
2222 ~~quarter. Such report shall be filed within 30 days after the~~
2223 ~~last day of each calendar quarter and shall contain the name,~~
2224 ~~social security number, date of birth, mortgage broker license~~
2225 ~~number, date of hire and, if applicable, the date of termination~~
2226 ~~of each person who became or ceased to be an associate of the~~
2227 ~~mortgage brokerage business during the immediate preceding~~
2228 ~~quarter. The commission shall prescribe, by rule, the procedures~~
2229 ~~for filing reports required by this subsection.~~

2230 ~~(2)(8)(a)~~ (2) In every mortgage loan transaction, each licensee
2231 under this part must ss. 494.003-494.0043 shall notify a
2232 borrower of any material changes in the terms of a mortgage loan
2233 previously offered to the borrower within 3 business days after

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2234 being made aware of such changes by the mortgage lender but at
2235 least ~~not less than~~ 3 business days before the signing of the
2236 settlement or closing statement. The licensee bears the burden
2237 of proving such notification was provided and accepted by the
2238 borrower.

2239 ~~(b)~~ A borrower may waive the right to receive notice of a
2240 material change ~~that is granted under paragraph (a)~~ if the
2241 borrower determines that the extension of credit is needed to
2242 meet a bona fide personal financial emergency and the right to
2243 receive notice would delay the closing of the mortgage loan. The
2244 imminent sale of the borrower's home at foreclosure during the
2245 3-day period before the signing of the settlement or closing
2246 statement is ~~constitutes~~ an example of a bona fide personal
2247 financial emergency. In order to waive the borrower's right to
2248 receive notice ~~not less than 3 business days before the signing~~
2249 ~~of the settlement or closing statement of any such material~~
2250 ~~change~~, the borrower must provide the licensee with a dated
2251 written statement that describes the personal financial
2252 emergency, waives the right to receive the notice, bears the
2253 borrower's signature, and is not on a printed form prepared by
2254 the licensee for the purpose of such a waiver.

2255 (3) Each mortgage broker shall submit to the registry
2256 reports of condition, which must be in such form and shall
2257 contain such information as the registry may require.

2258 (4) A license issued under this part is not transferable or
2259 assignable.

2260 Section 37. Section 494.0041, Florida Statutes, is
2261 repealed.

2262 Section 38. Section 494.0042, Florida Statutes, is amended

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2263 to read:

2264 494.0042 Loan origination ~~Brokerage~~ fees.—

2265 (1) A loan origination ~~mortgage brokerage~~ fee earned by a
2266 licensee, pursuant to this part ~~ss. 494.003–494.0043~~, is not
2267 considered interest or a finance charge under chapter 687.

2268 (2) A person may not charge or exact, directly or
2269 indirectly, from the borrower ~~mortgagor~~ a fee or commission in
2270 excess of the maximum fee or commission specified in this
2271 section. The maximum fees or commissions that may be charged for
2272 mortgage loans are as follows:

2273 (a) On a mortgage loan of \$1,000 or less: \$250.

2274 (b) On a mortgage loan exceeding \$1,000 and not exceeding
2275 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
2276 for each additional \$100 of the mortgage loan.

2277 (c) On a mortgage loan exceeding \$2,000 and not exceeding
2278 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
2279 for each additional \$100 of the mortgage loan.

2280 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
2281 percent of the entire mortgage loan.

2282

2283 For the purpose of determining the maximum fee, the amount of
2284 the mortgage loan is based on the amount of mortgage loan
2285 actually funded exclusive of the authorized maximum fees or
2286 commissions.

2287 (3) At the time of accepting a mortgage loan application, a
2288 mortgage broker ~~brokerage business~~ may receive from the borrower
2289 a nonrefundable application fee. If the mortgage loan is funded,
2290 the nonrefundable application fee shall be credited against the
2291 amount owed as a result of the loan being funded. A person may

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2292 not receive any form of compensation for acting as a loan
2293 originator ~~mortgage broker~~ other than a nonrefundable
2294 application fee, a fee based on the mortgage amount being
2295 funded, or a fee which complies with s. 494.00421.

2296 Section 39. Section 494.00421, Florida Statutes, is amended
2297 to read:

2298 494.00421 Fees earned upon obtaining a bona fide
2299 commitment.—Notwithstanding the provisions of ss. 494.001-
2300 494.0077, any mortgage broker ~~brokerage business~~ which contracts
2301 to receive ~~from a borrower~~ a loan origination ~~mortgage brokerage~~
2302 fee from a borrower upon obtaining a bona fide commitment shall
2303 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

2304 (1) The gross loan amount.

2305 (2) In the case of a fixed-rate mortgage, the note rate.

2306 (3) In the case of an adjustable rate mortgage:

2307 (a) The initial note rate.

2308 (b) The length of time for which the initial note rate is
2309 effective.

2310 (c) The frequency of changes.

2311 (d) The limitation upon such changes including adjustment
2312 to adjustment cap and life cap.

2313 (e) Whether the loan has any potential for negative
2314 amortization.

2315 (f) Identification of the margin-interest rate
2316 differential.

2317 (g) Identification of a nationally recognized index which
2318 index must be free from control of the mortgage broker, ~~mortgage~~
2319 ~~brokerage business, mortgage lender,~~ or ~~correspondent~~ mortgage
2320 lender.

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2321 (4) The estimated net proceeds to be paid directly to the
2322 borrower. "Estimated net proceeds" means the cash to be received
2323 by the borrower after payment of any fees, charges, debts,
2324 liens, or encumbrances to perfect the lien of the new mortgage
2325 and establish the agreed-upon priority of the new mortgage.

2326 (5) The lien priority of the new proposed mortgage.

2327 (6) The number of calendar days, which are mutually agreed
2328 upon, within which the mortgage broker ~~brokerage business~~ shall
2329 obtain a bona fide mortgage commitment.

2330 (7) (a) The following statement, in at least ~~no less than~~
2331 12-point boldface type immediately above the signature lines for
2332 the borrowers:

2333
2334 "You are entering into a contract with a mortgage broker
2335 ~~brokerage business~~ to obtain a bona fide mortgage loan
2336 commitment under the same terms and conditions as stated
2337 hereinabove or in a separate executed good faith estimate form.
2338 If the mortgage broker ~~brokerage business~~ obtains a bona fide
2339 commitment under the same terms and conditions, you will be
2340 obligated to pay the loan origination ~~mortgage brokerage~~
2341 ~~business fees, including, but not limited to, a mortgage~~
2342 ~~brokerage fee,~~ even if you choose not to complete the loan
2343 transaction. If the provisions of s. 494.00421, Florida
2344 Statutes, are not met, the loan origination ~~mortgage brokerage~~
2345 fee can only be earned upon the funding of the mortgage loan.
2346 The borrower may contact the Department of Financial Services,
2347 Tallahassee, Florida, regarding any complaints that the borrower
2348 may have against the loan originator ~~mortgage broker or the~~
2349 ~~mortgage brokerage business~~. The telephone number of the

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2350 department is: ...~~(insert telephone number)~~...."

2351 (b) Paragraph (a) does not apply to nonresidential mortgage
2352 loan commitments in excess of \$1 million.

2353 (8) Any other disclosure required pursuant to s. 494.0038.
2354 Section 40. Section 494.0043, Florida Statutes, is amended
2355 to read:

2356 494.0043 Requirements for brokering loans to
2357 noninstitutional investors.-

2358 (1) A loan originator ~~mortgage broker~~, when arranging a
2359 mortgage loan for a noninstitutional investor, shall:

2360 (a) Before any payment of money by the ~~a~~ noninstitutional
2361 investor, provide an opinion of value from an appraiser stating
2362 the value of the security property unless the opinion is waived
2363 in writing. The opinion must state the value of the property as
2364 it exists on the date of the opinion. If any relationship exists
2365 between the loan originator or mortgage broker and the
2366 appraiser, that relationship shall be disclosed to the investor.

2367 (b) Provide to the noninstitutional investor a mortgagee's
2368 title insurance policy or an opinion of title by an attorney
2369 licensed to practice law in the state, or a copy thereof.

2370 1. If a title insurance policy is issued, it must insure
2371 the noninstitutional investor against the unmarketability of the
2372 mortgagee's interest in such title. It must ~~shall~~ also specify
2373 any superior liens that exist against the property. If an
2374 opinion of title is issued by an attorney ~~licensed to practice~~
2375 ~~law in the state~~, the opinion must include a statement as to the
2376 marketability of the title to the property described in the
2377 mortgage and specify the priority of the mortgage being closed.

2378 2. If the title insurance policy or opinion of title is not

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2379 available at the time of purchase, the licensee shall provide a
2380 binder of the title insurance or conditional opinion of title.
2381 This binder or opinion must include any conditions or
2382 requirements that need ~~needed~~ to be corrected before ~~prior to~~
2383 the issuance of the final title policy or opinion of title. The
2384 binder or opinion must also include information concerning the
2385 requirements specified in subparagraph 1. Any conditions must be
2386 eliminated or waived in writing by the investor before ~~prior to~~
2387 delivery to the noninstitutional investor. The policy or
2388 opinion, or a copy thereof, shall be delivered to the investor
2389 within a reasonable period of time, not exceeding 6 months,
2390 after closing.

2391 3. The requirements of this paragraph may be waived in
2392 writing. If the requirements are waived by the noninstitutional
2393 investor, the waiver must include the following statement
2394 ~~wording~~: "The noninstitutional investor acknowledges that the
2395 mortgage broker or mortgage lender brokering this mortgage loan
2396 is not providing a title insurance policy or opinion of title
2397 issued by an attorney who is licensed to practice law in the
2398 State of Florida. Any requirement for title insurance or for a
2399 legal opinion of title is the sole responsibility of the
2400 noninstitutional mortgage investor."

2401 (c) Provide, if the loan is other than a first mortgage, a
2402 statement showing the balance owed by the mortgagor on any
2403 existing mortgages prior to this investment and the status of
2404 such existing mortgages.

2405 (d) Provide a disclosure if the licensee is directly or
2406 indirectly acting as a borrower or principal in the transaction.

2407 (2) Each original or certified copy of the mortgage, or

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2408 other instrument securing a note or assignment thereof, must
2409 ~~shall~~ be recorded before being delivered to the noninstitutional
2410 investor. A mortgage broker shall cause the properly endorsed
2411 original note to be delivered to the noninstitutional investor.

2412 (3) Each mortgage and assignment must ~~shall~~ be recorded as
2413 soon as practical, but no later than 30 business days after the
2414 date of closing.

2415 (4) Any money from a noninstitutional investor for
2416 disbursement at a mortgage loan closing must ~~shall~~ be deposited
2417 with and disbursed by an attorney duly licensed in this state or
2418 by a title company duly licensed in this state. A person acting
2419 as a loan originator ~~mortgage broker~~ may not have control of any
2420 money from a noninstitutional investor. This subsection does not
2421 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from
2422 receiving a loan origination ~~mortgage brokerage~~ fee upon the
2423 closing of the mortgage loan funded by the noninstitutional
2424 investor.

2425 Section 41. Effective January 1, 2010, section 494.006,
2426 Florida Statutes, is repealed.

2427 Section 42. Section 494.0061, Florida Statutes, is
2428 repealed.

2429 Section 43. Section 494.00611, Florida Statutes, is created
2430 to read:

2431 494.00611 Mortgage lender license.—

2432 (1) Each person who acts as a mortgage lender must be
2433 licensed under this section.

2434 (2) In order to apply for a mortgage lender license an
2435 applicant must:

2436 (a) Submit a completed application form as prescribed by

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2437 the commission by rule.

2438 (b) Designate a qualified principal loan originator who
2439 meets the requirements of s. 494.0035 on the application form.

2440 (c) Submit a nonrefundable application fee of \$500, and the
2441 \$100 nonrefundable fee if required by s. 494.00172. Application
2442 fees may not be prorated for partial years of licensure.

2443 (d) Submit fingerprints for each of the applicant's control
2444 persons in accordance with rules adopted by the commission:

2445 1. The fingerprints may be submitted to the registry, the
2446 office, or a vendor acting on behalf of the registry or the
2447 office.

2448 2. The office may contract with a third-party vendor to
2449 provide live-scan fingerprinting in lieu of a paper fingerprint
2450 card.

2451 3. A state criminal history background check must be
2452 conducted through the Department of Law Enforcement and a
2453 federal criminal history background check must be conducted
2454 through the Federal Bureau of Investigation.

2455 4. All fingerprints submitted to the Department of Law
2456 Enforcement must be submitted electronically and entered into
2457 the statewide automated fingerprint identification system
2458 established in s. 943.05(2) (b) and available for use in
2459 accordance with s. 943.05(2) (g) and (h). The office shall pay an
2460 annual fee to the department to participate in the system and
2461 inform the department of any person whose fingerprints are no
2462 longer required to be retained.

2463 5. The costs of fingerprint processing, including the cost
2464 of retaining the fingerprints, shall be borne by the person
2465 subject to the background check.

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2466 6. The office is responsible for reviewing the results of
2467 the state and federal criminal history checks and determining
2468 whether the applicant meets licensure requirements.

2469 (e) Indicate whether the applicant will be seeking a
2470 servicing endorsement on the application form.

2471 (f) Submit a copy of the applicant's financial audit report
2472 for the most recent fiscal year which, pursuant to United States
2473 generally accepted accounting principles. If the applicant is a
2474 wholly owned subsidiary of another corporation, the financial
2475 audit report for the parent corporation satisfies this
2476 requirement. The commission may establish by rule the form and
2477 procedures for filing the financial audit report, including the
2478 requirement to file the report with the registry when technology
2479 is available. The financial audit report must document that the
2480 applicant has a bona fide and verifiable net worth, of at least
2481 \$63,000 if the applicant is not seeking a servicing endorsement,
2482 or at least \$250,000 if the applicant is seeking a servicing
2483 endorsement, which must be continuously maintained as a
2484 condition of licensure. However, if the applicant held an active
2485 license issued before October 1, 2010, pursuant to former s.
2486 494.0065, and the applicant is seeking a servicing endorsement,
2487 the minimum net worth requirement:

2488 1. Until September 30, 2011, is \$63,000.

2489 2. Between October 1, 2011, and September 30, 2012, is
2490 \$125,000.

2491 3. On or after October 1, 2012, is \$250,000.

2492 (g) Authorize the registry to obtain an independent credit
2493 report on each of the applicant's control persons from a
2494 consumer reporting agency, and transmit or provide access to the

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2495 report to the office. The cost of the credit report shall be
2496 borne by the applicant.

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

2508 (i) Submit any other information required by the registry
2509 for the processing of the application.

2510 (3) An application is considered received for the purposes
2511 of s. 120.60 upon the office's receipt of all documentation from
2512 the registry, including the completed application form, criminal
2513 history information, and independent credit report, as well as
2514 the license application fee, the fee required under s.
2515 494.00172, and all applicable fingerprinting processing fees.

2516 (4) The office shall issue a mortgage lender license to
2517 each person who is not otherwise ineligible and who meets the
2518 requirements of this section. However, it is a ground for denial
2519 of licensure if the applicant or one of the applicant's control
2520 persons:

2521 (a) Has committed any violation specified in ss. 494.001-
2522 494.0077, or is the subject of a pending felony criminal
2523 prosecution or a prosecution or an administrative enforcement

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2524 action, in any jurisdiction, which involves fraud, dishonesty,
2525 breach of trust, money laundering, or any other act of moral
2526 turpitude.

2527 (b) Has failed to demonstrate the character, general
2528 fitness, and financial responsibility necessary to command the
2529 confidence of the community and warrant a determination that the
2530 applicant will operate honestly, fairly, and efficiently.

2531 1. If the office has information that could form the basis
2532 for license denial under this paragraph, before denying the
2533 license, the office must notify the applicant in writing of the
2534 specific items of concern and provide the applicant with an
2535 opportunity to explain the circumstances surrounding the
2536 specific items and provide any information that the applicant
2537 believes is relevant to the office's determination.

2538 2. For purposes of evaluating adverse information found in
2539 an applicant's credit report, the information must be considered
2540 within the totality of the circumstances. Information provided
2541 by the applicant under subparagraph 1., or information obtained
2542 by the office by other means, may be used to provide a context
2543 for the adverse items. For example, the adverse items may have
2544 resulted from factors that do not necessarily reflect negatively
2545 upon the applicant's character, general fitness, or financial
2546 responsibility.

2547 3. The office may not use a credit score or the absence or
2548 insufficiency of credit history information to determine
2549 character, general fitness, or financial responsibility.

2550 4. If information contained in a credit report is used as
2551 the basis for denying a license, the office shall, in accordance
2552 with s. 120.60(3), provide with particularity the grounds or

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2553 basis for denial. The use of the terms "poor credit history,"
2554 "poor credit rating," or similar language do not meet the
2555 requirements of this paragraph.

2556 (5) The office may not issue a license if the applicant has
2557 had a mortgage lender license or its equivalent revoked in any
2558 jurisdiction, or any of the applicant's control persons has ever
2559 had a loan originator license or its equivalent revoked in any
2560 jurisdiction.

2561 (6) A person required to be licensed under this part, or an
2562 agent or employee thereof, is deemed to have consented to the
2563 venue of courts in this state regarding any matter within the
2564 authority of ss. 494.001-494.0077 regardless of where an act or
2565 violation was committed.

2566 (7) A license issued in accordance with this part is not
2567 transferable or assignable.

2568 (8) A mortgage lender or branch office license may be
2569 annulled pursuant to s. 120.60 if it was issued by the office by
2570 mistake. A license must be reinstated if the applicant
2571 demonstrates that the requirements for obtaining the license
2572 under this chapter have been satisfied.

2573 (9) Each lender, regardless of the number of branches it
2574 operates, shall designate a principal loan originator
2575 representative who exercises control of the licensee's business,
2576 and a branch manager for each branch office. Each mortgage
2577 lender must keep the office informed of the persons designated
2578 as prescribed by commission rule, which includes documentation
2579 of the individual's acceptance of such responsibility. If the
2580 designation is inaccurate, the branch shall be deemed to be
2581 operated under the full charge, control, and supervision by each

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2582 officer, director, or ultimate equitable owner of a 10 percent
2583 or greater interest in the mortgage lender business, or any
2584 other person in a similar capacity during that time.

2585 (10) All mortgage lender licenses must be renewed annually
2586 by December 31 pursuant to s. 494.00612. If a person holding an
2587 active mortgage lender license has not applied to renew the
2588 license on or before December 31, the mortgage lender license
2589 expires on December 31. If a person holding an active mortgage
2590 lender license has applied to renew the license on or before
2591 December 31, the mortgage lender license remains active until
2592 the renewal application is approved or denied. A mortgage lender
2593 is not precluded from reapplying for licensure upon expiration
2594 of a previous license.

2595 Section 44. Section 494.00612, Florida Statutes, is created
2596 to read:

2597 494.00612 Mortgage lender license renewal.-

2598 (1) In order to renew a mortgage lender license, a mortgage
2599 lender must:

2600 (a) Submit a completed license renewal form as prescribed
2601 by commission rule.

2602 (b) Submit a nonrefundable renewal fee of \$475, the \$100
2603 nonrefundable fee if required by s. 494.00172, and nonrefundable
2604 fees to cover the cost of further fingerprint processing and
2605 retention as set forth in commission rule.

2606 (c) Submit fingerprints in accordance with s.
2607 494.00611(2) (d) for any new control persons who have not been
2608 screened.

2609 (d) Provide proof that the mortgage lender continues to
2610 meet the applicable net worth requirement in a form prescribed

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2611 by commission rule.

2612 (e) Authorize the registry to obtain an independent credit
2613 report on the mortgage lender from a consumer reporting agency,
2614 and transmit or provide access to the report to the office. The
2615 cost of the credit report shall be borne by the licensee.

2616 (f) Submit any additional information or documentation
2617 requested by the office and required by rule concerning the
2618 licensee. Additional information may include documentation of
2619 pending and prior disciplinary and criminal history events,
2620 including arrest reports and certified copies of charging
2621 documents, plea agreements, judgments and sentencing documents,
2622 documents relating to pretrial intervention, orders terminating
2623 probation or supervised release, final administrative agency
2624 orders, or other comparable documents that may provide the
2625 office with the appropriate information to determine eligibility
2626 for renewal of licensure.

2627 (2) The office may not renew a mortgage lender license
2628 unless the mortgage lender continues to meet the minimum
2629 requirements for initial licensure pursuant to s. 494.00611 and
2630 adopted rule.

2631 Section 45. Section 494.0062, Florida Statutes, is
2632 repealed.

2633 Section 46. Section 494.0063, Florida Statutes, is amended
2634 to read:

2635 494.0063 Audited financial statements.—All audited
2636 financial statements required by ss. 494.001-494.0077 must be
2637 prepared by an independent licensed certified public accountant.
2638 A mortgage lender must obtain an annual financial audit report
2639 as of the date of the licensee's fiscal year end, as disclosed

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2640 to the office on the application or a subsequent amendment to
2641 the application. The mortgage lender shall submit a copy of the
2642 report to the office within 120 days after the end of the
2643 licensee's fiscal year. If the licensee is a wholly owned
2644 subsidiary of another corporation, the financial audit report of
2645 the parent corporation's satisfies this requirement. If the
2646 licensee changes its fiscal year, the licensee must file a
2647 report within 18 months after the previously submitted report.
2648 The commission may establish by rule the procedures and form for
2649 filing a financial audit report, including the requirement to
2650 file the report with the registry when technology is available.

2651 Section 47. Section 494.0064, Florida Statutes, is
2652 repealed.

2653 Section 48. Section 494.0065, Florida Statutes, is
2654 repealed.

2655 Section 49. Section 494.0066, Florida Statutes, is amended
2656 to read:

2657 494.0066 Branch offices.—

2658 (1) Each branch office of a mortgage lender must be
2659 licensed under this section ~~A branch office license is required~~
2660 ~~for each branch office maintained by a licensee under ss.~~
2661 ~~494.006-494.0077.~~

2662 (2) The office shall issue a branch office license to a
2663 mortgage lender licensee licensed under ss. 494.006-494.0077
2664 after the office determines that the mortgage lender licensee
2665 has submitted a completed branch office application form as
2666 prescribed by rule by the commission, and an initial
2667 nonrefundable branch office license fee of \$225 per branch
2668 office ~~\$325.~~ Application fees may not be prorated for partial

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2669 years of licensure. The branch office application must include
2670 the name and license number of the mortgage lender licensee
2671 under this part ss. ~~494.006-494.0077~~, the name of the branch
2672 manager licensee's ~~employee~~ in charge of the branch office, and
2673 the address of the branch office. The branch office license
2674 shall be issued in the name of the mortgage lender licensee
2675 under ss. ~~494.006-494.0077~~ and must be renewed in conjunction
2676 with the license renewal. An application is considered received
2677 for purposes of s. 120.60 upon receipt of a completed branch
2678 office renewal form, as prescribed by commission rule, and the
2679 required fees.

2680 (3) A branch office license must be renewed at the time of
2681 renewing the mortgage lender license. A nonrefundable fee of
2682 \$225 per branch office must be submitted at the time of renewal.

2683 Section 50. Section 494.00665, Florida Statutes, is created
2684 to read:

2685 494.00665 Principal loan originator and branch manager for
2686 mortgage lender.—

2687 (1) Each mortgage lender business must be operated by a
2688 principal loan originator who shall have full charge, control,
2689 and supervision of the mortgage lender business. The principal
2690 loan originator must be licensed as a loan originator pursuant
2691 to s. 494.00312. Each mortgage lender must keep the office
2692 informed of the person designated as the principal loan
2693 originator as prescribed by commission rule. If the designation
2694 is inaccurate, the business shall be deemed to be operated under
2695 the full charge, control, and supervision of each officer,
2696 director, or ultimate equitable owner of a 10 percent or greater
2697 interest in the mortgage lender business, or any other person in

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2698 a similar capacity during that time.

2699 (2) Each branch office of a mortgage lender must be
2700 operated by a branch manager who shall have full charge,
2701 control, and supervision of the branch office. The designated
2702 branch manager must be a licensed loan originator pursuant to s.
2703 494.00312. Each mortgage lender must keep the office informed of
2704 the person designated as the branch manager as prescribed by
2705 commission rule, which includes documentation of the
2706 individual's acceptance of such responsibility. If the
2707 designation is inaccurate, the branch office shall be deemed to
2708 be operated under the full charge, control, and supervision of
2709 each officer, director, or ultimate equitable owner of a 10
2710 percent or greater interest in the mortgage lender business, or
2711 any other person in a similar capacity during that time.

2712 Section 51. Section 494.0067, Florida Statutes, is amended
2713 to read:

2714 494.0067 Requirements of mortgage lenders ~~licensees under~~
2715 ~~ss. 494.006-494.0077.~~

2716 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~
2717 ~~494.0077 which~~ makes mortgage loans on real estate in this state
2718 shall transact business from a principal place of business. Each
2719 principal place of business and each branch office shall be
2720 operated under the full charge, control, and supervision of the
2721 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2722 (2) A license issued under this part ~~ss. 494.006-494.0077~~
2723 is not transferable or assignable.

2724 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~
2725 ~~494.0077~~ shall report, on a form prescribed by rule of the
2726 commission, any change in the information contained in any

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2727 initial application form, or any amendment thereto, within not
2728 ~~later than~~ 30 days after the change is effective.

2729 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
2730 ~~494.0077~~ shall report any changes in the principal loan
2731 originator, any addition or subtraction of a control person,
2732 ~~partners, officers, members, joint venturers, directors, or~~
2733 ~~control persons of any licensee or any change~~ changes in the
2734 form of business organization by written amendment in such form
2735 and at such time that the commission specifies by rule.

2736 (a) In any case in which a person or a group of persons,
2737 directly or indirectly or acting by or through one or more
2738 persons, proposes to purchase or acquire a controlling interest
2739 in a licensee, such person or group must submit an initial
2740 application for licensure as a mortgage lender ~~or correspondent~~
2741 ~~mortgage lender~~ before such purchase or acquisition and at the
2742 time and in the form prescribed by the commission by rule.

2743 ~~(b) As used in this subsection, the term "controlling~~
2744 ~~interest" means possession of the power to direct or cause the~~
2745 ~~direction of the management or policies of a company whether~~
2746 ~~through ownership of securities, by contract, or otherwise. Any~~
2747 ~~person who directly or indirectly has the right to vote 25~~
2748 ~~percent or more of the voting securities of a company or who is~~
2749 ~~entitled to 25 percent or more of the company's profits is~~
2750 ~~presumed to possess a controlling interest.~~

2751 ~~(b)(c)~~ Any addition of a designated principal
2752 representative, partner, officer, member, joint venturer,
2753 director, or control person of the applicant who does not have a
2754 controlling interest and who has not previously filed a Uniform
2755 Mortgage Biographical Statement & Consent Form, MU2, or has not

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2756 previously complied with the fingerprinting and credit report
2757 requirements of s. 494.00611 is the provisions of s.
2758 494.0061(2) (g) and (h), s. 494.0062(2) (g) and (h), or s.
2759 494.0065(5) (e) and (f) shall be subject to the such provisions
2760 of this section unless required to file an initial application
2761 in accordance with paragraph (a). If after the addition of a
2762 control person, the office determines that the licensee does not
2763 continue to meet licensure requirements, the office may bring
2764 administrative action in accordance with s. 494.00255 s.
2765 494.0072 to enforce the provisions of this section.

2766 ~~(d) The commission shall adopt rules pursuant to ss.~~
2767 ~~120.536(1) and 120.54 providing for the waiver of the~~
2768 ~~application required by this subsection if the person or group~~
2769 ~~of persons proposing to purchase or acquire a controlling~~
2770 ~~interest in a licensee has previously complied with the~~
2771 ~~provisions of s. 494.0061(2) (g) and (h), s. 494.0062(2) (g) and~~
2772 ~~(h), or s. 494.0065(5) (e) and (f) with the same legal entity or~~
2773 ~~is currently licensed with the office under this chapter.~~

2774 (5) Each mortgage lender licensee under ~~ss. 494.006-~~
2775 ~~494.0077~~ shall report in a form prescribed by rule of ~~by~~ the
2776 commission any indictment, information, charge, conviction, or
2777 plea of guilty or nolo contendere, regardless of adjudication,
2778 ~~or plea of guilty~~ to any felony or any crime or administrative
2779 violation that involves fraud, dishonesty, breach of trust,
2780 money laundering ~~dishonest dealing,~~ or any other act of moral
2781 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
2782 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
2783 equitable owner of 10 percent or more of the licensed
2784 corporation, within ~~not later than~~ 30 business days after the

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2785 indictment, information, charge, conviction, or final
2786 administrative action.

2787 (6) Each mortgage lender licensee ~~under ss. 494.006-~~
2788 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
2789 involuntary, to the office, within 30 ~~not later than 7~~ business
2790 days after the action is instituted.

2791 (7) Each mortgage lender licensee ~~under ss. 494.006-~~
2792 ~~494.0077~~ shall designate a registered agent in this state for
2793 service of process.

2794 (8) Each mortgage lender licensee ~~under ss. 494.006-~~
2795 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
2796 faith estimate of the costs the applicant can reasonably expect
2797 to pay in obtaining a mortgage loan. The good faith estimate of
2798 costs must ~~shall~~ be mailed or delivered to the applicant within
2799 3 business days ~~a reasonable time~~ after the licensee receives a
2800 written loan application from the applicant. The estimate of
2801 costs may be provided to the applicant by a person other than
2802 the licensee making the loan. The good faith estimate must
2803 identify the recipient of all payments charged to the borrower
2804 and, except for all fees to be received by the mortgage broker
2805 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
2806 ~~mortgage lender~~, may be disclosed in generic terms, such as, but
2807 not limited to, paid to appraiser, officials, title company, or
2808 any other third-party service provider. The licensee bears the
2809 burden of proving such disclosures were provided to the
2810 borrower. The commission may adopt rules that set forth the
2811 disclosure requirements of this section.

2812 ~~(9) On or before April 30, 2000, each mortgage lender or~~
2813 ~~correspondent mortgage lender shall file an initial report~~

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2814 ~~stating the full legal name, residential address, social~~
2815 ~~security number, date of birth, mortgage broker license number,~~
2816 ~~date of hire, and, if applicable, date of termination for each~~
2817 ~~person who acted as a loan originator or an associate of the~~
2818 ~~mortgage lender or correspondent mortgage lender during the~~
2819 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
2820 ~~correspondent mortgage lender shall file a report only if a~~
2821 ~~person became or ceased to be a loan originator or an associate~~
2822 ~~of the mortgage lender or correspondent mortgage lender during~~
2823 ~~the immediate preceding quarter. Such report shall be filed~~
2824 ~~within 30 days after the last day of each calendar quarter and~~
2825 ~~shall contain the full legal name, residential address, social~~
2826 ~~security number, date of birth, date of hire and, if applicable,~~
2827 ~~the mortgage broker license number and date of termination of~~
2828 ~~each person who became or ceased to be a loan originator or an~~
2829 ~~associate of the mortgage lender or correspondent mortgage~~
2830 ~~lender during the immediate preceding quarter. The commission~~
2831 ~~shall prescribe, by rule, the procedures for filing reports~~
2832 ~~required by this subsection.~~

2833 ~~(10) (a) Each mortgage lender or correspondent mortgage~~
2834 ~~lender licensee shall require the principal representative and~~
2835 ~~all loan originators, not currently licensed as mortgage brokers~~
2836 ~~pursuant to s. 494.0033, who perform services for the licensee~~
2837 ~~to complete 14 hours of professional continuing education during~~
2838 ~~each biennial license period. The education shall cover primary~~
2839 ~~and subordinate mortgage financing transactions and the~~
2840 ~~provisions of this chapter and the rules adopted under this~~
2841 ~~chapter.~~

2842 ~~(b) The licensee shall maintain records of such training~~

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2843 ~~for a period of 4 years, including records of the content of and~~
2844 ~~hours designated for each program and the date and location of~~
2845 ~~the program.~~

2846 ~~(c) Evidence of completion of such programs shall be~~
2847 ~~included with the licensee's renewal application.~~

2848 (9)~~(11)~~ The disclosures in this subsection must be
2849 furnished in writing at the time an adjustable rate mortgage
2850 loan is offered to the borrower and whenever the terms of the
2851 adjustable rate mortgage loan offered have a material change
2852 prior to closing. The lender shall furnish the disclosures
2853 relating to adjustable rate mortgages in a format prescribed by
2854 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2855 of the Federal Reserve System, as amended; its commentary, as
2856 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2857 1601 et seq., as amended; together with the Consumer Handbook on
2858 Adjustable Rate Mortgages, as amended; published by the Federal
2859 Reserve Board and the Federal Home Loan Bank Board. The licensee
2860 bears the burden of proving such disclosures were provided to
2861 the borrower.

2862 (10)~~(12)~~~~(a)~~ In every mortgage loan transaction, each
2863 mortgage lender licensee ~~licensee under ss. 494.006-494.0077~~ shall notify
2864 a borrower of any material changes in the terms of a mortgage
2865 loan previously offered to the borrower within 3 business days
2866 after being made aware of such changes by the lender but at
2867 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the
2868 settlement or closing statement. The licensee bears the burden
2869 of proving such notification was provided and accepted by the
2870 borrower.

2871 ~~(b)~~ A borrower may waive the right to receive notice of a

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2872 material change ~~that is granted under paragraph (a)~~ if the
2873 borrower determines that the extension of credit is needed to
2874 meet a bona fide personal financial emergency and the right to
2875 receive notice would delay the closing of the mortgage loan. The
2876 imminent sale of the borrower's home at foreclosure during the
2877 3-day period before the signing of the settlement or closing
2878 statement constitutes an example of a bona fide personal
2879 financial emergency. In order to waive the borrower's right to
2880 receive notice ~~not less than 3 business days before the signing~~
2881 ~~of the settlement or closing statement of any such material~~
2882 ~~change~~, the borrower must provide the licensee with a dated
2883 written statement that describes the personal financial
2884 emergency, waives the right to receive the notice, bears the
2885 borrower's signature, and is not on a printed form prepared by
2886 the licensee for the purpose of such a waiver.

2887 (11) A mortgage lender may close loans in its own name but
2888 may not service the loan for more than 4 months unless the
2889 lender has a servicing endorsement. Only a mortgage lender who
2890 continuously maintains a net worth of at least \$250,000 may
2891 obtain a servicing endorsement.

2892 (12) A mortgage lender must report to the office the
2893 failure to meet the applicable net worth requirements of s.
2894 494.00611 within 2 days after the mortgage lender's knowledge of
2895 such failure or after the mortgage lender should have known of
2896 such failure.

2897 Section 52. Section 494.0068, Florida Statutes, is amended
2898 to read:

2899 494.0068 Loan application process.—

2900 (1) In addition to the requirements set forth in s.

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2901 494.0067(8), before accepting an application fee in whole or in
2902 part, a credit report fee, an appraisal fee, or a fee charged as
2903 reimbursement for third-party charges, a mortgage lender shall
2904 make a written disclosure to the borrower, which disclosure may
2905 be contained in the application, setting forth:

2906 (a) Whether all or any part of such fees or charges is
2907 refundable.

2908 (b) The terms and conditions for the refund, if all or any
2909 part of the fees or charges is refundable.

2910 (c) A realistic estimate of the number of days required to
2911 issue a commitment following receipt of the application by the
2912 lender.

2913 (d) The name or title of a person within the lender's
2914 organization to whom the borrower may address written questions,
2915 comments, or complaints and who is required to promptly respond
2916 to such inquiries.

2917 (2) The disclosures required in subsection (1) must ~~shall~~
2918 be acknowledged in writing by the borrower and maintained by the
2919 mortgage lender, and a copy of such acknowledgment shall be
2920 given to the borrower.

2921 (3) The borrower may, without penalty or responsibility for
2922 paying additional fees and charges, withdraw an application at
2923 any time prior to acceptance of commitment. Upon such
2924 withdrawal, the mortgage lender is responsible for refunding to
2925 the borrower only those fees and charges to which the borrower
2926 may be entitled pursuant to the terms set forth in the written
2927 disclosure required by subsection (1), except that:

2928 (a) If the lender failed to provide the borrower with the
2929 written disclosure required by subsection (1), the lender shall

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2930 promptly refund to the borrower all funds paid to the lender; or

2931 (b) If the lender failed to make a good faith effort to
2932 approve the loan, the lender shall promptly refund to the
2933 borrower all funds paid to the lender.

2934 (4) The application fee must be reasonably related to the
2935 services to be performed and may not be based upon a percentage
2936 of the principal amount of the loan or the amount financed.

2937 (5) For the purposes of this section, the term "application
2938 fee" means any moneys advanced by the borrower upon filing an
2939 application with a mortgage lender to offset the lender's
2940 expenses for determining whether the borrower is qualified for
2941 the mortgage loan or whether the mortgage loan should be funded.

2942 Section 53. Section 494.0069, Florida Statutes, is amended
2943 to read:

2944 494.0069 Lock-in agreement.—

2945 (1) Each lock-in agreement must be in writing and must
2946 contain:

2947 (a) The expiration date of the lock-in, if any;

2948 (b) The interest rate locked in, if any;

2949 (c) The discount points locked in, if any;

2950 (d) The commitment fee locked in, if any;

2951 (e) The lock-in fee, if any; and

2952 (f) A statement advising of the provisions of this part ~~ss.~~
2953 ~~494.006-494.0077~~ regarding lock-in agreements.

2954 (2) The mortgage lender ~~or correspondent mortgage lender~~
2955 shall make a good faith effort to process the mortgage loan
2956 application and stand ready to fulfill the terms of its
2957 commitment before the expiration date of the lock-in agreement
2958 or any extension thereof.

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2959 (3) Any lock-in agreement received by a mortgage lender ~~or~~
2960 ~~correspondent mortgage lender~~ by mail or through a mortgage
2961 broker must be signed by the mortgage lender ~~or correspondent~~
2962 ~~mortgage lender~~ in order to become effective. The borrower may
2963 rescind any lock-in agreement until a written confirmation of
2964 the agreement has been signed by the lender and mailed to the
2965 borrower or to the mortgage broker ~~brokerage business~~ pursuant
2966 to its contractual relationship with the borrower. If a borrower
2967 elects to so rescind, the mortgage lender ~~or correspondent~~
2968 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2969 (4) ~~(a) Before Any correspondent mortgage lender or mortgage~~
2970 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,
2971 a mortgage lender must have the ability to timely advance funds
2972 on all mortgage loans for which rate lock-in agreements have
2973 been issued. As used in this section, "ability to timely advance
2974 funds" means having sufficient liquid assets or a line of credit
2975 necessary to cover all rate lock-in agreements issued with
2976 respect to which a lock-in fee is collected.

2977 ~~(a)(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender
2978 that does not comply with this subsection ~~paragraph (a)~~ may
2979 issue mortgage rate lock-in agreements only if, prior to the
2980 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2981 1. Has received a written rate lock-in agreement from a
2982 ~~correspondent mortgage lender or~~ mortgage lender that complies
2983 with this subsection ~~paragraph (a)~~; or

2984 2. Has received a written rate lock-in agreement from an
2985 institutional investor or an agency of the Federal Government or
2986 the state or local government that will be funding, making, or
2987 purchasing the mortgage loan.

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2988 (b) ~~(e)~~ All rate lock-in fees collected by a mortgage lender
2989 ~~or correspondent mortgage lender~~ who is not in compliance with
2990 ~~paragraph (a)~~ must be deposited into an escrow account in a
2991 federally insured financial institution, and such fees may ~~shall~~
2992 not be removed from such escrow account until:

- 2993 1. The mortgage loan closes and is funded;
2994 2. The applicant cancels the loan application or the loan
2995 application is rejected; or
2996 3. The mortgage lender ~~or correspondent mortgage lender~~ is
2997 required to forward a portion of the lock-in fee to another
2998 ~~correspondent mortgage lender,~~ mortgage lender, institutional
2999 investor, or agency that will be funding, making, or purchasing
3000 the loan. The mortgage lender ~~or correspondent mortgage lender~~
3001 may remove only the amount of the lock-in fee actually paid to
3002 another mortgage lender, ~~correspondent mortgage lender,~~
3003 institutional investor, or agency.

3004 (5) For purposes of this section, the term "lock-in fee"
3005 means any moneys advanced by the borrower to lock in for a
3006 specified period of time a specified interest rate or discount
3007 points.

3008 (6) The commission may adopt by rule a form for required
3009 lock-in agreement disclosures.

3010 Section 54. Effective July 1, 2009, section 494.007,
3011 Florida Statutes, is amended to read:

3012 494.007 Commitment process.—

3013 (1) If a commitment is issued, the mortgage lender shall
3014 disclose in writing:

3015 (a) The expiration date of the commitment;

3016 (b) The mortgage amount, meaning the face amount of credit

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3017 provided to the borrower or in the borrower's behalf;

3018 (c) If the interest rate or other terms are subject to
3019 change before expiration of the commitment:

3020 1. The basis, index, or method, if any, which will be used
3021 to determine the rate at closing. Such basis, index, or method
3022 shall be established and disclosed with direct reference to the
3023 movement of an interest rate index or of a national or regional
3024 index that is available to and verifiable by the borrower and
3025 beyond the control of the lender; or

3026 2. The following statement, in at least 10-point bold type:
3027 "The interest rate will be the rate established by the lender in
3028 its discretion as its prevailing rate . . . days before
3029 closing.";

3030 (d) The amount of the commitment fee, if any, and whether
3031 and under what circumstances the commitment fee is refundable;
3032 and

3033 (e) The time, if any, within which the commitment must be
3034 accepted by the borrower.

3035 (2) The provisions of a commitment cannot be changed prior
3036 to expiration of the specified period within which the borrower
3037 must accept it. If any information necessary for an accurate
3038 disclosure required by subsection (1) is unknown to the mortgage
3039 lender at the time disclosure is required, the lender shall make
3040 the disclosure based upon the best information reasonably
3041 available to it and shall state that the disclosure is an
3042 estimate.

3043 (3) A commitment fee is refundable if:

3044 (a) The commitment is contingent upon approval by parties
3045 to whom the mortgage lender seeks to sell the loan.

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3046 (b) The loan purchaser's requirements are not met due to
3047 circumstances beyond the borrower's control.

3048 (c) The borrower is willing but unable to comply with the
3049 loan purchaser's requirements.

3050 Section 55. Section 494.0071, Florida Statutes, is amended
3051 to read:

3052 494.0071 Expiration of lock-in agreement or commitment.—If
3053 a lock-in agreement has been executed and the loan does not
3054 close before the expiration date of ~~either~~ the lock-in agreement
3055 or any commitment issued consistent therewith through no
3056 substantial fault of the borrower, the borrower may withdraw the
3057 application or reject or terminate any commitment, whereupon the
3058 mortgage lender ~~or correspondent mortgage lender~~ shall promptly
3059 refund to the borrower any lock-in fee and any commitment fee
3060 paid by the borrower.

3061 Section 56. Section 494.0072, Florida Statutes, is
3062 repealed.

3063 Section 57. Section 494.00721, Florida Statutes, is amended
3064 to read:

3065 494.00721 Net worth.—

3066 (1) The net worth requirements ~~required~~ in s. 494.00611 ~~ss.~~
3067 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained
3068 as a condition of licensure.

3069 (2) If a mortgage lender ~~or correspondent mortgage lender~~
3070 fails to satisfy the net worth requirements, the mortgage lender
3071 ~~or correspondent mortgage lender~~ shall immediately cease taking
3072 any new mortgage loan applications. Thereafter, the mortgage
3073 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
3074 within which to satisfy the net worth requirements. If the

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

3087 (3) If the mortgage lender ~~or correspondent mortgage lender~~
3088 does not satisfy the net worth requirements within 120 days ~~the~~
3089 ~~120-day period~~, the license of the mortgage lender ~~or~~
3090 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
3091 and canceled and all servicing contracts shall be disposed of in
3092 a timely manner by the mortgage lender ~~or correspondent mortgage~~
3093 ~~lender~~.

3094 Section 58. Section 494.0073, Florida Statutes, is amended
3095 to read:

3096 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
3097 when acting as a mortgage broker ~~brokerage business~~. ~~The~~
3098 provisions of this part Sections 494.006-494.0077 do not
3099 prohibit a mortgage lender ~~or correspondent mortgage lender~~ from
3100 acting as a mortgage broker ~~brokerage business~~. However, in
3101 mortgage transactions in which a mortgage lender ~~or~~
3102 ~~correspondent mortgage lender~~ acts as a mortgage broker
3103 ~~brokerage business~~, the provisions of ss. 494.0038, 494.004(2)

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3104 ~~494.004(8)~~, 494.0042, and 494.0043(1), (2), and (3) apply.

3105 Section 59. Effective July 1, 2009, section 494.0075,
3106 Florida Statutes, is amended to read:

3107 494.0075 Requirements for selling loans to noninstitutional
3108 investors.—

3109 (1) A mortgage lender, when selling a mortgage loan to a
3110 noninstitutional investor, shall:

3111 (a) Before any payment of money by a noninstitutional
3112 investor, provide an opinion of value from an appraiser stating
3113 the value of the security property unless the opinion is waived
3114 in writing. The opinion must state the value of the property as
3115 it exists on the date of the opinion. If any relationship exists
3116 between the lender and the appraiser, that relationship must
3117 ~~shall~~ be disclosed.†

3118 (b) Provide to the noninstitutional investor a mortgagee's
3119 title insurance policy or an opinion of title by an attorney
3120 licensed to practice law in this state, or a copy thereof:

3121 1. If a title insurance policy is issued, it must insure
3122 the noninstitutional investor against the unmarketability of the
3123 mortgagee's interest in such title. It must also specify any
3124 superior liens that exist against the property. If an opinion of
3125 title is issued by an attorney ~~licensed to practice law in this~~
3126 ~~state~~, the opinion must include a statement as to the
3127 marketability of the title to the property described in the
3128 mortgage and specify the priority of the mortgage being
3129 purchased.

3130 2. If the title insurance policy or opinion of title is not
3131 available at the time of purchase, the licensee shall provide a
3132 binder of the title insurance or conditional opinion of title.

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3133 This binder or opinion must include any conditions or
3134 requirements needed to be corrected before ~~prior to~~ the issuance
3135 of the final title policy or opinion of title. The binder or
3136 opinion must also include information concerning the
3137 requirements specified in subparagraph 1. Any conditions must be
3138 eliminated or waived in writing by the investor before ~~prior to~~
3139 delivery to the noninstitutional investor. The policy or
3140 opinion, or a copy thereof, shall be delivered to the investor
3141 within a reasonable period of time, not exceeding 6 months,
3142 after purchase.

3143 3. The requirements of this paragraph may be waived in
3144 writing. If the requirements are waived by the noninstitutional
3145 investor, the waiver must include the following wording: "The
3146 noninstitutional investor acknowledges that the mortgage lender
3147 selling this mortgage loan is not providing a title insurance
3148 policy or opinion of title issued by an attorney who is licensed
3149 to practice law in the State of Florida. Any requirement for
3150 title insurance or for a legal opinion of title is the sole
3151 responsibility of the noninstitutional mortgage purchaser."

3152 (c) Provide, if the loan is other than a first mortgage, a
3153 statement showing the balance owed by the mortgagor on any
3154 existing mortgages prior to this investment and the status of
3155 such existing mortgages.

3156 (d) Provide a disclosure if the licensee is directly or
3157 indirectly acting as a borrower or principal in the transaction.

3158 (2) Each mortgage, or other instrument securing a note or
3159 assignment thereof, must ~~shall~~ be recorded before being
3160 delivered to the noninstitutional investor.

3161 (3) Each mortgage and assignment shall be recorded as soon

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3162 as practical, but within ~~no later than~~ 30 business days after
3163 the date of purchase.

3164 (4) If the loan is to be serviced by a licensee under this
3165 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
3166 shall be a written servicing agreement.

3167 (5) The mortgage lender shall cause the original note to be
3168 properly endorsed showing the assignment of the note to the
3169 noninstitutional investor.

3170 Section 60. Effective July 1, 2009, paragraph (a) of
3171 subsection (1) of section 494.0076, Florida Statutes, is amended
3172 to read:

3173 494.0076 Servicing audits.—

3174 (1) (a) Each licensee under part III of chapter ~~who ss.~~
3175 ~~494.006-494.0077~~ which services mortgage loans shall:

3176 1. Maintain a segregated set of records for accounts that
3177 are serviced by the licensee.

3178 2. Have a separate, segregated depository account for all
3179 receipts relating to servicing.

3180 Section 61. Effective July 1, 2009, section 494.0077,
3181 Florida Statutes, is amended to read:

3182 494.0077 Other products and services.—This part does
3183 ~~Sections 494.006-494.0077~~ do not prohibit a mortgage lender from
3184 offering, for a fee or commission, products and services in
3185 addition to those offered in conjunction with making a mortgage
3186 loan.

3187 Section 62. Effective July 1, 2009, subsection (2) of
3188 section 501.1377, Florida Statutes, is amended to read:

3189 501.1377 Violations involving homeowners during the course
3190 of residential foreclosure proceedings.—

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3191 (2) DEFINITIONS.—As used in this section, the term:

3192 (a) "Equity purchaser" means a ~~any~~ person who acquires a

3193 legal, equitable, or beneficial ownership interest in any

3194 residential real property as a result of a foreclosure-rescue

3195 transaction. The term does not apply to a person who acquires

3196 the legal, equitable, or beneficial interest in such property:

3197 1. By a certificate of title from a foreclosure sale

3198 conducted under chapter 45;

3199 2. At a sale of property authorized by statute;

3200 3. By order or judgment of any court;

3201 4. From a spouse, parent, grandparent, child, grandchild,

3202 or sibling of the person or the person's spouse; or

3203 5. As a deed in lieu of foreclosure, a workout agreement, a

3204 bankruptcy plan, or any other agreement between a foreclosing

3205 lender and a homeowner.

3206 (b) "Foreclosure-rescue consultant" means a person who

3207 directly or indirectly makes a solicitation, representation, or

3208 offer to a homeowner to provide or perform, in return for

3209 payment of money or other valuable consideration, foreclosure-

3210 related rescue services. The term does not apply to:

3211 1. A person excluded under s. 501.212.

3212 2. A person acting under the express authority or written

3213 approval of the United States Department of Housing and Urban

3214 Development or other department or agency of the United States

3215 or this state to provide foreclosure-related rescue services.

3216 3. A charitable, not-for-profit agency or organization, as

3217 determined by the United States Internal Revenue Service under

3218 s. 501(c)(3) of the Internal Revenue Code, which offers

3219 counseling or advice to an owner of residential real property in

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3220 foreclosure or loan default if the agency or organization does
3221 not contract for foreclosure-related rescue services with a for-
3222 profit lender or person facilitating or engaging in foreclosure-
3223 rescue transactions.

3224 4. A person who holds or is owed an obligation secured by a
3225 lien on any residential real property in foreclosure if the
3226 person performs foreclosure-related rescue services in
3227 connection with this obligation or lien and the obligation or
3228 lien was not the result of or part of a proposed foreclosure
3229 reconveyance or foreclosure-rescue transaction.

3230 5. A financial institution as defined in s. 655.005 and any
3231 parent or subsidiary of the financial institution or of the
3232 parent or subsidiary.

3233 6. A licensed mortgage broker, mortgage lender, or
3234 correspondent mortgage lender that provides mortgage counseling
3235 or advice regarding residential real property in foreclosure,
3236 which counseling or advice is within the scope of services set
3237 forth in chapter 494 and is provided without payment of money or
3238 other consideration other than a loan origination ~~mortgage~~
3239 ~~brokerage fee as defined in s. 494.001.~~

3240 7. An attorney licensed to practice law in this state who
3241 provides foreclosure rescue-related services as an ancillary
3242 matter to the attorney's representation of a homeowner as a
3243 client.

3244 (c) "Foreclosure-related rescue services" means any good or
3245 service related to, or promising assistance in connection with:

3246 1. Stopping, avoiding, or delaying foreclosure proceedings
3247 concerning residential real property; or

3248 2. Curing or otherwise addressing a default or failure to

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3249 timely pay with respect to a residential mortgage loan
3250 obligation.

3251 (d) "Foreclosure-rescue transaction" means a transaction:

3252 1. By which residential real property in foreclosure is
3253 conveyed to an equity purchaser and the homeowner maintains a
3254 legal or equitable interest in the residential real property
3255 conveyed, including, without limitation, a lease option
3256 interest, an option to acquire the property, an interest as
3257 beneficiary or trustee to a land trust, or other interest in the
3258 property conveyed; and

3259 2. That is designed or intended by the parties to stop,
3260 avoid, or delay foreclosure proceedings against a homeowner's
3261 residential real property.

3262 (e) "Homeowner" means the ~~any~~ record title owner of
3263 residential real property ~~that is the subject of foreclosure~~
3264 ~~proceedings.~~

3265 (f) "Residential real property" means real property
3266 consisting of one-family to four-family dwelling units, ~~one of~~
3267 ~~which is occupied by the owner as his or her principal place of~~
3268 ~~residence.~~

3269 (g) "Residential real property in foreclosure" means
3270 residential real property against which there is an outstanding
3271 notice of the pendency of foreclosure proceedings recorded
3272 pursuant to s. 48.23.

3273 Section 63. Paragraph (b) of subsection (2) of section
3274 501.1377, Florida Statutes, as amended by this act, is amended
3275 to read:

3276 501.1377 Violations involving homeowners during the course
3277 of residential foreclosure proceedings.—

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- 3278 (2) DEFINITIONS.—As used in this section, the term:
- 3279 (b) "Foreclosure-rescue consultant" means a person who
- 3280 directly or indirectly makes a solicitation, representation, or
- 3281 offer to a homeowner to provide or perform, in return for
- 3282 payment of money or other valuable consideration, foreclosure-
- 3283 related rescue services. The term does not apply to:
- 3284 1. A person excluded under s. 501.212.
- 3285 2. A person acting under the express authority or written
- 3286 approval of the United States Department of Housing and Urban
- 3287 Development or other department or agency of the United States
- 3288 or this state to provide foreclosure-related rescue services.
- 3289 3. A charitable, not-for-profit agency or organization, as
- 3290 determined by the United States Internal Revenue Service under
- 3291 s. 501(c)(3) of the Internal Revenue Code, which offers
- 3292 counseling or advice to an owner of residential real property in
- 3293 foreclosure or loan default if the agency or organization does
- 3294 not contract for foreclosure-related rescue services with a for-
- 3295 profit lender or person facilitating or engaging in foreclosure-
- 3296 rescue transactions.
- 3297 4. A person who holds or is owed an obligation secured by a
- 3298 lien on any residential real property in foreclosure if the
- 3299 person performs foreclosure-related rescue services in
- 3300 connection with this obligation or lien and the obligation or
- 3301 lien was not the result of or part of a proposed foreclosure
- 3302 reconveyance or foreclosure-rescue transaction.
- 3303 5. A financial institution as defined in s. 655.005 and any
- 3304 parent or subsidiary of the financial institution or of the
- 3305 parent or subsidiary.
- 3306 6. A licensed mortgage broker, ~~mortgage lender,~~ or

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3307 ~~correspondent~~ mortgage lender that provides mortgage counseling
3308 or advice regarding residential real property in foreclosure,
3309 which counseling or advice is within the scope of services set
3310 forth in chapter 494 and is provided without payment of money or
3311 other consideration other than a loan origination mortgage
3312 ~~brokerage~~ fee as ~~defined in s. 494.001.~~

3313 7. An attorney licensed to practice law in this state who
3314 provides foreclosure rescue-related services as an ancillary
3315 matter to the attorney's representation of a homeowner as a
3316 client.

3317 Section 64. Effective July 1, 2009, paragraph (c) of
3318 subsection (1) of section 201.23, Florida Statutes, is amended
3319 to read:

3320 201.23 Foreign notes and other written obligations exempt.—

3321 (1) There shall be exempt from all excise taxes imposed by
3322 this chapter:

3323 (c) Any promissory note, nonnegotiable note, or other
3324 written obligation to pay money if the said note or obligation
3325 is executed and delivered outside this state and at the time of
3326 its making is secured only by a mortgage, deed of trust, or
3327 similar security agreement encumbering real estate located
3328 outside this state and if such promissory note, nonnegotiable
3329 note, or other written obligation for payment of money is
3330 brought into this state for deposit as collateral security under
3331 a wholesale warehouse mortgage agreement or for inclusion in a
3332 pool of mortgages deposited with a custodian as security for
3333 obligations issued by an agency of the United States Government
3334 or for inclusion in a pool of mortgages to be serviced for the
3335 account of a customer by a mortgage lender licensed or exempt

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3336 from licensing under part III of chapter 494 ~~ss. 494.006-~~
3337 ~~494.0077~~.

3338 Section 65. Effective July 1, 2009, paragraph (a) of
3339 subsection (21) of section 420.507, Florida Statutes, is amended
3340 to read:

3341 420.507 Powers of the corporation.—The corporation shall
3342 have all the powers necessary or convenient to carry out and
3343 effectuate the purposes and provisions of this part, including
3344 the following powers which are in addition to all other powers
3345 granted by other provisions of this part:

3346 (21) Review all reverse mortgage provisions proposed to be
3347 used by an individual lender or a consortium to determine that
3348 such provisions are consistent with the purposes and intent of
3349 this act. If the corporation finds that the provisions are
3350 consistent, it shall approve those provisions. If the
3351 corporation finds that the provisions are inconsistent, it shall
3352 state its objections and give the parties an opportunity to
3353 amend the provisions to overcome such objections. In approving
3354 these provisions, the corporation must determine:

3355 (a) That the mortgagee is ~~either~~ licensed pursuant to part
3356 II of chapter 494 ~~ss. 494.006-494.0077~~ or specifically exempt
3357 from part III of chapter 494 ~~ss. 494.006-494.0077~~.

3358 Section 66. Effective July 1, 2009, subsection (1) of
3359 section 520.52, Florida Statutes, is amended to read:

3360 520.52 Licensees.—

3361 (1) A person may not engage in the business of a sales
3362 finance company or operate a branch of such business without a
3363 license as provided in this section; however, a bank, trust
3364 company, savings and loan association, or credit union

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3365 authorized to do business in this state is not required to
3366 obtain a license under this part. Any person authorized as a
3367 licensee or registrant pursuant to part III of chapter 494 ss.
3368 ~~494.006-494.0077~~ is not required to obtain a license under this
3369 part in order to become an assignee of a home improvement
3370 finance seller.

3371 Section 67. Effective July 1, 2009, subsection (1) of
3372 section 520.63, Florida Statutes, is amended to read:

3373 520.63 Licensees.—

3374 (1) A person may not engage in or transact any business as
3375 a home improvement finance seller or operate a branch without
3376 first obtaining a license from the office, except that a banking
3377 institution, trust company, savings and loan association, credit
3378 union authorized to do business in this state, or licensee under
3379 part III of chapter 494 ss. ~~494.006-494.0077~~ is not required to
3380 obtain a license to engage in home improvement financing.

3381 Section 68. Effective July 1, 2009, paragraph (b) of
3382 subsection (11) of section 607.0505, Florida Statutes, is
3383 amended to read:

3384 607.0505 Registered agent; duties.—

3385 (11) As used in this section, the term:

3386 (b) "Financial institution" means:

3387 1. A bank, banking organization, or savings association, as
3388 defined in s. 220.62;

3389 2. An insurance company, trust company, credit union, or
3390 industrial savings bank, any of which is licensed or regulated
3391 by an agency of the United States or any state of the United
3392 States; or

3393 3. Any person licensed under part III of chapter 494 ~~the~~

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3394 ~~provisions of ss. 494.006-494.0077.~~

3395 Section 69. Effective July 1, 2009, subsection (1) of
3396 section 687.12, Florida Statutes, is amended to read:

3397 687.12 Interest rates; parity among licensed lenders or
3398 creditors.—

3399 (1) Any lender or creditor licensed or chartered under ~~the~~
3400 ~~provisions of~~ chapter 516, chapter 520, chapter 657, chapter 658
3401 or former chapter 659, former chapter 664 or former chapter 656,
3402 chapter 665, or part XV of chapter 627; any lender or creditor
3403 located in this state ~~the State of Florida~~ and licensed or
3404 chartered under the laws of the United States and authorized to
3405 conduct a lending business; or any lender or creditor lending
3406 through a licensee under part III of chapter 494, is ss.

3407 ~~494.006-494.0077,~~ shall be authorized to charge interest on
3408 loans or extensions of credit to any person as defined in s.
3409 1.01~~(3)~~, or to any firm or corporation, at the maximum rate of
3410 interest permitted by law to be charged on similar loans or
3411 extensions of credit made by any lender or creditor in this
3412 state ~~the State of Florida~~, except that the statutes governing
3413 the maximum permissible interest rate on any loan or extension
3414 of credit, and other statutory restrictions relating thereto,
3415 ~~shall~~ also govern the amount, term, permissible charges, rebate
3416 requirements, and restrictions for a similar loan or extension
3417 of credit made by any lender or creditor.

3418 Section 70. Effective September 1, 2010:

3419 (1) All mortgage business school permits issued pursuant to
3420 s. 494.0029, Florida Statutes, expire on September 30, 2010.

3421 (2) All mortgage brokerage business licenses issued before
3422 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida

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3423 Statutes, expire on December 31, 2010. However, if a person
3424 holding an active mortgage brokerage business license issued
3425 before October 1, 2010, applies for a mortgage broker license
3426 through the Nationwide Mortgage Licensing System and Registry
3427 between October 1, 2010, and December 31, 2010, the mortgage
3428 brokerage business license does not expire until the Office of
3429 Financial Regulation approves or denies the mortgage broker
3430 license application. A mortgage broker license approved on or
3431 after October 1, 2010, is effective until December 31, 2011.
3432 Application fees may not be prorated for partial years of
3433 licensure.

3434 (3) All mortgage broker licenses issued before October 1,
3435 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3436 expire on December 31, 2010. However, if a person holding an
3437 active mortgage broker license issued before October 1, 2010,
3438 applies for a loan originator license through the Nationwide
3439 Mortgage Licensing System and Registry between October 1, 2010,
3440 and December 31, 2010, the mortgage broker license does not
3441 expire until the Office of Financial Regulation approves or
3442 denies the loan originator license application. Notwithstanding
3443 s. 120.60, Florida Statutes, for mortgage broker applications
3444 submitted between July 1, 2009, and December 31, 2009, or loan
3445 originator applications submitted between October 1, 2010, and
3446 December 31, 2010, the office has 60 days to notify the
3447 applicant of any apparent errors or omissions in an application
3448 and to request any additional information that the office may
3449 require, and the office has 180 days to approve or deny a
3450 completed application. Application fees may not be prorated for
3451 partial years of licensure.

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3452 (4) All mortgage lender licenses issued before October 1,
3453 2010, pursuant to s. 494.0061 or s. 494.0064, Florida Statutes,
3454 expire on December 31, 2010. However, if a person holding an
3455 active mortgage lender license applies for a mortgage broker
3456 license or mortgage lender license through the Nationwide
3457 Mortgage Licensing System and Registry between October 1, 2010,
3458 and December 31, 2010, the mortgage lender license does not
3459 expire until the Office of Financial Regulation approves or
3460 denies the mortgage broker license or mortgage lender license
3461 application. Application fees may not be prorated for partial
3462 years of licensure.

3463 (5) All mortgage lender licenses issued before October 1,
3464 2010, pursuant to s. 494.0065 or s. 494.0064, Florida Statutes,
3465 expire on December 31, 2010. However, if a person holding such
3466 license applies for a mortgage broker license or mortgage lender
3467 license through the Nationwide Mortgage Licensing System and
3468 Registry between October 1, 2010, and December 31, 2010, the
3469 mortgage lender license does not expire until the Office of
3470 Financial Regulation approves or denies the mortgage broker
3471 license or mortgage lender license application. Application fees
3472 may not be prorated for partial years of licensure.

3473 (6) All correspondent mortgage lender licenses issued
3474 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,
3475 Florida Statutes, expire on December 31, 2010. However, if a
3476 person holding an active correspondent mortgage lender license
3477 issued before October 1, 2010, applies for a mortgage broker or
3478 mortgage lender license through the Nationwide Mortgage
3479 Licensing System and Registry between October 1, 2010, and
3480 December 31, 2010, the correspondent mortgage lender license

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3481 does not expire until the Office of Financial Regulation
3482 approves or denies the mortgage broker or mortgage lender
3483 license application. Application fees may not be prorated for
3484 partial years of licensure.

3485 Section 71. Except as otherwise expressly provided in this
3486 act and except for this section, which shall take effect July 1,
3487 2009, this act shall take effect October 1, 2010.