

20092226er

1  
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

20092226er

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

20092226er

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

20092226er

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

20092226er

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;

20092226er

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

20092226er

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~~

20092226er

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



20092226er

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

20092226er

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~~

20092226er

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

20092226er

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

20092226er

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.

20092226er

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;

20092226er

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.~~

20092226er

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



20092226er

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

20092226er

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~~

20092226er

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~~ 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.

20092226er

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

20092226er

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~~

20092226er

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~~

20092226er

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.-

20092226er

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



20092226er

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

20092226er

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

20092226er

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.

20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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



20092226er

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

20092226er

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~~

20092226er

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) ~~(e) 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

20092226er

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.~~

20092226er

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

20092226er

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

20092226er

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.

20092226er

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



20092226er

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.

20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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.

20092226er

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

20092226er

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



20092226er

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

20092226er

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.

20092226er

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.

20092226er

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

20092226er

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

20092226er

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.

20092226er

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.

20092226er

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.



20092226er

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:

20092226er

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.

20092226er

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:

20092226er

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

20092226er

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

20092226er

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

20092226er

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.

20092226er

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



20092226er

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

20092226er

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

20092226er

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

20092226er

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.~~

20092226er

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

20092226er

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 broker 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

20092226er

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-

20092226er

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



20092226er

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

20092226er

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

20092226er

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.

20092226er

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)(e) 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.~~

20092226er

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) 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

20092226er

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

20092226er

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 ~~mortgager~~ 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

20092226er

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.



20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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.

20092226er

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

20092226er

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

20092226er

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



20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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

20092226er

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



20092226er

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~~

20092226er

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~~

20092226er

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 ~~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

20092226er

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.

20092226er

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

20092226er

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.

20092226er

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, a  
2971 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.

20092226er

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



20092226er

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.

20092226er

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

20092226er

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)

20092226er

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.

20092226er

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

20092226er

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.—

20092226er

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

20092226er

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



20092226er

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.—

20092226er

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

20092226er

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

20092226er

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

20092226er

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~~

20092226er

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

20092226er

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.

20092226er

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



20092226er

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.