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

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

57 | loan originator or mortgage broker licensing and
58 | regulation; repealing s. 494.0031, F.S., relating to
59 | licensure as a mortgage brokerage business; creating s.
60 | 494.00312, F.S.; providing for the licensure of loan
61 | originators; providing license application requirements;
62 | providing grounds for license denial; requiring the denial
63 | of a license under certain circumstances; requiring
64 | licenses to be renewed annually by a certain date;
65 | creating s. 494.00313, F.S.; providing for the renewal of
66 | a loan originator license; repealing s. 494.0032, F.S.,
67 | relating to renewal of a mortgage brokerage business
68 | license or branch office license; creating s. 494.00321,
69 | F.S.; providing for the licensure of mortgage brokers;
70 | providing license application requirements; providing
71 | grounds for license denial; requiring the denial of a
72 | license under certain circumstances; requiring licenses to
73 | be renewed by a certain date; creating s. 494.00322, F.S.;
74 | providing for the annual renewal of a mortgage broker
75 | license; providing license renewal requirements; repealing
76 | s. 494.0033, F.S., relating to a mortgage broker license;
77 | amending s. 494.00331, F.S.; requiring a loan originator
78 | to be an employee or independent contractor for a mortgage
79 | broker or mortgage lender; repealing s. 494.0034, F.S.,
80 | relating to renewal of mortgage broker license; amending
81 | s. 494.0035, F.S.; providing for the management of a
82 | mortgage broker by a principal loan originator and a
83 | branch office by a loan originator; providing minimum
84 | requirements; amending s. 494.0036, F.S.; revising

85 provisions relating to the licensure of a mortgage
86 broker's branch office; amending s. 494.0038, F.S.;
87 revising provisions relating to loan origination and
88 mortgage broker fees; amending s. 494.0039, F.S.;
89 conforming terms; amending s. 494.004, F.S.; revising
90 provisions relating to licensees; providing for registry
91 requirements; deleting obsolete provisions; repealing s.
92 494.0041, F.S., relating to license violations and
93 administrative penalties; providing additional grounds for
94 assessing fines and penalties; amending s. 494.0042, F.S.;
95 providing for loan originator fees; conforming terms;
96 amending ss. 494.00421 and 494.0043, F.S.; conforming
97 terms; amending s. 494.006, F.S.; revising provisions
98 relating to who is exempt from licensure and regulation as
99 a mortgage lender; repealing s. 494.0061, F.S., relating
100 to mortgage lender license requirements; creating s.
101 494.00611, F.S.; providing for the licensure of mortgage
102 lenders; providing license application requirements;
103 providing grounds for license denial; requiring the denial
104 of a license under certain circumstances; requiring
105 licenses to be renewed annually by a certain date;
106 creating s. 494.00612, F.S.; providing for the renewal of
107 a mortgage lender license; repealing s. 494.0062, F.S.,
108 relating to correspondent mortgage lender license
109 requirements; amending s. 494.0063, F.S.; requiring a
110 mortgage lender to obtain an annual financial audit report
111 and submit a copy to the office within certain time
112 periods; repealing s. 494.0064, F.S., relating to renewal

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113 of mortgage lender license; repealing s. 494.0065, F.S.,
114 relating to certain licenses and registrations that were
115 converted into mortgage lender licenses; amending s.
116 494.0066, F.S.; revising provisions relating to a mortgage
117 lender branch office license; creating s. 494.00665, F.S.;
118 providing for a principal loan originator and branch
119 manager for a mortgage lender; providing requirements and
120 limitations; amending s. 494.0067, F.S.; revising
121 requirements of mortgage lenders; providing for registry
122 requirements; deleting obsolete provisions; providing for
123 servicing agreements; amending ss. 494.0068, 494.0069,
124 494.007, and 494.0071, F.S.; conforming terms; repealing
125 s. 494.0072, F.S., relating to license violations and
126 administrative penalties; amending ss. 494.00721,
127 494.0073, 494.0075, 494.0077, and 501.1377 F.S.; deleting
128 provisions relating to foreclosure rescue consultants and
129 foreclosure related rescue service agreements; providing
130 for the termination of mortgage business school licenses;
131 providing for the expiration of mortgage brokerage
132 business licenses, mortgage broker licenses, and
133 correspondent mortgage lender licenses; providing
134 requirements for applying for a loan originator, mortgage
135 broker and mortgage lender license by a certain date;
136 providing effective dates.

137

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

139

140 Section 1. Section 494.001, Florida Statutes, is amended

141 to read:

142 494.001 Definitions.--As used in ss. 494.001-494.0077, the
143 term:

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

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

157 ~~(3) "Act as a mortgage broker" means, for compensation or~~
158 ~~gain, or in the expectation of compensation or gain, either~~
159 ~~directly or indirectly, accepting or offering to accept an~~
160 ~~application for a mortgage loan, soliciting or offering to~~
161 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~
162 ~~offering to negotiate the terms or conditions of a mortgage loan~~
163 ~~on behalf of a lender, or negotiating or offering to negotiate~~
164 ~~the sale of an existing mortgage loan to a noninstitutional~~
165 ~~investor. An employee whose activities are ministerial and~~
166 ~~clerical, which may include quoting available interest rates or~~
167 ~~loan terms and conditions, is not acting as a mortgage broker.~~

168 ~~(4) "Act as a mortgage lender" means to make a mortgage~~

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169 ~~loan or to service a mortgage loan for others or, for~~
170 ~~compensation or gain, or in the expectation of compensation or~~
171 ~~gain, either directly or indirectly, to sell or offer to sell a~~
172 ~~mortgage loan to a noninstitutional investor.~~

173 ~~(5) "Associate" means a person required to be licensed as~~
174 ~~a mortgage broker under this chapter who is employed by or~~
175 ~~acting as an independent contractor for a mortgage brokerage~~
176 ~~business or a person acting as an independent contractor for a~~
177 ~~mortgage lender or correspondent mortgage lender. The use of the~~
178 ~~term associate, in contexts other than in the administration of~~
179 ~~ss. 494.003-494.0077, shall not be construed to impose or effect~~
180 ~~the common law or statutory liability of the employer.~~

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

184 (2)-(6) "Branch manager ~~broker~~" means the licensed loan
185 originator licensee in charge of, and responsible for, the
186 operation of the a branch office of a mortgage broker or
187 mortgage lender ~~brokerage business~~.

188 (3)-(7) "Branch office" means a location, other than a
189 mortgage broker's or mortgage lender's ~~licensee's~~ principal
190 place of business:

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

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

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

201 (4)(8) "Commission" means the Financial Services
 202 Commission.

203 (5)(9) "Control person" means an individual, partnership,
 204 corporation, trust, or other organization that possesses the
 205 power, directly or indirectly, to direct the management or
 206 policies of a company, whether through ownership of securities,
 207 by contract, or otherwise. Control person includes, but is not
 208 limited to ~~A person is presumed to control a company if, with~~
 209 ~~respect to a particular company, that person:~~

210 (a) A company's executive officers, including the
 211 president, chief executive officer, chief financial officer,
 212 chief operations officer, chief legal officer, chief compliance
 213 officer, director, and other individuals having similar status
 214 or functions.

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

219 (c) For a partnership, all general partners and limited or
 220 special partners that have contributed 10 percent or more or
 221 that have the right to receive, upon dissolution, 10 percent or
 222 more of the partnership's capital.

223 (d) For a trust, each trustee.

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

225 and those members that have contributed 10 percent or more or
 226 that have the right to receive, upon dissolution, 10 percent or
 227 more of the partnership's capital.

228 (f) Principal loan originators.

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

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

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

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

245 ~~(b) Directly or indirectly may vote 10 percent or more of~~
 246 ~~a class of voting securities or sell or direct the sale of 10~~
 247 ~~percent or more of a class of voting securities; or~~

248 ~~(c) In the case of a partnership, may receive upon~~
 249 ~~dissolution or has contributed 10 percent or more of the~~
 250 ~~capital.~~

251 ~~(10) "Office" means the Office of Financial Regulation of~~
 252 ~~the commission.~~

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

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

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

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

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

266 ~~(c) Probation of a license or registration for an offense~~
 267 ~~involving fraud, dishonest dealing, or an act of moral~~
 268 ~~turpitude.~~

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

275 (a) Financial statements, including notes related to the
 276 financial statements and required supplementary information,
 277 prepared in conformity with United States generally accepted
 278 accounting principles.

279 (b) An expression of opinion regarding whether the
 280 financial statements are presented in conformity with accounting

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281 principles generally accepted in the United States, or an
282 assertion to the effect that such an opinion cannot be expressed
283 and the reasons.

284 (10)~~(14)~~ "Institutional investor" means a depository
285 institution ~~state or national bank, state or federal savings and~~
286 ~~loan association or savings bank,~~ real estate investment trust,
287 insurance company, real estate company, accredited investor as
288 defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or
289 mortgage lender ~~business~~ licensed under this chapter ~~ss.~~
290 ~~494.001-494.0077,~~ or other business entity that invests in
291 mortgage loans, including a secondary mortgage market
292 institution including, without limitation, the Federal National
293 Mortgage Association, the Federal Home Loan Mortgage
294 Corporation, and the Government National Mortgage Association,
295 conduits, investment bankers, and any subsidiary of such
296 entities.

297 (11)~~(15)~~ "Loan commitment" or "commitment" means a
298 statement by the lender setting forth the terms and conditions
299 upon which the lender is willing to make a particular mortgage
300 loan to a particular borrower.

301 (12) "Loan modification" means a modification to an
302 existing loan. The term does not include a refinancing
303 transaction.

304 (13) "Loan origination fee" means the total compensation
305 from any source received by a mortgage broker acting as a loan
306 originator. Any payment for processing mortgage loan
307 applications must be included in the fee and must be paid to the
308 mortgage broker.

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309 (14) "Loan originator" means an individual who, directly
310 or indirectly, solicits or offers to solicit a mortgage loan,
311 accepts or offers to accept an application for a mortgage loan,
312 negotiates or offers to negotiate the terms or conditions of a
313 new or existing mortgage loan on behalf of a borrower or lender,
314 processes a mortgage loan application, or negotiates or offers
315 to negotiate the sale of an existing mortgage loan to a
316 noninstitutional investor for compensation or gain. The term
317 includes the activities of a loan originator as that term is
318 defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an
319 individual acting as a loan originator pursuant to that
320 definition is acting as a loan originator for purposes of this
321 definition. The term does not include an employee of a mortgage
322 broker or mortgage lender who performs only administrative or
323 clerical tasks, including quoting available interest rates,
324 physically handling a completed application form, or
325 transmitting a completed form to a lender on behalf of a
326 prospective borrower

327 (15)~~(16)~~ "Lock-in agreement" means an agreement whereby
328 the lender guarantees for a specified number of days or until a
329 specified date the availability of a specified rate of interest
330 or specified formula by which the rate of interest will be
331 determined or ~~and/or~~ specific number of discount points will be
332 given, if the loan is approved and closed within the stated
333 period of time.

334 (16)~~(17)~~ "Making ~~Make~~ a mortgage loan" means to close a
335 mortgage loan in a person's name, ~~or to~~ advance funds, offer to
336 advance funds, or make a commitment to advance funds to an

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337 applicant for a mortgage loan.

338 (17) "Mortgage broker" means a person conducting loan
339 originator activities through one or more licensed loan
340 originators employed by the mortgage broker or as independent
341 contractors to the mortgage broker.

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

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

346 (18) "Mortgage lender" means a person making a mortgage
347 loan or servicing a mortgage loan for others, or, for
348 compensation or gain, directly or indirectly, selling or
349 offering to sell a mortgage loan to a noninstitutional investor.

350 ~~(19)-(20)~~ "Mortgage loan" means any:

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

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

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

362 (20) "Mortgage loan application" means the submission of a
363 borrower's financial information in anticipation of a credit
364 decision, which includes the borrower's name, the borrower's

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365 monthly income, the borrower's social security number to obtain
366 a credit report, the property address, an estimate of the value
367 of the property, the mortgage loan amount sought, and any other
368 information deemed necessary by the loan originator. An
369 application may be in writing or electronically submitted,
370 including a written record of an oral application.

371 (21) "Net worth" means total assets minus total
372 liabilities pursuant to United States generally accepted
373 accounting principles.

374 (22) "Noninstitutional investor" means an investor other
375 than an institutional investor.

376 ~~(23) "Nonresidential mortgage loan" means a mortgage loan~~
377 ~~other than a residential mortgage loan.~~

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

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

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

385 (25) "Principal loan originator" means the licensed loan
386 originator in charge of, and responsible for, the operation of a
387 mortgage lender or mortgage broker, including all of the
388 activities of the mortgage lender's or mortgage broker's loan
389 originators and branch managers, whether employees or
390 independent contractors.

391 (26) "Principal place of business" means a mortgage
392 broker's or mortgage lender's licensee's primary business

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393 office, the street address, or physical location that ~~of which~~
394 is designated on the application for licensure or any amendment
395 to such application.

396 (27) "Registered loan originator" means a loan originator
397 who is employed by a depository institution, by a subsidiary
398 that is owned and controlled by a depository institution and
399 regulated by a federal banking agency, or by an institution
400 regulated by the Farm Credit Administration, and who is
401 registered with and maintains a unique identifier through the
402 registry.

403 (28) "Registry" means the Nationwide Mortgage Licensing
404 System and Registry, which is the mortgage licensing system
405 developed and maintained by the Conference of State Bank
406 Supervisors and the American Association of Residential Mortgage
407 Regulators for the licensing and registration of loan
408 originators.

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

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

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

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

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

420 (30) "Servicing endorsement" means authorizing a mortgage

421 lender to service a loan for more than 4 months.

422 ~~(31)-(28)~~ "Servicing Service a mortgage loan" means to
 423 receive, ~~or~~ cause to be received, or transferred for another,
 424 installment payments of principal, interest, or other payments
 425 pursuant to a mortgage loan.

426 ~~(32)-(29)~~ "Substantial fault of the borrower" means that
 427 the borrower:

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

430 (b) Provided information, in the application or
 431 subsequently, which upon verification proved to be significantly
 432 inaccurate, causing the need for review or further investigation
 433 by the lender or broker;

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

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

439
 440 For purposes of this definition, a borrower is considered to
 441 have provided information or documentation in a timely manner if
 442 such information and documentation was received by the lender
 443 within 7 days after the borrower received a request for same,
 444 and information is considered significantly inaccurate if the
 445 correct information materially affects the eligibility of the
 446 borrower for the loan for which application is made.

447 ~~(33)-(30)~~ "Ultimate equitable owner" means a natural person
 448 who, directly or indirectly, owns or controls an ownership

449 interest in a corporation, a foreign corporation, an alien
 450 business organization, or any other form of business
 451 organization, regardless of whether such natural person owns or
 452 controls such ~~ownership~~ interest through one or more natural
 453 persons or one or more proxies, powers of attorney, nominees,
 454 corporations, associations, partnerships, trusts, joint stock
 455 companies, or other entities or devices, or any combination
 456 thereof.

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

459 ~~(32) "Mortgage loan application" means a submission of a~~
 460 ~~borrower's financial information in anticipation of a credit~~
 461 ~~decision, whether written or computer-generated, relating to a~~
 462 ~~mortgage loan. If the submission does not state or identify a~~
 463 ~~specific property, the submission is an application for a~~
 464 ~~prequalification and not an application for a mortgage loan~~
 465 ~~under this part. The subsequent addition of an identified~~
 466 ~~property to the submission converts the submission to an~~
 467 ~~application for a mortgage loan.~~

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

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

473 Section 2. Section 494.0011, Florida Statutes, is amended
 474 to read:

475 494.0011 Powers and duties of the commission and office.--

476 (1) The office shall be responsible for the administration

477 and enforcement of ss. 494.001-494.0077.

478 (2) ~~The commission may adopt rules pursuant to ss.~~
 479 ~~120.536(1) and 120.54~~ To administer ~~implement~~ ss. 494.001-
 480 494.0077, ~~the~~ the commission may adopt rules:

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

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

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

488 2. Require the use of uniform forms that have been
 489 approved by the registry and any subsequent amendments to such
 490 forms if the forms are substantially in compliance with the
 491 provisions of this chapter. Uniform forms that the commission
 492 may adopt include, but are not limited to:

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

494 b. Uniform Mortgage Biographical Statement & Consent Form,
 495 MU2.

496 c. Uniform Mortgage Branch Office Form, MU3.

497 d. Uniform Individual Mortgage License/Registration &
 498 Consent Form, MU4.

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

501 4. Prescribe requirements for amending or surrendering a
 502 license or other activities as the commission deems necessary
 503 for the office's participation in the registry.

504 5. Prescribe procedures that allow a licensee to challenge

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505 information contained in the registry.

506 6. Prescribe procedures for reporting violations of this
507 chapter and disciplinary actions on licensees to the registry.
508 ~~The commission may prescribe by rule requirements and procedures~~
509 ~~for obtaining an exemption due to a technological or financial~~
510 ~~hardship. The commission may also adopt rules to accept~~
511 ~~certification of compliance with requirements of this act in~~
512 ~~lieu of requiring submission of documents.~~

513 (c) Establishing time periods during which a loan
514 originator, mortgage broker, or mortgage lender license
515 applicant under part II or part III is barred from licensure due
516 to prior criminal convictions of, or guilty or nolo contendere
517 pleas by, any of the applicant's control persons, regardless of
518 adjudication.

519 1. The rules must provide:

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

522 b. A 15-year disqualifying period for felonies involving
523 moral turpitude;

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

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

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

531 3. The rule may provide for mitigating factors for crimes
532 identified in sub-subparagraph 1.b. However, the mitigation may

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533 not result in a period of disqualification less than 7 years.
534 The rule may not mitigate the disqualifying periods in sub-
535 subparagraphs 1.a., 1.c., and 1.d.

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

538 5. Section 112.011 is not applicable to eligibility for
539 licensure under this part.

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

544 (4) The office shall participate in the registry and shall
545 regularly report to the registry violations of this chapter,
546 disciplinary actions, and other information deemed relevant by
547 the office under this chapter.

548 ~~(4) (a) The office has the power to issue and to serve~~
549 ~~subpoenas and subpoenas duces tecum to compel the attendance of~~
550 ~~witnesses and the production of all books, accounts, records,~~
551 ~~and other documents and materials relevant to an examination or~~
552 ~~investigation. The office, or its duly authorized~~
553 ~~representative, has the power to administer oaths and~~
554 ~~affirmations to any person.~~

555 ~~(b) The office may, in its discretion, seek subpoenas or~~
556 ~~subpoenas duces tecum from any court of competent jurisdiction~~
557 ~~commanding the appearance of witnesses and the production of~~
558 ~~books, accounts, records, and other documents or materials at a~~
559 ~~time and place named in the subpoenas; and any authorized~~
560 ~~representative of the office may serve any subpoena.~~

561 ~~(5) (a) In the event of substantial noncompliance with a~~
 562 ~~subpoena or subpoena duces tecum issued or caused to be issued~~
 563 ~~by the office, the office may petition the circuit court or any~~
 564 ~~other court of competent jurisdiction of the county in which the~~
 565 ~~person subpoenaed resides or has its principal place of business~~
 566 ~~for an order requiring the subpoenaed person to appear and~~
 567 ~~testify and to produce such books, accounts, records, and other~~
 568 ~~documents as are specified in the subpoena duces tecum. The~~
 569 ~~court may grant injunctive relief restraining the person from~~
 570 ~~advertising, promoting, soliciting, entering into, offering to~~
 571 ~~enter into, continuing, or completing any mortgage loan~~
 572 ~~transaction or mortgage loan servicing transaction. The court~~
 573 ~~may grant such other relief, including, but not limited to, the~~
 574 ~~restraint, by injunction or appointment of a receiver, of any~~
 575 ~~transfer, pledge, assignment, or other disposition of the~~
 576 ~~person's assets or any concealment, alteration, destruction, or~~
 577 ~~other disposition of books, accounts, records, or other~~
 578 ~~documents and materials as the court deems appropriate, until~~
 579 ~~the person has fully complied with the subpoena duces tecum and~~
 580 ~~the office has completed its investigation or examination. In~~
 581 ~~addition, the court may order the refund of any fees collected~~
 582 ~~in a mortgage loan transaction whenever books and documents~~
 583 ~~substantiating the transaction are not produced or cannot be~~
 584 ~~produced. The office is entitled to the summary procedure~~
 585 ~~provided in s. 51.011, and the court shall advance such cause on~~
 586 ~~its calendar. Attorney's fees and any other costs incurred by~~
 587 ~~the office to obtain an order granting, in whole or part, a~~
 588 ~~petition for enforcement of a subpoena or subpoena duces tecum~~

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589 ~~shall be taxed against the subpoenaed person, and failure to~~
 590 ~~comply with such order is a contempt of court.~~

591 ~~(b) When it appears to the office that the compliance with~~
 592 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~
 593 ~~by the office pursuant to this section is essential and~~
 594 ~~otherwise unavailable to an investigation or examination, the~~
 595 ~~office, in addition to the other remedies provided for in this~~
 596 ~~section, may apply to the circuit court or any other court of~~
 597 ~~competent jurisdiction of the county in which the subpoenaed~~
 598 ~~person resides or has its principal place of business for a writ~~
 599 ~~of ne exeat. The court shall thereupon direct the issuance of~~
 600 ~~the writ against the subpoenaed person requiring sufficient bond~~
 601 ~~conditioned on compliance with the subpoena or subpoena duces~~
 602 ~~tecum. The court shall cause to be endorsed on the writ a~~
 603 ~~suitable amount of bond upon the payment of which the person~~
 604 ~~named in the writ shall be freed, having a due regard to the~~
 605 ~~nature of the case.~~

606 ~~(c) Alternatively, the office may seek a writ of~~
 607 ~~attachment from the court having jurisdiction over the person~~
 608 ~~who has refused to obey a subpoena, who has refused to give~~
 609 ~~testimony, or who has refused to produce the matters described~~
 610 ~~in the subpoena duces tecum.~~

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

613 Section 3. Section 494.00121, Florida Statutes, is created
 614 to read:

615 494.00121 Subpoenas.--

616 (1) The office may:

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617 (a) Issue and serve subpoenas and subpoenas duces tecum to
618 compel the attendance of witnesses and the production of all
619 books, accounts, records, and other documents and materials
620 relevant to an examination or investigation conducted by the
621 office. The office, or its authorized representative, may
622 administer oaths and affirmations to any person.

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

628 (2) If there is substantial noncompliance with a subpoena
629 or subpoena duces tecum issued by the office, the office may
630 petition the court in the county where the person subpoenaed
631 resides or has his or her principal place of business for an
632 order requiring the person to appear, testify, or produce such
633 books, accounts, records, and other documents as are specified
634 in the subpoena or subpoena duces tecum.

635 (a) The court may grant injunctive relief restraining the
636 person from advertising, promoting, soliciting, entering into,
637 offering to enter into, continuing, or completing a mortgage
638 loan or servicing a mortgage loan.

639 (b) The court may grant such other relief, including, but
640 not limited to, the restraint, by injunction or appointment of a
641 receiver, of any transfer, pledge, assignment, or other
642 disposition of the person's assets or any concealment,
643 alteration, destruction, or other disposition of books,
644 accounts, records, or other documents and materials as the court

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645 deems appropriate, until the person has fully complied with the
646 subpoena duces tecum and the office has completed its
647 investigation or examination.

648 (c) The court may order the refund of any fees collected
649 in a mortgage loan transaction if books and documents
650 substantiating the transaction are not produced or cannot be
651 produced.

652 (d) If it appears to the office that compliance with a
653 subpoena or subpoena duces tecum issued is essential and
654 otherwise unavailable to an investigation or examination, the
655 office may apply to the court for a writ of ne exeat pursuant to
656 s. 68.02.

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

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

667 Section 4. Section 494.0014, Florida Statutes, is amended
668 to read:

669 494.0014 Cease and desist orders; ~~administrative fines;~~
670 refund orders.--

671 (1) The office may ~~has the power to~~ issue and serve upon
672 any person an order to cease and desist and to take corrective

673 | action if ~~whenever~~ it has reason to believe the person is
 674 | violating, has violated, or is about to violate any provision of
 675 | ss. 494.001-494.0077, any rule or order issued under ss.
 676 | 494.001-494.0077, or any written agreement between the person
 677 | and the office. All procedural matters relating to issuance and
 678 | enforcement of such a ~~cease and desist~~ order are governed by the
 679 | Administrative Procedure Act.

680 | (2) The office may ~~has the power to~~ order the refund of
 681 | any fee directly or indirectly assessed and charged on a
 682 | mortgage loan transaction which is unauthorized or exceeds the
 683 | maximum fee specifically authorized in ss. 494.001-494.0077, or
 684 | any amount collected for the payment of third-party fees which
 685 | exceeds the cost of the service provided.

686 | ~~(3) The office may prohibit the association by a mortgage~~
 687 | ~~broker business, or the employment by a mortgage lender or~~
 688 | ~~correspondent mortgage lender, of any person who has engaged in~~
 689 | ~~a pattern of misconduct while an associate of a mortgage~~
 690 | ~~brokerage business or an employee of a mortgage lender or~~
 691 | ~~correspondent mortgage lender. For the purpose of this~~
 692 | ~~subsection, the term "pattern of misconduct" means the~~
 693 | ~~commission of three or more violations of ss. 494.001-494.0077~~
 694 | ~~or the provisions of chapter 494 in effect prior to October 1,~~
 695 | ~~1991, during any 1-year period or any criminal conviction for~~
 696 | ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~
 697 | ~~in effect prior to October 1, 1991.~~

698 | ~~(4) The office may impose upon any person who makes or~~
 699 | ~~brokers a loan, or any mortgage business school, a fine for~~
 700 | ~~violations of any provision of ss. 494.001-494.00295 or any rule~~

701 ~~or order issued under ss. 494.001-494.00295 in an amount not~~
 702 ~~exceeding \$5,000 for each separate count or offense.~~

703 Section 5. Section 494.00165, Florida Statutes, is amended
 704 to read:

705 494.00165 Prohibited advertising; record requirements.--

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

707 (a) Advertise that an applicant shall ~~will~~ have
 708 unqualified access to credit without disclosing the ~~what~~
 709 material limitations on the availability of such credit ~~exist~~.
 710 ~~Such~~ Material limitations include, but are not limited to, the
 711 percentage of down payment required, that a higher rate or
 712 points could be required, or that restrictions on ~~as to~~ the
 713 maximum principal amount of the loan offered could apply.

714 (b) Advertise a mortgage loan at an expressed interest
 715 rate unless the advertisement specifically states that the
 716 expressed rate could change or not be available at commitment or
 717 closing.

718 (c) Advertise mortgage loans, including rates, margins,
 719 discounts, points, fees, commissions, or other material
 720 information, including material limitations on such loans,
 721 unless the ~~such~~ person is able to make such mortgage loans
 722 available to a reasonable number of qualified applicants.

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

725 (e) Engage in unfair, deceptive, or misleading advertising
 726 regarding mortgage loans, brokering services, or lending
 727 services.

728 (2) Each person required to be licensed under this chapter

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729 must ~~shall~~ maintain a record of samples of each of its
730 advertisements, including commercial scripts of each radio or
731 television broadcast, for examination by the office for a ~~period~~
732 ~~of~~ 2 years after the date of publication or broadcast.

733 Section 6. Section 494.0017, Florida Statutes, is
734 repealed.

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

737 494.00172 Mortgage Guaranty Trust Fund; payment of fees
738 and claims.--A nonrefundable fee is imposed on each application
739 for a mortgage broker, mortgage lender, or loan originator
740 license and on each annual application for a renewal of such
741 license. For a loan originator, the initial and renewal fee is
742 \$20. For mortgage brokers and lenders, the initial and renewal
743 fee is \$100. This fee is in addition to the regular application
744 or renewal fee assessed and shall be deposited into the Mortgage
745 Guaranty Trust Fund of the office for the payment of claims in
746 accordance with this section.

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

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

754 (a) The borrower has recorded a final judgment issued by a
755 state court wherein the cause of action against a licensee under
756 this chapter was based on a violation of this chapter and the

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757 damages were the result of that violation.

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

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

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

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

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

782 (3) The requirements of subsection (2) are not applicable
783 if the licensee upon which the claim is sought has filed for
784 bankruptcy or has been adjudicated bankrupt. However, the

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785 claimant must file a proof of claim in the bankruptcy
786 proceedings and must notify the office by certified mail of the
787 claim by enclosing a copy of the proof of claim and all
788 supporting documents.

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

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

808 (b) Payments for claims are limited in the aggregate to
809 \$250,000 against any one licensee under this chapter. If the
810 total claims exceed the aggregate limit of \$250,000, the office
811 shall prorate payments based on the ratio that a claim bears to
812 the total claims filed.

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

821 (d) The claimant shall assign his right, title, and
822 interest in the judgment, to the extent of his recovery from the
823 fund, to the office and shall record, at his own expense, the
824 assignment of judgment in every county where the judgment is
825 recorded.

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

833 (f) The payment of any amount from the fund in settlement
834 of a claim or in satisfaction of a judgment against a licensee
835 constitutes prima facie grounds for the revocation of the
836 license.

837 Section 8. Section 494.0018, Florida Statutes, is amended
838 to read:

839 494.0018 Penalties.--

840 (1) Whoever knowingly violates any provision of s.

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841 494.00255(1) (a), (b), or (c) ~~s. 494.0041(2) (e), (f), or (g); s.~~
 842 ~~494.0072(2) (e), (f), or (g);~~ or s. 494.0025(1), (2), (3), (4),
 843 or (5), except as provided in subsection (2) of this section,
 844 commits ~~is guilty of~~ a felony of the third degree, punishable as
 845 provided in s. 775.082, s. 775.083, or s. 775.084. Each such
 846 violation constitutes a separate offense.

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

853 Section 9. Section 494.0019, Florida Statutes, is amended
 854 to read:

855 494.0019 Liability in case of unlawful transaction.--

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

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

868 Section 10. Section 494.002, Florida Statutes, is amended

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869 to read:

870 494.002 Statutory or common-law remedies.--Sections
 871 ~~Nothing in ss. 494.001-494.0077 do not limit limits~~ any
 872 statutory or common-law right of any person to bring any action
 873 in any court for any act involved in the mortgage loan business
 874 or the right of the state to punish any person for any violation
 875 of any law.

876 Section 11. Section 494.0023, Florida Statutes, is amended
 877 to read:

878 494.0023 Conflicting interest.--

879 (1) If, in a mortgage transaction, a licensee has a
 880 conflicting interest as specified in subsection (2), the
 881 licensee shall, at a minimum, provide the following disclosures
 882 to the borrower in writing:

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

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

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

893 ~~(d)-(e) The borrower shall be informed~~ That alternative
 894 sources may be chosen by the borrower to provide the any
 895 required products or services. ~~The following language must be~~
 896 ~~contained in 12-point type in any agreement between a mortgage~~

897 ~~broker, mortgage lender, or correspondent mortgage lender and a~~
 898 ~~borrower in substantially this form:~~

899
 900 ~~You are not required to purchase additional products or services~~
 901 ~~from any person or entity suggested or recommended by~~
 902 ~~(Broker/Lender/Correspondent Lender). However, the~~
 903 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~
 904 ~~to approve the entity selected by the borrower, which approval~~
 905 ~~may not be unreasonably withheld.~~

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

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

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

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

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

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

925 as an officer or director, or performs similar functions as an
 926 officer or director, for both the licensee and the person
 927 providing the additional products or services; or

928 (f) The licensee or the licensee's relative sits as an
 929 officer or director, or performs similar functions as an officer
 930 or director, of the person providing the additional products or
 931 services.

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

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

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

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

945 ~~(c) The spouses of children, brothers, or sisters of such~~
 946 ~~person.~~

947 Section 12. Section 494.0025, Florida Statutes, is amended
 948 to read:

949 494.0025 Prohibited practices.--It is unlawful for any
 950 person:

951 ~~(1) To act as a mortgage lender in this state without a~~
 952 ~~current, active license issued by the office pursuant to ss.~~

953 ~~494.006-494.0077.~~

954 (1)~~(2)~~ To act as a loan originator ~~correspondent mortgage~~
 955 ~~lender~~ in this state without a current, active license issued by
 956 the office pursuant to part II of this chapter ~~ss. 494.006-~~
 957 ~~494.0077.~~

958 (2)~~(3)~~ To act as a mortgage broker in this state without a
 959 current, active license issued by the office pursuant to part II
 960 of this chapter ~~ss. 494.003-494.0043.~~

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

964 (4) In any practice or transaction or course of business
 965 relating to the sale, purchase, negotiation, promotion,
 966 advertisement, or hypothecation of mortgage loan transactions,
 967 directly or indirectly:

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

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

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

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

981 (6) To violate s. 655.922(2), subject to ss. 494.001-
 982 494.0077.

983 ~~(7) Who is required to be licensed under ss. 494.006-~~
 984 ~~494.0077, to fail to report to the office the failure to meet~~
 985 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~
 986 ~~494.0065 within 48 hours after the person's knowledge of such~~
 987 ~~failure or within 48 hours after the person should have known of~~
 988 ~~such failure.~~

989 (7)~~(8)~~ To pay a fee or commission in any mortgage loan
 990 transaction to any person or entity other than a licensed
 991 mortgage broker ~~brokerage business, mortgage lender,~~ or
 992 ~~correspondent~~ mortgage lender, ~~operating under an active~~
 993 ~~license,~~ or a person exempt from licensure under this chapter.

994 (8)~~(9)~~ To record a mortgage broker ~~brokerage~~ agreement or
 995 any other document, not rendered by a court of competent
 996 jurisdiction, which purports to enforce the terms of the
 997 mortgage ~~brokerage~~ agreement.

998 (9)~~(10)~~ To use the name or logo of a financial
 999 institution, as defined in s. 655.005(1), or its affiliates or
 1000 subsidiaries when marketing or soliciting existing or
 1001 prospective customers if such marketing materials are used
 1002 without the written consent of the financial institution and in
 1003 a manner that would lead a reasonable person to believe that the
 1004 material or solicitation originated from, was endorsed by, or is
 1005 related to or the responsibility of the financial institution or
 1006 its affiliates or subsidiaries.

1007 (10) Subject to investigation or examination under this
 1008 chapter, to knowingly alter, withhold, conceal, or destroy any

1009 books, records, computer records, or other information relating
 1010 to a person's activities which subject the person to the
 1011 jurisdiction of this chapter.

1012 Section 13. Section 494.00255, Florida Statutes, is
 1013 created to read:

1014 494.00255 Administrative penalties and fines; license
 1015 violations.--

1016 (1) Each of the following acts constitutes a ground for
 1017 which the disciplinary actions specified in subsection (2) may
 1018 be taken against a person licensed or required to be licensed
 1019 under part II or part III of chapter:

1020 (a) Failure to immediately place upon receipt, and
 1021 maintain until authorized to disburse, any money entrusted to
 1022 the licensee as a licensee in a segregated account of a
 1023 federally insured financial institution in this state.

1024 (b) Failure to account or deliver to any person any
 1025 property that is not the licensee's, or that the licensee is not
 1026 entitled to retain, under the circumstances and at the time that
 1027 has been agreed upon or as required by law or, in the absence of
 1028 a fixed time, upon demand of the person entitled to such
 1029 accounting and delivery.

1030 (c) Failure to disburse funds in accordance with
 1031 agreements.

1032 (d) Any misuse, misapplication, or misappropriation of
 1033 personal property entrusted to the licensee's care to which the
 1034 licensee had no current property right at the time of
 1035 entrustment.

1036 (e) Fraud, misrepresentation, deceit, negligence, or

1037 incompetence in any mortgage financing transaction.

1038 (f) Requesting a specific valuation, orally or in writing,
 1039 from an appraiser for a particular property, implying to an
 1040 appraiser that a specific valuation is needed for a particular
 1041 property, or in any manner conditioning the order for an
 1042 appraisal on the appraisal meeting a specific valuation. The
 1043 numeric value of the specific valuation sought need not be
 1044 stated, but rather the mere statement that a specific valuation
 1045 is sought, violates this section.

1046 (g) Consistently and materially underestimating maximum
 1047 closing costs.

1048 (h) Disbursement, or an act which has caused or will cause
 1049 disbursement, to any person in any amount from the Mortgage
 1050 Guaranty Trust Fund, the Securities Guaranty Fund, or the
 1051 Florida Real Estate Recovery Fund, regardless of any repayment
 1052 or restitution to the disbursed fund by the licensee or any
 1053 person acting on behalf of the licensee.

1054 (i) Commission of fraud, misrepresentation, concealment,
 1055 or dishonest dealing by trick, scheme, or device; culpable
 1056 negligence; breach of trust in any business transaction in any
 1057 state, nation, or territory; or aiding, assisting, or conspiring
 1058 with any other person engaged in any such misconduct and in
 1059 furtherance thereof.

1060 (j) Being convicted of, or entering a plea of guilty or
 1061 nolo contendere to, regardless of adjudication, any felony or
 1062 any crime involving fraud, dishonesty, breach of trust, money
 1063 laundering, or act of moral turpitude.

1064 (k) Having a final judgment entered against the licensee

1065 in a civil action upon grounds of fraud, embezzlement,
 1066 misrepresentation, or deceit.

1067 (1) Having been the subject of any:

1068 1. Decision, finding, injunction, suspension, prohibition,
 1069 revocation, denial, judgment, or administrative order by any
 1070 court, administrative law judge, state or federal agency,
 1071 national securities exchange, national commodities exchange,
 1072 national option exchange, national securities association,
 1073 national commodities association, or national option association
 1074 involving a violation of any federal or state securities or
 1075 commodities law or rule or regulation adopted under such law or
 1076 involving a violation of any rule or regulation of any national
 1077 securities, commodities, or options exchange or association.

1078 2. Injunction or adverse administrative order by a state
 1079 or federal agency regulating banking, insurance, finance or
 1080 small loan companies, real estate, mortgage brokers or lenders,
 1081 money transmitters, or other related or similar industries.

1082 (m) In any mortgage transaction, violating any provision
 1083 of the federal Real Estate Settlement Procedure Act, as amended,
 1084 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
 1085 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
 1086 under such acts.

1087 (n) Having a loan originator, mortgage broker, or mortgage
 1088 lender license, or the equivalent thereof, revoked in any
 1089 jurisdiction.

1090 (o) Having a license, or the equivalent, to practice any
 1091 profession or occupation revoked, suspended, or otherwise acted
 1092 against, including the denial of licensure by a licensing

1093 authority of this state or another state, territory, or country.

1094 (p) Acting as a loan originator, mortgage broker, or
 1095 mortgage lender without a current license issued under part II
 1096 or part III of this chapter.

1097 (q) Operating a mortgage broker or mortgage lender branch
 1098 office without a current license issued under part II or part
 1099 III of this chapter.

1100 (r) Conducting any brokering or lending activities in the
 1101 absence of a properly designated principal loan originator or
 1102 brokering or lending activities at any particular branch office
 1103 without a properly designated branch manager.

1104 (s) A material misstatement or omission of fact on an
 1105 initial or renewal license application.

1106 (t) Payment to the office for a license or permit with a
 1107 check or electronic transmission of funds which is dishonored by
 1108 the applicant's or licensee's financial institution.

1109 (u) Failure to comply with, or violations of, any
 1110 provision of ss. 494.001-494.0077, or any rule or order made or
 1111 issued under ss. 494.001-494.0077.

1112 (v) Failure to maintain, preserve, and keep available for
 1113 examination all books, accounts, or other documents required by
 1114 ss. 494.001-494.0077 and the rules of the commission.

1115 (w) Refusal to permit an investigation or examination of
 1116 books and records, or refusal to comply with an office subpoena
 1117 or subpoena duces tecum.

1118 (x) Failure to timely pay any fee, charge, or fine imposed
 1119 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1120 (2) If the office finds a person in violation of any act

1121 specified in this section, it may enter an order imposing one or
 1122 more of the following penalties:

1123 (a) Issuance of a reprimand.

1124 (b) Suspension of a license or registration, subject to
 1125 reinstatement upon satisfying all reasonable conditions imposed
 1126 by the office.

1127 (c) Revocation of a license or registration.

1128 (d) Denial of a license or registration.

1129 (e) Imposition of a fine in an amount up to \$25,000 for
 1130 each count or separate offense.

1131 (f) An administrative fine of up to \$1,000 per day, but
 1132 not to exceed \$25,000 cumulatively, for each day that

1133 1. A mortgage broker or mortgage lender conducts business
 1134 at an unlicensed branch office.

1135 2. An unlicensed person acts as a loan originator, a
 1136 mortgage broker, or a mortgage lender.

1137 (3) A mortgage broker or mortgage lender, as applicable,
 1138 is subject to the disciplinary actions specified in subsection
 1139 (2) for a violation of subsection (1) by:

1140 (a) A control person of the mortgage broker or mortgage
 1141 lender;

1142 (b) A loan originator employed by or contracting with the
 1143 mortgage broker; or

1144 (c) An associate of the mortgage lender.

1145 (4) A principal loan originator of a mortgage broker is
 1146 subject to the disciplinary actions specified in subsection (2)
 1147 for violations of subsection (1) by a loan originator in the
 1148 course of an association with the mortgage broker if there is a

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1149 pattern of repeated violations by the loan originator or if the
1150 principal loan originator has knowledge of the violations.

1151 (5) A principal loan originator of a mortgage lender is
1152 subject to the disciplinary actions specified in subsection (2)
1153 for violations of subsection (1) by an associate of a mortgage
1154 lender if there is a pattern of repeated violations by the
1155 associate or if the principal loan originator has knowledge of
1156 the violations.

1157 (6) A branch manager is subject to the disciplinary
1158 actions specified in subsection (2) for violations of subsection
1159 (1) by a loan originator in the course of an association with
1160 the mortgage broker if there is a pattern of repeated violations
1161 by the loan originator or if the branch manager has knowledge of
1162 the violations.

1163 (7) A natural person who is associated with a mortgage
1164 broker is subject to the disciplinary actions specified in
1165 subsection (2) for a violation of subsection (1) with respect
1166 to an action in which such person was involved.

1167 (8) Pursuant to s. 120.60(6), the office may summarily
1168 suspend the license of a loan originator, mortgage broker, or
1169 mortgage lender if the office has reason to believe that a
1170 licensee poses an immediate, serious danger to the public's
1171 health, safety, or welfare. The arrest of the licensee, or the
1172 mortgage broker or the mortgage lender's control person, for any
1173 felony or any crime involving fraud, dishonesty, breach of
1174 trust, money laundering, or any other act of moral turpitude is
1175 deemed sufficient to constitute an immediate danger to the
1176 public's health, safety, or welfare. Any proceeding for the

1177 summary suspension of a license must be conducted by the
 1178 commissioner of the office, or designee, who shall issue the
 1179 final summary order.

1180 (9) The office may deny any request to terminate or
 1181 withdraw any license application or license if the office
 1182 believes that an act that would be a ground for license denial,
 1183 suspension, restriction, or revocation under this chapter has
 1184 been committed.

1185 Section 14. Section 494.0028, Florida Statutes, is amended
 1186 to read:

1187 494.0028 Arbitration.--

1188 (1) This section applies to any mortgage broker ~~brokerage~~
 1189 agreement, servicing agreement, loan application, or purchase
 1190 agreement that ~~which~~ provides for arbitration between:

1191 (a) A noninstitutional investor and a mortgage lender
 1192 servicing ~~or correspondent mortgage lender to service~~ a mortgage
 1193 loan.

1194 (b) A borrower and a mortgage broker ~~brokerage business,~~
 1195 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a
 1196 mortgage loan.

1197 (c) A noninstitutional investor and a mortgage broker
 1198 ~~brokerage business, mortgage lender,~~ or ~~correspondent~~ mortgage
 1199 lender to fund or purchase a mortgage loan.

1200 (2) All agreements subject to this section must ~~shall~~
 1201 provide that, at the voluntary election of the noninstitutional
 1202 investor or borrower, disputes shall be handled by ~~either~~ a
 1203 court ~~of competent jurisdiction~~ or by binding arbitration.

1204 (3) All agreements subject to this section must ~~shall~~

1205 provide the noninstitutional investor or borrower with the
 1206 option to elect arbitration before the American Arbitration
 1207 Association or other independent nonindustry arbitration forum.
 1208 Any other nonindustry arbitration forum may apply to the office
 1209 to allow such forum to provide arbitration services. The office
 1210 shall grant the application if the applicant's fees, practices,
 1211 and procedures do not materially differ from those of the
 1212 American Arbitration Association.

1213 (4) At the election of the noninstitutional investor or
 1214 borrower, venue shall be in the county in which the
 1215 noninstitutional investor or borrower entered into the agreement
 1216 or at a business location of the mortgage broker or brokerage
 1217 ~~business, mortgage lender, or correspondent lender.~~

1218 (5) Any fees or charges must be in accordance with ~~shall~~
 1219 ~~be made as provided in~~ the rules of the American Arbitration
 1220 Association or other approved nonindustry arbitration forum and
 1221 may ~~shall~~ not be set in the agreement.

1222 (6) Any election made under this section is ~~shall be~~
 1223 irrevocable.

1224 (7) This section does ~~shall not be construed to~~ require an
 1225 agreement that ~~which~~ is subject to this section to contain an
 1226 arbitration clause.

1227 Section 15. Effective October 1, 2010, sections 494.0029
 1228 and 494.00295, Florida Statutes, are repealed.

1229 Section 16. Section 494.00296, Florida Statutes, is
 1230 created to read:

1231 494.00296 Loan modification.--

1232 (1) PROHIBITED ACTS.--When offering or providing loan

1233 modifications services, a loan originator, mortgage broker, or
 1234 mortgage lender may not:

1235 (a) Engage in or initiate loan modification services
 1236 without first executing a written agreement for loan
 1237 modification services with the borrower;

1238 (b) Execute a loan modification without the consent of the
 1239 borrower after the borrower is made aware of each modified term;
 1240 or

1241 (c) Solicit, charge, receive, or attempt to collect or
 1242 secure payment, directly or indirectly, for loan modification
 1243 services before completing or performing all services included
 1244 in the agreement for loan modification services. A fee may be
 1245 charged only if the loan modification results in a material
 1246 benefit to the borrower. The commission may adopt rules to
 1247 provide guidance on what constitutes a material benefit to the
 1248 borrower

1249 (2) LOAN MODIFICATION AGREEMENT.--

1250 (a) The written agreement for loan modification services
 1251 must be printed in at least 12-point uppercase type and signed
 1252 by both parties. The agreement must include the name and address
 1253 of the person providing loan modification services, the exact
 1254 nature and specific detail of each service to be provided, the
 1255 total amount and terms of charges to be paid by the borrower for
 1256 the services, and the date of the agreement. The date of the
 1257 agreement may not be earlier than the date the borrower signed
 1258 the agreement. The mortgage broker or mortgage lender must give
 1259 the borrower a copy of the agreement to review at least 1
 1260 business day before the borrower is to sign the agreement.

1261 (b) The borrower has the right to cancel the written
 1262 agreement without any penalty or obligation if the borrower
 1263 cancels the agreement within 3 business days after signing the
 1264 agreement. The right to cancel may not be waived by the borrower
 1265 or limited in any manner by the loan originator, mortgage
 1266 broker, or mortgage lender. If the borrower cancels the
 1267 agreement, any payments to the loan originator, mortgage broker,
 1268 or mortgage lender must be returned to the homeowner within 10
 1269 business days after receipt of the notice of cancellation.

1270 (c) An agreement for loan modification services must
 1271 contain, immediately above the signature line, a statement in at
 1272 least 12-point uppercase type which substantially complies with
 1273 the following:

1274 BORROWER'S RIGHT OF CANCELLATION

1275
 1276 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION SERVICES
 1277 WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS AFTER
 1278 THE DATE THIS AGREEMENT IS SIGNED BY YOU.
 1279 THE LOAN ORIGINATOR, MORTGAGE BROKER, OR MORTGAGE LENDER IS
 1280 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER
 1281 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN
 1282 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE
 1283 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
 1284 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION
 1285 NOTICE.
 1286 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT
 1287 THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
 1288 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO

1289 LATER THAN MIDNIGHT OF ... (DATE)
 1290 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE
 1291 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR
 1292 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR
 1293 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1294
 1295 (d) The inclusion of the statement does not prohibit a
 1296 loan originator, mortgage broker, or mortgage lender from giving
 1297 the homeowner more time to cancel the agreement than is set
 1298 forth in the statement if all other requirements of this
 1299 subsection are met.

1300 (e) The person offering or providing the loan modification
 1301 services must give the borrower a copy of the signed agreement
 1302 within 3 hours after the borrower signs the agreement.

1303 (3) REMEDIES.--

1304 (a) Without regard to any other remedy or relief to which
 1305 a person is entitled, anyone aggrieved by a violation of this
 1306 section may bring an action to obtain a declaratory judgment
 1307 that an act or practice violates this section and to enjoin a
 1308 person who has violated, is violating, or is otherwise likely to
 1309 violate this section.

1310 (b) In any action brought by a person who has suffered a
 1311 loss as a result of a violation of this section, such person may
 1312 recover actual damages, plus attorney's fees and court costs, as
 1313 follows:

1314 1. In any action brought under this section, upon motion
 1315 of the party against whom such action is filed alleging that the
 1316 action is frivolous, without legal or factual merit, or brought

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1317 for the purpose of harassment, the court may, after hearing
1318 evidence as to the necessity therefore, require the party
1319 instituting the action to post a bond in the amount that the
1320 court finds reasonable to indemnify the defendant for any
1321 damages incurred, including reasonable attorney's fees.

1322 2. In any civil litigation resulting from an act or
1323 practice involving a violation of this section, the prevailing
1324 party, after judgment in the trial court and exhaustion of all
1325 appeals, if any, may receive reasonable attorney's fees and
1326 costs from the nonprevailing party.

1327 3. The attorney for the prevailing party shall submit a
1328 sworn affidavit of time spent on the case and costs incurred for
1329 all the motions, hearings, and appeals to the trial judge who
1330 presided over the civil case.

1331 4. The trial judge may award the prevailing party the sum
1332 of reasonable costs incurred in the action plus a reasonable
1333 legal fee for the hours actually spent on the case as sworn to
1334 in an affidavit.

1335 5. Any award of attorney's fees or costs become part of
1336 the judgment and subject to execution as the law allows.

1337 (c) The provisions of this subsection do not apply to any
1338 action initiated by the enforcing authority.

1339 Section 17. The Division of Statutory Revision is
1340 requested to rename part II of chapter 494, Florida Statutes,
1341 consisting of ss. 494.003-491.0043, Florida Statutes, as "Loan
1342 Originators and Mortgage Brokers."

1343 Section 18. Section 494.003, Florida Statutes, is amended
1344 to read:

1345 494.003 Exemptions.--

1346 (1) ~~None of~~ The following persons are not ~~is~~ subject to
 1347 the requirements of this part ss. 494.003-494.0043:

1348 (a) Any person operating exclusively as a registered loan
 1349 originator in accordance with the S.A.F.E. Mortgage Licensing
 1350 Act of 2008 licensed under ss. 494.006-494.0077, except as
 1351 provided in s. 494.0073.

1352 (b) A depository institution; subsidiaries that are owned
 1353 and controlled by a depository institution and regulated by the
 1354 Board of Governors of the Federal Reserve System, the
 1355 Comptroller of the Currency, the Director of the Office of
 1356 Thrift Supervision, the National Credit Union Administration, or
 1357 the Federal Deposit Insurance Corporation; or institutions
 1358 regulated by the Farm Credit Administration ~~state or federal~~
 1359 ~~chartered bank, trust company, savings and loan association,~~
 1360 ~~savings bank or credit union, bank holding company regulated~~
 1361 ~~under the laws of any state or the United States, or consumer~~
 1362 ~~finance company licensed pursuant to chapter 516.~~

1363 ~~(c) A wholly owned bank holding company subsidiary or a~~
 1364 ~~wholly owned savings and loan association holding company~~
 1365 ~~subsidiary formed and regulated under the laws of any state or~~
 1366 ~~the United States that is approved or certified by the~~
 1367 ~~Department of Housing and Urban Development, the Veterans~~
 1368 ~~Administration, the Government National Mortgage Association,~~
 1369 ~~the Federal National Mortgage Association, or the Federal Home~~
 1370 ~~Loan Mortgage Corporation.~~

1371 (c) ~~(d)~~ The Federal National Mortgage Association; the
 1372 Federal Home Loan Mortgage Corporation; any agency of the

1373 Federal Government; any state, county, or municipal government;
 1374 or any quasi-governmental agency that acts in such capacity
 1375 under the specific authority of the laws of any state or the
 1376 United States.

1377 (d) A licensed attorney who negotiates the terms of a
 1378 mortgage loan on behalf of a client as an ancillary matter to
 1379 the attorney's representation of the client, unless the attorney
 1380 is compensated by a mortgage lender, a mortgage broker, or a
 1381 loan originator or by the agent of such lender, broker, or
 1382 originator.

1383 ~~(c) Any person licensed to practice law in this state, not~~
 1384 ~~actively and principally engaged in the business of negotiating~~
 1385 ~~loans secured by real property, when such person renders~~
 1386 ~~services in the course of her or his practice as an attorney at~~
 1387 ~~law.~~

1388 ~~(2) None of the following persons is required to be~~
 1389 ~~licensed under ss. 494.003-494.0043:~~

1390 ~~(a) An insurance company duly licensed in this state when~~
 1391 ~~dealing with its clients in the normal course of its insurance~~
 1392 ~~business.~~

1393 ~~(b) A federally licensed small business investment~~
 1394 ~~company.~~

1395 ~~(c) A securities dealer registered under the provisions of~~
 1396 ~~s. 517.12, when dealing with its corporate or individual clients~~
 1397 ~~in the normal course of its securities business.~~

1398 ~~(d) Any person acting in a fiduciary capacity conferred by~~
 1399 ~~authority of any court.~~

1400 ~~(e) A wholly owned subsidiary of a state or federal~~

1401 ~~chartered bank or savings and loan association the sole activity~~
 1402 ~~of which is to distribute the lending programs of such state or~~
 1403 ~~federal chartered bank or savings and loan association to~~
 1404 ~~persons who arrange loans for, or make loans to, borrowers.~~

1405 (2)~~(3)~~ It is not necessary to negate any of the exemptions
 1406 provided in this section in any complaint, information,
 1407 indictment, or other writ or proceeding brought under ss.
 1408 494.001-494.0077. The burden of establishing the right to an ~~any~~
 1409 ~~such~~ exemption is upon the party claiming the benefit of the
 1410 exemption.

1411 Section 19. Effective October 1, 2010, section 494.0031,
 1412 Florida Statutes, is repealed.

1413 Section 20. Effective October 1, 2010, section 494.00312,
 1414 Florida Statutes, is created to read:

1415 494.00312 Loan originator license.--

1416 (1) An individual who acts as a loan originator must be
 1417 licensed under this section.

1418 (2) In order to apply for loan originator license, an
 1419 applicant must:

1420 (a) Be at least 18 years of age and have a high school
 1421 diploma or its equivalent.

1422 (b) Complete a 20-hour prelicensing class approved by the
 1423 registry.

1424 (c) Pass a written test developed by the registry and
 1425 administered by a provider approved by the registry.

1426 (d) Submit a completed license application form as
 1427 prescribed by commission rule.

1428 (e) Submit a nonrefundable application fee of \$195, and

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1429 the \$20 nonrefundable fee if required by s. 494.00172.

1430 Application fees may not be prorated for partial years of
1431 licensure.

1432 (f) Submit fingerprints in accordance with rules adopted
1433 by the commission:

1434 1. The fingerprints may be submitted to the registry, the
1435 office, or a vendor acting on behalf of the registry or the
1436 office.

1437 2. The office may contract with a third-party vendor to
1438 provide live-scan fingerprinting in lieu of a paper fingerprint
1439 card.

1440 3. A state criminal history background check must be
1441 conducted through the Department of Law Enforcement and a
1442 federal criminal history background check must be conducted
1443 through the Federal Bureau of Investigation.

1444 4. All fingerprints submitted to the Department of Law
1445 Enforcement must be submitted electronically and entered into
1446 the statewide automated fingerprint identification system
1447 established in s. 943.05(2) (b) and available for use in
1448 accordance with s. 943.05(2) (g) and (h). The office shall pay an
1449 annual fee to the department to participate in the system and
1450 inform the department of any person whose fingerprints are no
1451 longer required to be retained.

1452 5. The costs of fingerprint processing, including the cost
1453 of retaining the fingerprints, shall be borne by the person
1454 subject to the background check.

1455 6. The office is responsible for reviewing the results of
1456 the state and federal criminal history checks and determining

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1457 whether the applicant meets licensure requirements.

1458 (g) Authorize the registry to obtain an independent credit
1459 report on the applicant from a consumer reporting agency, and
1460 transmit or provide access to the report to the office. The cost
1461 of the credit report shall be borne by the applicant.

1462 (h) Submit additional information or documentation
1463 requested by the office and required by rule concerning the
1464 applicant. Additional information may include documentation of
1465 pending and prior disciplinary and criminal history events,
1466 including arrest reports and certified copies of charging
1467 documents, plea agreements, judgments and sentencing documents,
1468 documents relating to pretrial intervention, orders terminating
1469 probation or supervised release, final administrative agency
1470 orders, or other comparable documents that may provide the
1471 office with the appropriate information to determine eligibility
1472 for licensure.

1473 (i) Submit any other information required by the registry
1474 for the processing of the application.

1475 (3) An application is considered received for the purposes
1476 of s. 120.60 upon the office's receipt of all documentation from
1477 the registry, including the completed application form,
1478 documentation of completion of the prelicensure class, test
1479 results, criminal history information, and independent credit
1480 report, as well as the license application fee, the fee required
1481 by s. 494.00172, and all applicable fingerprinting processing
1482 fees.

1483 (4) The office shall issue a loan originator license to
1484 each person who is not otherwise ineligible and who meets the

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1485 requirements of this section. However, it is a ground for denial
1486 of licensure if the applicant:

1487 (a) Has committed any violation specified in ss. 494.001-
1488 494.0077, or is the subject of a pending felony criminal
1489 prosecution or a prosecution or an administrative enforcement
1490 action, in any jurisdiction, which involves fraud, dishonesty,
1491 breach of trust, money laundering, or any other act of moral
1492 turpitude.

1493 (b) Demonstrates a lack of financial responsibility,
1494 character, and general fitness which would fail to command the
1495 confidence of the community and to warrant a determination that
1496 the loan originator will operate honestly, fairly, and
1497 efficiently. The office may not base a license denial, in whole
1498 or in part, on an applicant's credit score or use a credit
1499 report as the sole basis for license denial. If an applicant's
1500 credit report is determined by the office to be a factor that
1501 would contribute to the denial of a license, the office shall
1502 notify the applicant of the specific concern relating to the
1503 applicant's credit report and provide the applicant with an
1504 opportunity to provide a written explanation and other
1505 mitigating information in response to the credit report. For
1506 purposes of this paragraph, a person has shown that he or she is
1507 not financially responsible if he or she has shown a disregard
1508 in the management of his or her own financial condition, which
1509 may include, but is not limited to:

1510 1. Current outstanding judgments, except judgments
1511 resulting solely from medical expenses;

1512 2. Current outstanding federal tax liens; or

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1513 3. A pattern of seriously delinquent accounts within the
1514 past 7 years that would exhibit an obvious disregard for the
1515 repayment of outstanding obligations.

1516 (5) The office may not issue a license to an applicant who
1517 has had a loan originator license or its equivalent revoked in
1518 any jurisdiction.

1519 (6) A loan originator license may be withdrawn pursuant to
1520 s. 120.60 if it was issued through mistake or inadvertence of
1521 the office. A license must be reinstated if the applicant
1522 demonstrates that the requirements for obtaining the license
1523 under this chapter have been satisfied.

1524 (7) All loan originator licenses must be renewed annually
1525 by December 31 pursuant to s. 494.00313. If a person holding a
1526 loan originator license has not applied to renew the license on
1527 or before December 31, the loan originator license expires on
1528 December 31. If a person holding an active loan originator
1529 license has applied to renew the license on or before December
1530 31, the loan originator license remains active until the renewal
1531 application is approved or denied. A loan originator is not
1532 precluded from reapplying for licensure upon expiration of a
1533 previous license.

1534 Section 21. Effective October 1, 2010, section 494.00313,
1535 Florida Statutes, is created to read:

1536 494.00313 Loan originator license renewal.--

1537 (1) In order to renew a loan originator license, a loan
1538 originator must:

1539 (a) Submit a completed license renewal form as prescribed
1540 by commission rule.

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1541 (b) Submit a nonrefundable renewal fee of \$150, and the
1542 \$20 nonrefundable fee if required by s. 494.00172.

1543 (c) Provide documentation of completion of at least 8
1544 hours of continuing education in courses reviewed and approved
1545 by the registry.

1546 (d) Authorize the registry to obtain an independent credit
1547 report on the applicant from a consumer reporting agency, and
1548 transmit or provide access to the report to the office. The cost
1549 of the credit report shall be borne by the applicant.

1550 (e) Submit any additional information or documentation
1551 requested by the office and required by rule concerning the
1552 licensee. Additional information may include documentation of
1553 pending and prior disciplinary and criminal history events,
1554 including arrest reports and certified copies of charging
1555 documents, plea agreements, judgments and sentencing documents,
1556 documents relating to pretrial intervention, orders terminating
1557 probation or supervised release, final administrative agency
1558 orders, or other comparable documents that may provide the
1559 office with the appropriate information to determine eligibility
1560 for licensure.

1561 (2) The office may not renew a loan originator license
1562 unless the loan originator continues to meet the minimum
1563 standards for initial license issuance pursuant to s. 494.00312
1564 and adopted rule.

1565 Section 22. Effective October 1, 2010, section 494.0032,
1566 Florida Statutes, is repealed.

1567 Section 23. Effective October 1, 2010, section 494.00321,
1568 Florida Statutes, is created to read:

1569 494.00321 Mortgage broker license.--
 1570 (1) Each person who acts as a mortgage broker must be
 1571 licensed in accordance with this section.
 1572 (2) In order to apply for a mortgage broker license the
 1573 applicant must:
 1574 (a) Submit a completed license application form as
 1575 prescribed by commission rule.
 1576 (b) Designate a qualified principal loan originator on the
 1577 application form who meets the requirements of s. 494.0035.
 1578 (c) Submit a nonrefundable application fee of \$425, and
 1579 the \$100 nonrefundable fee if required by s. 494.00172.
 1580 Application fees may not be prorated for partial years of
 1581 licensure.
 1582 (d) Submit fingerprints for each of the applicant's
 1583 control persons in accordance with rules adopted by the
 1584 commission:
 1585 1. The fingerprints may be submitted to the registry, the
 1586 office, or a vendor acting on behalf of the registry or the
 1587 office.
 1588 2. The office may contract with a third-party vendor to
 1589 provide live-scan fingerprinting in lieu of a paper fingerprint
 1590 card.
 1591 3. A state criminal history background check must be
 1592 conducted through the Department of Law Enforcement and a
 1593 federal criminal history background check must be conducted
 1594 through the Federal Bureau of Investigation.
 1595 4. All fingerprints submitted to the Department of Law
 1596 Enforcement must be submitted electronically and entered into

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1597 the statewide automated fingerprint identification system
1598 established in s. 943.05(2)(b) and available for use in
1599 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1600 annual fee to the department to participate in the system and
1601 inform the department of any person whose fingerprints are no
1602 longer required to be retained.

1603 5. The costs of fingerprint processing, including the cost
1604 of retaining the fingerprints, shall be borne by the person
1605 subject to the background check.

1606 6. The office is responsible for reviewing the results of
1607 the state and federal criminal history checks and determining
1608 whether the applicant meets licensure requirements.

1609 (e) Authorize the registry to obtain an independent credit
1610 report on each of the applicant's control persons from a
1611 consumer reporting agency, and transmit or provide access to the
1612 report to the office. The cost of the credit report shall be
1613 borne by the applicant.

1614 (f) Submit additional information or documentation
1615 requested by the office and required by rule concerning the
1616 applicant or a control person of the applicant. Additional
1617 information may include documentation of pending and prior
1618 disciplinary and criminal history events, including arrest
1619 reports and certified copies of charging documents, plea
1620 agreements, judgments and sentencing documents, documents
1621 relating to pretrial intervention, orders terminating probation
1622 or supervised release, final administrative agency orders, or
1623 other comparable documents that may provide the office with the
1624 appropriate information to determine eligibility for licensure.

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1625 (g) Submit any other information required by the registry
1626 for the processing of the application.

1627 (3) An application is considered received for the purposes
1628 of s. 120.60 upon the office's receipt of all documentation from
1629 the registry, including the completed application form, criminal
1630 history information, and independent credit report, as well as
1631 the licensed application fee, the fee required by s. 492.00172,
1632 and all applicable fingerprinting processing fees.

1633 (4) The office shall issue a mortgage broker license to
1634 each person who is not otherwise ineligible and who meets the
1635 requirements of this section. However, it is a ground for denial
1636 of licensure if the applicant or one of the applicant's control
1637 persons:

1638 (a) Has committed any violation specified in ss. 494.001-
1639 494.0077, or is the subject of a pending felony criminal
1640 prosecution or a prosecution or an administrative enforcement
1641 action, in any jurisdiction, which involves fraud, dishonesty,
1642 breach of trust, money laundering, or any other act of moral
1643 turpitude.

1644 (b) Demonstrates a lack of financial responsibility,
1645 character, and general fitness which would fail to command the
1646 confidence of the community and to warrant a determination that
1647 the loan originator will operate honestly, fairly, and
1648 efficiently. The office may not base a license denial, in whole
1649 or in part, on an applicant's credit score or use a credit
1650 report as the sole basis for license denial. If an applicant's
1651 credit report is determined by the office to be a factor that
1652 would contribute to the denial of a license, the office shall

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1653 notify the applicant of the specific concern relating to the
1654 applicant's credit report and provide the applicant with an
1655 opportunity to provide a written explanation and other
1656 mitigating information in response to the credit report. For
1657 purposes of this paragraph, a person has shown that he or she is
1658 not financially responsible if he or she has shown a disregard
1659 in the management of his or her own financial condition, which
1660 may include, but is not limited to:

- 1661 1. Current outstanding judgments, except judgments
1662 resulting solely from medical expenses;
- 1663 2. Current outstanding federal tax liens; or
- 1664 3. A pattern of seriously delinquent accounts within the
1665 past 7 years that would exhibit an obvious disregard for the
1666 repayment of outstanding obligations.

1667 (5) The office shall deny a license if the applicant has
1668 had a mortgage broker license, or its equivalent, revoked in any
1669 jurisdiction, or any of the applicant's control persons has had
1670 a loan originator license, or its equivalent, revoked in any
1671 jurisdiction.

1672 (6) A mortgage broker license may be withdrawn pursuant to
1673 s. 120.60 if it was issued through mistake or inadvertence of
1674 the office. A license must be reinstated if the applicant
1675 demonstrates that the requirements for obtaining the license
1676 under this chapter have been satisfied.

1677 (7) All mortgage broker licenses must be renewed annually
1678 by December 31 pursuant to s. 494.00322. If a person holding an
1679 active mortgage broker license has not applied to renew the
1680 license annually on or before December 31, the mortgage broker

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1681 license expires on December 31. If a person holding an active
1682 mortgage broker license has applied to renew the license on or
1683 before December 31, the mortgage broker license remains active
1684 until the renewal application is approved or denied. A mortgage
1685 broker is not precluded from reapplying for licensure upon
1686 expiration of a previous license.

1687 Section 24. Effective October 1, 2010, section 494.00322,
1688 Florida Statutes, is created to read:

1689 494.00322 Mortgage broker license renewal.--

1690 (1) In order to renew a mortgage broker license, a
1691 mortgage broker must:

1692 (a) Submit a completed license renewal form as prescribed
1693 by commission rule.

1694 (b) Submit a nonrefundable renewal fee of \$375, and the
1695 \$100 nonrefundable fee if required by s. 494.00172.

1696 (c) Submit fingerprints in accordance with s.
1697 494.00321(2) (d) for any new control persons who have not been
1698 screened.

1699 (d) Authorize the registry to obtain an independent credit
1700 report on each of the applicant's control persons from a
1701 consumer reporting agency, and transmit or provide access to the
1702 report to the office. The cost of the credit report shall be
1703 borne by the applicant.

1704 (e) Submit any additional information or documentation
1705 requested by the office and required by rule concerning the
1706 applicant or a control person of the applicant. Additional
1707 information may include documentation of pending and prior
1708 disciplinary and criminal history events, including arrest

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1709 reports and certified copies of charging documents, plea
 1710 agreements, judgments and sentencing documents, documents
 1711 relating to pretrial intervention, orders terminating probation
 1712 or supervised release, final administrative agency orders, or
 1713 other comparable documents that may provide the office with the
 1714 appropriate information to determine eligibility for licensure.

1715 (2) The office may not renew a mortgage broker license
 1716 unless the licensee continues to meet the minimum requirements
 1717 for initial licensure pursuant to s. 494.00321 and adopted rule.

1718 Section 25. Effective October 1, 2010, section 494.0033,
 1719 Florida Statutes, is repealed.

1720 Section 26. Section 494.00331, Florida Statutes, is
 1721 amended to read:

1722 494.00331 Loan originator employment ~~Mortgage broker~~
 1723 ~~association.--An individual may not act as a loan originator~~
 1724 unless he or she is an employee of, or an independent contractor
 1725 for, a mortgage broker or a mortgage lender, and may not be
 1726 employed by or contract with more than one mortgage broker or
 1727 mortgage lender, or either simultaneously. No person required to
 1728 ~~be licensed as a mortgage broker under this chapter shall be~~
 1729 ~~simultaneously an associate of more than one licensed mortgage~~
 1730 ~~brokerage business, licensed mortgage lender, or licensed~~
 1731 ~~correspondent mortgage lender.~~

1732 Section 27. Effective October 1, 2010, section 494.0034,
 1733 Florida Statutes, is repealed.

1734 Section 28. Section 494.0035, Florida Statutes, is amended
 1735 to read:

1736 494.0035 Principal loan originator ~~broker~~ and branch

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1737 manager for mortgage broker requirements.--

1738 (1) Each mortgage broker ~~brokerage business~~ must be

1739 operated by a principal loan originator who shall have a

1740 ~~principal broker who shall operate the business under such~~

1741 ~~broker's~~ full charge, control, and supervision of the mortgage

1742 broker business. The principal loan originator must have been

1743 licensed as a loan originator ~~broker must have been a licensed~~

1744 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year

1745 before ~~prior to~~ being designated as the a principal loan

1746 originator ~~broker~~, or must shall demonstrate to the satisfaction

1747 of the office that he or she ~~such principal broker~~ has been

1748 actively engaged in a mortgage broker-related ~~mortgage-related~~

1749 business for at least 1 year before ~~prior to~~ being designated as

1750 a principal loan originator ~~broker~~. Each mortgage broker must

1751 keep the office informed of the person designated as the

1752 principal loan originator as prescribed by commission rule

1753 ~~brokerage business shall maintain a form as prescribed by the~~

1754 ~~commission indicating the business's designation of principal~~

1755 ~~broker and the individual's acceptance of such responsibility.~~

1756 If the designation is inaccurate, the business shall be deemed

1757 to be operated under ~~form is unavailable, inaccurate, or~~

1758 ~~incomplete, it is deemed that the business was operated in the~~

1759 full charge, control, and supervision of by each officer,

1760 director, or ultimate equitable owner of a 10-percent or greater

1761 interest in the mortgage broker ~~brokerage business~~, or any other

1762 person in a similar capacity. A loan originator may not be a

1763 principal loan originator for more than one mortgage broker at

1764 any given time.

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1765 (2) Each branch office of a mortgage broker ~~brokerage~~
 1766 ~~business~~ must be operated by a ~~have a designated~~ branch manager
 1767 ~~broker~~ who shall have ~~operate the business under such broker's~~
 1768 full charge, control, and supervision of the branch office. The
 1769 designated branch manager ~~broker~~ must be a licensed loan
 1770 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033~~.
 1771 Each branch office must keep the office informed of the person
 1772 designated as the branch manager as prescribed by commission
 1773 rule, which includes documentation of ~~shall maintain a form as~~
 1774 ~~prescribed by the commission logging the branch's designation of~~
 1775 ~~a branch broker and the individual's acceptance of such~~
 1776 responsibility. If the designation is inaccurate, the branch
 1777 office shall be deemed to be operated under ~~form is unavailable,~~
 1778 ~~inaccurate, or incomplete, it is deemed that the branch was~~
 1779 ~~operated in the full charge, control, and supervision of~~ by each
 1780 officer, director, or ultimate equitable owner of a 10-percent
 1781 or greater interest in the mortgage broker ~~brokerage~~ ~~business,~~
 1782 or any other person in a similar capacity.

1783 Section 29. Section 494.0036, Florida Statutes, is amended
 1784 to read:

1785 494.0036 Mortgage broker branch office license ~~brokerage~~
 1786 ~~business branch offices.--~~

1787 (1) Each branch office of a mortgage broker must be
 1788 licensed under this section. ~~A mortgage brokerage business~~
 1789 ~~branch office license is required for each branch office~~
 1790 ~~maintained by a mortgage brokerage business.~~

1791 (2) The office shall issue a mortgage broker ~~brokerage~~
 1792 ~~business~~ branch office license to a mortgage broker ~~brokerage~~

1793 ~~business~~ licensee after the office determines that the licensee
 1794 has submitted a completed application for a branch office in a
 1795 form ~~as~~ prescribed by commission rule and payment of an initial
 1796 nonrefundable branch office license fee of \$225 per branch
 1797 office. Application fees may not be prorated for partial years
 1798 of licensure. The branch office license shall be issued in the
 1799 name of the mortgage broker ~~brokerage business~~ that maintains
 1800 the branch office. An application is considered received for
 1801 purposes of s. 120.60 upon receipt of a completed application
 1802 form as prescribed by commission rule, and the required fees a
 1803 ~~nonrefundable application fee of \$225, and any other fee~~
 1804 ~~prescribed by law.~~

1805 (3) A branch office license must be renewed annually at
 1806 the time of renewing the mortgage broker license under s.
 1807 494.00322. A nonrefundable branch renewal fee of \$225 per branch
 1808 office must be submitted at the time of renewal.

1809 Section 30. Section 494.0038, Florida Statutes, is amended
 1810 to read:

1811 494.0038 Loan origination and mortgage broker fees and
 1812 ~~Mortgage broker~~ disclosures.--

1813 (1) ~~(a)1.~~ A loan origination fee may not be paid ~~person may~~
 1814 ~~not receive a mortgage brokerage fee~~ except pursuant to a
 1815 written mortgage broker ~~brokerage~~ agreement between the mortgage
 1816 broker ~~brokerage business~~ and the borrower which is signed and
 1817 dated by the principal loan originator or branch manager, ~~the~~
 1818 ~~business~~ and the borrower. The unique registry identifier of
 1819 each loan originator responsible for providing loan originator
 1820 services must be printed on the mortgage broker agreement.

1821 (a)2. The written mortgage broker ~~brokerage~~ agreement must
 1822 describe the services to be provided by the mortgage broker
 1823 ~~brokerage business~~ and specify the amount and terms of the loan
 1824 origination ~~mortgage brokerage~~ fee that the mortgage broker
 1825 ~~brokerage business~~ is to receive.

1826 1. Except for application and third-party fees, all fees
 1827 received by a mortgage broker from a borrower must be identified
 1828 as a loan origination fee.

1829 2. All fees on the mortgage broker agreement must be
 1830 disclosed in dollar amounts.

1831 3. All loan origination fees must be paid to a mortgage
 1832 broker.

1833 (b) The ~~written mortgage brokerage~~ agreement must be
 1834 executed within 3 business days after a mortgage loan
 1835 application is accepted if the borrower is present when the
 1836 mortgage loan application is accepted. If the borrower is not
 1837 present ~~when such an application is accepted~~, the licensee shall
 1838 forward the ~~written mortgage brokerage~~ agreement to the borrower
 1839 within 3 business days after the licensee's acceptance of the
 1840 application and the licensee bears the burden of proving that
 1841 the borrower received and approved the ~~written mortgage~~
 1842 ~~brokerage~~ agreement.

1843 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to
 1844 receive any payment of any kind from the mortgage lender, the
 1845 maximum total dollar amount of the payment must be disclosed to
 1846 the borrower in the written mortgage broker ~~brokerage~~ agreement
 1847 as described in paragraph (1) (a). The commission may prescribe
 1848 by rule an acceptable form for disclosure of brokerage fees

1849 received from the lender. The ~~mortgage broker~~ agreement must
 1850 state the nature of the relationship with the lender, describe
 1851 how compensation is paid by the lender, and describe how the
 1852 mortgage interest rate affects the compensation paid to the
 1853 mortgage broker ~~brokerage business~~.

1854 (a)2. The exact amount of any payment of any kind by the
 1855 lender to the mortgage broker ~~brokerage business~~ must be
 1856 disclosed in writing to the borrower within 3 business days
 1857 after the mortgage broker ~~brokerage business~~ is made aware of
 1858 the exact amount of the payment from the lender but not less
 1859 than 3 business days before the execution of the closing or
 1860 settlement statement. The licensee bears the burden of proving
 1861 such notification was provided to the borrower. Notification is
 1862 waived if the exact amount of the payment is accurately
 1863 disclosed in the written mortgage broker agreement.

1864 (b)(e) The commission may prescribe by rule the form of
 1865 disclosure of brokerage fees.

1866 (3)(2) At the time a written mortgage broker ~~brokerage~~
 1867 agreement is signed ~~executed~~ by the borrower or forwarded to the
 1868 borrower for signature ~~execution~~, or at the time the mortgage
 1869 broker ~~brokerage business~~ accepts an application fee, credit
 1870 report fee, property appraisal fee, or any other third-party
 1871 fee, but at least ~~not less than~~ 3 business days before execution
 1872 of the closing or settlement statement, the mortgage broker
 1873 ~~brokerage business~~ shall disclose in writing to any applicant
 1874 for a mortgage loan the following information:

1875 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may
 1876 not make mortgage loans or commitments. The mortgage broker

1877 ~~brokerage business~~ may make a commitment and may furnish a lock-
 1878 in of the rate and program on behalf of the lender if ~~when~~ the
 1879 mortgage broker ~~brokerage business~~ has obtained a written
 1880 commitment or lock-in for the loan from the lender on behalf of
 1881 the borrower for the loan. The commitment must be in the same
 1882 form and substance as issued by the lender.

1883 (b) That the ~~such~~ mortgage broker ~~brokerage business~~
 1884 cannot guarantee acceptance into any particular loan program or
 1885 promise any specific loan terms or conditions.

1886 (c) A good faith estimate, signed and dated by the
 1887 borrower, which discloses the total amount of each of the fees
 1888 ~~which~~ the borrower may reasonably expect to pay if the loan is
 1889 closed, including, but not limited to, fees earned by the
 1890 mortgage broker ~~brokerage business~~, lender fees, third-party
 1891 fees, and official fees, together with the terms and conditions
 1892 for obtaining a refund of such fees, if any. Any amount
 1893 collected in excess of the actual cost shall be returned within
 1894 60 days after rejection, withdrawal, or closing. The good faith
 1895 estimate must identify the recipient of all payments charged the
 1896 borrower and, except for all fees to be received by the mortgage
 1897 broker ~~brokerage business~~, may be disclosed in generic terms,
 1898 such as, but not limited to, paid to lender, appraiser,
 1899 officials, title company, or any other third-party service
 1900 provider. This requirement does not supplant or is not a
 1901 substitute for the written mortgage broker ~~brokerage~~ agreement
 1902 described in subsection (1).

1903 (4) ~~(3)~~ The disclosures required by this subsection must be
 1904 furnished in writing at the time an adjustable rate mortgage

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1905 loan is offered to the borrower and whenever the terms of the
 1906 adjustable rate mortgage loan offered materially change prior to
 1907 closing. The mortgage broker shall furnish the disclosures
 1908 relating to adjustable rate mortgages in a format prescribed by
 1909 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
 1910 of the Federal Reserve System, as amended; its commentary, as
 1911 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
 1912 1601 et seq., as amended; together with the Consumer Handbook on
 1913 Adjustable Rate Mortgages, as amended; published by the Federal
 1914 Reserve Board and the Federal Home Loan Bank Board. The licensee
 1915 bears the burden of proving such disclosures were provided to
 1916 the borrower.

1917 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes
 1918 a nonrefundable application fee, the following requirements are
 1919 applicable:

1920 (a) The amount of the application fee, which must be
 1921 clearly denominated as such, must ~~shall~~ be clearly disclosed.

1922 (b) The specific services that will be performed in
 1923 consideration for the application fee must ~~shall~~ be disclosed.

1924 (c) The application fee must be reasonably related to the
 1925 services to be performed and may not be based upon a percentage
 1926 of the principal amount of the loan or the amount financed.

1927 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept
 1928 any fee in connection with a mortgage loan other than an
 1929 application fee, credit report fee, property appraisal fee, or
 1930 other third-party fee ~~prior to obtaining a written commitment~~
 1931 ~~from a qualified lender.~~

1932 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker

1933 must ~~brokerage business shall~~ immediately, upon receipt, be
 1934 placed into a segregated account with a financial institution
 1935 located in the state the accounts of which are insured by the
 1936 Federal Government. Such funds shall be held in trust for the
 1937 payor and shall be kept in the account until disbursement. Such
 1938 funds may be placed in one account if adequate accounting
 1939 measures are taken to identify the source of the funds.

1940 ~~(7) All mortgage brokerage fees shall be paid to a~~
 1941 ~~mortgage brokerage business licensee.~~

1942 (8) A mortgage broker may not pay a commission to any
 1943 person not licensed pursuant to this chapter.

1944 (9)~~(8)~~ This section does not prohibit a mortgage broker
 1945 ~~brokerage business~~ from offering products and services, in
 1946 addition to those offered in conjunction with the loan
 1947 origination process, for a fee or commission.

1948 Section 31. Section 494.0039, Florida Statutes, is amended
 1949 to read:

1950 494.0039 Principal place of business requirements.--Each
 1951 mortgage broker ~~brokerage business~~ licensee shall maintain and
 1952 transact business from a principal place of business.

1953 Section 32. Section 494.004, Florida Statutes, is amended
 1954 to read:

1955 494.004 Requirements of licensees.--

1956 (1) Each licensee under this part ~~ss. 494.003-494.0043~~
 1957 shall report to the office:

1958 (a) In writing, any conviction of, or plea of nolo
 1959 contendere to, regardless of adjudication, any felony or any
 1960 crime or administrative violation that involves fraud,

1961 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~
 1962 or any other act of moral turpitude, in any jurisdiction, by the
 1963 licensee or any control natural person within ~~named in s.~~
 1964 ~~494.0031(2)(d), not later than~~ 30 days after the date of
 1965 conviction, entry of a plea of nolo contendere, or final
 1966 administrative action.

1967 ~~(b)(2) Each licensee under ss. 494.003-494.0043 shall~~
 1968 ~~report,~~ In a form prescribed by rule of the commission, any
 1969 conviction of, or plea of nolo contendere to, regardless of
 1970 ~~whether~~ adjudication is withheld, any felony committed by the
 1971 licensee or any control natural person within ~~named in s.~~
 1972 ~~494.0031(2)(d), not later than~~ 30 days after the date of
 1973 conviction or the date the plea of nolo contendere is entered.

1974 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~
 1975 ~~report~~ Any action in bankruptcy, voluntary or involuntary,
 1976 within 30 ~~to the office not later than 7~~ business days after the
 1977 action is instituted.

1978 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~
 1979 ~~report~~ On a form prescribed by rule of the commission, any
 1980 change to the information contained in any initial application
 1981 form or any amendment to the application within ~~not later than~~
 1982 30 days after the change is effective.

1983 ~~(5) A license issued under ss. 494.003-494.0043 is not~~
 1984 ~~transferable or assignable.~~

1985 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~
 1986 ~~report~~ Any change in the principal loan originator broker, any
 1987 addition or subtraction of a control person ~~partners, officers,~~
 1988 ~~members, joint venturers, directors, control persons of any~~

1989 ~~licensee, or any individual who is the ultimate equitable owner~~
 1990 ~~of a 10-percent or greater interest in the licensee, or any~~
 1991 ~~change in the form of business organization, by written~~
 1992 ~~amendment in the form and at the time the commission specifies~~
 1993 ~~by rule.~~

1994 ~~(a) In any case in which a person or a group of persons,~~
 1995 ~~directly or indirectly or acting by or through one or more~~
 1996 ~~persons, proposes to purchase or acquire a controlling interest~~
 1997 ~~in a licensee, such person or group shall submit an initial~~
 1998 ~~application for licensure as a mortgage brokerage business~~
 1999 ~~before such purchase or acquisition and at the time and in the~~
 2000 ~~form the commission prescribes by rule.~~

2001 ~~(b) As used in this subsection, the term "controlling~~
 2002 ~~interest" means possession of the power to direct or cause the~~
 2003 ~~direction of the management or policies of a company whether~~
 2004 ~~through ownership of securities, by contract, or otherwise. Any~~
 2005 ~~person who directly or indirectly has the right to vote 25~~
 2006 ~~percent or more of the voting securities of a company or is~~
 2007 ~~entitled to 25 percent or more of the company's profits is~~
 2008 ~~presumed to possess a controlling interest.~~

2009 ~~(f)(e) Any addition of a partner, officer, member, joint~~
 2010 ~~venturer, director, control person, or ultimate equitable owner~~
 2011 ~~of the applicant who does not have a controlling interest and~~
 2012 ~~who has not previously filed a Uniform Mortgage Biographical~~
 2013 ~~Statement & Consent Form, MU2, or has not previously complied~~
 2014 ~~with the fingerprinting and credit report requirements~~
 2015 ~~provisions of ss. 494.00321 and 494.00322, s. 494.0031(2)(e) and~~
 2016 ~~(d) is subject to the such provisions of these sections unless~~

2017 ~~required to file an initial application in accordance with~~
 2018 ~~paragraph (a). If, after the addition of a control person, the~~
 2019 office finds that the licensee does not continue to meet
 2020 licensure requirements, the office may bring an administrative
 2021 action in accordance with s. 494.00255 ~~s. 494.0041~~ to enforce
 2022 the provisions of this chapter.

2023 ~~(d) The commission shall adopt rules pursuant to ss.~~
 2024 ~~120.536(1) and 120.54 providing for the waiver of the~~
 2025 ~~application required by this subsection if the person or group~~
 2026 ~~of persons proposing to purchase or acquire a controlling~~
 2027 ~~interest in a licensee has previously complied with the~~
 2028 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~
 2029 ~~legal entity or is currently licensed by the office under this~~
 2030 ~~chapter.~~

2031 ~~(7) On or before April 30, 2000, each mortgage brokerage~~
 2032 ~~business shall file an initial report stating the name, social~~
 2033 ~~security number, date of birth, mortgage broker license number,~~
 2034 ~~date of hire and, if applicable, date of termination for each~~
 2035 ~~person who was an associate of the mortgage brokerage business~~
 2036 ~~during the immediate preceding quarter. Thereafter, A mortgage~~
 2037 ~~brokerage business shall file a quarterly report only if a~~
 2038 ~~person became an associate or ceased to be an associate of the~~
 2039 ~~mortgage brokerage business during the immediate preceding~~
 2040 ~~quarter. Such report shall be filed within 30 days after the~~
 2041 ~~last day of each calendar quarter and shall contain the name,~~
 2042 ~~social security number, date of birth, mortgage broker license~~
 2043 ~~number, date of hire and, if applicable, the date of termination~~
 2044 ~~of each person who became or ceased to be an associate of the~~

2045 ~~mortgage brokerage business during the immediate preceding~~
 2046 ~~quarter. The commission shall prescribe, by rule, the procedures~~
 2047 ~~for filing reports required by this subsection.~~

2048 (2) ~~(8)~~ ~~(a)~~ In every mortgage loan transaction, each
 2049 licensee under this part ~~must~~ ~~ss. 494.003-494.0043~~ shall notify
 2050 a borrower of any material changes in the terms of a mortgage
 2051 loan previously offered to the borrower within 3 business days
 2052 after being made aware of such changes by the mortgage lender
 2053 but at least ~~not less than~~ 3 business days before the signing of
 2054 the settlement or closing statement. The licensee bears the
 2055 burden of proving such notification was provided and accepted by
 2056 the borrower.

2057 ~~(b)~~ A borrower may waive the right to receive notice of a
 2058 material change ~~that is granted under paragraph (a)~~ if the
 2059 borrower determines that the extension of credit is needed to
 2060 meet a bona fide personal financial emergency and the right to
 2061 receive notice would delay the closing of the mortgage loan. The
 2062 imminent sale of the borrower's home at foreclosure during the
 2063 3-day period before the signing of the settlement or closing
 2064 statement is ~~constitutes~~ an example of a bona fide personal
 2065 financial emergency. In order to waive the borrower's right to
 2066 receive notice ~~not less than 3 business days before the signing~~
 2067 ~~of the settlement or closing statement of any such material~~
 2068 ~~change~~, the borrower must provide the licensee with a dated
 2069 written statement that describes the personal financial
 2070 emergency, waives the right to receive the notice, bears the
 2071 borrower's signature, and is not on a printed form prepared by
 2072 the licensee for the purpose of such a waiver.

2073 (3) Each mortgage broker shall submit to the registry
 2074 reports of condition, which must be in such form and shall
 2075 contain such information as the registry may require.

2076 (4) A license issued under this part is not transferable
 2077 or assignable.

2078 Section 33. Section 494.0041, Florida Statutes, is
 2079 repealed.

2080 Section 34. Section 494.0042, Florida Statutes, is amended
 2081 to read:

2082 494.0042 Loan originator ~~Brokerage~~ fees.--

2083 (1) A loan originator ~~mortgage brokerage~~ fee earned by a
 2084 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not
 2085 considered interest or a finance charge under chapter 687.

2086 (2) A person may not charge or exact, directly or
 2087 indirectly, from the borrower ~~mortgagor~~ a fee or commission in
 2088 excess of the maximum fee or commission specified in this
 2089 section. The maximum fees or commissions that may be charged for
 2090 mortgage loans are as follows:

2091 (a) On a mortgage loan of \$1,000 or less: \$250.

2092 (b) On a mortgage loan exceeding \$1,000 and not exceeding
 2093 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10
 2094 for each additional \$100 of the mortgage loan.

2095 (c) On a mortgage loan exceeding \$2,000 and not exceeding
 2096 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10
 2097 for each additional \$100 of the mortgage loan.

2098 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10
 2099 percent of the entire mortgage loan.

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2101 For the purpose of determining the maximum fee, the amount of
 2102 the mortgage loan is based on the amount of mortgage loan
 2103 actually funded exclusive of the authorized maximum fees or
 2104 commissions.

2105 (3) At the time of accepting a mortgage loan application,
 2106 a mortgage broker ~~brokerage business~~ may receive from the
 2107 borrower a nonrefundable application fee. If the mortgage loan
 2108 is funded, the nonrefundable application fee shall be credited
 2109 against the amount owed as a result of the loan being funded. A
 2110 person may not receive any form of compensation for acting as a
 2111 loan originator ~~mortgage broker~~ other than a nonrefundable
 2112 application fee, a fee based on the mortgage amount being
 2113 funded, or a fee which complies with s. 494.00421.

2114 Section 35. Section 494.00421, Florida Statutes, is amended to
 2115 read:

2116 494.00421 Fees earned upon obtaining a bona fide
 2117 commitment.--Notwithstanding the provisions of ss. 494.001-
 2118 494.0077, any mortgage broker ~~brokerage business~~ which contracts
 2119 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from
 2120 a borrower upon obtaining a bona fide commitment shall
 2121 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

- 2122 (1) The gross loan amount.
- 2123 (2) In the case of a fixed-rate mortgage, the note rate.
- 2124 (3) In the case of an adjustable rate mortgage:
 - 2125 (a) The initial note rate.
 - 2126 (b) The length of time for which the initial note rate is
 - 2127 effective.
 - 2128 (c) The frequency of changes.

2129 (d) The limitation upon such changes including adjustment
 2130 to adjustment cap and life cap.

2131 (e) Whether the loan has any potential for negative
 2132 amortization.

2133 (f) Identification of the margin-interest rate
 2134 differential.

2135 (g) Identification of a nationally recognized index which
 2136 index must be free from control of the mortgage broker, ~~mortgage~~
 2137 ~~brokerage business, mortgage lender, or correspondent mortgage~~
 2138 lender.

2139 (4) The estimated net proceeds to be paid directly to the
 2140 borrower. "Estimated net proceeds" means the cash to be received
 2141 by the borrower after payment of any fees, charges, debts,
 2142 liens, or encumbrances to perfect the lien of the new mortgage
 2143 and establish the agreed-upon priority of the new mortgage.

2144 (5) The lien priority of the new proposed mortgage.

2145 (6) The number of calendar days, which are mutually agreed
 2146 upon, within which the mortgage broker ~~brokerage business~~ shall
 2147 obtain a bona fide mortgage commitment.

2148 (7) (a) The following statement, in at least ~~no less than~~
 2149 12-point boldface type immediately above the signature lines for
 2150 the borrowers:

2151
 2152 "You are entering into a contract with a mortgage broker
 2153 ~~brokerage business~~ to obtain a bona fide mortgage loan
 2154 commitment under the same terms and conditions as stated
 2155 hereinabove or in a separate executed good faith estimate form.
 2156 If the mortgage broker ~~brokerage business~~ obtains a bona fide

2157 | commitment under the same terms and conditions, you will be
 2158 | obligated to pay the mortgage broker ~~brokerage~~ business fees,
 2159 | including, but not limited to, a mortgage broker ~~brokerage~~ fee,
 2160 | even if you choose not to complete the loan transaction. If the
 2161 | provisions of s. 494.00421, Florida Statutes, are not met, the
 2162 | mortgage broker ~~brokerage~~ fee can only be earned upon the
 2163 | funding of the mortgage loan. The borrower may contact the
 2164 | Department of Financial Services, Tallahassee, Florida,
 2165 | regarding any complaints that the borrower may have against the
 2166 | mortgage broker ~~or the mortgage brokerage business~~. The
 2167 | telephone number of the department is: ...[insert telephone
 2168 | number]...."

2169 | (b) Paragraph (a) does not apply to nonresidential
 2170 | mortgage loan commitments in excess of \$1 million.

2171 | (8) Any other disclosure required pursuant to s. 494.0038.
 2172 | Section 36. Section 494.0043, Florida Statutes, is amended
 2173 | to read:

2174 | 494.0043 Requirements for brokering loans to
 2175 | noninstitutional investors.--

2176 | (1) A loan originator ~~mortgage broker~~, when arranging a
 2177 | mortgage loan for a noninstitutional investor, shall:

2178 | (a) Before any payment of money by the ~~a~~ noninstitutional
 2179 | investor, provide an opinion of value from an appraiser stating
 2180 | the value of the security property unless the opinion is waived
 2181 | in writing. The opinion must state the value of the property as
 2182 | it exists on the date of the opinion. If any relationship exists
 2183 | between the mortgage broker and the appraiser, that relationship
 2184 | shall be disclosed to the investor.

2185 (b) Provide to the noninstitutional investor a mortgagee's
 2186 title insurance policy or an opinion of title by an attorney
 2187 licensed to practice law in the state, or a copy thereof.

2188 1. If a title insurance policy is issued, it must insure
 2189 the noninstitutional investor against the unmarketability of the
 2190 mortgagee's interest in such title. It must ~~shall~~ also specify
 2191 any superior liens that exist against the property. If an
 2192 opinion of title is issued by an attorney ~~licensed to practice~~
 2193 ~~law in the state~~, the opinion must include a statement as to the
 2194 marketability of the title to the property described in the
 2195 mortgage and specify the priority of the mortgage being closed.

2196 2. If the title insurance policy or opinion of title is
 2197 not available at the time of purchase, the licensee shall
 2198 provide a binder of the title insurance or conditional opinion
 2199 of title. This binder or opinion must include any conditions or
 2200 requirements that need ~~needed~~ to be corrected before ~~prior to~~
 2201 the issuance of the final title policy or opinion of title. The
 2202 binder or opinion must also include information concerning the
 2203 requirements specified in subparagraph 1. Any conditions must be
 2204 eliminated or waived in writing by the investor before ~~prior to~~
 2205 delivery to the noninstitutional investor. The policy or
 2206 opinion, or a copy thereof, shall be delivered to the investor
 2207 within a reasonable period of time, not exceeding 6 months,
 2208 after closing.

2209 3. The requirements of this paragraph may be waived in
 2210 writing. If the requirements are waived by the noninstitutional
 2211 investor, the waiver must include the following statement
 2212 ~~wording~~: "The noninstitutional investor acknowledges that the

2213 mortgage broker or mortgage lender brokering this mortgage loan
 2214 is not providing a title insurance policy or opinion of title
 2215 issued by an attorney who is licensed to practice law in the
 2216 State of Florida. Any requirement for title insurance or for a
 2217 legal opinion of title is the sole responsibility of the
 2218 noninstitutional mortgage investor."

2219 (c) Provide, if the loan is other than a first mortgage, a
 2220 statement showing the balance owed by the mortgagor on any
 2221 existing mortgages prior to this investment and the status of
 2222 such existing mortgages.

2223 (d) Provide a disclosure if the licensee is directly or
 2224 indirectly acting as a borrower or principal in the transaction.

2225 (2) Each original or certified copy of the mortgage, or
 2226 other instrument securing a note or assignment thereof, must
 2227 ~~shall~~ be recorded before being delivered to the noninstitutional
 2228 investor. A loan originator ~~mortgage broker~~ shall cause the
 2229 properly endorsed original note to be delivered to the
 2230 noninstitutional investor.

2231 (3) Each mortgage and assignment must ~~shall~~ be recorded as
 2232 soon as practical, but no later than 30 business days after the
 2233 date of closing.

2234 (4) Any money from a noninstitutional investor for
 2235 disbursement at a mortgage loan closing must ~~shall~~ be deposited
 2236 with and disbursed by an attorney duly licensed in this state or
 2237 by a title company duly licensed in this state. A person acting
 2238 as a loan originator ~~mortgage broker~~ may not have control of any
 2239 money from a noninstitutional investor. This subsection does not
 2240 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from

2241 receiving a loan originator ~~mortgage brokerage~~ fee upon the
 2242 closing of the mortgage loan funded by the noninstitutional
 2243 investor.

2244 Section 37. Section 494.006, Florida Statutes, is amended
 2245 to read:

2246 494.006 Exemptions.--

2247 (1) None of the following persons are subject to the
 2248 requirements of this part ~~ss. 494.006-494.0077~~ in order to act
 2249 as a mortgage lender ~~or correspondent mortgage lender~~:

2250 (a) Any person operating exclusively as a registered loan
 2251 originator in accordance with the S.A.F.E. Mortgage Licensing
 2252 Act of 2008.

2253 (b) A depository institution; subsidiaries that are owned
 2254 and controlled by a depository institution and regulated by the
 2255 Board of Governors of the Federal Reserve System, the
 2256 Comptroller of the Currency, the Director of the Office of
 2257 Thrift Supervision, the National Credit Union Administration, or
 2258 the Federal Deposit Insurance Corporation; or institutions
 2259 regulated by the Farm Credit Administration

2260 (c) The Federal National Mortgage Association; the Federal
 2261 Home Loan Mortgage Corporation; an agency of the Federal
 2262 Government; any state, county, or municipal government; or any
 2263 quasi-governmental agency that acts in such capacity under the
 2264 specific authority of the laws of any state or the United
 2265 States.

2266 (d) ~~(b)~~ Any person acting in a fiduciary capacity conferred
 2267 by the authority of any court.

2268 ~~(e) A wholly owned bank holding company subsidiary or a~~

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2269 ~~wholly owned savings and loan association holding company~~
 2270 ~~subsidiary that is formed and regulated under the laws of any~~
 2271 ~~state or the United States and that is approved or certified by~~
 2272 ~~the Department of Housing and Urban Development, the Veterans~~
 2273 ~~Administration, the Government National Mortgage Association,~~
 2274 ~~the Federal National Mortgage Association, or the Federal Home~~
 2275 ~~Loan Mortgage Corporation.~~

2276 (e)~~(d)~~ Any person who, as a seller of his or her own real
 2277 property, receives one or more mortgages in a purchase money
 2278 transaction.

2279 ~~(e) Any person who receives a mortgage as security for an~~
 2280 ~~obligation arising out of materials furnished or as services~~
 2281 ~~rendered by the person in the improvement of the real property.~~

2282 (f)~~(f)~~ Any person who makes only nonresidential mortgage
 2283 loans and sells loans only to institutional investors.

2284 ~~(g) The Federal National Mortgage Association; the Federal~~
 2285 ~~Home Loan Mortgage Corporation; an agency of the Federal~~
 2286 ~~Government; any state, county, or municipal government; or any~~
 2287 ~~quasi-governmental agency that acts in such capacity under the~~
 2288 ~~specific authority of the laws of any state or the United~~
 2289 ~~States.~~

2290 ~~(h) A consumer finance company licensed pursuant to~~
 2291 ~~chapter 516 as of October 1, 1991.~~

2292 (g)~~(i)~~ Any natural person making or acquiring a mortgage
 2293 loan with his or her own funds for his or her own investment,
 2294 and who does not hold himself or herself out to the public, in
 2295 any manner, as being in the mortgage lending business.

2296 (h)~~(j)~~ Any natural person selling a mortgage that was made

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2297 or purchased with that person's funds for his or her own
 2298 investment, and who does not hold himself or herself out to the
 2299 public, in any manner, as being in the mortgage lending
 2300 business.

2301 (i)~~(k)~~ Any person who acts solely under contract and as an
 2302 agent for federal, state, or municipal agencies in the servicing
 2303 of mortgage loans.

2304 ~~(2) (a) A natural person employed by a mortgage lender or~~
 2305 ~~correspondent mortgage lender licensed under ss. 494.001-~~
 2306 ~~494.0077 is exempt from the licensure requirements of ss.~~
 2307 ~~494.001-494.0077 when acting within the scope of employment with~~
 2308 ~~the licensee.~~

2309 ~~(b) A corporation that is in existence on October 1, 1991,~~
 2310 ~~and that is a wholly owned subsidiary of a consumer finance~~
 2311 ~~company licensed pursuant to chapter 516 on October 1, 1991, is~~
 2312 ~~not required to be licensed under ss. 494.006-494.0077 in order~~
 2313 ~~to act as a mortgage lender or a correspondent mortgage lender.~~

2314 (2)~~(3)~~ It is unnecessary to negate any of the exemptions
 2315 provided in this section ~~ss. 494.001-494.0077~~ in any complaint,
 2316 information, indictment, or other writ or proceeding brought
 2317 under ss. 494.001-494.0077. The burden of establishing the right
 2318 to an ~~any~~ exemption is upon the party claiming the benefit of
 2319 the exemption.

2320 Section 38. Effective October 1, 2010, section 494.0061,
 2321 Florida Statutes, is repealed.

2322 Section 39. Effective October 1, 2010, section 494.00611,
 2323 Florida Statutes, is created to read:

2324 494.00611 Mortgage lender license.--

2325 (1) Each person who acts as a mortgage lender must be
 2326 licensed under this section.

2327 (2) In order to apply for a mortgage lender license the
 2328 applicant must:

2329 (a) Submit a completed application form as prescribed by
 2330 the commission by rule.

2331 (b) Designate a qualified principal loan originator who
 2332 meets the requirements of s. 494.0035 on the application form.

2333 (c) Submit a nonrefundable application fee of \$500, and
 2334 the \$100 nonrefundable fee if required by s. 494.00172.
 2335 Application fees may not be prorated for partial years of
 2336 licensure.

2337 (d) Submit fingerprints for each of the applicant's
 2338 control persons in accordance with rules adopted by the
 2339 commission:

2340 1. The fingerprints may be submitted to the registry, the
 2341 office, or a vendor acting on behalf of the registry or the
 2342 office.

2343 2. The office may contract with a third-party vendor to
 2344 provide live-scan fingerprinting in lieu of a paper fingerprint
 2345 card.

2346 3. A state criminal history background check must be
 2347 conducted through the Department of Law Enforcement and a
 2348 federal criminal history background check must be conducted
 2349 through the Federal Bureau of Investigation.

2350 4. All fingerprints submitted to the Department of Law
 2351 Enforcement must be submitted electronically and entered into
 2352 the statewide automated fingerprint identification system

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2353 established in s. 943.05(2)(b) and available for use in
2354 accordance with s. 943.05(2)(g) and (h). The office shall pay an
2355 annual fee to the department to participate in the system and
2356 inform the department of any person whose fingerprints are no
2357 longer required to be retained.

2358 5. The costs of fingerprint processing, including the cost
2359 of retaining the fingerprints, shall be borne by the person
2360 subject to the background check.

2361 6. The office is responsible for reviewing the results of
2362 the state and federal criminal history checks and determining
2363 whether the applicant meets licensure requirements.

2364 (e) Indicate whether the applicant will be seeking a
2365 servicing endorsement on the application form.

2366 (f) Submit a copy of the applicant's financial audit
2367 report for the most recent fiscal year which, pursuant to United
2368 States generally accepted accounting principles, documents that
2369 the applicant has a bona fide and verifiable net worth, of at
2370 least \$63,000 if the applicant is not seeking a servicing
2371 endorsement, or at least \$250,000 if the applicant is seeking a
2372 servicing endorsement, which must be continuously maintained as
2373 a condition of licensure. If the applicant is a wholly owned
2374 subsidiary of another corporation, the financial audit report
2375 for the parent corporation's satisfies this requirement. The
2376 commission may establish by rule the form and procedures for
2377 filing the financial audit report, including the requirement to
2378 file the report with the registry when technology is available.

2379 (g) Authorize the registry to obtain an independent credit
2380 report on each of the applicant's control persons from a

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2381 consumer reporting agency, and transmit or provide access to the
2382 report to the office. The cost of the credit report shall be
2383 borne by the applicant.

2384 (h) Submit additional information or documentation
2385 requested by the office and required by rule concerning the
2386 applicant or a control person of the applicant. Additional
2387 information may include documentation of pending and prior
2388 disciplinary and criminal history events, including arrest
2389 reports and certified copies of charging documents, plea
2390 agreements, judgments and sentencing documents, documents
2391 relating to pretrial intervention, orders terminating probation
2392 or supervised release, final administrative agency orders, or
2393 other comparable documents that may provide the office with the
2394 appropriate information to determine eligibility for licensure.

2395 (i) Submit any other information required by the registry
2396 for the processing of the application.

2397 (3) An application is considered received for the purposes
2398 of s. 120.60 upon the office's receipt of all documentation from
2399 the registry, including the completed application form, criminal
2400 history information, and independent credit report, as well as
2401 the license application fee, the fee required under s.
2402 494.00172, and all applicable fingerprinting processing fees.

2403 (4) The office shall issue a mortgage lender license to
2404 each person who is not otherwise ineligible and who meets the
2405 requirements of this section. However, it is a ground for denial
2406 of licensure if the applicant or one of the applicant's control
2407 persons:

2408 (a) Has committed any violation specified in ss. 494.001-

2409 494.0077, or is the subject of a pending felony criminal
 2410 prosecution or a prosecution or an administrative enforcement
 2411 action, in any jurisdiction, which involves fraud, dishonesty,
 2412 breach of trust, money laundering, or any other act of moral
 2413 turpitude.

2414 (b) Demonstrates a lack of financial responsibility,
 2415 character, and general fitness which would fail to command the
 2416 confidence of the community and to warrant a determination that
 2417 the loan originator will operate honestly, fairly, and
 2418 efficiently. The office may not base a license denial, in whole
 2419 or in part, on an applicant's credit score or use a credit
 2420 report as the sole basis for license denial. If an applicant's
 2421 credit report is determined by the office to be a factor that
 2422 would contribute to the denial of a license, the office shall
 2423 notify the applicant of the specific concern relating to the
 2424 applicant's credit report and provide the applicant with an
 2425 opportunity to provide a written explanation and other
 2426 mitigating information in response to the credit report. For
 2427 purposes of this paragraph, a person has shown that he or she is
 2428 not financially responsible if he or she has shown a disregard
 2429 in the management of his or her own financial condition, which
 2430 may include, but is not limited to:

- 2431 1. Current outstanding judgments, except judgments
- 2432 resulting solely from medical expenses;
- 2433 2. Current outstanding federal tax liens; or
- 2434 3. A pattern of seriously delinquent accounts within the
- 2435 past 7 years that would exhibit an obvious disregard for the
- 2436 repayment of outstanding obligations.

2437 (5) The office may not issue a license if the applicant
 2438 has had a mortgage lender license or its equivalent revoked in
 2439 any jurisdiction, or any of the applicant's control persons has
 2440 ever had a loan originator license or its equivalent revoked in
 2441 any jurisdiction.

2442 (6) A person required to be licensed under this part, or
 2443 an agent or employee thereof, is deemed to have consented to the
 2444 venue of courts in this state regarding any matter within the
 2445 authority of ss. 494.001-494.0077 regardless of where an act or
 2446 violation was committed.

2447 (7) A license issued in accordance with this part is not
 2448 transferable or assignable.

2449 (8) A mortgage lender or branch office license may be
 2450 withdrawn pursuant to s. 120.60 if it was issued through mistake
 2451 or inadvertence of the office. A license must be reinstated if
 2452 the applicant demonstrates that the requirements for obtaining
 2453 the license under this chapter have been satisfied.

2454 (9) Each lender, regardless of the number of branches it
 2455 operates, shall designate a principal loan originator
 2456 representative who exercises control of the licensee's business,
 2457 and a branch manager for each branch office. Each mortgage
 2458 lender must keep the office informed of the persons designated
 2459 as prescribed by commission rule, which includes documentation
 2460 of the individual's acceptance of such responsibility. If the
 2461 designation is inaccurate, the branch shall be deemed to be
 2462 operated under the full charge, control, and supervision by each
 2463 officer, director, or ultimate equitable owner of a 10 percent
 2464 or greater interest in the mortgage lender business, or any

2465 other person in a similar capacity during that time.

2466 (10) All mortgage lender licenses must be renewed annually
 2467 by December 31 pursuant to s. 494.00612. If a person holding an
 2468 active mortgage broker license has not applied to renew the
 2469 license annually on or before December 31, the mortgage broker
 2470 license expires on December 31. If a person holding an active
 2471 mortgage broker license has applied to renew the license on or
 2472 before December 31, the mortgage broker license remains active
 2473 until the renewal application is approved or denied. A mortgage
 2474 broker is not precluded from reapplying for licensure upon
 2475 expiration of a previous license.

2476 Section 40. Effective October 1, 2010, section 494.00612,
 2477 Florida Statutes, is created to read:

2478 494.00612 Mortgage lender license renewal.--

2479 (1) In order to renew a mortgage lender license, a
 2480 mortgage lender must:

2481 (a) Submit a completed license renewal form as prescribed
 2482 by commission rule.

2483 (b) Submit a nonrefundable renewal fee of \$475, and the
 2484 \$100 nonrefundable fee if required by s. 494.00172.

2485 (c) Submit fingerprints in accordance with s.
 2486 494.00611(2) (d) for any new control persons who have not been
 2487 screened.

2488 (d) Provide proof that the mortgage lender continues to
 2489 meet the applicable net worth requirement in a form prescribed
 2490 by commission rule.

2491 (e) Authorize the registry to obtain an independent credit
 2492 report on the mortgage lender from a consumer reporting agency,

2493 and transmit or provide access to the report to the office. The
 2494 cost of the credit report shall be borne by the applicant.

2495 (f) Submit any additional information or documentation
 2496 requested by the office and required by rule concerning the
 2497 licensee. Additional information may include documentation of
 2498 pending and prior disciplinary and criminal history events,
 2499 including arrest reports and certified copies of charging
 2500 documents, plea agreements, judgments and sentencing documents,
 2501 documents relating to pretrial intervention, orders terminating
 2502 probation or supervised release, final administrative agency
 2503 orders, or other comparable documents that may provide the
 2504 office with the appropriate information to determine eligibility
 2505 for licensure.

2506 (2) The office may not renew a mortgage lender license
 2507 unless the mortgage lender continues to meet the minimum
 2508 standards for initial license issuance pursuant to s. 494.00611
 2509 and adopted rule.

2510 Section 41. Effective October 1, 2010, section 494.0062,
 2511 Florida Statutes, is repealed.

2512 Section 42. Section 494.0063, Florida Statutes, is amended
 2513 to read:

2514 494.0063 Audited financial statements.--All audited
 2515 financial statements required by ss. 494.001-494.0077 must be
 2516 prepared by an independent licensed certified public accountant.
 2517 A mortgage lender must obtain an annual financial audit report
 2518 as of the date of the licensee's fiscal year end, as disclosed
 2519 to the office on the application or a subsequent amendment to
 2520 the application. The mortgage lender shall submit a copy of the

2521 report to the office within 120 days after the end of the
 2522 licensee's fiscal year. If the applicant is a wholly owned
 2523 subsidiary of another corporation, the financial audit report of
 2524 the parent corporation's satisfies this requirement. If the
 2525 licensee changes its fiscal year, the licensee must file report
 2526 within 18 months after the previously submitted report. The
 2527 commission may establish by rule the procedures and form for
 2528 filing a financial audit report, including the requirement to
 2529 file the report with the registry when technology is available.

2530 Section 43. Effective October 1, 2010, section 494.0064,
 2531 Florida Statutes, is repealed.

2532 Section 44. Effective October 1, 2010, section 494.0065,
 2533 Florida Statutes, is repealed.

2534 Section 45. Section 494.0066, Florida Statutes, is amended
 2535 to read:

2536 494.0066 Branch offices.--

2537 (1) Each branch office of a mortgage lender must be
 2538 licensed under this section ~~A branch office license is required~~
 2539 ~~for each branch office maintained by a licensee under ss.~~
 2540 ~~494.006-494.0077.~~

2541 (2) The office shall issue a branch office license to a
 2542 mortgage lender licensee licensed under ss. 494.006-494.0077
 2543 after the office determines that the mortgage lender licensee
 2544 has submitted a completed branch office application form as
 2545 prescribed by rule by the commission, and an initial
 2546 nonrefundable branch office license fee of \$225 per branch
 2547 office \$325. Application fees may not be prorated for partial
 2548 years of licensure. The branch office application must include

2549 the name and license number of the mortgage lender licensee
 2550 under this part ss. ~~494.006-494.0077~~, the name of the branch
 2551 manager licensee's employee in charge of the branch office, and
 2552 the address of the branch office. The branch office license
 2553 shall be issued in the name of the mortgage lender licensee
 2554 under ss. ~~494.006-494.0077~~ and must be renewed in conjunction
 2555 with the license renewal. An application is considered received
 2556 for purposes of s. 120.60 upon receipt of a completed branch
 2557 office renewal form, as prescribed by commission rule, and the
 2558 required fees.

2559 (3) A branch office license must be renewed at the time of
 2560 renewing the mortgage lender license. A nonrefundable fee of
 2561 \$225 per branch office must be submitted at the time of renewal.

2562 Section 46. Section 494.00665, Florida Statutes, is
 2563 created to read:

2564 494.00665 Principal loan originator and branch manager for
 2565 mortgage lender.--

2566 (1) Each mortgage lender business must be operated by a
 2567 principal loan originator who shall have full charge, control,
 2568 and supervision of the mortgage lender business. The principal
 2569 loan originator must have been licensed as a loan originator
 2570 pursuant to s. 494.00312. Each mortgage lender must keep the
 2571 office informed of the person designated as the principal loan
 2572 originator as prescribed by commission rule. If the designation
 2573 is inaccurate, the business shall be deemed to be operated under
 2574 the full charge, control, and supervision of each officer,
 2575 director, or ultimate equitable owner of a 10 percent or greater
 2576 interest in the mortgage lender business, or any other person in

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2577 | a similar capacity during that time.

2578 | (2) Each branch office of a mortgage lender must be
 2579 | operated by a branch manager who shall have full charge,
 2580 | control, and supervision of the branch office. The designated
 2581 | branch manager must be a licensed loan originator pursuant to s.
 2582 | 494.00312. Each mortgage lender must keep the office informed of
 2583 | the person designated as the branch manager as prescribed by
 2584 | commission rule, which includes documentation of the
 2585 | individual's acceptance of such responsibility. If the
 2586 | designation is inaccurate, the branch office shall be deemed to
 2587 | be operated under the full charge, control, and supervision of
 2588 | each officer, director, or ultimate equitable owner of a 10
 2589 | percent or greater interest in the mortgage lender business, or
 2590 | any other person in a similar capacity during that time.

2591 | Section 47. Section 494.0067, Florida Statutes, is amended
 2592 | to read:

2593 | 494.0067 Requirements of mortgage lenders ~~licensees under~~
 2594 | ~~ss. 494.006-494.0077.--~~

2595 | (1) A mortgage lender that ~~Each licensee under ss.~~
 2596 | ~~494.006-494.0077~~ which makes mortgage loans on real estate in
 2597 | this state shall transact business from a principal place of
 2598 | business. Each principal place of business and each branch
 2599 | office shall be operated under the full charge, control, and
 2600 | supervision of the licensee pursuant to this part ~~under ss.~~
 2601 | ~~494.006-494.0077.~~

2602 | (2) A license issued under this part ~~ss. 494.006-494.0077~~
 2603 | is not transferable or assignable.

2604 | (3) A mortgage lender ~~Each licensee under ss. 494.006-~~

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2605 ~~494.0077~~ shall report, on a form prescribed by rule of the
 2606 commission, any change in the information contained in any
 2607 initial application form, or any amendment thereto, within not
 2608 ~~later than~~ 30 days after the change is effective.

2609 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~
 2610 ~~494.0077~~ shall report any changes in the principal loan
 2611 originator, any addition or subtraction of a control person,
 2612 ~~partners, officers, members, joint venturers, directors, or~~
 2613 ~~control persons of any licensee or~~ any change ~~changes~~ in the
 2614 form of business organization by written amendment in such form
 2615 and at such time that the commission specifies by rule.

2616 (a) In any case in which a person or a group of persons,
 2617 directly or indirectly or acting by or through one or more
 2618 persons, proposes to purchase or acquire a controlling interest
 2619 in a licensee, such person or group must submit an initial
 2620 application for licensure as a mortgage lender ~~or correspondent~~
 2621 ~~mortgage lender~~ before such purchase or acquisition and at the
 2622 time and in the form prescribed by the commission by rule.

2623 ~~(b) As used in this subsection, the term "controlling~~
 2624 ~~interest" means possession of the power to direct or cause the~~
 2625 ~~direction of the management or policies of a company whether~~
 2626 ~~through ownership of securities, by contract, or otherwise. Any~~
 2627 ~~person who directly or indirectly has the right to vote 25~~
 2628 ~~percent or more of the voting securities of a company or who is~~
 2629 ~~entitled to 25 percent or more of the company's profits is~~
 2630 ~~presumed to possess a controlling interest.~~

2631 (b)(c) Any addition of a ~~designated principal~~
 2632 ~~representative, partner, officer, member, joint venturer,~~

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2633 ~~director, or control person of the applicant who does not have a~~
 2634 ~~controlling interest and who has not previously filed a Uniform~~
 2635 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~
 2636 ~~previously complied with fingerprinting and credit report~~
 2637 ~~requirements of s. 494.00611 is the provisions of s.~~
 2638 ~~494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.~~
 2639 ~~494.0065(5)(e) and (f) shall be subject to the such provisions~~
 2640 ~~of this section unless required to file an initial application~~
 2641 ~~in accordance with paragraph (a). If after the addition of a~~
 2642 ~~control person, the office determines that the licensee does not~~
 2643 ~~continue to meet licensure requirements, the office may bring~~
 2644 ~~administrative action in accordance with s. 494.00255 s.~~
 2645 ~~494.0072 to enforce the provisions of this section.~~

2646 ~~(d) The commission shall adopt rules pursuant to ss.~~
 2647 ~~120.536(1) and 120.54 providing for the waiver of the~~
 2648 ~~application required by this subsection if the person or group~~
 2649 ~~of persons proposing to purchase or acquire a controlling~~
 2650 ~~interest in a licensee has previously complied with the~~
 2651 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~
 2652 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~
 2653 ~~is currently licensed with the office under this chapter.~~

2654 (5) Each mortgage lender licensee ~~under ss. 494.006-~~
 2655 ~~494.0077~~ shall report in a form prescribed by rule by the
 2656 commission any indictment, information, charge, conviction, plea
 2657 of guilty or nolo contendere, regardless of adjudication, ~~or~~
 2658 ~~plea of guilty~~ to any felony or any crime or administrative
 2659 violation that involves fraud, dishonesty, breach of trust,
 2660 money laundering ~~dishonest dealing,~~ or any other act of moral

2661 turpitude, in any jurisdiction, by the licensee ~~under ss.~~
 2662 ~~494.006-494.0077~~ or any principal officer, director, or ultimate
 2663 equitable owner of 10 percent or more of the licensed
 2664 corporation, within ~~not later than~~ 30 business days after the
 2665 indictment, information, charge, conviction, or final
 2666 administrative action.

2667 (6) Each mortgage lender ~~licensee under ss. 494.006-~~
 2668 ~~494.0077~~ shall report any action in bankruptcy, voluntary or
 2669 involuntary, to the office, within ~~not later than~~ 7 business
 2670 days after the action is instituted.

2671 (7) Each mortgage lender ~~licensee under ss. 494.006-~~
 2672 ~~494.0077~~ shall designate a registered agent in this state for
 2673 service of process.

2674 (8) Each mortgage lender ~~licensee under ss. 494.006-~~
 2675 ~~494.0077~~ shall provide an applicant for a mortgage loan a good
 2676 faith estimate of the costs the applicant can reasonably expect
 2677 to pay in obtaining a mortgage loan. The good faith estimate of
 2678 costs must ~~shall~~ be mailed or delivered to the applicant within
 2679 3 business days ~~a reasonable time~~ after the licensee receives a
 2680 written loan application from the applicant. The estimate of
 2681 costs may be provided to the applicant by a person other than
 2682 the licensee making the loan. The good faith estimate must
 2683 identify the recipient of all payments charged to the borrower
 2684 and, except for all fees to be received by the mortgage broker
 2685 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~
 2686 ~~mortgage lender~~, may be disclosed in generic terms, such as, but
 2687 not limited to, paid to appraiser, officials, title company, or
 2688 any other third-party service provider. The licensee bears the

2689 | burden of proving such disclosures were provided to the
 2690 | borrower. The commission may adopt rules that set forth the
 2691 | disclosure requirements of this section.

2692 | ~~(9) On or before April 30, 2000, each mortgage lender or~~
 2693 | ~~correspondent mortgage lender shall file an initial report~~
 2694 | ~~stating the full legal name, residential address, social~~
 2695 | ~~security number, date of birth, mortgage broker license number,~~
 2696 | ~~date of hire, and, if applicable, date of termination for each~~
 2697 | ~~person who acted as a loan originator or an associate of the~~
 2698 | ~~mortgage lender or correspondent mortgage lender during the~~
 2699 | ~~immediate preceding quarter. Thereafter, a mortgage lender or~~
 2700 | ~~correspondent mortgage lender shall file a report only if a~~
 2701 | ~~person became or ceased to be a loan originator or an associate~~
 2702 | ~~of the mortgage lender or correspondent mortgage lender during~~
 2703 | ~~the immediate preceding quarter. Such report shall be filed~~
 2704 | ~~within 30 days after the last day of each calendar quarter and~~
 2705 | ~~shall contain the full legal name, residential address, social~~
 2706 | ~~security number, date of birth, date of hire and, if applicable,~~
 2707 | ~~the mortgage broker license number and date of termination of~~
 2708 | ~~each person who became or ceased to be a loan originator or an~~
 2709 | ~~associate of the mortgage lender or correspondent mortgage~~
 2710 | ~~lender during the immediate preceding quarter. The commission~~
 2711 | ~~shall prescribe, by rule, the procedures for filing reports~~
 2712 | ~~required by this subsection.~~

2713 | ~~(10)(a) Each mortgage lender or correspondent mortgage~~
 2714 | ~~lender licensee shall require the principal representative and~~
 2715 | ~~all loan originators, not currently licensed as mortgage brokers~~
 2716 | ~~pursuant to s. 494.0033, who perform services for the licensee~~

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2717 ~~to complete 14 hours of professional continuing education during~~
 2718 ~~each biennial license period. The education shall cover primary~~
 2719 ~~and subordinate mortgage financing transactions and the~~
 2720 ~~provisions of this chapter and the rules adopted under this~~
 2721 ~~chapter.~~

2722 ~~(b) The licensee shall maintain records of such training~~
 2723 ~~for a period of 4 years, including records of the content of and~~
 2724 ~~hours designated for each program and the date and location of~~
 2725 ~~the program.~~

2726 ~~(c) Evidence of completion of such programs shall be~~
 2727 ~~included with the licensee's renewal application.~~

2728 (9)~~(11)~~ The disclosures in this subsection must be
 2729 furnished in writing at the time an adjustable rate mortgage
 2730 loan is offered to the borrower and whenever the terms of the
 2731 adjustable rate mortgage loan offered have a material change
 2732 prior to closing. The lender shall furnish the disclosures
 2733 relating to adjustable rate mortgages in a format prescribed by
 2734 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors
 2735 of the Federal Reserve System, as amended; its commentary, as
 2736 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.
 2737 1601 et seq., as amended; together with the Consumer Handbook on
 2738 Adjustable Rate Mortgages, as amended; published by the Federal
 2739 Reserve Board and the Federal Home Loan Bank Board. The licensee
 2740 bears the burden of proving such disclosures were provided to
 2741 the borrower.

2742 (10)~~(12)~~ (a) In every mortgage loan transaction, each
 2743 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify
 2744 a borrower of any material changes in the terms of a mortgage

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2745 loan previously offered to the borrower within 3 business days
2746 after being made aware of such changes by the lender but at
2747 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the
2748 settlement or closing statement. The licensee bears the burden
2749 of proving such notification was provided and accepted by the
2750 borrower.

2751 ~~(b)~~ A borrower may waive the right to receive notice of a
2752 material change ~~that is granted under paragraph (a)~~ if the
2753 borrower determines that the extension of credit is needed to
2754 meet a bona fide personal financial emergency and the right to
2755 receive notice would delay the closing of the mortgage loan. The
2756 imminent sale of the borrower's home at foreclosure during the
2757 3-day period before the signing of the settlement or closing
2758 statement constitutes an example of a bona fide personal
2759 financial emergency. In order to waive the borrower's right to
2760 receive notice ~~not less than 3 business days before the signing~~
2761 ~~of the settlement or closing statement of any such material~~
2762 ~~change~~, the borrower must provide the licensee with a dated
2763 written statement that describes the personal financial
2764 emergency, waives the right to receive the notice, bears the
2765 borrower's signature, and is not on a printed form prepared by
2766 the licensee for the purpose of such a waiver.

2767 (11) A mortgage lender may close loans in its own name but
2768 may not service the loan for more than 4 months unless the
2769 lender has a servicing endorsement. Only a mortgage lender who
2770 continuously maintains a net worth of at least \$250,000 may
2771 obtain a servicing endorsement.

2772 (12) A mortgage lender must report to the office the

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2773 failure to meet the applicable net worth requirements of s.
 2774 494.00611 within 2 days after the mortgage lender's knowledge of
 2775 such failure or after the mortgage lender should have known of
 2776 such failure.

2777 Section 48. Section 494.0068, Florida Statutes, is amended
 2778 to read:

2779 494.0068 Loan application process.--

2780 (1) In addition to the requirements set forth in s.
 2781 494.0067(8), before accepting an application fee in whole or in
 2782 part, a credit report fee, an appraisal fee, or a fee charged as
 2783 reimbursement for third-party charges, a mortgage lender shall
 2784 make a written disclosure to the borrower, which disclosure may
 2785 be contained in the application, setting forth:

2786 (a) Whether all or any part of such fees or charges is
 2787 refundable.

2788 (b) The terms and conditions for the refund, if all or any
 2789 part of the fees or charges is refundable.

2790 (c) A realistic estimate of the number of days required to
 2791 issue a commitment following receipt of the application by the
 2792 lender.

2793 (d) The name or title of a person within the lender's
 2794 organization to whom the borrower may address written questions,
 2795 comments, or complaints and who is required to promptly respond
 2796 to such inquiries.

2797 (2) The disclosures required in subsection (1) must ~~shall~~
 2798 be acknowledged in writing by the borrower and maintained by the
 2799 mortgage lender, and a copy of such acknowledgment shall be
 2800 given to the borrower.

2801 (3) The borrower may, without penalty or responsibility
 2802 for paying additional fees and charges, withdraw an application
 2803 at any time prior to acceptance of commitment. Upon such
 2804 withdrawal, the mortgage lender is responsible for refunding to
 2805 the borrower only those fees and charges to which the borrower
 2806 may be entitled pursuant to the terms set forth in the written
 2807 disclosure required by subsection (1), except that:

2808 (a) If the lender failed to provide the borrower with the
 2809 written disclosure required by subsection (1), the lender shall
 2810 promptly refund to the borrower all funds paid to the lender; or

2811 (b) If the lender failed to make a good faith effort to
 2812 approve the loan, the lender shall promptly refund to the
 2813 borrower all funds paid to the lender.

2814 (4) The application fee must be reasonably related to the
 2815 services to be performed and may not be based upon a percentage
 2816 of the principal amount of the loan or the amount financed.

2817 (5) For the purposes of this section, the term
 2818 "application fee" means any moneys advanced by the borrower upon
 2819 filing an application with a mortgage lender to offset the
 2820 lender's expenses for determining whether the borrower is
 2821 qualified for the mortgage loan or whether the mortgage loan
 2822 should be funded.

2823 Section 49. Section 494.0069, Florida Statutes, is amended
 2824 to read:

2825 494.0069 Lock-in agreement.--

2826 (1) Each lock-in agreement must be in writing and must
 2827 contain:

2828 (a) The expiration date of the lock-in, if any;

- 2829 (b) The interest rate locked in, if any;
- 2830 (c) The discount points locked in, if any;
- 2831 (d) The commitment fee locked in, if any;
- 2832 (e) The lock-in fee, if any; and
- 2833 (f) A statement advising of the provisions of ss. 494.006-
- 2834 494.0077 regarding lock-in agreements.

2835 (2) The mortgage lender ~~or correspondent mortgage lender~~
 2836 shall make a good faith effort to process the mortgage loan
 2837 application and stand ready to fulfill the terms of its
 2838 commitment before the expiration date of the lock-in agreement
 2839 or any extension thereof.

2840 (3) Any lock-in agreement received by a mortgage lender ~~or~~
 2841 ~~correspondent mortgage lender~~ by mail or through a mortgage
 2842 broker must be signed by the mortgage lender ~~or correspondent~~
 2843 ~~mortgage lender~~ in order to become effective. The borrower may
 2844 rescind any lock-in agreement until a written confirmation of
 2845 the agreement has been signed by the lender and mailed to the
 2846 borrower or to the mortgage broker ~~brokerage business~~ pursuant
 2847 to its contractual relationship with the borrower. If a borrower
 2848 elects to so rescind, the mortgage lender ~~or correspondent~~
 2849 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2850 (4) ~~(a) Before Any correspondent mortgage lender or~~
 2851 ~~mortgage lender prior to~~ issuing a mortgage loan rate lock-in
 2852 agreement, a mortgage lender must have the ability to timely
 2853 advance funds on all mortgage loans for which rate lock-in
 2854 agreements have been issued. As used in this section, "ability
 2855 to timely advance funds" means having sufficient liquid assets
 2856 or a line of credit necessary to cover all rate lock-in

2857 | agreements issued with respect to which a lock-in fee is
 2858 | collected.

2859 | (a) ~~(b)~~ A ~~correspondent mortgage lender or~~ mortgage lender
 2860 | that does not comply with this subsection ~~paragraph (a)~~ may
 2861 | issue mortgage rate lock-in agreements only if, prior to the
 2862 | issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2863 | 1. Has received a written rate lock-in agreement from a
 2864 | ~~correspondent mortgage lender or~~ mortgage lender that complies
 2865 | with this subsection ~~paragraph (a)~~; or

2866 | 2. Has received a written rate lock-in agreement from an
 2867 | institutional investor or an agency of the Federal Government or
 2868 | the state or local government that will be funding, making, or
 2869 | purchasing the mortgage loan.

2870 | (b) ~~(e)~~ All rate lock-in fees collected by a mortgage
 2871 | lender ~~or correspondent mortgage lender~~ who is not in compliance
 2872 | with ~~paragraph (a)~~ must be deposited into an escrow account in a
 2873 | federally insured financial institution, and such fees may ~~shall~~
 2874 | not be removed from such escrow account until:

2875 | 1. The mortgage loan closes and is funded;

2876 | 2. The applicant cancels the loan application or the loan
 2877 | application is rejected; or

2878 | 3. The mortgage lender ~~or correspondent mortgage lender~~ is
 2879 | required to forward a portion of the lock-in fee to another
 2880 | ~~correspondent mortgage lender,~~ mortgage lender, institutional
 2881 | investor, or agency that will be funding, making, or purchasing
 2882 | the loan. The mortgage lender ~~or correspondent mortgage lender~~
 2883 | may remove only the amount of the lock-in fee actually paid to
 2884 | another mortgage lender, ~~correspondent mortgage lender,~~

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2885 institutional investor, or agency.

2886 (5) For purposes of this section, the term "lock-in fee"
 2887 means any moneys advanced by the borrower to lock in for a
 2888 specified period of time a specified interest rate or discount
 2889 points.

2890 (6) The commission may adopt by rule a form for required
 2891 lock-in agreement disclosures.

2892 Section 50. Section 494.007, Florida Statutes, is amended
 2893 to read:

2894 494.007 Commitment process.--

2895 (1) If a commitment is issued, the mortgage lender shall
 2896 disclose in writing:

2897 (a) The expiration date of the commitment;

2898 (b) The mortgage amount, meaning the face amount of credit
 2899 provided to the borrower or in the borrower's behalf;

2900 (c) If the interest rate or other terms are subject to
 2901 change before expiration of the commitment:

2902 1. The basis, index, or method, if any, which will be used
 2903 to determine the rate at closing. Such basis, index, or method
 2904 shall be established and disclosed with direct reference to the
 2905 movement of an interest rate index or of a national or regional
 2906 index that is available to and verifiable by the borrower and
 2907 beyond the control of the lender; or

2908 2. The following statement, in at least 10-point bold
 2909 type: "The interest rate will be the rate established by the
 2910 lender in its discretion as its prevailing rate . . . days
 2911 before closing.";

2912 (d) The amount of the commitment fee, if any, and whether

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2913 and under what circumstances the commitment fee is refundable;
 2914 and

2915 (e) The time, if any, within which the commitment must be
 2916 accepted by the borrower.

2917 (2) The provisions of a commitment cannot be changed prior
 2918 to expiration of the specified period within which the borrower
 2919 must accept it. If any information necessary for an accurate
 2920 disclosure required by subsection (1) is unknown to the mortgage
 2921 lender at the time disclosure is required, the lender shall make
 2922 the disclosure based upon the best information reasonably
 2923 available to it and shall state that the disclosure is an
 2924 estimate.

2925 (3) A commitment fee is refundable if:

2926 (a) The commitment is contingent upon approval by parties
 2927 to whom the mortgage lender seeks to sell the loan.

2928 (b) The loan purchaser's requirements are not met due to
 2929 circumstances beyond the borrower's control.

2930 (c) The borrower is willing but unable to comply with the
 2931 loan purchaser's requirements.

2932 Section 51. Section 494.0071, Florida Statutes, is amended
 2933 to read:

2934 494.0071 Expiration of lock-in agreement or
 2935 commitment.--If a lock-in agreement has been executed and the
 2936 loan does not close before the expiration date of ~~either~~ the
 2937 lock-in agreement or any commitment issued consistent therewith
 2938 through no substantial fault of the borrower, the borrower may
 2939 withdraw the application or reject or terminate any commitment,
 2940 whereupon the mortgage lender ~~or correspondent mortgage lender~~

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2941 shall promptly refund to the borrower any lock-in fee and any
 2942 commitment fee paid by the borrower.

2943 Section 52. Section 494.0072, Florida Statutes, is
 2944 repealed.

2945 Section 53. Section 494.00721, Florida Statutes, is
 2946 amended to read:

2947 494.00721 Net worth.--

2948 (1) The net worth requirements ~~required~~ in s. 494.00611
 2949 ~~ss. 494.0061, 494.0062, and 494.0065~~ shall be continually
 2950 maintained as a condition of licensure.

2951 (2) If a mortgage lender ~~or correspondent mortgage lender~~
 2952 fails to satisfy the net worth requirements, the mortgage lender
 2953 ~~or correspondent mortgage lender~~ shall immediately cease taking
 2954 any new mortgage loan applications. Thereafter, the mortgage
 2955 lender ~~or correspondent mortgage lender~~ shall have up to 60 days
 2956 within which to satisfy the net worth requirements. If the
 2957 licensee makes the office aware, prior to an examination, that
 2958 the licensee no longer meets the net worth requirements, the
 2959 mortgage lender ~~or correspondent mortgage lender~~ shall have 120
 2960 days within which to satisfy the net worth requirements. A
 2961 mortgage lender may ~~or correspondent mortgage lender shall~~ not
 2962 resume acting as a mortgage lender ~~or correspondent mortgage~~
 2963 ~~lender~~ without written authorization from the office, which
 2964 authorization shall be granted if the mortgage lender ~~or~~
 2965 ~~correspondent mortgage lender~~ provides the office with
 2966 documentation which satisfies the requirements of s. 494.00611
 2967 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~
 2968 whichever is applicable.

2969 (3) If the mortgage lender ~~or correspondent mortgage~~
 2970 ~~lender~~ does not satisfy the net worth requirements within 120
 2971 days ~~the 120-day period~~, the license of the mortgage lender ~~or~~
 2972 ~~correspondent mortgage lender~~ shall be deemed to be relinquished
 2973 and canceled and all servicing contracts shall be disposed of in
 2974 a timely manner by the mortgage lender ~~or correspondent mortgage~~
 2975 ~~lender~~.

2976 Section 54. Section 494.0073, Florida Statutes, is amended
 2977 to read:

2978 494.0073 Mortgage lender ~~or correspondent mortgage lender~~
 2979 when acting as a mortgage broker ~~brokerage business~~.--The
 2980 provision of this part ~~Sections 494.006-494.0077~~ do not prohibit
 2981 a mortgage lender ~~or correspondent mortgage lender~~ from acting
 2982 as a mortgage broker ~~brokerage business~~. However, in mortgage
 2983 transactions in which a mortgage lender ~~or correspondent~~
 2984 ~~mortgage lender~~ acts as a mortgage broker ~~brokerage business~~,
 2985 the provisions of ss. 494.0038, 494.004(2) ~~494.004(8)~~, 494.0042,
 2986 and 494.0043(1), (2), and (3) apply.

2987 Section 55. Section 494.0075, Florida Statutes, is amended
 2988 to read:

2989 494.0075 Requirements for selling loans to
 2990 noninstitutional investors.--

2991 (1) A mortgage lender, when selling a mortgage loan to a
 2992 noninstitutional investor, shall:

2993 (a) Before any payment of money by a noninstitutional
 2994 investor, provide an opinion of value from an appraiser stating
 2995 the value of the security property unless the opinion is waived
 2996 in writing. The opinion must state the value of the property as

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2997 | it exists on the date of the opinion. If any relationship exists
 2998 | between the lender and the appraiser, that relationship must
 2999 | ~~shall~~ be disclosed.†

3000 | (b) Provide to the noninstitutional investor a mortgagee's
 3001 | title insurance policy or an opinion of title by an attorney
 3002 | licensed to practice law in this state, or a copy thereof:

3003 | 1. If a title insurance policy is issued, it must insure
 3004 | the noninstitutional investor against the unmarketability of the
 3005 | mortgagee's interest in such title. It must also specify any
 3006 | superior liens that exist against the property. If an opinion of
 3007 | title is issued by an attorney ~~licensed to practice law in this~~
 3008 | ~~state~~, the opinion must include a statement as to the
 3009 | marketability of the title to the property described in the
 3010 | mortgage and specify the priority of the mortgage being
 3011 | purchased.

3012 | 2. If the title insurance policy or opinion of title is
 3013 | not available at the time of purchase, the licensee shall
 3014 | provide a binder of the title insurance or conditional opinion
 3015 | of title. This binder or opinion must include any conditions or
 3016 | requirements needed to be corrected before ~~prior to~~ the issuance
 3017 | of the final title policy or opinion of title. The binder or
 3018 | opinion must also include information concerning the
 3019 | requirements specified in subparagraph 1. Any conditions must be
 3020 | eliminated or waived in writing by the investor before ~~prior to~~
 3021 | delivery to the noninstitutional investor. The policy or
 3022 | opinion, or a copy thereof, shall be delivered to the investor
 3023 | within a reasonable period of time, not exceeding 6 months,
 3024 | after purchase.

3025 3. The requirements of this paragraph may be waived in
 3026 writing. If the requirements are waived by the noninstitutional
 3027 investor, the waiver must include the following wording: "The
 3028 noninstitutional investor acknowledges that the mortgage lender
 3029 selling this mortgage loan is not providing a title insurance
 3030 policy or opinion of title issued by an attorney who is licensed
 3031 to practice law in the State of Florida. Any requirement for
 3032 title insurance or for a legal opinion of title is the sole
 3033 responsibility of the noninstitutional mortgage purchaser."

3034 (c) Provide, if the loan is other than a first mortgage, a
 3035 statement showing the balance owed by the mortgagor on any
 3036 existing mortgages prior to this investment and the status of
 3037 such existing mortgages.

3038 (d) Provide a disclosure if the licensee is directly or
 3039 indirectly acting as a borrower or principal in the transaction.

3040 (2) Each mortgage, or other instrument securing a note or
 3041 assignment thereof, must ~~shall~~ be recorded before being
 3042 delivered to the noninstitutional investor.

3043 (3) Each mortgage and assignment shall be recorded as soon
 3044 as practical, but within ~~no later than~~ 30 business days after
 3045 the date of purchase.

3046 (4) If the loan is to be serviced by a licensee under this
 3047 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there
 3048 shall be a written servicing agreement.

3049 ~~(5) The mortgage lender shall cause the original note to~~
 3050 ~~be properly endorsed showing the assignment of the note to the~~
 3051 ~~noninstitutional investor.~~

3052 Section 56. Section 494.0077, Florida Statutes, is amended

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3053 to read:
 3054 494.0077 Other products and services.--This part does
 3055 ~~Sections 494.006-494.0077 do~~ not prohibit a mortgage lender from
 3056 offering, for a fee or commission, products and services in
 3057 addition to those offered in conjunction with making a mortgage
 3058 loan.

3059 Section 57. Section 501.1377, Florida Statutes, is amended
 3060 to read:

3061 501.1377 Violations involving homeowners during the course
 3062 of residential foreclosure proceedings.--

3063 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
 3064 finds that homeowners who are in default on their mortgages, in
 3065 foreclosure, or at risk of losing their homes due to nonpayment
 3066 of taxes may be vulnerable to fraud, deception, and unfair
 3067 dealings ~~with foreclosure rescue consultants or equity~~
 3068 ~~purchasers~~. The intent of this section is to provide a homeowner
 3069 with information necessary to make an informed decision
 3070 regarding the sale or transfer of his or her home to an equity
 3071 purchaser. It is the further intent of this section ~~to require~~
 3072 ~~that foreclosure-related rescue services agreements be expressed~~
 3073 ~~in writing in order to safeguard homeowners against deceit and~~
 3074 ~~financial hardship~~; to ensure, foster, and encourage fair
 3075 dealing in the sale and purchase of homes in foreclosure or
 3076 default; to prohibit representations that tend to mislead; to
 3077 prohibit or restrict unfair contract terms; to provide a
 3078 cooling-off period for homeowners who enter into contracts for
 3079 services related to saving their homes from foreclosure or
 3080 preserving their rights to possession of their homes; to afford

3081 homeowners a reasonable and meaningful opportunity to rescind
 3082 sales to equity purchasers; and to preserve and protect home
 3083 equity for the homeowners of this state.

3084 (2) DEFINITIONS.--As used in this section, the term:

3085 (a) "Equity purchaser" means any person who acquires a
 3086 legal, equitable, or beneficial ownership interest in any
 3087 residential real property as a result of a foreclosure-rescue
 3088 transaction. The term does not apply to a person who acquires
 3089 the legal, equitable, or beneficial interest in such property:

3090 1. By a certificate of title from a foreclosure sale
 3091 conducted under chapter 45;

3092 2. At a sale of property authorized by statute;

3093 3. By order or judgment of any court;

3094 4. From a spouse, parent, grandparent, child, grandchild,
 3095 or sibling of the person or the person's spouse; or

3096 5. As a deed in lieu of foreclosure, a workout agreement,
 3097 a bankruptcy plan, or any other agreement between a foreclosing
 3098 lender and a homeowner.

3099 ~~(b) "Foreclosure-rescue consultant" means a person who~~
 3100 ~~directly or indirectly makes a solicitation, representation, or~~
 3101 ~~offer to a homeowner to provide or perform, in return for~~
 3102 ~~payment of money or other valuable consideration, foreclosure-~~
 3103 ~~related rescue services. The term does not apply to:~~

3104 ~~1. A person excluded under s. 501.212.~~

3105 ~~2. A person acting under the express authority or written~~
 3106 ~~approval of the United States Department of Housing and Urban~~
 3107 ~~Development or other department or agency of the United States~~
 3108 ~~or this state to provide foreclosure-related rescue services.~~

3109 ~~3. A charitable, not-for-profit agency or organization, as~~
 3110 ~~determined by the United States Internal Revenue Service under~~
 3111 ~~s. 501(c)(3) of the Internal Revenue Code, which offers~~
 3112 ~~counseling or advice to an owner of residential real property in~~
 3113 ~~foreclosure or loan default if the agency or organization does~~
 3114 ~~not contract for foreclosure-related rescue services with a for-~~
 3115 ~~profit lender or person facilitating or engaging in foreclosure-~~
 3116 ~~rescue transactions.~~

3117 ~~4. A person who holds or is owed an obligation secured by~~
 3118 ~~a lien on any residential real property in foreclosure if the~~
 3119 ~~person performs foreclosure-related rescue services in~~
 3120 ~~connection with this obligation or lien and the obligation or~~
 3121 ~~lien was not the result of or part of a proposed foreclosure~~
 3122 ~~reconveyance or foreclosure-rescue transaction.~~

3123 ~~5. A financial institution as defined in s. 655.005 and~~
 3124 ~~any parent or subsidiary of the financial institution or of the~~
 3125 ~~parent or subsidiary.~~

3126 ~~6. A licensed mortgage broker, mortgage lender, or~~
 3127 ~~correspondent mortgage lender that provides mortgage counseling~~
 3128 ~~or advice regarding residential real property in foreclosure,~~
 3129 ~~which counseling or advice is within the scope of services set~~
 3130 ~~forth in chapter 494 and is provided without payment of money or~~
 3131 ~~other consideration other than a mortgage brokerage fee as~~
 3132 ~~defined in s. 494.001.~~

3133 ~~(c) "Foreclosure-related rescue services" means any good~~
 3134 ~~or service related to, or promising assistance in connection~~
 3135 ~~with:~~

3136 ~~1. Stopping, avoiding, or delaying foreclosure proceedings~~

3137 ~~concerning residential real property; or~~
 3138 ~~2. Curing or otherwise addressing a default or failure to~~
 3139 ~~timely pay with respect to a residential mortgage loan~~
 3140 ~~obligation.~~
 3141 (b)~~(d)~~ "Foreclosure-rescue transaction" means a
 3142 transaction:
 3143 1. By which residential real property in foreclosure is
 3144 conveyed to an equity purchaser and the homeowner maintains a
 3145 legal or equitable interest in the residential real property
 3146 conveyed, including, without limitation, a lease option
 3147 interest, an option to acquire the property, an interest as
 3148 beneficiary or trustee to a land trust, or other interest in the
 3149 property conveyed; and
 3150 2. That is designed or intended by the parties to stop,
 3151 avoid, or delay foreclosure proceedings against a homeowner's
 3152 residential real property.
 3153 (c)~~(e)~~ "Homeowner" means any record title owner of
 3154 residential real property that is the subject of foreclosure
 3155 proceedings.
 3156 (d)~~(f)~~ "Residential real property" means real property
 3157 consisting of one-family to four-family dwelling units, one of
 3158 which is occupied by the owner as his or her principal place of
 3159 residence.
 3160 (e)~~(g)~~ "Residential real property in foreclosure" means
 3161 residential real property against which there is an outstanding
 3162 notice of the pendency of foreclosure proceedings recorded
 3163 pursuant to s. 48.23.
 3164 ~~(3) PROHIBITED ACTS. In the course of offering or~~

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3165 ~~providing foreclosure-related rescue services, a foreclosure-~~
3166 ~~rescue consultant may not:~~

3167 ~~(a) Engage in or initiate foreclosure-related rescue~~
3168 ~~services without first executing a written agreement with the~~
3169 ~~homeowner for foreclosure-related rescue services; or~~

3170 ~~(b) Solicit, charge, receive, or attempt to collect or~~
3171 ~~secure payment, directly or indirectly, for foreclosure-related~~
3172 ~~rescue services before completing or performing all services~~
3173 ~~contained in the agreement for foreclosure-related rescue~~
3174 ~~services.~~

3175 ~~(4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN~~
3176 ~~AGREEMENT.~~

3177 ~~(a) The written agreement for foreclosure-related rescue~~
3178 ~~services must be printed in at least 12-point uppercase type and~~
3179 ~~signed by both parties. The agreement must include the name and~~
3180 ~~address of the person providing foreclosure-related rescue~~
3181 ~~services, the exact nature and specific detail of each service~~
3182 ~~to be provided, the total amount and terms of charges to be paid~~
3183 ~~by the homeowner for the services, and the date of the~~
3184 ~~agreement. The date of the agreement may not be earlier than the~~
3185 ~~date the homeowner signed the agreement. The foreclosure-rescue~~
3186 ~~consultant must give the homeowner a copy of the agreement to~~
3187 ~~review not less than 1 business day before the homeowner is to~~
3188 ~~sign the agreement.~~

3189 ~~(b) The homeowner has the right to cancel the written~~
3190 ~~agreement without any penalty or obligation if the homeowner~~
3191 ~~cancels the agreement within 3 business days after signing the~~
3192 ~~written agreement. The right to cancel may not be waived by the~~

3193 ~~homeowner or limited in any manner by the foreclosure-rescue~~
 3194 ~~consultant. If the homeowner cancels the agreement, any payments~~
 3195 ~~that have been given to the foreclosure-rescue consultant must~~
 3196 ~~be returned to the homeowner within 10 business days after~~
 3197 ~~receipt of the notice of cancellation.~~

3198 ~~(c) An agreement for foreclosure-related rescue services~~
 3199 ~~must contain, immediately above the signature line, a statement~~
 3200 ~~in at least 12-point uppercase type that substantially complies~~
 3201 ~~with the following:~~

3202
 3203 ~~HOMEOWNER'S RIGHT OF CANCELLATION~~

3204
 3205 ~~YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE~~
 3206 ~~SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS~~
 3207 ~~DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.~~

3208
 3209 ~~THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM~~
 3210 ~~ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU~~
 3211 ~~UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU~~
 3212 ~~HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST~~
 3213 ~~BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE~~
 3214 ~~CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.~~

3215
 3216 ~~TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT~~
 3217 ~~THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED~~
 3218 ~~(POSTMARKED) OR DELIVERED TO ... (NAME)... AT ... (ADDRESS)... NO~~
 3219 ~~LATER THAN MIDNIGHT OF ... (DATE)....~~

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3221 ~~IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR~~
 3222 ~~MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR~~
 3223 ~~MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR~~
 3224 ~~A RESTRUCTURING WITH YOU FREE OF CHARGE.~~

3225 ~~(d) The inclusion of the statement does not prohibit the~~
 3226 ~~foreclosure-rescue consultant from giving the homeowner more~~
 3227 ~~time in which to cancel the agreement than is set forth in the~~
 3228 ~~statement, provided all other requirements of this subsection~~
 3229 ~~are met.~~

3230 ~~(e) The foreclosure-rescue consultant must give the~~
 3231 ~~homeowner a copy of the signed agreement within 3 hours after~~
 3232 ~~the homeowner signs the agreement.~~

3233 (3)~~(5)~~ FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN
 3234 AGREEMENT.--

3235 ~~(a)1.~~ A foreclosure-rescue transaction must include a
 3236 written agreement prepared in at least 12-point uppercase type
 3237 that is completed, signed, and dated by the homeowner and the
 3238 equity purchaser before executing any instrument from the
 3239 homeowner to the equity purchaser quitclaiming, assigning,
 3240 transferring, conveying, or encumbering an interest in the
 3241 residential real property in foreclosure. The equity purchaser
 3242 must give the homeowner a copy of the completed agreement within
 3243 3 hours after the homeowner signs the agreement.

3244 1. The agreement must contain the entire understanding of
 3245 the parties and must include:

3246 a. The name, business address, and telephone number of the
 3247 equity purchaser.

3248 b. The street address and full legal description of the

3249 | property.

3250 | c. Clear and conspicuous disclosure of any financial or
3251 | legal obligations of the homeowner which ~~that~~ will be assumed by
3252 | the equity purchaser.

3253 | d. The total consideration to be paid by the equity
3254 | purchaser in connection with or incident to the acquisition of
3255 | the property by the equity purchaser.

3256 | e. The terms of payment or other consideration, including,
3257 | but not limited to, any services that the equity purchaser
3258 | represents will be performed for the homeowner before or after
3259 | the sale.

3260 | f. The date and time when possession of the property is to
3261 | be transferred to the equity purchaser.

3262 | 2. A foreclosure-rescue transaction agreement must
3263 | contain, above the signature line, a statement in at least 12-
3264 | point uppercase type that substantially complies with the
3265 | following:

3266 |
3267 | I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO
3268 | THE OTHER UNDERSIGNED PARTY.

3269 | 3. A foreclosure-rescue transaction agreement must state
3270 | the specifications of any option or right to repurchase the
3271 | residential real property in foreclosure, including the specific
3272 | amounts of any escrow payments or deposit, down payment,
3273 | purchase price, closing costs, commissions, or other fees or
3274 | costs.

3275 | 4. A foreclosure-rescue transaction agreement must comply
3276 | with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and

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3277 related regulations.
 3278 (b) The homeowner may cancel the foreclosure-rescue
 3279 transaction agreement without penalty if the homeowner notifies
 3280 the equity purchaser of such cancellation no later than 5 p.m.
 3281 on the 3rd business day after signing the written agreement. Any
 3282 moneys paid by the equity purchaser to the homeowner or by the
 3283 homeowner to the equity purchaser must be returned at
 3284 cancellation. The right to cancel does not limit or otherwise
 3285 affect the homeowner's right to cancel the transaction under any
 3286 other law. The right to cancel may not be waived by the
 3287 homeowner or limited ~~in any way~~ by the equity purchaser. The
 3288 equity purchaser must give the homeowner, at the time the
 3289 written agreement is signed, a notice of the homeowner's right
 3290 to cancel the foreclosure-rescue transaction as set forth in
 3291 this subsection. The notice, which must be set forth on a
 3292 separate cover sheet to the written agreement that contains no
 3293 other written or pictorial material, must be in at least 12-
 3294 point uppercase type, double-spaced, and read as follows:

3295
 3296 NOTICE TO THE HOMEOWNER/SELLER
 3297
 3298 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
 3299 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.
 3300
 3301 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY
 3302 CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
 3303 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.
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3305 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU
 3306 OR BY THE PURCHASER.

3307
 3308 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE RETURNED
 3309 TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU TO THE
 3310 PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

3311
 3312 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00
 3313 P.M. ON ... (DATE) ... AT ... (ADDRESS) IT IS BEST TO MAIL IT
 3314 BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT
 3315 REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR
 3316 POST OFFICE RECEIPT.

3317
 3318 I (we) hereby cancel this transaction.

3319 ...Seller's Signature...
 3320 ...Printed Name of Seller...
 3321 ...Seller's Signature...
 3322 ...Printed Name of Seller...
 3323 ...Date...

3324 (c) In any foreclosure-rescue transaction in which the
 3325 homeowner has ~~is provided~~ the right to repurchase the
 3326 residential real property, the homeowner has a 30-day right to
 3327 cure any default of the terms of the contract with the equity
 3328 purchaser, and this right to cure may be exercised on up to
 3329 three separate occasions. The homeowner's right to cure must be
 3330 included in any written agreement required by this subsection.

3331 (d) In any foreclosure-rescue transaction, before or at
 3332 the time of conveyance, the equity purchaser must fully assume

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3333 or discharge any lien in foreclosure as well as any prior liens
 3334 that are ~~will~~ not be extinguished by the foreclosure.

3335 (e) If the homeowner has the right to repurchase the
 3336 residential real property, the equity purchaser must verify and
 3337 be able to demonstrate that the homeowner has or will have a
 3338 reasonable ability to make the required payments to exercise the
 3339 option to repurchase under the written agreement. For purposes
 3340 of this subsection, there is a rebuttable presumption that the
 3341 homeowner has a reasonable ability to make the payments required
 3342 to repurchase the property if the homeowner's monthly payments
 3343 for primary housing expenses and regular monthly principal and
 3344 interest payments on other personal debt do not exceed 60
 3345 percent of the homeowner's monthly gross income.

3346 (f) If the homeowner has the right to repurchase the
 3347 residential real property, the price the homeowner pays may not
 3348 be unconscionable, unfair, or commercially unreasonable. A
 3349 rebuttable presumption, solely between the equity purchaser and
 3350 the homeowner, arises that the foreclosure-rescue transaction
 3351 was unconscionable if the homeowner's repurchase price is
 3352 greater than 17 percent per annum more than the total amount
 3353 paid by the equity purchaser to acquire, improve, maintain, and
 3354 hold the property. Unless the repurchase agreement or a
 3355 memorandum of the repurchase agreement is recorded in accordance
 3356 with s. 695.01, the presumption does ~~arising under this~~
 3357 ~~subsection shall~~ not apply against creditors or subsequent
 3358 purchasers for a valuable consideration and without notice.

3359 (4) ~~(6)~~ REBUTTABLE PRESUMPTION.--Any foreclosure-rescue
 3360 transaction involving a lease option or other repurchase

3361 agreement creates a rebuttable presumption, solely between the
 3362 equity purchaser and the homeowner, that the transaction is a
 3363 loan transaction and the conveyance from the homeowner to the
 3364 equity purchaser is a mortgage under s. 697.01. Unless the lease
 3365 option or other repurchase agreement, or a memorandum of the
 3366 lease option or other repurchase agreement, is recorded in
 3367 accordance with s. 695.01, the presumption does ~~created under~~
 3368 ~~this subsection shall~~ not apply against creditors or subsequent
 3369 purchasers for a valuable consideration and without notice.

3370 (5)~~(7)~~ VIOLATIONS.--A person who violates any provision of
 3371 this section commits an unfair and deceptive trade practice as
 3372 defined in part II of this chapter. Violators are subject to the
 3373 penalties and remedies provided in part II of this chapter,
 3374 including a monetary penalty not to exceed \$15,000 per
 3375 violation.

3376 Section 58. Effective October 1, 2009:

3377 (1) All mortgage business school permits issued pursuant
 3378 to s. 494.0029, Florida Statutes, expire on September 30, 2010.

3379 (2) All mortgage brokerage business licenses issued before
 3380 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida
 3381 Statutes, expire December 31, 2010. However, if a person holding
 3382 an active mortgage brokerage business license issued before
 3383 October 1, 2010, applies for a mortgage broker license through
 3384 the Nationwide Mortgage Licensing System and Registry between
 3385 October 1, 2010, and December 31, 2010, the mortgage brokerage
 3386 business license does not expire until the Office of Financial
 3387 Regulation approves or denies the mortgage broker license
 3388 application. A mortgage broker license approved on or after

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3389 October 1, 2010, is effective until December 31, 2011.

3390 Application fees may not be prorated for partial years of
3391 licensure.

3392 (3) All mortgage broker licenses issued before October 1,
3393 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,
3394 expire December 31, 2010. However, if a person holding an active
3395 mortgage broker license issued before October 1, 2010, applies
3396 for a loan originator license through the Nationwide Mortgage
3397 Licensing System and Registry between October 1, 2010, and
3398 December 31, 2010, the mortgage broker license does not expire
3399 until the Office of Financial Regulation approves or denies the
3400 loan originator license application. Notwithstanding s. 120.60,
3401 Florida Statutes, for mortgage broker applications submitted
3402 between July 1, 2009, and December 31, 2009, or loan originator
3403 applications submitted between October 1, 2010, and December 31,
3404 2010, the office has 60 days to notify the applicant of any
3405 apparent errors or omissions in an application and to request
3406 any additional information that the agency may require, and the
3407 office has 180 days to approve or deny a completed application.
3408 Application fees may not be prorated for partial years of
3409 licensure.

3410 (4) All mortgage lender licenses issued before October 1,
3411 2010, pursuant to s. 494.0061 or 494.0064, Florida Statutes,
3412 expire December 31, 2010. However, if a person holding an active
3413 mortgage lender license applies for a mortgage broker license or
3414 mortgage lender license through the Nationwide Mortgage
3415 Licensing System and Registry between October 1, 2010, and
3416 December 31, 2010, the mortgage lender license does not expire

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3417 until the Office of Financial Regulation approves or denies the
3418 mortgage broker license or mortgage lender license application.
3419 Application fees may not be prorated for partial years of
3420 licensure.

3421 (5) All mortgage lender licenses issued before October 1,
3422 2010, pursuant to s. 494.0065 or s. 494.0064, Florida Statutes,
3423 expire December 31, 2010. However, if a person holding such
3424 license applies for a mortgage broker license or mortgage lender
3425 license through the Nationwide Mortgage Licensing System and
3426 Registry between October 1, 2010, and December 31, 2010, the
3427 mortgage lender license does not expire until the Office of
3428 Financial Regulation approves or denies the mortgage broker
3429 license or mortgage lender license application. Application fees
3430 may not be prorated for partial years of licensure.

3431 (6) All correspondent mortgage lender licenses issued
3432 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,
3433 Florida Statutes, expire December 31, 2010. However, if a person
3434 holding an active correspondent mortgage lender license issued
3435 before October 1, 2010, applies for a mortgage broker or
3436 mortgage lender license through the Nationwide Mortgage
3437 Licensing System and Registry between October 1, 2010, and
3438 December 31, 2010, the correspondent mortgage lender license
3439 does not expire until the Office of Financial Regulation
3440 approves or denies the mortgage broker or mortgage lender
3441 license application. Application fees may not be prorated for
3442 partial years of licensure.

3443 Section 59. Except as otherwise expressly provided in this
3444 act and except for this section, which shall take effect July 1,

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3445 | 2009, this act shall take effect January 1, 2010. |