

FOR CONSIDERATION By the Committee on Banking and Insurance

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1 A bill to be entitled
2 (PRELIMINARY DRAFT) An act relating to mortgage
3 brokering and lending; amending s. 494.001, F.S.;
4 redefining terms, defining new terms, and deleting
5 terms; amending s. 494.0011, F.S.; authorizing the
6 Financial Services Commission to adopt rules relating
7 to compliance with the S.A.F.E. Mortgage Licensing Act
8 of 2008; authorizing the commission to participate in
9 the Nationwide Mortgage Licensing System and Registry;
10 creating s. 494.00121, F.S.; providing for the
11 issuance of subpoenas; amending s. 494.0014, F.S.;
12 revising provisions relating to the refund of fees;
13 deleting an obsolete provision; capping the amount of
14 administrative fine that can be assessed for a single
15 violation at \$25,000; authorizing a fine of \$1,000 for
16 each day of unlicensed activity up to \$25,000;
17 amending s. 494.00165, F.S.; prohibiting unfair and
18 deceptive advertising relating to mortgage brokering
19 and lending; repealing s. 494.0017, F.S., relating to
20 claims paid from the Regulatory Trust Fund; creating
21 s. 494.00172, F.S.; providing for a \$20 fee to be
22 assessed against loan originators and a \$100 fee to be
23 assessed against mortgage brokers and lenders at the
24 time of license application or renewal; providing that
25 such fees shall be deposited into the Mortgage
26 Guaranty Trust Fund and used to pay claims against
27 licensees; providing for a cap on the amount collected
28 and deposited; providing requirements for seeking
29 recovery from the trust fund; providing limitations on

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

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

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

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117 within certain time periods; repealing s. 494.0064,
118 F.S., relating to renewal of mortgage lender license;
119 repealing s. 494.0065, F.S., relating to certain
120 licenses and registrations that were converted into
121 mortgage lender licenses; amending s. 494.0066, F.S.;
122 revising provisions relating to a mortgage lender
123 branch office license; increasing the fees for such
124 license; creating s. 494.00665, F.S.; providing for a
125 principal loan originator and branch manager for a
126 mortgage lender; providing requirements and
127 limitations; amending s. 494.0067, F.S.; revising
128 requirements of mortgage lenders; providing for
129 registry requirements; deleting obsolete provisions;
130 amending ss. 494.0068, 494.0069, 494.007, and
131 494.0071, F.S.; conforming terms; amending s.
132 494.0072, F.S.; revising provisions relating to
133 administrative fines and penalties; providing
134 additional grounds for assessing fines and penalties;
135 amending ss. 494.00721, 494.0073, 494.0075, 494.0077,
136 and 501.1377 F.S.; conforming terms; providing for the
137 termination of mortgage business school licenses;
138 providing for the expiration of mortgage brokerage
139 business licenses, mortgage broker licenses, and
140 correspondent mortgage lender licenses; providing for
141 applying for applying for a mortgage broker license
142 and a loan originator license by a certain date;
143 providing for the transfer of a mortgage lender
144 licenses; providing for a one-time \$50 registry fee to
145 be imposed on new licensees; providing effective

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146 dates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 (d) For a trust, each trustee.

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

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

235 (f) Principal loan originators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

326 (b) A loan processor or underwriter who does not represent
327 to the public, through advertising or other means of
328 communicating or providing information, including the use of
329 business cards, stationery, brochures, signs, rate lists, or
330 other promotional items, that he or she can or will perform any
331 of the activities of a loan originator.

332 (12) "Loan processor or underwriter" means an individual
333 who performs clerical or support duties at the direction of, and
334 subject to, the supervision and instruction of a state-licensed
335 loan originator or a registered loan originator. The term
336 "clerical or support duties" may include the receipt,
337 collection, distribution, and analysis of information for the
338 processing or underwriting of a mortgage loan, and communication
339 with a consumer to obtain the information necessary for the
340 processing or underwriting of a loan, to the extent that such
341 communication does not include offering or negotiating loan
342 rates or terms, or counseling consumers about mortgage loan
343 rates or terms.

344 (13)~~(16)~~ "Lock-in agreement" means an agreement whereby the
345 lender guarantees for a specified number of days or until a
346 specified date the availability of a specified rate of interest
347 or specified formula by which the rate of interest will be
348 determined or ~~and/or~~ specific number of discount points will be

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349 given, if the loan is approved and closed within the stated
350 period of time.

351 ~~(14)(17)~~ "Making ~~Make~~ a mortgage loan" means to close a
352 mortgage loan in a person's name; ~~or~~ to advance funds, offer to
353 advance funds, or make a commitment to advance funds to an
354 applicant for a mortgage loan; or to provide funds in a table-
355 funded transaction.

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

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

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

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

367 ~~(17)(20)~~ "Mortgage loan" means any:

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

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

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

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378 lender is a noninstitutional investor.

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

388 ~~(19)(21)~~ "Net worth" means total assets minus total
389 liabilities pursuant to United States generally accepted
390 accounting principles.

391 ~~(20)(22)~~ "Noninstitutional investor" means an investor
392 other than an institutional investor.

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

395 (21) "Office" means the Office of Financial Regulation.

396 ~~(22)(24)~~ "Person" has the same meaning as in s. 1.01 ~~means~~
397 ~~an individual, partnership, corporation, association, or other~~
398 ~~group, however organized.~~

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

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

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407 independent contractors.

408 ~~(24)-(26)~~ "Principal place of business" means a mortgage
409 broker's or mortgage lender's licensee's primary business
410 office, the street address, or physical location that ~~of which~~
411 is designated on the application for licensure or any amendment
412 to such application.

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

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

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

428 ~~(27)-(28)~~ "Servicing Service a mortgage loan" means to
429 receive, or cause to be received, or transferred for another,
430 installment payments of principal, interest, or other payments
431 pursuant to a mortgage loan.

432 ~~(28)-(29)~~ "Substantial fault of the borrower" means that the
433 borrower:

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

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

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

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

445

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

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

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

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465 other entities or devices, or any combination thereof.

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

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

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

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

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

484 494.0011 Powers and duties of the commission and office.—

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

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

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

493 (b) Relating to compliance with the S.A.F.E. Mortgage

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494 Licensing Act of 2008, including rules to:

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

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

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

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

505 c. Uniform Mortgage Branch Office Form, MU3.

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

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

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

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

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

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

522 (3) Except as provided in s. 492.00172, all fees, charges,

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523 and fines collected pursuant to ss. 494.001-494.0077 shall be
524 deposited in ~~the State Treasury to the credit of~~ the Regulatory
525 Trust Fund of under the office.

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

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

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

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

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

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

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

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

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

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

597 494.00121 Subpoenas.-

598 (1) The office may:

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

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

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

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

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

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

634 (d) If it appears to the office that compliance with a
635 subpoena or subpoena duces tecum issued is essential and
636 otherwise unavailable to an investigation or examination, the
637 office may apply to the court for a writ of ne exeat pursuant to
638 s. 68.02.

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

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

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

651 494.0014 Cease and desist orders; ~~administrative fines;~~
652 refund orders; administrative fines.-

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

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

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

680 (3)(4) The office may impose an administrative fine of:

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

687 (b) Up to \$1,000 per day, but not to exceed \$25,000
688 cumulatively, for each day that an unlicensed person acts as a
689 loan originator, a mortgage broker, or a mortgage lender. The
690 office may also impose an administrative fine of up to \$1000 per
691 day, but not to exceed \$25,0000 cumulatively, for each day that
692 a mortgage broker or mortgage lender conducts business at an
693 unlicensed branch office.

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

696 494.00165 Prohibited advertising; record requirements.-

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

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

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

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

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

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

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

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

724 Section 7. Section 494.00172, Florida Statutes, is created
725 to read:

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726 494.00172 Mortgage Guaranty Trust Fund; payment of fees
727 and claims.-A nonrefundable fee is imposed on each application
728 for a mortgage broker, mortgage lender, or loan originator
729 license and on each annual application for a renewal of such
730 license. For a loan originator, the initial and renewal fee is
731 \$20. For mortgage brokers and lenders, the initial and renewal
732 fee is \$100. This fee is in addition to the regular application
733 or renewal fee assessed and shall be deposited into the Mortgage
734 Guaranty Trust Fund of the office for the payment of claims in
735 accordance with this section.

736 (1) If the amount in the trust fund exceeds \$5 million, the
737 additional \$100 fee shall be discontinued and may not be
738 reimposed until the fund is reduced to below \$1 million pursuant
739 to disbursements made in accordance with this section.

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

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

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

754 (c) The borrower has made all reasonable searches and

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

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

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

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

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

778 (4) Any person who meets all of the conditions in
779 subsection (2) may apply to the office for payment from the
780 trust fund equal to the unsatisfied portion of that person's
781 judgment or \$50,000, whichever is less, but only to the extent
782 and amount reflected in the judgment as being for actual or
783 compensatory damages. Actual or compensatory damages may not

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784 include post-judgment interest.

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

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

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

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

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

812 (f) The payment of any amount from the fund in settlement

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813 of a claim or in satisfaction of a judgment against a licensee
814 constitutes prima facie grounds for the revocation of the
815 license.

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

818 494.0018 Penalties.—

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

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

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

835 494.0019 Liability in case of unlawful transaction.—

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

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

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

850 494.002 Statutory or common-law remedies.—Sections ~~Nothing~~
851 ~~in ss. 494.001-494.0077~~ do not limit ~~limits~~ any statutory or
852 common-law right of any person to bring any action in any court
853 for any act involved in the mortgage loan business or the right
854 of the state to punish any person for any violation of any law.

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

857 494.0023 Conflicting interest.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

915 494.0025 Prohibited practices.—It is unlawful for any
916 person:

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

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

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

927 (4) In any practice or transaction or course of business
928 relating to the sale, purchase, negotiation, promotion,

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929 advertisement, or hypothecation of mortgage loan transactions,
930 directly or indirectly:

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

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

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

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

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

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

952 (7)~~(8)~~ To pay a fee or commission in any mortgage loan
953 transaction to any person or entity other than a licensed
954 mortgage broker ~~brokerage business, mortgage lender, or~~
955 ~~correspondent mortgage lender, operating under an active~~
956 ~~license,~~ or a person exempt from licensure under this chapter.

957 (8)~~(9)~~ To record a mortgage brokerage agreement or any

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958 other document, not rendered by a court of competent
959 jurisdiction, which purports to enforce the terms of the
960 mortgage brokerage agreement.

961 (9)~~(10)~~ To use the name or logo of a financial institution,
962 as defined in s. 655.005(1), or its affiliates or subsidiaries
963 when marketing or soliciting existing or prospective customers
964 if such marketing materials are used without the written consent
965 of the financial institution and in a manner that would lead a
966 reasonable person to believe that the material or solicitation
967 originated from, was endorsed by, or is related to or the
968 responsibility of the financial institution or its affiliates or
969 subsidiaries.

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

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

977 494.0028 Arbitration.—

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

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

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

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

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

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

1003 (4) At the election of the noninstitutional investor or
1004 borrower, venue shall be in the county in which the
1005 noninstitutional investor or borrower entered into the agreement
1006 or at a business location of the mortgage broker or ~~brokerage~~
1007 ~~business, mortgage lender, or correspondent lender.~~

1008 (5) Any fees or charges must be in accordance with ~~shall be~~
1009 ~~made as provided in~~ the rules of the American Arbitration
1010 Association or other approved nonindustry arbitration forum and
1011 may ~~shall~~ not be set in the agreement.

1012 (6) Any election made under this section is ~~shall be~~
1013 irrevocable.

1014 (7) This section may ~~shall~~ not be construed to require an
1015 agreement that ~~which~~ is subject to this section to contain an

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1016 arbitration clause.

1017 Section 14. Sections 494.0029 and 494.00295, Florida
1018 Statutes, are repealed.

1019 Section 15. The Division of Statutory Revision is requested
1020 to rename part II of chapter 494, Florida Statutes, consisting
1021 of ss. 494.003-491.0043, Florida Statutes, as "Mortgage Brokers
1022 and Loan Originators."

1023 Section 16. Effective July 1, 2009, section 494.003,
1024 Florida Statutes, is amended to read:

1025 494.003 Exemptions.—

1026 (1) ~~None of~~ The following persons are not ~~is~~ subject to the
1027 requirements of this part ~~ss. 494.003-494.0043~~:

1028 (a) Any person operating exclusively as a registered loan
1029 originator in accordance with the S.A.F.E. Mortgage Licensing
1030 Act of 2008 ~~licensed under ss. 494.006-494.0077, except as~~
1031 ~~provided in s. 494.0073.~~

1032 (b) A depository institution; subsidiaries that are owned
1033 and controlled by a depository institution and regulated by the
1034 Board of Governors of the Federal Reserve System, the
1035 Comptroller of the Currency, the Director of the Office of
1036 Thrift Supervision, the National Credit Union Administration, or
1037 the Federal Deposit Insurance Corporation; and institutions
1038 regulated by the Farm Credit Administration ~~state or federal~~
1039 ~~chartered bank, trust company, savings and loan association,~~
1040 ~~savings bank or credit union, bank holding company regulated~~
1041 ~~under the laws of any state or the United States, or consumer~~
1042 ~~finance company licensed pursuant to chapter 516.~~

1043 (c) ~~A wholly owned bank holding company subsidiary or a~~
1044 ~~wholly owned savings and loan association holding company~~

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

1051 (c) ~~(d)~~ The Federal National Mortgage Association; the
1052 Federal Home Loan Mortgage Corporation; any agency of the
1053 Federal Government; any state, county, or municipal government;
1054 or any quasi-governmental agency that acts in such capacity
1055 under the specific authority of the laws of any state or the
1056 United States.

1057 (d) A licensed attorney who negotiates the terms of a
1058 mortgage loan on behalf of a client as an ancillary matter to
1059 the attorney's representation of the client, unless the attorney
1060 is compensated by a mortgage lender, a mortgage broker, or a
1061 loan originator or by the agent of such lender, broker, or
1062 originator.

1063 ~~(e) Any person licensed to practice law in this state, not~~
1064 ~~actively and principally engaged in the business of negotiating~~
1065 ~~loans secured by real property, when such person renders~~
1066 ~~services in the course of her or his practice as an attorney at~~
1067 ~~law.~~

1068 ~~(2) None of the following persons is required to be~~
1069 ~~licensed under ss. 494.003-494.0043:~~

1070 ~~(a) An insurance company duly licensed in this state when~~
1071 ~~dealing with its clients in the normal course of its insurance~~
1072 ~~business.~~

1073 ~~(b) A federally licensed small business investment company.~~

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1074 ~~(c) A securities dealer registered under the provisions of~~
1075 ~~s. 517.12, when dealing with its corporate or individual clients~~
1076 ~~in the normal course of its securities business.~~

1077 ~~(d) Any person acting in a fiduciary capacity conferred by~~
1078 ~~authority of any court.~~

1079 ~~(e) A wholly owned subsidiary of a state or federal~~
1080 ~~chartered bank or savings and loan association the sole activity~~
1081 ~~of which is to distribute the lending programs of such state or~~
1082 ~~federal chartered bank or savings and loan association to~~
1083 ~~persons who arrange loans for, or make loans to, borrowers.~~

1084 ~~(2)(3)~~ It is not necessary to negate any of the exemptions
1085 provided in this section in any complaint, information,
1086 indictment, or other writ or proceeding brought under ss.
1087 494.001-494.0077. The burden of establishing the right to an ~~any~~
1088 ~~such~~ exemption is upon the party claiming the benefit of the
1089 exemption.

1090 Section 17. Section 494.0031, Florida Statutes, is
1091 repealed.

1092 Section 18. Section 494.00312, Florida Statutes, is created
1093 to read:

1094 494.00312 Mortgage broker license.-

1095 (1) Each person who acts as a mortgage broker must be
1096 licensed in accordance with this section.

1097 (2) To apply for a mortgage broker license the applicant
1098 must:

1099 (a) Submit a completed license application form as
1100 prescribed by commission rule.

1101 (b) Designate a qualified principal loan originator who
1102 meets the requirement of s. 494.0035 on the application form.

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1103 (c) Submit a nonrefundable application fee of \$625, and the
1104 \$100 nonrefundable fee required by s. 494.0017. Application fees
1105 may not be prorated for partial years of licensure.

1106 (d) Submit a complete set of fingerprints for each of the
1107 applicant's control persons to:

1108 1. The registry for a federal criminal history check. If
1109 the registry is not processing fingerprints at the time the
1110 application is submitted, the Department of Law Enforcement
1111 shall forward the fingerprints submitted pursuant to
1112 subparagraph 2. to the Federal Bureau of Investigation for
1113 processing.

1114 2. The office for a state criminal history check. The
1115 office may contract with a third-party vendor that provides live
1116 scan fingerprinting in lieu of a paper fingerprint card. All
1117 fingerprints shall be submitted to the Department of Law
1118 Enforcement and entered into the statewide automated fingerprint
1119 identification system established in s. 943.05(2)(b) and
1120 available for use in accordance with s. 943.05(2)(g). The cost
1121 of fingerprinting shall be borne by the applicant.

1122 (e) Authorize the registry to obtain an independent credit
1123 report on each of the applicant's control persons from a
1124 consumer reporting agency, and transmit or provide access to the
1125 report to the office. The cost of the credit report shall be
1126 borne by the applicant.

1127 (f) Submit additional information or documentation
1128 requested by the office and required by rule concerning the
1129 applicant or a control person of the applicant. Additional
1130 information may include documentation of pending and prior
1131 disciplinary and criminal history events, including arrest

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

1138 (g) Submit any other information required by the registry
1139 for the processing of the application.

1140 (3) An application is considered received for the purposes
1141 of s. 120.60 upon the office's receipt of all documentation from
1142 the registry including the completed application form, criminal
1143 history information, and credit history information, as well as
1144 the nonrefundable license application fees and all applicable
1145 fingerprinting processing fees.

1146 (4) The office shall issue a mortgage broker license to
1147 each person who is not otherwise ineligible and who meets the
1148 requirements of this section. However, it is a ground for denial
1149 of licensure if the applicant or one of the applicant's control
1150 persons:

1151 (a) Has committed any violation specified in ss. 494.001-
1152 494.0077, or is the subject of a pending felony criminal
1153 prosecution or a prosecution or an administrative enforcement
1154 action, in any jurisdiction, that involves fraud, dishonesty,
1155 breach of trust, money laundering, or any other act of moral
1156 turpitude.

1157 (b) Demonstrates a lack of financial responsibility,
1158 character, and general fitness which would fail to command the
1159 confidence of the community and to warrant a determination that
1160 the mortgage broker will operate honestly, fairly, and

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

1165 1. Current outstanding judgments, except judgments
1166 resulting solely from medical expenses;

1167 2. Current outstanding tax liens or other government liens
1168 and filings;

1169 3. Foreclosures within the past 3 years; or

1170 4. A pattern of seriously delinquent accounts within the
1171 past 3 years.

1172 (5) The office shall deny a license if the applicant has
1173 had a mortgage broker license, or its equivalent, revoked in any
1174 jurisdiction, or any of the applicant's control persons has had
1175 a loan originator license, or its equivalent, revoked in any
1176 jurisdiction.

1177 (6) The commission shall, by rule, establish time periods
1178 during which an applicant is barred from licensure due to prior
1179 criminal convictions of, or guilty or nolo contendere pleas by,
1180 any of the applicant's control persons, regardless of
1181 adjudication.

1182 (a) The rules must provide:

1183 1. Permanent bars for felonies involving fraud, dishonesty,
1184 breach of trust, or money laundering;

1185 2. A 15-year disqualifying period for felonies involving
1186 moral turpitude;

1187 3. A 7-year period for all other felonies; and

1188 4. A 5-year period for misdemeanors involving fraud,
1189 dishonesty, or any other act of moral turpitude.

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1190 (b) The rule may also provide for mitigating factors, an
1191 additional waiting period due to dates of imprisonment or
1192 community supervision, an additional waiting period due to the
1193 commitment of multiple crimes, and other factors reasonably
1194 related to the applicant's criminal history. An applicant is not
1195 eligible for licensure until the expiration of the disqualifying
1196 period set by rule. Section 112.011 is not applicable to
1197 eligibility for licensure under this part.

1198 (7) A mortgage broker license may be withdrawn pursuant to
1199 s. 120.60 if it was issued through mistake or inadvertence of
1200 the office. A license must be reinstated if the applicant can
1201 demonstrate that the requirements for obtaining the license
1202 under this chapter have been satisfied.

1203 (8) All mortgage broker licenses must be renewed annually
1204 by December 31 pursuant to s. 494.00321. If a person holding an
1205 active mortgage broker license has not applied to renew the
1206 license annually on or before December 31, the mortgage broker
1207 license expires on December 31. If a person holding an active
1208 mortgage broker license has applied to renew the license on or
1209 before December 31, the mortgage broker license remains active
1210 until the renewal application is approved or denied. A mortgage
1211 broker may not be precluded from reapplying for licensure upon
1212 expiration of a previous license.

1213 Section 19. Section 494.0032, Florida Statutes, is
1214 repealed.

1215 Section 20. Section 494.00321, Florida Statutes, is created
1216 to read:

1217 494.00321 Mortgage broker license renewal.-

1218 (1) To renew a mortgage broker license, a mortgage broker

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1219 must:1220 (a) Submit a completed license renewal form as prescribed
1221 by commission rule.1222 (b) Submit a nonrefundable renewal fee of \$625, and the
1223 \$100 nonrefundable fee required by s. 494.0017.1224 (c) Submit a complete set of fingerprints in accordance
1225 with s. 494.00312(2)(c) for any new control persons who have not
1226 been screened.1227 (d) Authorize the registry to obtain an independent credit
1228 report on each of the applicant's control persons from a
1229 consumer reporting agency, and transmit or provide access to the
1230 report to the office. The cost of the credit report shall be
1231 borne by the applicant.1232 (e) Submit any additional information or documentation
1233 requested by the office and required by rule concerning the
1234 applicant or a control person of the applicant. Additional
1235 information may include documentation of pending and prior
1236 disciplinary and criminal history events, including arrest
1237 reports and certified copies of charging documents, plea
1238 agreements, judgments and sentencing documents, documents
1239 relating to pretrial intervention, orders terminating probation
1240 or supervised release, final administrative agency orders, or
1241 other comparable documents that may provide the office with the
1242 appropriate information to determine eligibility for licensure.1243 (2) The office may not renew a mortgage broker license
1244 unless the licensee continues to meet the minimum requirements
1245 for initial licensure pursuant to s. 494.00312 and adopted rule.1246 Section 21. Section 494.00323, Florida Statutes, is created
1247 to read:

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- 1248 494.00323 Loan originator license.-
- 1249 (1) An individual who acts as a loan originator must be
1250 licensed under this section.
- 1251 (2) To apply for loan originator license, an applicant
1252 must:
- 1253 (a) Be at least 18 years of age and have a high school
1254 diploma or its equivalent.
- 1255 (b) Complete a 20-hour prelicensing class approved by the
1256 registry.
- 1257 (c) Pass a written test developed by the registry and
1258 administered by a provider approved by the registry.
- 1259 (d) Submit a completed license application form as
1260 prescribed by commission rule.
- 1261 (e) Submit a nonrefundable renewal fee of \$285, and the \$20
1262 nonrefundable fee required by s. 494.0017. Application fees may
1263 not be prorated for partial years of licensure.
- 1264 (f) Submit a complete set of fingerprints to:
- 1265 1. The registry for a federal criminal history check. If
1266 the registry is not processing fingerprints at the time the
1267 application is submitted, the Department of Law Enforcement
1268 shall forward the fingerprints submitted pursuant to
1269 subparagraph 2. to the Federal Bureau of Investigation for
1270 processing.
- 1271 2. The office for a state criminal history check. The
1272 office may contract with a third-party vendor that provides live
1273 scan fingerprinting in lieu of a paper fingerprint card. All
1274 fingerprints shall be submitted to the Department of Law
1275 Enforcement and entered into the statewide automated fingerprint
1276 identification system established in s. 943.05(2)(b) and

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

1279 (g) Authorize the registry to obtain an independent credit
1280 report on the applicant from a consumer reporting agency, and
1281 transmit or provide access to the report to the office. The cost
1282 of the credit report shall be borne by the applicant.

1283 (h) Submit additional information or documentation
1284 requested by the office and required by rule concerning the
1285 applicant. Additional information may include documentation of
1286 pending and prior disciplinary and criminal history events,
1287 including arrest reports and certified copies of charging
1288 documents, plea agreements, judgments and sentencing documents,
1289 documents relating to pretrial intervention, orders terminating
1290 probation or supervised release, final administrative agency
1291 orders, or other comparable documents that may provide the
1292 office with the appropriate information to determine eligibility
1293 for licensure.

1294 (i) Submit any other information required by the registry
1295 for the processing of the application.

1296 (3) An application is considered received for the purposes
1297 of s. 120.60 upon the office's receipt of all documentation from
1298 the registry including the completed application form,
1299 documentation of completion of the pre-licensure class, test
1300 results, criminal history information, and credit history
1301 information, as well as the nonrefundable license application
1302 fees and all applicable fingerprinting processing fees.

1303 (4) The office shall issue a loan originator license to
1304 each person who is not otherwise ineligible and who meets the
1305 requirements of this section. However, it is a ground for denial

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1306 of licensure if the applicant:

1307 (a) Has committed any violation specified in ss. 494.001-
1308 494.0077, or is the subject of a pending felony criminal
1309 prosecution or a prosecution or an administrative enforcement
1310 action, in any jurisdiction, which involves fraud, dishonesty,
1311 breach of trust, money laundering, or any other act of moral
1312 turpitude.

1313 (b) Demonstrates a lack of financial responsibility,
1314 character, and general fitness which would fail to command the
1315 confidence of the community and to warrant a determination that
1316 the loan originator will operate honestly, fairly, and
1317 efficiently. For purposes of this paragraph, a person has shown
1318 that he or she is not financially responsible if he or she has
1319 shown a disregard in the management of his or her own financial
1320 condition which may include, but is not limited to:

1321 1. Current outstanding judgments, except judgments
1322 resulting solely from medical expenses;

1323 2. Current outstanding tax liens or other government liens
1324 and filings;

1325 3. Foreclosures within the past 3 years; or

1326 4. A pattern of seriously delinquent accounts within the
1327 past 3 years.

1328 (5) The office may not issue a license to an applicant who
1329 has had a loan originator license or its equivalent revoked in
1330 any jurisdiction.

1331 (6) The commission shall, by rule, establish time periods
1332 during which an applicant is barred from licensure due to prior
1333 criminal convictions of, or guilty or nolo contendere pleas by,
1334 any of the applicant's control persons, regardless of

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1335 adjudication.

1336 (a) The rules must provide:

1337 1. Permanent bars for felonies involving fraud, dishonesty,
1338 breach of trust, or money laundering;

1339 2. A 15-year disqualifying period for felonies involving
1340 moral turpitude;

1341 3. A 7-year period for all other felonies; and

1342 4. A 5-year period for misdemeanors involving fraud,
1343 dishonesty, or any other act of moral turpitude.

1344 (b) The rule may also provide for mitigating factors, an
1345 additional waiting period due to dates of imprisonment or
1346 community supervision, an additional waiting period due to the
1347 commitment of multiple crimes, and other factors reasonably
1348 related to the applicant's criminal history. The rule may not
1349 provide standards that are less rigorous than those set forth in
1350 the S.A.F.E. Mortgage Licensing Act of 2008. An applicant is not
1351 eligible for licensure until the expiration of the disqualifying
1352 period set by rule. Section 112.011 is not applicable to
1353 eligibility for licensure under this part.

1354 (7) A loan originator license may be withdrawn pursuant to
1355 s. 120.60 if it was issued through mistake or inadvertence of
1356 the office. A license must be reinstated if the applicant can
1357 demonstrate that the requirements for obtaining the license
1358 under this chapter have been satisfied.

1359 (8) All loan originator licenses must be renewed annually
1360 by December 31 pursuant to s. 494.00324. If a person holding a
1361 loan originator license has not applied to renew the license on
1362 or before December 31, the loan originator license expires on
1363 December 31. If a person holding an active loan originator

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

1369 Section 22. Section 494.00324, Florida Statutes, is created
1370 to read:

1371 494.00324 Loan originator license renewal.-

1372 (1) To renew a loan originator license, a loan originator
1373 must:

1374 (a) Submit a completed license renewal form as prescribed
1375 by commission rule.

1376 (b) Submit a nonrefundable renewal fee of \$285 and the \$20
1377 nonrefundable fee required by s. 494.0017.

1378 (c) Submit a complete set of fingerprints in accordance
1379 with s. 494.00323(2)(e).

1380 (d) Provide documentation of completion of at least 8 hours
1381 of continuing education in courses reviewed and approved by the
1382 registry.

1383 (e) Authorize the registry to obtain an independent credit
1384 report on the applicant from a consumer reporting agency, and
1385 transmit or provide access to the report to the office. The cost
1386 of the credit report shall be borne by the applicant.

1387 (f) Submit any additional information or documentation
1388 requested by the office and required by rule concerning the
1389 licensee. Additional information may include documentation of
1390 pending and prior disciplinary and criminal history events,
1391 including arrest reports and certified copies of charging
1392 documents, plea agreements, judgments and sentencing documents,

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1393 documents relating to pretrial intervention, orders terminating
1394 probation or supervised release, final administrative agency
1395 orders, or other comparable documents that may provide the
1396 office with the appropriate information to determine eligibility
1397 for licensure.

1398 (2) The office may not renew a loan originator license
1399 unless the loan originator continues to meet the minimum
1400 standards for initial license issuance pursuant to s. 494.00323
1401 and adopted rule.

1402 Section 23. Section 494.0033, Florida Statutes, is
1403 repealed.

1404 Section 24. Section 494.00331, Florida Statutes, is amended
1405 to read:

1406 494.00331 Prohibition against multiple employers ~~Mortgage~~
1407 ~~broker association.~~—A loan originator may not be employed by or
1408 contract with more than one mortgage broker or mortgage lender,
1409 or either simultaneously. ~~No person required to be licensed as a~~
1410 ~~mortgage broker under this chapter shall be simultaneously an~~
1411 ~~associate of more than one licensed mortgage brokerage business,~~
1412 ~~licensed mortgage lender, or licensed correspondent mortgage~~
1413 ~~lender.~~

1414 Section 25. Section 494.0034, Florida Statutes, is
1415 repealed.

1416 Section 26. Section 494.0035, Florida Statutes, is amended
1417 to read:

1418 494.0035 Principal loan originator ~~broker~~ and branch
1419 manager for mortgage broker ~~requirements.~~—

1420 (1) Each mortgage broker ~~brokerage business~~ must be
1421 operated by a principal loan originator who shall have a

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

1447 (2) Each branch office of a mortgage broker ~~brokerage~~
1448 ~~business~~ must be operated by a ~~have a designated~~ branch manager
1449 ~~broker~~ who shall have ~~operate the business under such broker's~~
1450 full charge, control, and supervision of the branch office. The

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

1465 Section 27. Section 494.0036, Florida Statutes, is amended
1466 to read:

1467 494.0036 Mortgage broker branch office license ~~brokerage~~
1468 ~~business branch offices.~~

1469 (1) Each branch office of a mortgage broker must be
1470 licensed under this section. ~~A mortgage brokerage business~~
1471 ~~branch office license is required for each branch office~~
1472 ~~maintained by a mortgage brokerage business.~~

1473 (2) The office shall issue a mortgage broker ~~brokerage~~
1474 ~~business~~ branch office license to a mortgage broker ~~brokerage~~
1475 ~~business~~ licensee after the office determines that the licensee
1476 has submitted a completed application for a branch office in a
1477 form ~~as~~ prescribed by commission rule and payment of an initial
1478 nonrefundable branch office license fee of \$350, and the \$100
1479 nonrefundable fee required by s. 494.0017 ~~\$225.~~ Application fees

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

1487 (3) A branch office license must be renewed at the time of
1488 renewing the mortgage broker license under s. 494.00321.

1489 Section 28. Section 494.0038, Florida Statutes, is amended
1490 to read:

1491 494.0038 Loan origination and mortgage broker fees and
1492 ~~Mortgage broker disclosures.-~~

1493 (1)(a)1. A loan origination fee may not be paid ~~person may~~
1494 ~~not receive a mortgage brokerage fee~~ except pursuant to a
1495 written mortgage broker ~~brokerage~~ agreement between the mortgage
1496 broker ~~brokerage business~~ and the borrower which is signed and
1497 dated by each loan originator responsible for providing loan
1498 origination services, the principal loan originator or branch
1499 manager, the business and the borrower. If the principal loan
1500 originator or branch manager is the only licensed loan
1501 originator responsible for providing loan origination services,
1502 only his or signature is required.

1503 (a)2. The written mortgage broker ~~brokerage~~ agreement must
1504 describe the services to be provided by the mortgage broker
1505 ~~brokerage business~~ and specify the amount and terms of the loan
1506 origination ~~mortgage brokerage~~ fee that the mortgage broker
1507 ~~brokerage business~~ is to receive.

1508 1. Except for application and third-party fees, all fees

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1509 received by a mortgage broker from a borrower must be identified
1510 as a loan origination fee.

1511 2. All fees on the mortgage broker agreement must be
1512 disclosed in dollar amounts.

1513 3. All loan origination fees must be paid to a mortgage
1514 broker.

1515 (b) The ~~written mortgage brokerage~~ agreement must be
1516 executed within 3 business days after a mortgage loan
1517 application is accepted if the borrower is present when the
1518 mortgage loan application is accepted. If the borrower is not
1519 present ~~when such an application is accepted~~, the licensee shall
1520 forward the ~~written mortgage brokerage~~ agreement to the borrower
1521 within 3 business days after the licensee's acceptance of the
1522 application and the licensee bears the burden of proving that
1523 the borrower received and approved the written mortgage
1524 brokerage agreement.

1525 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to
1526 receive any payment of any kind from the mortgage lender, the
1527 maximum total dollar amount of the payment must be disclosed to
1528 the borrower in the written mortgage brokerage agreement as
1529 described in paragraph (1) (a). The commission may prescribe by
1530 rule an acceptable form for disclosure of brokerage fees
1531 received from the lender. The ~~mortgage brokerage~~ agreement must
1532 state the nature of the relationship with the lender, describe
1533 how compensation is paid by the lender, and describe how the
1534 mortgage interest rate affects the compensation paid to the
1535 mortgage broker ~~brokerage business~~.

1536 (a)2. The exact amount of any payment of any kind by the
1537 lender to the mortgage broker ~~brokerage business~~ must be

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1538 disclosed in writing to the borrower within 3 business days
1539 after the mortgage broker ~~brokerage business~~ is made aware of
1540 the exact amount of the payment from the lender but not less
1541 than 3 business days before the execution of the closing or
1542 settlement statement. The licensee bears the burden of proving
1543 such notification was provided to the borrower. Notification is
1544 waived if the exact amount of the payment is accurately
1545 disclosed in the written mortgage broker agreement.

1546 (b) ~~(e)~~ The commission may prescribe by rule the form of
1547 disclosure of brokerage fees.

1548 (3) ~~(2)~~ At the time a written mortgage brokerage agreement
1549 is signed ~~executed~~ by the borrower or forwarded to the borrower
1550 for signature ~~execution~~, or at the time the mortgage broker
1551 ~~brokerage business~~ accepts an application fee, credit report
1552 fee, property appraisal fee, or any other third-party fee, but
1553 at least ~~not less than~~ 3 business days before execution of the
1554 closing or settlement statement, the mortgage broker ~~brokerage~~
1555 ~~business~~ shall disclose in writing to any applicant for a
1556 mortgage loan the following information:

1557 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may
1558 not make mortgage loans or commitments. The mortgage broker
1559 ~~brokerage business~~ may make a commitment and may furnish a lock-
1560 in of the rate and program on behalf of the lender if ~~when~~ the
1561 mortgage broker ~~brokerage business~~ has obtained a written
1562 commitment or lock-in for the loan from the lender on behalf of
1563 the borrower for the loan. The commitment must be in the same
1564 form and substance as issued by the lender.

1565 (b) That the ~~such~~ mortgage broker ~~brokerage business~~ cannot
1566 guarantee acceptance into any particular loan program or promise

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1567 any specific loan terms or conditions.

1568 (c) A good faith estimate, signed and dated by the
1569 borrower, which discloses the total amount of each of the fees
1570 ~~which~~ the borrower may reasonably expect to pay if the loan is
1571 closed, including, but not limited to, fees earned by the
1572 mortgage broker ~~brokerage business~~, lender fees, third-party
1573 fees, and official fees, together with the terms and conditions
1574 for obtaining a refund of such fees, if any. Any amount
1575 collected in excess of the actual cost shall be returned within
1576 60 days after rejection, withdrawal, or closing. The good faith
1577 estimate must identify the recipient of all payments charged the
1578 borrower and, except for all fees to be received by the mortgage
1579 broker ~~brokerage business~~, may be disclosed in generic terms,
1580 such as, but not limited to, paid to lender, appraiser,
1581 officials, title company, or any other third-party service
1582 provider. This requirement does not supplant or is not a
1583 substitute for the written mortgage brokerage agreement
1584 described in subsection (1).

1585 (4) ~~(3)~~ The disclosures required by this subsection must be
1586 furnished in writing at the time an adjustable rate mortgage
1587 loan is offered to the borrower and whenever the terms of the
1588 adjustable rate mortgage loan offered materially change prior to
1589 closing. The mortgage broker shall furnish the disclosures
1590 relating to adjustable rate mortgages in a format prescribed by
1591 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
1592 of the Federal Reserve System, as amended; its commentary, as
1593 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
1594 1601 et seq., as amended; together with the Consumer Handbook on
1595 Adjustable Rate Mortgages, as amended; published by the Federal

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1596 Reserve Board and the Federal Home Loan Bank Board. The licensee
1597 bears the burden of proving such disclosures were provided to
1598 the borrower.

1599 (5)~~(4)~~ If the mortgage brokerage agreement includes a
1600 nonrefundable application fee, the following requirements are
1601 applicable:

1602 (a) The amount of the application fee, which must be
1603 clearly denominated as such, must ~~shall~~ be clearly disclosed.

1604 (b) The specific services that will be performed in
1605 consideration for the application fee must ~~shall~~ be disclosed.

1606 (c) The application fee must be reasonably related to the
1607 services to be performed and may not be based upon a percentage
1608 of the principal amount of the loan or the amount financed.

1609 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
1610 any fee in connection with a mortgage loan other than an
1611 application fee, credit report fee, property appraisal fee, or
1612 other third-party fee ~~prior to obtaining a written commitment~~
1613 ~~from a qualified lender.~~

1614 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker
1615 must ~~brokerage business shall~~ immediately, upon receipt, be
1616 placed into a segregated account with a financial institution
1617 located in the state the accounts of which are insured by the
1618 Federal Government. Such funds shall be held in trust for the
1619 payor and shall be kept in the account until disbursement. Such
1620 funds may be placed in one account if adequate accounting
1621 measures are taken to identify the source of the funds.

1622 ~~(7) All mortgage brokerage fees shall be paid to a mortgage~~
1623 ~~brokerage business licensee.~~

1624 (8) A mortgage broker may not pay a commission to any

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1625 person not licensed pursuant to this chapter.

1626 (9)~~(8)~~ This section does not prohibit a mortgage broker
1627 ~~brokerage business~~ from offering products and services, in
1628 addition to those offered in conjunction with the loan
1629 origination process, for a fee or commission.

1630 Section 29. Section 494.00385, Florida Statutes, is created
1631 to read:

1632 494.00385 Loan modification fees.—

1633 (1) A fee for negotiating a mortgage loan modification may
1634 not be paid except pursuant to a written agreement between the
1635 loan originator and the borrower. The written agreement must
1636 specify the amount of the fee that will be charged to the
1637 borrower, specify the terms of the mortgage loan for which
1638 modification will be sought, and disclose the expected impact of
1639 the loan modification on the monthly payment and length of the
1640 loan.

1641 (2) A loan modification may not be executed without the
1642 consent of the borrower after the borrower is made aware of each
1643 modified term.

1644 (3) Fees charged for negotiating a loan modification may
1645 not be received until after the loan modification is completed,
1646 and may be charged only if the loan modification results in a
1647 material benefit to the borrower. The commission may adopt rules
1648 to provide guidance on what constitutes a material benefit to
1649 the borrower.

1650 Section 30. Section 494.0039, Florida Statutes, is amended
1651 to read:

1652 494.0039 Principal place of business requirements.—Each
1653 mortgage broker ~~brokerage business~~ licensee shall maintain and

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1654 transact business from a principal place of business.

1655 Section 31. Section 494.004, Florida Statutes, is amended
1656 to read:

1657 494.004 Requirements of licensees.—

1658 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
1659 shall report to the office:

1660 (a) In writing, any conviction of, or plea of nolo
1661 contendere to, regardless of adjudication, any felony or any
1662 crime or administrative violation that involves fraud,
1663 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
1664 or any other act of moral turpitude, in any jurisdiction, by the
1665 licensee or any control natural person within ~~named in s.~~
1666 ~~494.0031(2)(d), not later than~~ 30 days after the date of
1667 conviction, entry of a plea of nolo contendere, or final
1668 administrative action.

1669 ~~(b)(2) Each licensee under ss. 494.003-494.0043 shall~~
1670 ~~report,~~ In a form prescribed by rule of the commission, any
1671 conviction of, or plea of nolo contendere to, regardless of
1672 ~~whether~~ adjudication is ~~withheld,~~ any felony committed by the
1673 licensee or any control natural person within ~~named in s.~~
1674 ~~494.0031(2)(d), not later than~~ 30 days after the date of
1675 conviction or the date the plea of nolo contendere is entered.

1676 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~
1677 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
1678 within 30 ~~to the office not later than 7~~ business days after the
1679 action is instituted.

1680 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
1681 ~~report~~ On a form prescribed by rule of the commission, any
1682 change to the information contained in any initial application

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1683 form or any amendment to the application within ~~not later than~~
1684 30 days after the change is effective.

1685 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
1686 ~~transferable or assignable.~~

1687 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
1688 ~~report~~ Any change in the principal loan originator broker, any
1689 addition or subtraction of a control person partners, officers,
1690 members, joint venturers, directors, control persons of any
1691 licensee, or any individual who is the ultimate equitable owner
1692 of a 10-percent or greater interest in the licensee, or any
1693 change in the form of business organization, by written
1694 amendment in the form and at the time the commission specifies
1695 by rule.

1696 ~~(a) In any case in which a person or a group of persons,~~
1697 ~~directly or indirectly or acting by or through one or more~~
1698 ~~persons, proposes to purchase or acquire a controlling interest~~
1699 ~~in a licensee, such person or group shall submit an initial~~
1700 ~~application for licensure as a mortgage brokerage business~~
1701 ~~before such purchase or acquisition and at the time and in the~~
1702 ~~form the commission prescribes by rule.~~

1703 ~~(b) As used in this subsection, the term "controlling~~
1704 ~~interest" means possession of the power to direct or cause the~~
1705 ~~direction of the management or policies of a company whether~~
1706 ~~through ownership of securities, by contract, or otherwise. Any~~
1707 ~~person who directly or indirectly has the right to vote 25~~
1708 ~~percent or more of the voting securities of a company or is~~
1709 ~~entitled to 25 percent or more of the company's profits is~~
1710 ~~presumed to possess a controlling interest.~~

1711 ~~(f)(e) Any addition of a partner, officer, member, joint~~

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1712 ~~venturer, director, control person, or ultimate equitable owner~~
1713 ~~of the applicant who does not have a controlling interest and~~
1714 ~~who has not previously filed a Uniform Mortgage Biographical~~
1715 ~~Statement & Consent Form, MU2, or has not previously complied~~
1716 ~~with the fingerprinting and credit report requirements~~
1717 ~~provisions of ss. 494.00312 and 494.00321, s. 494.0031(2)(c) and~~
1718 ~~(d) is subject to the such provisions of these sections unless~~
1719 ~~required to file an initial application in accordance with~~
1720 ~~paragraph (a). If, after the addition of a control person, the~~
1721 office finds that the licensee does not continue to meet
1722 licensure requirements, the office may bring an administrative
1723 action in accordance with s. 494.0041 to enforce the provisions
1724 of this chapter.

1725 ~~(d) The commission shall adopt rules pursuant to ss.~~
1726 ~~120.536(1) and 120.54 providing for the waiver of the~~
1727 ~~application required by this subsection if the person or group~~
1728 ~~of persons proposing to purchase or acquire a controlling~~
1729 ~~interest in a licensee has previously complied with the~~
1730 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~
1731 ~~legal entity or is currently licensed by the office under this~~
1732 ~~chapter.~~

1733 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
1734 ~~business shall file an initial report stating the name, social~~
1735 ~~security number, date of birth, mortgage broker license number,~~
1736 ~~date of hire and, if applicable, date of termination for each~~
1737 ~~person who was an associate of the mortgage brokerage business~~
1738 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
1739 ~~brokerage business shall file a quarterly report only if a~~
1740 ~~person became an associate or ceased to be an associate of the~~

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

1750 (2) ~~(8)~~ ~~(a)~~ In every mortgage loan transaction, each licensee
1751 under this part must ~~ss. 494.003-494.0043~~ shall notify a
1752 borrower of any material changes in the terms of a mortgage loan
1753 previously offered to the borrower within 3 business days after
1754 being made aware of such changes by the mortgage lender but at
1755 least ~~not less than~~ 3 business days before the signing of the
1756 settlement or closing statement. The licensee bears the burden
1757 of proving such notification was provided and accepted by the
1758 borrower.

1759 ~~(b)~~ A borrower may waive the right to receive notice of a
1760 material change ~~that is granted under paragraph (a)~~ if the
1761 borrower determines that the extension of credit is needed to
1762 meet a bona fide personal financial emergency and the right to
1763 receive notice would delay the closing of the mortgage loan. The
1764 imminent sale of the borrower's home at foreclosure during the
1765 3-day period before the signing of the settlement or closing
1766 statement is ~~constitutes~~ an example of a bona fide personal
1767 financial emergency. In order to waive the borrower's right to
1768 receive notice ~~not less than 3 business days before the signing~~
1769 ~~of the settlement or closing statement of any such material~~

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1770 ~~change~~, the borrower must provide the licensee with a dated
1771 written statement that describes the personal financial
1772 emergency, waives the right to receive the notice, bears the
1773 borrower's signature, and is not on a printed form prepared by
1774 the licensee for the purpose of such a waiver.

1775 (3) Each mortgage broker shall submit to the registry
1776 reports of condition, which must be in such form and shall
1777 contain such information as the registry may require.

1778 (4) A license issued under this part is not transferable or
1779 assignable.

1780 Section 32. Section 494.0041, Florida Statutes, is amended
1781 to read:

1782 494.0041 Administrative penalties and fines; license
1783 violations.-

1784 ~~(1) Whenever the office finds a person in violation of an~~
1785 ~~act specified in subsection (2), it may enter an order imposing~~
1786 ~~one or more of the following penalties against the person:~~

1787 ~~(a) Revocation of a license or registration.~~

1788 ~~(b) Suspension of a license or registration subject to~~
1789 ~~reinstatement upon satisfying all reasonable conditions that the~~
1790 ~~office specifies.~~

1791 ~~(c) Placement of the licensee, registrant, or applicant on~~
1792 ~~probation for a period of time and subject to all reasonable~~
1793 ~~conditions that the office specifies.~~

1794 ~~(d) Issuance of a reprimand.~~

1795 ~~(e) Imposition of a fine in an amount not exceeding \$5,000~~
1796 ~~for each count or separate offense.~~

1797 ~~(f) Denial of a license or registration.~~

1798 (1)~~(2)~~ Each of the following acts constitutes a ground for

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1799 which the disciplinary actions specified in subsection (2) ~~(1)~~
1800 may be taken:

1801 (a) Being convicted of, or entering a plea of guilty or
1802 ~~Pleading nolo contendere to, or having been convicted or found~~
1803 ~~guilty of,~~ regardless of whether adjudication was withheld, any
1804 felony or any a crime involving fraud, dishonesty, breach of
1805 trust, money laundering ~~dishonest dealing,~~ or any act of moral
1806 turpitude.

1807 (b) Fraud, misrepresentation, deceit, negligence, or
1808 incompetence, in any mortgage financing transaction.

1809 (c) A material misstatement or omission of fact on an
1810 initial or renewal license application.

1811 (d) Disbursement, or an act which has caused or will cause
1812 disbursement, to any person in any amount from the Mortgage
1813 Guaranty Regulatory Trust Fund, the Securities Guaranty Fund, or
1814 the Florida Real Estate Recovery Fund, regardless of any
1815 repayment or restitution to the disbursed fund by the licensee
1816 or any person acting on behalf of the licensee ~~or registrant~~.

1817 (e) Failure of a loan originator to place immediately upon
1818 receipt, and maintain until authorized to disburse, any money
1819 entrusted to her or him ~~by a person dealing with her or him~~ as a
1820 loan originator ~~mortgage broker~~ in a segregated account of a
1821 federally insured financial institution in this state.

1822 (f) Failure to account or deliver to any person any
1823 property that ~~has come into her or his hands and that is not the~~
1824 licensee's ~~her or his property~~ or that the licensee ~~she or he~~ is
1825 not ~~in law or equity~~ entitled to retain, under the circumstances
1826 and at the time which has been agreed upon or is required by law
1827 or, in the absence of a fixed time, upon demand of the person

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1828 entitled to such accounting and delivery.

1829 (g) Failure to disburse funds in accordance with
1830 agreements.

1831 (h) Any misuse, misapplication, or misappropriation of
1832 personal property entrusted to her or his care to which she or
1833 he had no current property right at the time of entrustment.

1834 (i) Having a license, or the equivalent, to practice any
1835 profession or occupation revoked, suspended, or otherwise acted
1836 against, including the denial of licensure by a licensing
1837 authority of this state or another state, territory, or country
1838 ~~for fraud, dishonest dealing, or any other act of moral~~
1839 ~~turpitude.~~

1840 (j) Failure to comply with any order or rule made or issued
1841 under this part ~~ss. 494.001-494.0077.~~

1842 (k) Acting as a loan originator ~~mortgage broker~~ or mortgage
1843 broker or operating a branch office ~~brokerage business~~ without a
1844 current, ~~active~~ license issued under this part ~~ss. 494.003-~~
1845 ~~494.0043.~~

1846 ~~(l) Failure to timely pay any fee, charge, or fine under~~
1847 ~~ss. 494.001-494.0077.~~

1848 (l) ~~(m)~~ Failure to maintain, preserve, and keep available
1849 for examination all books, accounts, or other documents required
1850 by ss. 494.001-494.0077 and the rules of the commission.

1851 (m) ~~(n)~~ Refusal to permit an investigation or examination of
1852 books and records, or refusal to comply with an office subpoena
1853 or subpoena duces tecum.

1854 (n) ~~(o)~~ Consistently and materially underestimating maximum
1855 closing costs.

1856 (o) ~~(p)~~ Failure to comply with, or violation of, any other

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1857 provision of ss. 494.001-494.0077.

1858 (p)~~(q)~~ Commission of fraud, misrepresentation, concealment,
1859 or dishonest dealing by trick, scheme, or device;r culpable
1860 negligence;r~~or~~ breach of trust in any business transaction in
1861 any state, nation, or territory; or aiding, assisting, or
1862 conspiring with any other person engaged in any such misconduct
1863 and in furtherance thereof.

1864 (q)~~(r)~~ Failure to timely pay any fee, charge, or fine
1865 imposed or assessed pursuant to this chapter or rules adopted
1866 under this chapter.

1867 (r)~~(s)~~ Payment to the office for a license or permit with a
1868 check or electronic transmission of funds that is dishonored by
1869 the applicant's or licensee's financial institution.

1870 (s)~~(t)~~ Having a final judgment entered against the
1871 applicant or licensee in a civil action upon grounds of fraud,
1872 embezzlement, misrepresentation, or deceit.

1873 (t)~~(u)~~1. Having been the subject of any:

1874 1. Decision, finding, injunction, suspension, prohibition,
1875 revocation, denial, judgment, or administrative order by any
1876 court ~~of competent jurisdiction~~, administrative law judge, state
1877 or federal agency, national securities exchange, national
1878 commodities exchange, national option exchange, national
1879 securities association, national commodities association, or
1880 national option association involving a violation of any federal
1881 or state securities or commodities law or rule or regulation
1882 adopted under such law or involving a violation of any rule or
1883 regulation of any national securities, commodities, or options
1884 exchange or association.

1885 2. ~~Having been the subject of any~~ Injunction or adverse

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1886 administrative order by a state or federal agency regulating
1887 banking, insurance, finance or small loan companies, real
1888 estate, mortgage brokers or lenders, money transmitters, or
1889 other related or similar industries.

1890 (u)~~(v)~~ In any mortgage transaction, violating any provision
1891 of the federal Real Estate Settlement Procedure Act, as amended,
1892 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
1893 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
1894 under such acts.

1895 (v) Requesting a specific valuation, orally or in writing,
1896 from an appraiser for a particular property, implying to an
1897 appraiser that a specific valuation is needed for a particular
1898 property, or in any manner conditioning the order for an
1899 appraisal on the appraisal meeting a specific valuation. The
1900 numeric value of the specific valuation sought need not be
1901 stated, but rather the mere statement that a specific valuation
1902 is sought, violates this section.

1903 (w) Failure to provide a lender with all appraisals
1904 obtained by the loan originator with respect to a particular
1905 property if more than one appraisal has been obtained.

1906 (x) Conducting any brokering activities in the absence of a
1907 properly designated principal loan originator or brokering
1908 activities at any particular branch office without a properly
1909 designated branch manager.

1910 (y) Having a loan originator, mortgage broker, or mortgage
1911 lender license, or the equivalent thereof, revoked in any
1912 jurisdiction.

1913 (2) If the office finds a person in violation of any act
1914 specified in this section, it may enter an order imposing one or

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1915 more of the following penalties:

1916 (a) Revocation of a license or registration.

1917 (b) Suspension of a license or registration, subject to
1918 reinstatement upon satisfying all reasonable conditions imposed
1919 by the office.

1920 (c) Issuance of a reprimand.

1921 (d) Imposition of a fine in an amount up to \$10,000 for
1922 each count or separate offense.

1923 (e) Denial of a license or registration.

1924 (3) A mortgage broker ~~brokerage business~~ is subject to the
1925 disciplinary actions specified in subsection (2) ~~(1)~~ for a
1926 violation of subsection (1) ~~(2)~~ by any ~~officer, member,~~
1927 ~~director,~~ control person or loan originator employed by or
1928 contracting with the mortgage broker, ~~joint venturer, partner,~~
1929 ~~ultimate equitable owner of a 10-percent or greater interest in~~
1930 ~~the mortgage brokerage business, or associate mortgage broker of~~
1931 ~~the licensee.~~

1932 (4) A principal loan originator ~~mortgage broker~~ is subject
1933 to the disciplinary actions specified in subsection (2) ~~(1)~~ for
1934 violations of subsection (1) ~~(2)~~ by a loan originator ~~associates~~
1935 in the course of an association with the mortgage broker
1936 ~~brokerage business. The principal mortgage broker is only~~
1937 ~~subject to suspension or revocation for associate actions if~~
1938 there is a pattern of repeated violations by the loan originator
1939 ~~associates~~ or if the principal loan originator ~~mortgage broker~~
1940 has knowledge of the violations.

1941 (5) A branch manager is subject to the disciplinary actions
1942 specified in subsection (2) for violations of subsection (1) by
1943 a loan originator in the course of an association with the

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1944 mortgage broker if there is a pattern of repeated violations by
1945 the loan originator or if the branch manager has knowledge of
1946 the violations.

1947 (6) ~~(5)~~ A natural person who is associated with a mortgage
1948 broker ~~brokerage business~~ is subject to the disciplinary actions
1949 specified in subsection (2) ~~(1)~~ for a violation of subsection
1950 (1) ~~(2)~~ with respect to an action in which such person was
1951 involved.

1952 (7) The office may summarily suspend the license of any
1953 loan originator or mortgage broker in accordance with s.
1954 120.60(6) due to the arrest of the loan originator or the
1955 mortgage broker's control person for any felony or any crime
1956 involving fraud, dishonesty, breach of trust, money laundering,
1957 or any other act of moral turpitude, or if the office has reason
1958 to believe that a licensee poses an immediate, serious danger to
1959 the public's health, safety, or welfare. Any proceeding for the
1960 summary suspension of a license must be conducted by the
1961 commissioner of the office, or designee, who shall issue the
1962 final summary order. A reasonable belief by the office that a
1963 loan originator or mortgage broker's control person has
1964 committed any act of fraud is deemed sufficient to constitute an
1965 immediate danger to the public's health, safety, or welfare.

1966 (8) The office may deny any request to terminate or
1967 withdraw any application or license if the office believes that
1968 an act which would be a ground for denial, suspension,
1969 restriction, or revocation under this chapter has been
1970 committed.

1971 Section 33. Section 494.0042, Florida Statutes, is amended
1972 to read:

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1973 494.0042 Loan originator ~~Brokerage~~ fees.-

1974 (1) A loan originator ~~mortgage brokerage~~ fee earned by a
1975 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not
1976 considered interest or a finance charge under chapter 687.

1977 (2) A person may not charge or exact, directly or
1978 indirectly, from the borrower ~~mortgagor~~ a fee or commission in
1979 excess of the maximum fee or commission specified in this
1980 section. The maximum fees or commissions that may be charged for
1981 mortgage loans are as follows:

1982 (a) On a mortgage loan of \$1,000 or less: \$250.

1983 (b) On a mortgage loan exceeding \$1,000 and not exceeding
1984 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
1985 for each additional \$100 of the mortgage loan.

1986 (c) On a mortgage loan exceeding \$2,000 and not exceeding
1987 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
1988 for each additional \$100 of the mortgage loan.

1989 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
1990 percent of the entire mortgage loan.

1991
1992 For the purpose of determining the maximum fee, the amount
1993 of the mortgage loan is based on the amount of mortgage loan
1994 actually funded exclusive of the authorized maximum fees or
1995 commissions.

1996 (3) At the time of accepting a mortgage loan application, a
1997 mortgage broker ~~brokerage business~~ may receive from the borrower
1998 a nonrefundable application fee. If the mortgage loan is funded,
1999 the nonrefundable application fee shall be credited against the
2000 amount owed as a result of the loan being funded. A person may
2001 not receive any form of compensation for acting as a loan

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2002 originator ~~mortgage broker~~ other than a nonrefundable
 2003 application fee, a fee based on the mortgage amount being
 2004 funded, or a fee which complies with s. 494.00421.

2005 Section 34. Section 494.00421, Florida Statutes, is amended
 2006 to read:

2007 494.00421 Fees earned upon obtaining a bona fide
 2008 commitment.—Notwithstanding the provisions of ss. 494.001-
 2009 494.0077, any mortgage broker ~~brokerage business~~ which contracts
 2010 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from
 2011 a borrower upon obtaining a bona fide commitment shall
 2012 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

2013 (1) The gross loan amount.

2014 (2) In the case of a fixed-rate mortgage, the note rate.

2015 (3) In the case of an adjustable rate mortgage:

2016 (a) The initial note rate.

2017 (b) The length of time for which the initial note rate is
 2018 effective.

2019 (c) The frequency of changes.

2020 (d) The limitation upon such changes including adjustment
 2021 to adjustment cap and life cap.

2022 (e) Whether the loan has any potential for negative
 2023 amortization.

2024 (f) Identification of the margin-interest rate
 2025 differential.

2026 (g) Identification of a nationally recognized index which
 2027 index must be free from control of the mortgage broker, ~~mortgage~~
 2028 ~~brokerage business, mortgage lender, or correspondent mortgage~~
 2029 lender.

2030 (4) The estimated net proceeds to be paid directly to the

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2031 borrower. "Estimated net proceeds" means the cash to be received
2032 by the borrower after payment of any fees, charges, debts,
2033 liens, or encumbrances to perfect the lien of the new mortgage
2034 and establish the agreed-upon priority of the new mortgage.

2035 (5) The lien priority of the new proposed mortgage.

2036 (6) The number of calendar days, which are mutually agreed
2037 upon, within which the mortgage broker ~~brokerage business~~ shall
2038 obtain a bona fide mortgage commitment.

2039 (7) (a) The following statement, in at least ~~no less than~~
2040 12-point boldface type immediately above the signature lines for
2041 the borrowers:

2042
2043 "You are entering into a contract with a mortgage broker
2044 ~~brokerage business~~ to obtain a bona fide mortgage loan
2045 commitment under the same terms and conditions as stated
2046 hereinabove or in a separate executed good faith estimate form.
2047 If the mortgage broker ~~brokerage business~~ obtains a bona fide
2048 commitment under the same terms and conditions, you will be
2049 obligated to pay the mortgage broker ~~brokerage business~~ fees,
2050 including, but not limited to, a mortgage broker ~~brokerage~~ fee,
2051 even if you choose not to complete the loan transaction. If the
2052 provisions of s. 494.00421, Florida Statutes, are not met, the
2053 mortgage broker ~~brokerage~~ fee can only be earned upon the
2054 funding of the mortgage loan. The borrower may contact the
2055 Department of Financial Services, Tallahassee, Florida,
2056 regarding any complaints that the borrower may have against the
2057 mortgage broker ~~or the mortgage brokerage business~~. The
2058 telephone number of the department is: ...[insert telephone
2059 number]...."

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2060 (b) Paragraph (a) does not apply to nonresidential mortgage
2061 loan commitments in excess of \$1 million.

2062 (8) Any other disclosure required pursuant to s. 494.0038.
2063 Section 35. Section 494.0043, Florida Statutes, is amended
2064 to read:

2065 494.0043 Requirements for brokering loans to
2066 noninstitutional investors.-

2067 (1) A loan originator ~~mortgage broker~~, when arranging a
2068 mortgage loan for a noninstitutional investor, shall:

2069 (a) Before any payment of money by the ~~a~~ noninstitutional
2070 investor, provide an opinion of value from an appraiser stating
2071 the value of the security property unless the opinion is waived
2072 in writing. The opinion must state the value of the property as
2073 it exists on the date of the opinion. If any relationship exists
2074 between the mortgage broker and the appraiser, that relationship
2075 shall be disclosed to the investor.

2076 (b) Provide to the noninstitutional investor a mortgagee's
2077 title insurance policy or an opinion of title by an attorney
2078 licensed to practice law in the state, or a copy thereof.

2079 1. If a title insurance policy is issued, it must insure
2080 the noninstitutional investor against the unmarketability of the
2081 mortgagee's interest in such title. It must ~~shall~~ also specify
2082 any superior liens that exist against the property. If an
2083 opinion of title is issued by an attorney ~~licensed to practice~~
2084 ~~law in the state~~, the opinion must include a statement as to the
2085 marketability of the title to the property described in the
2086 mortgage and specify the priority of the mortgage being closed.

2087 2. If the title insurance policy or opinion of title is not
2088 available at the time of purchase, the licensee shall provide a

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

2100 3. The requirements of this paragraph may be waived in
2101 writing. If the requirements are waived by the noninstitutional
2102 investor, the waiver must include the following statement
2103 ~~wording~~: "The noninstitutional investor acknowledges that the
2104 mortgage broker or mortgage lender brokering this mortgage loan
2105 is not providing a title insurance policy or opinion of title
2106 issued by an attorney who is licensed to practice law in the
2107 State of Florida. Any requirement for title insurance or for a
2108 legal opinion of title is the sole responsibility of the
2109 noninstitutional mortgage investor."

2110 (c) Provide, if the loan is other than a first mortgage, a
2111 statement showing the balance owed by the mortgagor on any
2112 existing mortgages prior to this investment and the status of
2113 such existing mortgages.

2114 (d) Provide a disclosure if the licensee is directly or
2115 indirectly acting as a borrower or principal in the transaction.

2116 (2) Each original or certified copy of the mortgage, or
2117 other instrument securing a note or assignment thereof, must

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2118 ~~shall~~ be recorded before being delivered to the noninstitutional
2119 investor. A loan originator ~~mortgage broker~~ shall cause the
2120 properly endorsed original note to be delivered to the
2121 noninstitutional investor.

2122 (3) Each mortgage and assignment must ~~shall~~ be recorded as
2123 soon as practical, but no later than 30 business days after the
2124 date of closing.

2125 (4) Any money from a noninstitutional investor for
2126 disbursement at a mortgage loan closing must ~~shall~~ be deposited
2127 with and disbursed by an attorney duly licensed in this state or
2128 by a title company duly licensed in this state. A person acting
2129 as a loan originator ~~mortgage broker~~ may not have control of any
2130 money from a noninstitutional investor. This subsection does not
2131 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from
2132 receiving a loan originator ~~mortgage brokerage~~ fee upon the
2133 closing of the mortgage loan funded by the noninstitutional
2134 investor.

2135 Section 36. Effective July 1, 2009, section 494.006,
2136 Florida Statutes, is amended to read:

2137 494.006 Exemptions.—

2138 (1) None of the following persons are subject to the
2139 requirements of this part ~~ss. 494.006-494.0077~~ in order to act
2140 as a mortgage lender ~~or correspondent mortgage lender~~:

2141 (a) A depository institution; subsidiaries that are owned
2142 and controlled by a depository institution and regulated by the
2143 Board of Governors of the Federal Reserve System, the
2144 Comptroller of the Currency, the Director of the Office of
2145 Thrift Supervision, the National Credit Union Administration, or
2146 the Federal Deposit Insurance Corporation; and institutions

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2147 regulated by the Farm Credit Administration ~~state or federal~~
2148 ~~chartered bank, trust company, savings and loan association,~~
2149 ~~savings bank or credit union, bank holding company regulated~~
2150 ~~under the laws of any state or the United States, or insurance~~
2151 ~~company if the insurance company is duly licensed in this state.~~

2152 (b) Any person acting in a fiduciary capacity conferred by
2153 the authority of any court.

2154 ~~(c) A wholly owned bank holding company subsidiary or a~~
2155 ~~wholly owned savings and loan association holding company~~
2156 ~~subsidiary that is formed and regulated under the laws of any~~
2157 ~~state or the United States and that is approved or certified by~~
2158 ~~the Department of Housing and Urban Development, the Veterans~~
2159 ~~Administration, the Government National Mortgage Association,~~
2160 ~~the Federal National Mortgage Association, or the Federal Home~~
2161 ~~Loan Mortgage Corporation.~~

2162 (c) ~~(d)~~ Any person who, as a seller of his or her own real
2163 property, receives one or more mortgages in a purchase money
2164 transaction.

2165 ~~(e) Any person who receives a mortgage as security for an~~
2166 ~~obligation arising out of materials furnished or as services~~
2167 ~~rendered by the person in the improvement of the real property.~~

2168 (d) ~~(f)~~ Any person who makes only nonresidential mortgage
2169 loans and sells loans only to institutional investors.

2170 (e) ~~(g)~~ The Federal National Mortgage Association; the
2171 Federal Home Loan Mortgage Corporation; an agency of the Federal
2172 Government; any state, county, or municipal government; or any
2173 quasi-governmental agency that acts in such capacity under the
2174 specific authority of the laws of any state or the United
2175 States.

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2176 ~~(h) A consumer finance company licensed pursuant to chapter~~
2177 ~~516 as of October 1, 1991.~~

2178 ~~(f)~~ (i) Any natural person making or acquiring a mortgage
2179 loan with his or her own funds for his or her own investment,
2180 and who does not hold himself or herself out to the public, in
2181 any manner, as being in the mortgage lending business.

2182 ~~(g)~~ (j) Any natural person selling a mortgage that was made
2183 or purchased with that person's funds for his or her own
2184 investment, and who does not hold himself or herself out to the
2185 public, in any manner, as being in the mortgage lending
2186 business.

2187 ~~(h)~~ (k) Any person who acts solely under contract and as an
2188 agent for federal, state, or municipal agencies in the servicing
2189 of mortgage loans.

2190 (2) A mortgage broker who closes a mortgage loan in the
2191 mortgage broker's own name in a table-funded transaction is not
2192 considered as acting as a mortgage lender if the mortgage
2193 broker, at or before the closing, advises the borrower in
2194 writing that the mortgage broker is not the actual lender in the
2195 transaction and discloses the name and address of the actual
2196 lender who advances the funds for the loan and to whom the loan
2197 will be assigned at or after settlement.

2198 ~~(2)(a) A natural person employed by a mortgage lender or~~
2199 ~~correspondent mortgage lender licensed under ss. 494.001-~~
2200 ~~494.0077 is exempt from the licensure requirements of ss.~~
2201 ~~494.001-494.0077 when acting within the scope of employment with~~
2202 ~~the licensee.~~

2203 ~~(b) A corporation that is in existence on October 1, 1991,~~
2204 ~~and that is a wholly owned subsidiary of a consumer finance~~

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2205 ~~company licensed pursuant to chapter 516 on October 1, 1991, is~~
2206 ~~not required to be licensed under ss. 494.006-494.0077 in order~~
2207 ~~to act as a mortgage lender or a correspondent mortgage lender.~~

2208 (3) It is unnecessary to negate any of the exemptions
2209 provided in ss. 494.001-494.0077 in any complaint, information,
2210 indictment, or other writ or proceeding brought under ss.
2211 494.001-494.0077. The burden of establishing the right to any
2212 exemption is upon the party claiming the benefit of the
2213 exemption.

2214 Section 37. Section 494.0061, Florida Statutes, is
2215 repealed.

2216 Section 38. Section 494.00611, Florida Statutes, is created
2217 to read:

2218 494.00611 Mortgage lender license.—

2219 (1) Each person who acts as a mortgage lender must be
2220 licensed under this section.

2221 (2) To apply for a mortgage lender license the applicant
2222 must:

2223 (a) Submit a completed application form as prescribed by
2224 the commission by rule.

2225 (b) Designate a qualified principal loan originator who
2226 meets the requirement of s. 494.0035 on the application form.

2227 (c) Submit a nonrefundable application fee of \$625, and the
2228 \$100 nonrefundable fee required by s. 494.0017. Application fees
2229 may not be prorated for partial years of licensure.

2230 (d) Submit a complete set of fingerprints for each of the
2231 applicant's control persons to:

2232 1. The registry for a federal criminal history check. If
2233 the registry is not processing fingerprints at the time the

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2234 application is submitted, the Department of Law Enforcement
2235 shall forward the fingerprints submitted pursuant to
2236 subparagraph 2. to the Federal Bureau of Investigation for
2237 processing.

2238 2. The office for a state criminal history check. The
2239 office may contract with a third-party vendor that provides live
2240 scan fingerprinting in lieu of a paper fingerprint card. All
2241 fingerprints shall be submitted to the Department of Law
2242 Enforcement and entered into the statewide automated fingerprint
2243 identification system established in s. 943.05(2)(b) and
2244 available for use in accordance with s. 943.05(2)(g). The cost
2245 of fingerprinting shall be borne by the applicant.

2246 (e) Submit a copy of the applicant's audited financial
2247 statement for the most recent fiscal year, which documents that
2248 the applicant has a bona fide and verifiable net worth, pursuant
2249 to United States generally accepted accounting principles, of at
2250 least \$250,000, which must be continuously maintained as a
2251 condition of licensure. If the applicant is a wholly-owned
2252 subsidiary of another corporation, the audited financial
2253 statement for the parent corporation's financial statement
2254 satisfies this requirement. The commission may establish by rule
2255 the form and procedures for filing the audited financial
2256 statement, including the requirement to file the statement with
2257 the registry when technology is available.

2258 (f) Authorize the registry to obtain an independent credit
2259 report on each of the applicant's control persons from a
2260 consumer reporting agency, and transmit or provide access to the
2261 report to the office. The cost of the credit report shall be
2262 borne by the applicant.

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2263 (g) Submit additional information or documentation
2264 requested by the office and required by rule concerning the
2265 applicant or a control person of the applicant. Additional
2266 information may include documentation of pending and prior
2267 disciplinary and criminal history events, including arrest
2268 reports and certified copies of charging documents, plea
2269 agreements, judgments and sentencing documents, documents
2270 relating to pretrial intervention, orders terminating probation
2271 or supervised release, final administrative agency orders, or
2272 other comparable documents that may provide the office with the
2273 appropriate information to determine eligibility for licensure.

2274 (h) Submit any other information required by the registry
2275 for the processing of the application.

2276 (3) An application is considered received for the purposes
2277 of s. 120.60 upon the office's receipt of all documentation from
2278 the registry including the completed application form, criminal
2279 history information, and credit history information, as well as
2280 the nonrefundable license application fees and all applicable
2281 fingerprinting processing fees.

2282 (4) The office shall issue a mortgage lender license to
2283 each person who is not otherwise ineligible and who meets the
2284 requirements of this section. However, it is a ground for denial
2285 of licensure if the applicant or one of the applicant's control
2286 persons:

2287 (a) Has committed any violation specified in s. 494.0072,
2288 or is the subject of a pending felony criminal prosecution or a
2289 prosecution or an administrative enforcement action, in any
2290 jurisdiction, which involves fraud, dishonesty, breach of trust,
2291 money laundering, or any act of moral turpitude.

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2292 (b) Demonstrates a lack of financial responsibility,
2293 character, and general fitness which would fail to command the
2294 confidence of the community and to warrant a determination that
2295 the mortgage broker will operate honestly, fairly, and
2296 efficiently. For purposes of this paragraph, a person has shown
2297 that he or she is not financially responsible if he or she has
2298 shown a disregard in the management of his or her own financial
2299 condition which may include, but is not limited to:

2300 1. Current outstanding judgments, except judgments
2301 resulting solely from medical expenses;

2302 2. Current outstanding tax liens or other government liens
2303 and filings;

2304 3. Foreclosures within the past 3 years; or

2305 4. A pattern of seriously delinquent accounts within the
2306 past 3 years.

2307 (5) The office may not issue a license if the applicant is
2308 has had a mortgage lender license or its equivalent revoked in
2309 any jurisdiction, or any of the applicant's control persons has
2310 ever had a loan originator license or its equivalent revoked in
2311 any governmental jurisdiction.

2312 (6) A person required to be licensed under this part, or an
2313 agent or employee thereof, is deemed to have consented to the
2314 venue of courts in this state regarding any matter within the
2315 authority of ss. 494.001-494.0077 regardless of where an act or
2316 violation was committed.

2317 (7) A license issued in accordance with this part is not
2318 transferable or assignable.

2319 (8) A mortgage lender or branch office license may be
2320 withdrawn pursuant to s. 120.60 if it was issued through mistake

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2321 or inadvertence of the office. A license must be reinstated if
2322 the applicant can demonstrate that the requirements for
2323 obtaining the license under this chapter have been satisfied.

2324 (9) Each lender, regardless of the number of branches it
2325 operates, shall designate a principal loan originator
2326 representative who exercises control of the licensee's business,
2327 and a branch manager for each branch office. Each mortgage
2328 lender must keep the office informed of the persons designated
2329 as prescribed by commission rule, which includes documentation
2330 of the individual's acceptance of such responsibility. If the
2331 designation is inaccurate, the branch shall be deemed to be
2332 operated under the full charge, control, and supervision by each
2333 officer, director, or ultimate equitable owner of a 10-percent
2334 or greater interest in the mortgage lender business, or any
2335 other person in a similar capacity during that time.

2336 (10) The commission shall, by rule, establish time periods
2337 during which an applicant is barred from licensure due to prior
2338 criminal convictions of, or guilty or nolo contendere pleas by,
2339 any of the applicant's control persons, regardless of
2340 adjudication.

2341 (a) The rules must provide:

2342 1. Permanent bars for felonies involving fraud, dishonesty,
2343 breach of trust, or money laundering;

2344 2. A 15-year disqualifying period for felonies involving
2345 moral turpitude;

2346 3. A 7-year period for all other felonies; and

2347 4. A 5-year period for misdemeanors involving fraud,
2348 dishonesty, or any other act of moral turpitude.

2349 (b) The rule may also provide for mitigating factors, an

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2350 additional waiting period due to dates of imprisonment or
2351 community supervision, an additional waiting period due to the
2352 commitment of multiple crimes, and other factors reasonably
2353 related to the applicant's criminal history. The rule may not
2354 provide standards that are less rigorous than those set forth in
2355 the S.A.F.E. Mortgage Licensing Act of 2008. An applicant is not
2356 eligible for licensure until the expiration of the disqualifying
2357 period set by rule. Section 112.011 is not applicable to
2358 eligibility for licensure under this part.

2359 (11) All mortgage lender licenses must be renewed annually
2360 by December 31 pursuant to s. 494.00612. If a person holding an
2361 active mortgage broker license has not applied to renew the
2362 license annually on or before December 31, the mortgage broker
2363 license expires on December 31. If a person holding an active
2364 mortgage broker license has applied to renew the license on or
2365 before December 31, the mortgage broker license remains active
2366 until the renewal application is approved or denied. A mortgage
2367 broker may not be precluded from reapplying for licensure upon
2368 expiration of a previous license.

2369 Section 39. Section 494.00612, Florida Statutes, is created
2370 to read:

2371 494.00612 Mortgage lender license renewal.-

2372 (1) To renew a mortgage lender license, a mortgage lender
2373 must:

2374 (a) Submit a completed license renewal form as prescribed
2375 by commission rule.

2376 (b) Submit a nonrefundable renewal fee of \$625, and the
2377 \$100 nonrefundable fee required by s. 494.0017.

2378 (c) Submit a complete set of fingerprints in accordance

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2379 with s. 494.00611(2) (d).

2380 (d) Provide proof that the mortgage lender continues to
2381 meet the net worth requirement in a form prescribed by the
2382 commission rule.

2383 (e) Authorize the registry to obtain an independent credit
2384 report on the mortgage lender from a consumer reporting agency,
2385 and transmit or provide access to the report to the office. The
2386 cost of the credit report shall be borne by the applicant.

2387 (f) Submit any additional information or documentation
2388 requested by the office and required by rule concerning the
2389 licensee. Additional information may include documentation of
2390 pending and prior disciplinary and criminal history events,
2391 including arrest reports and certified copies of charging
2392 documents, plea agreements, judgments and sentencing documents,
2393 documents relating to pretrial intervention, orders terminating
2394 probation or supervised release, final administrative agency
2395 orders, or other comparable documents that may provide the
2396 office with the appropriate information to determine eligibility
2397 for licensure.

2398 (2) The office may not renew a mortgage lender license
2399 unless the mortgage lender continues to meet the minimum
2400 standards for initial license issuance pursuant to s. 494.00611
2401 and adopted rule.

2402 Section 40. Section 494.0062, Florida Statutes, is
2403 repealed.

2404 Section 41. Section 494.0063, Florida Statutes, is amended
2405 to read:

2406 494.0063 Audited financial statements.—All audited
2407 financial statements required by ss. 494.001-494.0077 must be

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

2422 Section 42. Section 494.0064, Florida Statutes, is
2423 repealed.

2424 Section 43. Effective April 1, 2020, section 494.0065,
2425 Florida Statutes, is repealed.

2426 Section 44. Section 494.0066, Florida Statutes, is amended
2427 to read:

2428 494.0066 Branch offices.—

2429 (1) Each branch office of a mortgage lender must be
2430 licensed under this section ~~A branch office license is required~~
2431 ~~for each branch office maintained by a licensee under ss.~~
2432 ~~494.006-494.0077.~~

2433 (2) The office shall issue a branch office license to a
2434 mortgage lender licensee licensed under ss. 494.006-494.0077
2435 after the office determines that the mortgage lender licensee
2436 has submitted a completed branch office application form as

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2437 prescribed by rule by the commission, ~~and~~ an initial
2438 nonrefundable branch office license fee of \$350, and the \$100
2439 nonrefundable fee required by s. 494.0017 ~~\$325~~. Application fees
2440 may not be prorated for partial years of licensure. The branch
2441 office application must include the name and license number of
2442 the mortgage lender licensee under this part ~~ss. 494.006-~~
2443 ~~494.0077~~, the name of the branch manager ~~licensee's~~ employee in
2444 charge of the branch office, and the address of the branch
2445 office. The branch office license shall be issued in the name of
2446 the mortgage lender ~~licensee~~ under ~~ss. 494.006-494.0077~~ and must
2447 be renewed in conjunction with the license renewal. An
2448 application is considered received for purposes of s.120.60 upon
2449 receipt of a completed branch office renewal form as prescribed
2450 by commission rule, and the required fees.

2451 (3) A branch office license must be renewed at the time of
2452 renewing the mortgage lender license.

2453 Section 45. Section 494.00665, Florida Statutes, is created
2454 to read:

2455 494.00665 Principal loan originator and branch manager for
2456 mortgage lender.-

2457 (1) Each mortgage lender business must be operated by a
2458 principal loan originator who shall have full charge, control,
2459 and supervision of the mortgage lender business. The principal
2460 loan originator must have been licensed as a loan originator
2461 pursuant to s. 494.00323. Each mortgage lender must keep the
2462 office informed of the person designated as the principal loan
2463 originator as prescribed by commission rule. If the designation
2464 is inaccurate, the business shall be deemed to be operated under
2465 the full charge, control, and supervision of each officer,

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2466 director, or ultimate equitable owner of a 10-percent or greater
2467 interest in the mortgage lender business, or any other person in
2468 a similar capacity during that time. A loan originator may not
2469 be a principal loan originator for more than one mortgage lender
2470 at any given time.

2471 (2) Each branch office of a mortgage lender must be
2472 operated by a branch manager who shall have full charge,
2473 control, and supervision of the branch office. The designated
2474 branch manager must be a licensed loan originator pursuant to s.
2475 494.00323. Each mortgage lender must keep the office informed of
2476 the person designated as the branch manager as prescribed by
2477 commission rule, which includes documentation of the
2478 individual's acceptance of such responsibility. If the
2479 designation is inaccurate, the branch office shall be deemed to
2480 be operated under the full charge, control, and supervision of
2481 each officer, director, or ultimate equitable owner of a 10-
2482 percent or greater interest in the mortgage lender business, or
2483 any other person in a similar capacity during that time.

2484 Section 46. Section 494.0067, Florida Statutes, is amended
2485 to read:

2486 494.0067 Requirements of mortgage lenders ~~licensees under~~
2487 ~~ss. 494.006-494.0077.~~

2488 (1) A mortgage lender that ~~Each licensee under ss. 494.006-~~
2489 ~~494.0077 which~~ makes mortgage loans on real estate in this state
2490 shall transact business from a principal place of business. Each
2491 principal place of business and each branch office shall be
2492 operated under the full charge, control, and supervision of the
2493 licensee pursuant to this part ~~under ss. 494.006-494.0077.~~

2494 (2) A license issued under this part ~~ss. 494.006-494.0077~~

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2495 is not transferable or assignable.

2496 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~
2497 ~~494.0077~~ shall report, on a form prescribed by rule of the
2498 commission, any change in the information contained in any
2499 initial application form, or any amendment thereto, within not
2500 ~~later than~~ 30 days after the change is effective.

2501 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
2502 ~~494.0077~~ shall report any changes in the principal loan
2503 originator, any addition or subtraction of a control person,
2504 ~~partners, officers, members, joint venturers, directors, or~~
2505 ~~control persons of any licensee or any change~~ changes in the
2506 form of business organization by written amendment in such form
2507 and at such time that the commission specifies by rule.

2508 (a) In any case in which a person or a group of persons,
2509 directly or indirectly or acting by or through one or more
2510 persons, proposes to purchase or acquire a controlling interest
2511 in a licensee, such person or group must submit an initial
2512 application for licensure as a mortgage lender ~~or correspondent~~
2513 ~~mortgage lender~~ before such purchase or acquisition and at the
2514 time and in the form prescribed by the commission by rule.

2515 (b) ~~As used in this subsection, the term "controlling~~
2516 ~~interest" means possession of the power to direct or cause the~~
2517 ~~direction of the management or policies of a company whether~~
2518 ~~through ownership of securities, by contract, or otherwise. Any~~
2519 ~~person who directly or indirectly has the right to vote 25~~
2520 ~~percent or more of the voting securities of a company or who is~~
2521 ~~entitled to 25 percent or more of the company's profits is~~
2522 ~~presumed to possess a controlling interest.~~

2523 (b)(c) Any addition of a designated principal

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2524 ~~representative, partner, officer, member, joint venturer,~~
2525 ~~director, or control person of the applicant who does not have a~~
2526 ~~controlling interest and who has not previously filed a Uniform~~
2527 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~
2528 ~~previously complied with fingerprinting and credit report~~
2529 ~~requirements of s. 494.00611 is the provisions of s.~~
2530 ~~494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.~~
2531 ~~494.0065(5)(e) and (f) shall be subject to the such provisions~~
2532 ~~of this section unless required to file an initial application~~
2533 ~~in accordance with paragraph (a). If after the addition of a~~
2534 ~~control person, the office determines that the licensee does not~~
2535 ~~continue to meet licensure requirements, the office may bring~~
2536 ~~administrative action in accordance with s. 494.0072 to enforce~~
2537 ~~the provisions of this section.~~

2538 ~~(d) The commission shall adopt rules pursuant to ss.~~
2539 ~~120.536(1) and 120.54 providing for the waiver of the~~
2540 ~~application required by this subsection if the person or group~~
2541 ~~of persons proposing to purchase or acquire a controlling~~
2542 ~~interest in a licensee has previously complied with the~~
2543 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~
2544 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~
2545 ~~is currently licensed with the office under this chapter.~~

2546 (5) Each mortgage lender licensee under ~~ss. 494.006-~~
2547 ~~494.0077~~ shall report in a form prescribed by rule by the
2548 commission any indictment, information, charge, conviction, plea
2549 of guilty or nolo contendere, regardless of adjudication, ~~or~~
2550 ~~plea of guilty~~ to any felony or any crime or administrative
2551 violation that involves fraud, dishonesty, breach of trust,
2552 money laundering ~~dishonest dealing,~~ or any other act of moral

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2553 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
2554 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
2555 equitable owner of 10 percent or more of the licensed
2556 corporation, within ~~not later than~~ 30 business days after the
2557 indictment, information, charge, conviction, or final
2558 administrative action.

2559 (6) Each mortgage lender licensee ~~under ss. 494.006-~~
2560 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
2561 involuntary, to the office, within ~~not later than~~ 7 business
2562 days after the action is instituted.

2563 (7) Each mortgage lender licensee ~~under ss. 494.006-~~
2564 ~~494.0077~~ shall designate a registered agent in this state for
2565 service of process.

2566 (8) Each mortgage lender licensee ~~under ss. 494.006-~~
2567 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
2568 faith estimate of the costs the applicant can reasonably expect
2569 to pay in obtaining a mortgage loan. The good faith estimate of
2570 costs must ~~shall~~ be mailed or delivered to the applicant within
2571 3 business days ~~a reasonable time~~ after the licensee receives a
2572 written loan application from the applicant. The estimate of
2573 costs may be provided to the applicant by a person other than
2574 the licensee making the loan. The good faith estimate must
2575 identify the recipient of all payments charged to the borrower
2576 and, except for all fees to be received by the mortgage broker
2577 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
2578 ~~mortgage lender~~, may be disclosed in generic terms, such as, but
2579 not limited to, paid to appraiser, officials, title company, or
2580 any other third-party service provider. The licensee bears the
2581 burden of proving such disclosures were provided to the

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2582 borrower. The commission may adopt rules that set forth the
2583 disclosure requirements of this section.

2584 ~~(9) On or before April 30, 2000, each mortgage lender or~~
2585 ~~correspondent mortgage lender shall file an initial report~~
2586 ~~stating the full legal name, residential address, social~~
2587 ~~security number, date of birth, mortgage broker license number,~~
2588 ~~date of hire, and, if applicable, date of termination for each~~
2589 ~~person who acted as a loan originator or an associate of the~~
2590 ~~mortgage lender or correspondent mortgage lender during the~~
2591 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
2592 ~~correspondent mortgage lender shall file a report only if a~~
2593 ~~person became or ceased to be a loan originator or an associate~~
2594 ~~of the mortgage lender or correspondent mortgage lender during~~
2595 ~~the immediate preceding quarter. Such report shall be filed~~
2596 ~~within 30 days after the last day of each calendar quarter and~~
2597 ~~shall contain the full legal name, residential address, social~~
2598 ~~security number, date of birth, date of hire and, if applicable,~~
2599 ~~the mortgage broker license number and date of termination of~~
2600 ~~each person who became or ceased to be a loan originator or an~~
2601 ~~associate of the mortgage lender or correspondent mortgage~~
2602 ~~lender during the immediate preceding quarter. The commission~~
2603 ~~shall prescribe, by rule, the procedures for filing reports~~
2604 ~~required by this subsection.~~

2605 ~~(10) (a) Each mortgage lender or correspondent mortgage~~
2606 ~~lender licensee shall require the principal representative and~~
2607 ~~all loan originators, not currently licensed as mortgage brokers~~
2608 ~~pursuant to s. 494.0033, who perform services for the licensee~~
2609 ~~to complete 14 hours of professional continuing education during~~
2610 ~~each biennial license period. The education shall cover primary~~

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2611 ~~and subordinate mortgage financing transactions and the~~
2612 ~~provisions of this chapter and the rules adopted under this~~
2613 ~~chapter.~~

2614 ~~(b) The licensee shall maintain records of such training~~
2615 ~~for a period of 4 years, including records of the content of and~~
2616 ~~hours designated for each program and the date and location of~~
2617 ~~the program.~~

2618 ~~(c) Evidence of completion of such programs shall be~~
2619 ~~included with the licensee's renewal application.~~

2620 (9)~~(11)~~ The disclosures in this subsection must be
2621 furnished in writing at the time an adjustable rate mortgage
2622 loan is offered to the borrower and whenever the terms of the
2623 adjustable rate mortgage loan offered have a material change
2624 prior to closing. The lender shall furnish the disclosures
2625 relating to adjustable rate mortgages in a format prescribed by
2626 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
2627 of the Federal Reserve System, as amended; its commentary, as
2628 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
2629 1601 et seq., as amended; together with the Consumer Handbook on
2630 Adjustable Rate Mortgages, as amended; published by the Federal
2631 Reserve Board and the Federal Home Loan Bank Board. The licensee
2632 bears the burden of proving such disclosures were provided to
2633 the borrower.

2634 (10)~~(12)~~~~(a)~~ In every mortgage loan transaction, each
2635 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify
2636 a borrower of any material changes in the terms of a mortgage
2637 loan previously offered to the borrower within 3 business days
2638 after being made aware of such changes by the lender but at
2639 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the

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2640 settlement or closing statement. The licensee bears the burden
2641 of proving such notification was provided and accepted by the
2642 borrower.

2643 ~~(b)~~ A borrower may waive the right to receive notice of a
2644 material change ~~that is granted under paragraph (a)~~ if the
2645 borrower determines that the extension of credit is needed to
2646 meet a bona fide personal financial emergency and the right to
2647 receive notice would delay the closing of the mortgage loan. The
2648 imminent sale of the borrower's home at foreclosure during the
2649 3-day period before the signing of the settlement or closing
2650 statement constitutes an example of a bona fide personal
2651 financial emergency. In order to waive the borrower's right ~~to~~
2652 ~~receive notice not less than 3 business days before the signing~~
2653 ~~of the settlement or closing statement of any such material~~
2654 ~~change~~, the borrower must provide the licensee with a dated
2655 written statement that describes the personal financial
2656 emergency, waives the right to receive the notice, bears the
2657 borrower's signature, and is not on a printed form prepared by
2658 the licensee for the purpose of such a waiver.

2659 (11) Each mortgage lender must report to the office the
2660 failure to meet the net worth requirements of s. 494.00611
2661 within 2 days after the mortgage lender's knowledge of such
2662 failure or after the mortgage lender should have known of such
2663 failure.

2664 Section 47. Section 494.0068, Florida Statutes, is amended
2665 to read:

2666 494.0068 Loan application process.—

2667 (1) In addition to the requirements set forth in s.
2668 494.0067(8), before accepting an application fee in whole or in

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2669 part, a credit report fee, an appraisal fee, or a fee charged as
2670 reimbursement for third-party charges, a mortgage lender shall
2671 make a written disclosure to the borrower, which disclosure may
2672 be contained in the application, setting forth:

2673 (a) Whether all or any part of such fees or charges is
2674 refundable.

2675 (b) The terms and conditions for the refund, if all or any
2676 part of the fees or charges is refundable.

2677 (c) A realistic estimate of the number of days required to
2678 issue a commitment following receipt of the application by the
2679 lender.

2680 (d) The name or title of a person within the lender's
2681 organization to whom the borrower may address written questions,
2682 comments, or complaints and who is required to promptly respond
2683 to such inquiries.

2684 (2) The disclosures required in subsection (1) must ~~shall~~
2685 be acknowledged in writing by the borrower and maintained by the
2686 mortgage lender, and a copy of such acknowledgment shall be
2687 given to the borrower.

2688 (3) The borrower may, without penalty or responsibility for
2689 paying additional fees and charges, withdraw an application at
2690 any time prior to acceptance of commitment. Upon such
2691 withdrawal, the mortgage lender is responsible for refunding to
2692 the borrower only those fees and charges to which the borrower
2693 may be entitled pursuant to the terms set forth in the written
2694 disclosure required by subsection (1), except that:

2695 (a) If the lender failed to provide the borrower with the
2696 written disclosure required by subsection (1), the lender shall
2697 promptly refund to the borrower all funds paid to the lender; or

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2698 (b) If the lender failed to make a good faith effort to
2699 approve the loan, the lender shall promptly refund to the
2700 borrower all funds paid to the lender.

2701 (4) The application fee must be reasonably related to the
2702 services to be performed and may not be based upon a percentage
2703 of the principal amount of the loan or the amount financed.

2704 (5) For the purposes of this section, the term "application
2705 fee" means any moneys advanced by the borrower upon filing an
2706 application with a mortgage lender to offset the lender's
2707 expenses for determining whether the borrower is qualified for
2708 the mortgage loan or whether the mortgage loan should be funded.

2709 Section 48. Section 494.0069, Florida Statutes, is amended
2710 to read:

2711 494.0069 Lock-in agreement.—

2712 (1) Each lock-in agreement must be in writing and must
2713 contain:

2714 (a) The expiration date of the lock-in, if any;

2715 (b) The interest rate locked in, if any;

2716 (c) The discount points locked in, if any;

2717 (d) The commitment fee locked in, if any;

2718 (e) The lock-in fee, if any; and

2719 (f) A statement advising of the provisions of ss. 494.006-
2720 494.0077 regarding lock-in agreements.

2721 (2) The mortgage lender ~~or correspondent mortgage lender~~
2722 shall make a good faith effort to process the mortgage loan
2723 application and stand ready to fulfill the terms of its
2724 commitment before the expiration date of the lock-in agreement
2725 or any extension thereof.

2726 (3) Any lock-in agreement received by a mortgage lender ~~or~~

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2727 ~~correspondent mortgage lender~~ by mail or through a mortgage
2728 broker must be signed by the mortgage lender ~~or correspondent~~
2729 ~~mortgage lender~~ in order to become effective. The borrower may
2730 rescind any lock-in agreement until a written confirmation of
2731 the agreement has been signed by the lender and mailed to the
2732 borrower or to the mortgage broker ~~brokerage business~~ pursuant
2733 to its contractual relationship with the borrower. If a borrower
2734 elects to so rescind, the mortgage lender ~~or correspondent~~
2735 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2736 (4) ~~(a) Before Any correspondent mortgage lender or mortgage~~
2737 ~~lender prior to~~ issuing a mortgage loan rate lock-in agreement,
2738 a mortgage lender must have the ability to timely advance funds
2739 on all mortgage loans for which rate lock-in agreements have
2740 been issued. As used in this section, "ability to timely advance
2741 funds" means having sufficient liquid assets or a line of credit
2742 necessary to cover all rate lock-in agreements issued with
2743 respect to which a lock-in fee is collected.

2744 ~~(a)(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender
2745 that does not comply with this subsection ~~paragraph (a)~~ may
2746 issue mortgage rate lock-in agreements only if, prior to the
2747 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2748 1. Has received a written rate lock-in agreement from a
2749 ~~correspondent mortgage lender or~~ mortgage lender that complies
2750 with this subsection ~~paragraph (a)~~; or

2751 2. Has received a written rate lock-in agreement from an
2752 institutional investor or an agency of the Federal Government or
2753 the state or local government that will be funding, making, or
2754 purchasing the mortgage loan.

2755 ~~(b)(e)~~ All rate lock-in fees collected by a mortgage lender

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2756 ~~or correspondent mortgage lender~~ who is not in compliance with
2757 ~~paragraph (a)~~ must be deposited into an escrow account in a
2758 federally insured financial institution, and such fees may ~~shall~~
2759 not be removed from such escrow account until:

2760 1. The mortgage loan closes and is funded;

2761 2. The applicant cancels the loan application or the loan
2762 application is rejected; or

2763 3. The mortgage lender ~~or correspondent mortgage lender~~ is
2764 required to forward a portion of the lock-in fee to another
2765 ~~correspondent mortgage lender~~, mortgage lender, institutional
2766 investor, or agency that will be funding, making, or purchasing
2767 the loan. The mortgage lender ~~or correspondent mortgage lender~~
2768 may remove only the amount of the lock-in fee actually paid to
2769 another mortgage lender, ~~correspondent mortgage lender~~,
2770 institutional investor, or agency.

2771 (5) For purposes of this section, the term "lock-in fee"
2772 means any moneys advanced by the borrower to lock in for a
2773 specified period of time a specified interest rate or discount
2774 points.

2775 (6) The commission may adopt by rule a form for required
2776 lock-in agreement disclosures.

2777 Section 49. Section 494.007, Florida Statutes, is amended
2778 to read:

2779 494.007 Commitment process.—

2780 (1) If a commitment is issued, the mortgage lender shall
2781 disclose in writing:

2782 (a) The expiration date of the commitment;

2783 (b) The mortgage amount, meaning the face amount of credit
2784 provided to the borrower or in the borrower's behalf;

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2785 (c) If the interest rate or other terms are subject to
2786 change before expiration of the commitment:

2787 1. The basis, index, or method, if any, which will be used
2788 to determine the rate at closing. Such basis, index, or method
2789 shall be established and disclosed with direct reference to the
2790 movement of an interest rate index or of a national or regional
2791 index that is available to and verifiable by the borrower and
2792 beyond the control of the lender; or

2793 2. The following statement, in at least 10-point bold type:
2794 "The interest rate will be the rate established by the lender in
2795 its discretion as its prevailing rate . . . days before
2796 closing.";

2797 (d) The amount of the commitment fee, if any, and whether
2798 and under what circumstances the commitment fee is refundable;
2799 and

2800 (e) The time, if any, within which the commitment must be
2801 accepted by the borrower.

2802 (2) The provisions of a commitment cannot be changed prior
2803 to expiration of the specified period within which the borrower
2804 must accept it. If any information necessary for an accurate
2805 disclosure required by subsection (1) is unknown to the mortgage
2806 lender at the time disclosure is required, the lender shall make
2807 the disclosure based upon the best information reasonably
2808 available to it and shall state that the disclosure is an
2809 estimate.

2810 (3) A commitment fee is refundable if:

2811 (a) The commitment is contingent upon approval by parties
2812 to whom the mortgage lender seeks to sell the loan.

2813 (b) The loan purchaser's requirements are not met due to

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2814 circumstances beyond the borrower's control.

2815 (c) The borrower is willing but unable to comply with the
2816 loan purchaser's requirements.

2817 Section 50. Section 494.0071, Florida Statutes, is amended
2818 to read:

2819 494.0071 Expiration of lock-in agreement or commitment.—If
2820 a lock-in agreement has been executed and the loan does not
2821 close before the expiration date of ~~either~~ the lock-in agreement
2822 or any commitment issued consistent therewith through no
2823 substantial fault of the borrower, the borrower may withdraw the
2824 application or reject or terminate any commitment, whereupon the
2825 mortgage lender ~~or correspondent mortgage lender~~ shall promptly
2826 refund to the borrower any lock-in fee and any commitment fee
2827 paid by the borrower.

2828 Section 51. Section 494.0072, Florida Statutes, is amended
2829 to read:

2830 494.0072 Administrative penalties and fines; license
2831 violations.—

2832 ~~(1) Whenever the office finds a person in violation of an~~
2833 ~~act specified in subsection (2), it may enter an order imposing~~
2834 ~~one or more of the following penalties against that person:~~

2835 ~~(a) Revocation of a license or registration.~~

2836 ~~(b) Suspension of a license or registration, subject to~~
2837 ~~reinstatement upon satisfying all reasonable conditions that the~~
2838 ~~office specifies.~~

2839 ~~(c) Placement of the licensee or applicant on probation for~~
2840 ~~a period of time and subject to all reasonable conditions that~~
2841 ~~the office specifies.~~

2842 ~~(d) Issuance of a reprimand.~~

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2843 ~~(e) Imposition of a fine in an amount not exceeding \$5,000~~
2844 ~~for each count or separate offense.~~

2845 ~~(f) Denial of a license or registration.~~

2846 (1)~~(2)~~ Each of the following acts constitutes a ground for
2847 which the disciplinary actions specified in subsection (2) ~~(1)~~
2848 may be taken:

2849 (a) Being convicted of, or entering a plea of guilty or
2850 ~~Pleading~~ nolo contendere to, ~~or having been convicted or found~~
2851 ~~guilty of,~~ regardless of whether adjudication was withheld, any
2852 felony or a crime involving fraud, dishonesty, breach of trust,
2853 money laundering ~~dishonest dealing,~~ or any act of moral
2854 turpitude.

2855 (b) Fraud, misrepresentation, deceit, negligence, or
2856 incompetence in any mortgage financing transaction.

2857 (c) A material misstatement or omission of fact on an
2858 initial or renewal application.

2859 (d) Disbursement, or an act which has caused or will cause
2860 disbursement, to any person in any amount from the Mortgage
2861 Guaranty ~~Regulatory~~ Trust Fund, the Securities Guaranty Fund, or
2862 the Florida Real Estate Recovery Fund, regardless of any
2863 repayment or restitution to the disbursed fund by the licensee
2864 or any person acting on behalf of the licensee.

2865 (e) Failure of a mortgage lender to place immediately upon
2866 receipt, and maintain until authorized to disburse, any money
2867 entrusted to him or her ~~by a person dealing with him or her as a~~
2868 mortgage lender in a segregated account in a federally insured
2869 financial institution;

2870 (f) Failure to account for or deliver to any person any
2871 personal property that ~~has come into his or her hands and that~~

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2872 is not the licensee's ~~his or her~~ property or that he or she is
2873 not ~~in law or equity~~ entitled to retain, under the circumstances
2874 and at the time which has been agreed upon or is required by law
2875 or, in the absence of a fixed time, upon demand of the person
2876 entitled to such accounting and delivery.

2877 (g) Failure to disburse funds in accordance with
2878 agreements.

2879 (h) Any misuse, misapplication, or misappropriation of
2880 personal property entrusted to his or her care to which he or
2881 she had no current property right at the time of entrustment.

2882 (i) Having a license, or the equivalent, to practice any
2883 profession or occupation revoked, suspended, or otherwise acted
2884 against, including the denial of licensure by a licensing
2885 authority of this state or another state, territory, or country
2886 ~~for fraud, dishonest dealing, or any other act of moral~~
2887 ~~turpitude.~~

2888 (j) Failure to comply with any order or rule made or issued
2889 under this part ~~the provisions of ss. 494.001-494.0077.~~

2890 (k) Acting as a mortgage lender or operating a branch
2891 office ~~correspondent mortgage lender~~ without a current, ~~active~~
2892 license issued under this part ~~ss. 494.006-494.0077.~~

2893 ~~(l) Failure to timely pay any fee, charge, or fine under~~
2894 ~~ss. 494.001-494.0077.~~

2895 ~~(l)(m)~~ Failure to maintain, preserve, and keep available
2896 for examination all books, accounts, or other documents required
2897 by ss. 494.001-494.0077 or the rules of the commission.

2898 ~~(m)(n)~~ Refusal to permit an investigation or examination of
2899 books and records, or refusal to comply with an office subpoena
2900 or subpoena duces tecum.

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2901 (n)~~(e)~~ Consistently and materially underestimating the
2902 closing costs.

2903 (o)~~(p)~~ Failure to comply with, or violations of, any other
2904 provision of ss. 494.001-494.0077.

2905 (p)~~(q)~~ Commission of fraud, misrepresentation, concealment,
2906 or dishonest dealing by trick, scheme, or device;r culpable
2907 negligence;r~~or~~ breach of trust in any business transaction in
2908 any state, nation, or territory; or aiding, assisting, or
2909 conspiring with any other person engaged in any such misconduct
2910 and in furtherance thereof.

2911 (q)~~(r)~~ Failure to timely pay any fee, charge, or fine
2912 imposed or assessed pursuant to this chapter or rules adopted
2913 under this chapter.

2914 (r)~~(s)~~ Payment to the office for a license or permit with a
2915 check or electronic transmission of funds that is dishonored by
2916 the applicant's or licensee's financial institution.

2917 (s)~~(t)~~ Having a final judgment entered against the
2918 applicant or licensee in a civil action upon grounds of fraud,
2919 embezzlement, misrepresentation, or deceit.

2920 (t)~~(u)~~1. Having been the subject of any:

2921 1. Decision, finding, injunction, suspension, prohibition,
2922 revocation, denial, judgment, or administrative order by any
2923 court ~~of competent jurisdiction~~, administrative law judge, state
2924 or federal agency, national securities exchange, national
2925 commodities exchange, national option exchange, national
2926 securities association, national commodities association, or
2927 national option association involving a violation of any federal
2928 or state securities or commodities law, or any rule or
2929 regulation adopted under such law, or involving a violation of

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2930 any rule or regulation of any national securities, commodities,
2931 or options exchange or association.

2932 2. ~~Having been the subject of any~~ Injunction or adverse
2933 administrative order by a state or federal agency regulating
2934 banking, insurance, finance or small loan companies, real
2935 estate, mortgage brokers or lenders, money transmitters, or
2936 other related or similar industries.

2937 (u)~~(v)~~ In any mortgage transaction, violating any provision
2938 of the federal Real Estate Settlement Procedure Act, as amended,
2939 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
2940 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
2941 under such acts.

2942 (v) Requesting a specific valuation, orally or in writing,
2943 from an appraiser for a particular property, implying to an
2944 appraiser that a specific valuation is needed for a particular
2945 property, or in any manner conditioning the order for an
2946 appraisal on the appraisal meeting a specific valuation. The
2947 numeric value of the specific valuation sought need not be
2948 stated, but rather the mere statement that a specific valuation
2949 is sought, violates this section.

2950 (w) Failure to provide a lender with all appraisals
2951 obtained by the loan originator with respect to a particular
2952 property if more than one appraisal has been obtained.

2953 (x) Conducting any lending activities in the absence of a
2954 properly designated principal loan originator or lending
2955 activities at any particular branch office without a properly
2956 designated branch manager.

2957 (y) Having a loan originator, mortgage broker, or mortgage
2958 lender license, or the equivalent thereof, revoked in any

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2959 jurisdiction.

2960 (z) Operating an unlicensed branch office.

2961 (2) If the office finds a person in violation of an act
2962 specified in subsection (1), it may enter an order imposing one
2963 or more of the following penalties:

2964 (a) Revocation of a license or registration.

2965 (b) Suspension of a license or registration, subject to
2966 reinstatement upon satisfying all reasonable conditions imposed
2967 by the office.

2968 (c) Issuance of a reprimand.

2969 (d) Imposition of a fine up to \$25,000 for each count or
2970 separate offense.

2971 (e) Denial of a license or registration.

2972 ~~(3) A mortgage lender or correspondent mortgage lender is~~
2973 ~~subject to the disciplinary actions specified in subsection (2)~~
2974 ~~(1) if any officer, member, director, control person, joint~~
2975 ~~venturer, or ultimate equitable owner of a 10-percent or greater~~
2976 ~~interest in the mortgage lender or correspondent mortgage~~
2977 ~~lender, associate, or employee of the mortgage lender or~~
2978 ~~correspondent mortgage lender violates or has violated any~~
2979 ~~provision of subsection (1) (2).~~

2980 ~~(4) A natural person who is an associate of or employed by~~
2981 ~~a mortgage lender or correspondent mortgage lender is subject to~~
2982 ~~the disciplinary actions specified in subsection (1) if such~~
2983 ~~person violates any provision of subsection (2).~~

2984 ~~(4)(5)~~ (4) A principal loan originator ~~representative~~ of a
2985 mortgage lender ~~or correspondent mortgage lender~~ is subject to
2986 the disciplinary actions specified in subsection (2) ~~(1)~~ for
2987 violations of subsection (1) ~~(2)~~ by associates of the ~~or~~

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

2995 (5) The office may summarily suspend the license of any
2996 mortgage lender in accordance with section 120.60(6) due to the
2997 arrest of a control person for any felony or crime involving
2998 fraud, dishonesty, breach of trust, money laundering, or any
2999 other act of moral turpitude, or if the office has reason to
3000 believe that a licensee poses immediate, serious danger to the
3001 public's health, safety, or welfare. Any proceeding for the
3002 purpose of summary suspension of a license must be conducted by
3003 the commissioner of the office, or designee, who shall issue the
3004 final summary order. A reasonable belief by the office that a
3005 mortgage lender's control person has committed any act of fraud
3006 is deemed sufficient to constitute an immediate danger to the
3007 public's health, safety, or welfare.

3008 (6) The office may deny any request to terminate or
3009 withdraw any application or license if the office believes that
3010 an act which would be a ground for denial, suspension,
3011 restriction, or revocation under this chapter has been
3012 committed.

3013 Section 52. Section 494.00721, Florida Statutes, is amended
3014 to read:

3015 494.00721 Net worth.—

3016 (1) The net worth requirements ~~required~~ in s. 494.00611 ss.

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3017 ~~494.0061, 494.0062, and 494.0065~~ shall be continually maintained
3018 as a condition of licensure.

3019 (2) If a mortgage lender ~~or correspondent mortgage lender~~
3020 fails to satisfy the net worth requirements, the mortgage lender
3021 ~~or correspondent mortgage lender~~ shall immediately cease taking
3022 any new mortgage loan applications. Thereafter, the mortgage
3023 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
3024 within which to satisfy the net worth requirements. If the
3025 licensee makes the office aware, prior to an examination, that
3026 the licensee no longer meets the net worth requirements, the
3027 mortgage lender ~~or correspondent mortgage lender~~ shall have 120
3028 days within which to satisfy the net worth requirements. A
3029 mortgage lender may ~~or correspondent mortgage lender~~ shall not
3030 resume acting as a mortgage lender ~~or correspondent mortgage~~
3031 ~~lender~~ without written authorization from the office, which
3032 authorization shall be granted if the mortgage lender ~~or~~
3033 ~~correspondent mortgage lender~~ provides the office with
3034 documentation which satisfies the requirements of s. 494.00611
3035 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~
3036 whichever is applicable.

3037 (3) If the mortgage lender ~~or correspondent mortgage lender~~
3038 does not satisfy the net worth requirements within 120 days ~~the~~
3039 ~~120-day period~~, the license of the mortgage lender ~~or~~
3040 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
3041 and canceled and all servicing contracts shall be disposed of in
3042 a timely manner by the mortgage lender ~~or correspondent mortgage~~
3043 ~~lender~~.

3044 Section 53. Section 494.0073, Florida Statutes, is amended
3045 to read:

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3046 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
3047 when acting as a mortgage broker ~~brokerage business~~. ~~The~~
3048 provision of this part Sections 494.006-494.0077 do not prohibit
3049 a mortgage lender ~~or correspondent mortgage lender~~ from acting
3050 as a mortgage broker ~~brokerage business~~. However, in mortgage
3051 transactions in which a mortgage lender ~~or correspondent~~
3052 ~~mortgage lender~~ acts as a mortgage broker ~~brokerage business~~,
3053 the provisions of ss. 494.0038, 494.004(8), 494.0042, and
3054 494.0043(1), (2), and (3) apply.

3055 Section 54. Section 494.0075, Florida Statutes, is amended
3056 to read:

3057 494.0075 Requirements for selling loans to noninstitutional
3058 investors.—

3059 (1) A mortgage lender, when selling a mortgage loan to a
3060 noninstitutional investor, shall:

3061 (a) Before any payment of money by a noninstitutional
3062 investor, provide an opinion of value from an appraiser stating
3063 the value of the security property unless the opinion is waived
3064 in writing. The opinion must state the value of the property as
3065 it exists on the date of the opinion. If any relationship exists
3066 between the lender and the appraiser, that relationship must
3067 ~~shall~~ be disclosed. ~~†~~

3068 (b) Provide to the noninstitutional investor a mortgagee's
3069 title insurance policy or an opinion of title by an attorney
3070 licensed to practice law in this state, or a copy thereof:

3071 1. If a title insurance policy is issued, it must insure
3072 the noninstitutional investor against the unmarketability of the
3073 mortgagee's interest in such title. It must also specify any
3074 superior liens that exist against the property. If an opinion of

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3075 title is issued by an attorney ~~licensed to practice law in this~~
3076 ~~state~~, the opinion must include a statement as to the
3077 marketability of the title to the property described in the
3078 mortgage and specify the priority of the mortgage being
3079 purchased.

3080 2. If the title insurance policy or opinion of title is not
3081 available at the time of purchase, the licensee shall provide a
3082 binder of the title insurance or conditional opinion of title.
3083 This binder or opinion must include any conditions or
3084 requirements needed to be corrected before ~~prior to~~ the issuance
3085 of the final title policy or opinion of title. The binder or
3086 opinion must also include information concerning the
3087 requirements specified in subparagraph 1. Any conditions must be
3088 eliminated or waived in writing by the investor before ~~prior to~~
3089 delivery to the noninstitutional investor. The policy or
3090 opinion, or a copy thereof, shall be delivered to the investor
3091 within a reasonable period of time, not exceeding 6 months,
3092 after purchase.

3093 3. The requirements of this paragraph may be waived in
3094 writing. If the requirements are waived by the noninstitutional
3095 investor, the waiver must include the following wording: "The
3096 noninstitutional investor acknowledges that the mortgage lender
3097 selling this mortgage loan is not providing a title insurance
3098 policy or opinion of title issued by an attorney who is licensed
3099 to practice law in the State of Florida. Any requirement for
3100 title insurance or for a legal opinion of title is the sole
3101 responsibility of the noninstitutional mortgage purchaser."

3102 (c) Provide, if the loan is other than a first mortgage, a
3103 statement showing the balance owed by the mortgagor on any

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3104 existing mortgages prior to this investment and the status of
3105 such existing mortgages.

3106 (d) Provide a disclosure if the licensee is directly or
3107 indirectly acting as a borrower or principal in the transaction.

3108 (2) Each mortgage, or other instrument securing a note or
3109 assignment thereof, must ~~shall~~ be recorded before being
3110 delivered to the noninstitutional investor.

3111 (3) Each mortgage and assignment shall be recorded as soon
3112 as practical, but within ~~no later than~~ 30 business days after
3113 the date of purchase.

3114 (4) If the loan is to be serviced by a licensee under this
3115 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
3116 shall be a written servicing agreement.

3117 ~~(5) The mortgage lender shall cause the original note to be~~
3118 ~~properly endorsed showing the assignment of the note to the~~
3119 ~~noninstitutional investor.~~

3120 Section 55. Section 494.0077, Florida Statutes, is amended
3121 to read:

3122 494.0077 Other products and services. ~~Sections 494.006-~~
3123 ~~494.0077 do not prohibit~~ A mortgage lender may not offer from
3124 ~~offering~~, for a fee or commission, products and services in
3125 addition to those offered in conjunction with making a mortgage
3126 loan.

3127 Section 56. Paragraph (b) of subsection (2) of section
3128 501.1377, Florida Statutes, is amended to read:

3129 501.1377 Violations involving homeowners during the course
3130 of residential foreclosure proceedings.-

3131 (2) DEFINITIONS.-As used in this section, the term:

3132 (b) "Foreclosure-rescue consultant" means a person who

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3133 directly or indirectly makes a solicitation, representation, or
3134 offer to a homeowner to provide or perform, in return for
3135 payment of money or other valuable consideration, foreclosure-
3136 related rescue services. The term does not apply to:

3137 1. A person excluded under s. 501.212.

3138 2. A person acting under the express authority or written
3139 approval of the United States Department of Housing and Urban
3140 Development or other department or agency of the United States
3141 or this state to provide foreclosure-related rescue services.

3142 3. A charitable, not-for-profit agency or organization, as
3143 determined by the United States Internal Revenue Service under
3144 s. 501(c)(3) of the Internal Revenue Code, which offers
3145 counseling or advice to an owner of residential real property in
3146 foreclosure or loan default if the agency or organization does
3147 not contract for foreclosure-related rescue services with a for-
3148 profit lender or person facilitating or engaging in foreclosure-
3149 rescue transactions.

3150 4. A person who holds or is owed an obligation secured by a
3151 lien on any residential real property in foreclosure if the
3152 person performs foreclosure-related rescue services in
3153 connection with this obligation or lien and the obligation or
3154 lien was not the result of or part of a proposed foreclosure
3155 reconveyance or foreclosure-rescue transaction.

3156 5. A financial institution as defined in s. 655.005 and any
3157 parent or subsidiary of the financial institution or of the
3158 parent or subsidiary.

3159 6. A licensed mortgage broker, ~~mortgage lender,~~ or
3160 ~~correspondent~~ mortgage lender that provides mortgage counseling
3161 or advice regarding residential real property in foreclosure,

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3162 which counseling or advice is within the scope of services set
3163 forth in chapter 494 and is provided without payment of money or
3164 other consideration other than a mortgage broker ~~brokerage~~ fee
3165 ~~as defined in s. 494.001.~~

3166 Section 57. Effective July 1, 2009:

3167 (1) All mortgage business school permits issued pursuant to
3168 s. 494.0029, Florida Statutes, expire on December 31, 2009.

3169 (2) All mortgage brokerage business licenses issued before
3170 January 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida
3171 Statutes, expire on March 31, 2010. However, if a person holding
3172 an active mortgage brokerage business license issued on or
3173 before December 31, 2009, applies for a mortgage broker license
3174 between January 1, 2010, and March 31, 2010, the mortgage
3175 brokerage business license does not expire until the office
3176 approves or denies the mortgage broker license application. A
3177 mortgage broker license approved on or after January 1, 2010 is
3178 effective until December 31, 2010. Application fees may not be
3179 prorated for partial years of licensure.

3180 (3) All mortgage broker licenses issued before January 1,
3181 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3182 expire on March 31, 2010. However, if a person holding an active
3183 mortgage broker license issued on or before December 31, 2009,
3184 applies for a loan originator license between January 1, 2010,
3185 and March 31, 2010, the mortgage broker license does not expire
3186 until the office approves or denies the loan originator license
3187 application. Notwithstanding s. 120.60, Florida Statutes, for
3188 applications submitted between July 1, 2009, and March 31, 2010,
3189 the office has 60 days to notify the applicant of any apparent
3190 errors or omissions in an application and to request any

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3191 additional information the agency may require, and the office
3192 has 180 days to approve or deny a completed application.
3193 Application fees may not be prorated for partial years of
3194 licensure.

3195 (4) Persons holding an active mortgage lender license on
3196 January 1, 2010, issued pursuant to s. 494.0061 or s. 494.0064,
3197 Florida Statutes, must file a transition request, in a form
3198 prescribed by commission rule, with the registry by March 31,
3199 2010. The license of a mortgage lender that fails to file a
3200 transition request with the registry by March 31, 2010, expires
3201 on March 31, 2010. License fees may not be prorated for partial
3202 years of licensure.

3203 (5) All mortgage lender licenses issued before January 1,
3204 2010, pursuant to s. 494.0065, Florida Statutes, expire on March
3205 31, 2010. However, if a person holding such license applies for
3206 a mortgage broker license or mortgage lender license between
3207 January 1, 2010, and March 31, 2010, the license does not expire
3208 until the office approves or denies the mortgage broker license
3209 or mortgage lender license application. Application fees may not
3210 be prorated for partial years of licensure.

3211 (6) All correspondent mortgage lender licenses issued
3212 pursuant to s. 494.62, Florida Statutes, expire on March 31,
3213 2010. However, if a person holding an active correspondent
3214 mortgage lender license issued on or before December 31, 2009,
3215 applies for a mortgage broker or mortgage lender license between
3216 January 1, 2010, and March 31, 2010, the correspondent mortgage
3217 lender license does not expire until the office approves or
3218 denies the mortgage broker or mortgage lender license
3219 application. Application fees may not be prorated for partial

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3220 years of licensure.

3221 (7) The Office of Financial Regulation shall impose a one-
3222 time \$50 registry fee to be paid by all persons who were
3223 licensed as a mortgage brokerage business, mortgage broker,
3224 mortgage lender, or correspondent mortgage lender before January
3225 1, 2010, and who are seeking licensure as a loan originator,
3226 mortgage broker, or mortgage lender between January 1, 2010 and
3227 March 31, 2010, as provided in this act, to be collected at the
3228 time of license application or transfer.

3229 Section 58. Except as otherwise expressly provided in this
3230 act, this act shall take effect January 1, 2010.