

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

29 | the Mortgage Guaranty Trust Fund and used to pay claims  
30 | against licensees; providing for a cap on the amount  
31 | collected and deposited; providing requirements for  
32 | seeking recovery from the trust fund; providing  
33 | limitations on the amount paid; providing for the  
34 | assignment of certain rights to the office; providing that  
35 | payment for a claim is prima facie grounds for the  
36 | revocation of a license; amending s. 494.0018, F.S.;  
37 | conforming cross-references; amending ss. 494.0019 and  
38 | 494.002, F.S.; conforming terms; amending s. 494.0023,  
39 | F.S.; deleting the statutory disclosure form and revising  
40 | the disclosure that must be provided to a borrower in  
41 | writing; providing that there is a conflicting interest if  
42 | a licensee or the licensee's relatives have a 1-percent or  
43 | more interest in the person providing additional products  
44 | or services; authorizing the commission to adopt rules;  
45 | deleting a definition; amending s. 494.0025, F.S.;  
46 | revising provisions specifying prohibited practices;  
47 | prohibiting the alteration, withholding, concealment, or  
48 | destruction of records relevant to regulated activities;  
49 | creating s. 494.00255, F.S.; providing for license  
50 | violations and administrative penalties; authorizing a  
51 | fine of \$1,000 for each day of unlicensed activity up to  
52 | \$25,000; amending s. 494.0026, F.S.; correcting a cross-  
53 | reference; amending s. 494.0028, F.S.; conforming terms;  
54 | repealing ss. 494.0029 and 494.00295, F.S., relating to  
55 | mortgage business schools and continuing education  
56 | requirements; creating s. 494.00296, F.S.; providing for

57 | loan modification services; prohibiting certain related  
58 | acts by a mortgage broker, mortgage brokerage business,  
59 | correspondent mortgage lender, or mortgage lender;  
60 | providing for a loan modification agreement and for the  
61 | inclusion of a borrower's right of cancellation statement;  
62 | providing remedies; providing definitions; amending s.  
63 | 494.00296, F.S., as created by the act; deleting  
64 | references to a mortgage brokerage business and a  
65 | correspondent mortgage lender, and adding reference to a  
66 | loan originator; deleting certain definitions; providing a  
67 | directive to the Division of Statutory Revision; repealing  
68 | s. 494.003, F.S., relating to exemptions from mortgage  
69 | broker licensing and regulation; repealing s. 494.0031,  
70 | F.S., relating to licensure as a mortgage brokerage  
71 | business; creating s. 494.00312, F.S.; providing  
72 | requirements and procedures for the licensure of loan  
73 | originators; providing license application requirements;  
74 | providing grounds for denial of licensure; requiring the  
75 | denial of a license under certain circumstances; requiring  
76 | licenses to be renewed annually by a certain date;  
77 | creating s. 494.00313, F.S.; providing for the renewal of  
78 | a loan originator license; providing license renewal  
79 | requirements; repealing s. 494.0032, F.S., relating to  
80 | renewal of a mortgage brokerage business license or branch  
81 | office license; creating s. 494.00321, F.S.; providing for  
82 | the licensure of mortgage brokers; providing license  
83 | application requirements; providing grounds for denial of  
84 | licensure; requiring the denial of a license under certain

85 | circumstances; requiring licenses to be renewed annually  
86 | by a certain date; creating s. 494.00322, F.S.; providing  
87 | for the renewal of a mortgage broker license; providing  
88 | license renewal requirements; repealing s. 494.0033, F.S.,  
89 | relating to a mortgage broker license; amending s.  
90 | 494.00331, F.S.; requiring a loan originator to be an  
91 | employee or independent contractor for a mortgage broker  
92 | or mortgage lender; repealing s. 494.0034, F.S., relating  
93 | to renewal of a mortgage broker license; amending s.  
94 | 494.0035, F.S.; providing for the management of a mortgage  
95 | broker by a principal loan originator and a branch office  
96 | by a loan originator; providing minimum requirements;  
97 | amending s. 494.0036, F.S.; revising provisions relating  
98 | to the licensure of a mortgage broker's branch office;  
99 | amending s. 494.0038, F.S.; providing for application of  
100 | certain disclosure requirements to loan origination and  
101 | mortgage broker fees; amending s. 494.0039, F.S.;  
102 | conforming terms; amending s. 494.004, F.S.; revising  
103 | provisions relating to licensees; providing for registry  
104 | requirements; deleting obsolete provisions; repealing s.  
105 | 494.0041, F.S., relating to license violations and  
106 | administrative penalties; amending s. 494.0042, F.S.;  
107 | providing for loan originator fees; conforming terms;  
108 | amending ss. 494.00421 and 494.0043, F.S.; conforming  
109 | terms; repealing s. 494.006, F.S., relating to exemptions  
110 | from mortgage lender licensing and regulation; repealing  
111 | s. 494.0061, F.S., relating to mortgage lender license  
112 | requirements; creating s. 494.00611, F.S.; providing

113 requirements and procedures for the licensure of mortgage  
114 lenders; providing license application requirements;  
115 providing grounds for denial of licensure; requiring the  
116 denial of a license under certain circumstances; requiring  
117 licenses to be renewed annually by a certain date;  
118 creating s. 494.00612, F.S.; providing for the renewal of  
119 a mortgage lender license; providing license renewal  
120 requirements; repealing s. 494.0062, F.S., relating to  
121 correspondent mortgage lender license requirements;  
122 amending s. 494.0063, F.S.; requiring a mortgage lender to  
123 obtain an annual financial audit report and submit a copy  
124 to the office within certain time periods; repealing s.  
125 494.0064, F.S., relating to renewal of a mortgage lender  
126 license; repealing s. 494.0065, F.S., relating to certain  
127 licenses and registrations that were converted into  
128 mortgage lender licenses; amending s. 494.0066, F.S.;  
129 revising provisions relating to a mortgage lender branch  
130 office license; creating s. 494.00665, F.S.; providing for  
131 a principal loan originator and branch manager for a  
132 mortgage lender; providing requirements and limitations;  
133 amending s. 494.0067, F.S.; revising requirements of  
134 mortgage lenders; providing for registry requirements;  
135 deleting obsolete provisions; providing for servicing  
136 agreements; amending ss. 494.0068, 494.0069, 494.007, and  
137 494.0071, F.S.; conforming terms; repealing s. 494.0072,  
138 F.S., relating to license violations and administrative  
139 penalties; amending ss. 494.00721, 494.0073, 494.0075, and  
140 494.0077, F.S.; conforming terms; amending s. 501.1377,

141 F.S.; revising definitions; conforming terms; amending ss.  
 142 201.23, 420.507, 494.0076, 520.52, 520.63, 607.0505, and  
 143 687.12, F.S.; correcting cross-references; providing for  
 144 the expiration of mortgage business school permits,  
 145 mortgage brokerage business licenses, mortgage broker  
 146 licenses, mortgage lender licenses, and correspondent  
 147 mortgage lender licenses; providing requirements for  
 148 applying for a loan originator, mortgage broker, and  
 149 mortgage lender license by a certain date; providing  
 150 effective dates.

151

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

153

154 Section 1. Section 494.001, Florida Statutes, is amended  
 155 to read:

156 494.001 Definitions.--As used in ss. 494.001-494.0077, the  
 157 term:

158 (1) "Borrower" means a person obligated to repay a  
 159 mortgage loan and includes, but is not limited to, a coborrower,  
 160 cosignor, or guarantor. "Act as a correspondent mortgage lender"  
 161 ~~means to make a mortgage loan.~~

162 ~~(2) "Act as a loan originator" means being employed by a~~  
 163 ~~mortgage lender or correspondent mortgage lender, for~~  
 164 ~~compensation or gain or in the expectation of compensation or~~  
 165 ~~gain, to negotiate, offer to negotiate, or assist any licensed~~  
 166 ~~or exempt entity in negotiating the making of a mortgage loan,~~  
 167 ~~including, but not limited to, working with a licensed or exempt~~  
 168 ~~entity to structure a loan or discussing terms and conditions~~

169 ~~necessary for the delivery of a loan product. A natural person~~  
170 ~~whose activities are ministerial and clerical, which may include~~  
171 ~~quoting available interest rates, is not acting as a loan~~  
172 ~~originator.~~

173 ~~(3) "Act as a mortgage broker" means, for compensation or~~  
174 ~~gain, or in the expectation of compensation or gain, either~~  
175 ~~directly or indirectly, accepting or offering to accept an~~  
176 ~~application for a mortgage loan, soliciting or offering to~~  
177 ~~solicit a mortgage loan on behalf of a borrower, negotiating or~~  
178 ~~offering to negotiate the terms or conditions of a mortgage loan~~  
179 ~~on behalf of a lender, or negotiating or offering to negotiate~~  
180 ~~the sale of an existing mortgage loan to a noninstitutional~~  
181 ~~investor. An employee whose activities are ministerial and~~  
182 ~~clerical, which may include quoting available interest rates or~~  
183 ~~loan terms and conditions, is not acting as a mortgage broker.~~

184 ~~(4) "Act as a mortgage lender" means to make a mortgage~~  
185 ~~loan or to service a mortgage loan for others or, for~~  
186 ~~compensation or gain, or in the expectation of compensation or~~  
187 ~~gain, either directly or indirectly, to sell or offer to sell a~~  
188 ~~mortgage loan to a noninstitutional investor.~~

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

197        (2)~~(6)~~ "Branch manager ~~broker~~" means the licensed loan  
 198 originator ~~licensee~~ in charge of, and responsible for, the  
 199 operation of the ~~a~~ branch office of a mortgage broker or  
 200 mortgage lender ~~brokerage business~~.

201        (3)~~(7)~~ "Branch office" means a location, other than a  
 202 mortgage broker's or mortgage lender's ~~licensee's~~ principal  
 203 place of business:

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

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

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

214        (4)~~(8)~~ "Commission" means the Financial Services  
 215 Commission.

216        (5)~~(9)~~ "Control person" means an individual, partnership,  
 217 corporation, trust, or other organization that possesses the  
 218 power, directly or indirectly, to direct the management or  
 219 policies of a company, whether through ownership of securities,  
 220 by contract, or otherwise. "Control person" includes, but is not  
 221 limited to ~~A person is presumed to control a company if, with~~  
 222 ~~respect to a particular company, that person:~~

223            (a) A company's executive officers, including the  
 224 president, chief executive officer, chief financial officer,



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225 chief operations officer, chief legal officer, chief compliance  
226 officer, director, and other individuals having similar status  
227 or functions.

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

232 (c) For a partnership, all general partners and limited or  
233 special partners that have contributed 10 percent or more or  
234 that have the right to receive, upon dissolution, 10 percent or  
235 more of the partnership's capital.

236 (d) For a trust, each trustee.

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

241 (f) Principal loan originators.

242 (6) "Credit report" means any written, oral, or other  
243 information obtained from a consumer reporting agency as  
244 described in the federal Fair Credit Reporting Act which bears  
245 on an individual's creditworthiness, credit standing, or credit  
246 capacity. A credit score alone, as calculated by the reporting  
247 agency, is not considered a credit report.

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

253 (8) "Depository institution" has the same meaning as in s.  
 254 (3) (c) of the Federal Deposit Insurance Act and includes any  
 255 credit union.

256 (9) "Financial audit report" means a report prepared in  
 257 connection with a financial audit that is conducted in  
 258 accordance with generally accepted auditing standards prescribed  
 259 by the American Institute of Certified Public Accountants by a  
 260 certified public accountant licensed to do business in the  
 261 United States, and which must include:

262 (a) Financial statements, including notes related to the  
 263 financial statements and required supplementary information,  
 264 prepared in conformity with United States generally accepted  
 265 accounting principles.

266 (b) An expression of opinion regarding whether the  
 267 financial statements are presented in conformity with United  
 268 States generally accepted accounting principles or an assertion  
 269 to the effect that such an opinion cannot be expressed and the  
 270 reasons.

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

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

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

279 ~~(10) "Office" means the Office of Financial Regulation of~~  
 280 ~~the commission.~~

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

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

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

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

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

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

297 ~~(10)(14)~~ "Institutional investor" means a depository  
 298 institution ~~state or national bank, state or federal savings and~~  
 299 ~~loan association or savings bank, real estate investment trust,~~  
 300 ~~insurance company, real estate company, accredited investor as~~  
 301 ~~defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or~~  
 302 mortgage lender ~~business~~ licensed under this chapter ss.  
 303 ~~494.001-494.0077,~~ or other business entity that invests in  
 304 mortgage loans, including a secondary mortgage market  
 305 institution including, without limitation, the Federal National  
 306 Mortgage Association, the Federal Home Loan Mortgage  
 307 Corporation, and the Government National Mortgage Association,  
 308 conduits, investment bankers, and any subsidiary of such

309 entities.

310 ~~(11)-(15)~~ "Loan commitment" or "commitment" means a  
311 statement by the lender setting forth the terms and conditions  
312 upon which the lender is willing to make a particular mortgage  
313 loan to a particular borrower.

314 (12) "Loan modification" means a modification to an  
315 existing loan. The term does not include a refinancing  
316 transaction.

317 (13) "Loan origination fee" means the total compensation  
318 from any source received by a mortgage broker acting as a loan  
319 originator. Any payment for processing mortgage loan  
320 applications must be included in the fee and must be paid to the  
321 mortgage broker.

322 (14) "Loan originator" means an individual who, directly  
323 or indirectly, solicits or offers to solicit a mortgage loan,  
324 accepts or offers to accept an application for a mortgage loan,  
325 negotiates or offers to negotiate the terms or conditions of a  
326 new or existing mortgage loan on behalf of a borrower or lender,  
327 processes a mortgage loan application, or negotiates or offers  
328 to negotiate the sale of an existing mortgage loan to a  
329 noninstitutional investor for compensation or gain. The term  
330 includes the activities of a loan originator as that term is  
331 defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an  
332 individual acting as a loan originator pursuant to that  
333 definition is acting as a loan originator for purposes of this  
334 definition. The term does not include an employee of a mortgage  
335 broker or mortgage lender who performs only administrative or  
336 clerical tasks, including quoting available interest rates,

337 physically handling a completed application form, or  
 338 transmitting a completed form to a lender on behalf of a  
 339 prospective borrower.

340 (15)~~(16)~~ "Lock-in agreement" means an agreement whereby  
 341 the lender guarantees for a specified number of days or until a  
 342 specified date the availability of a specified rate of interest  
 343 or specified formula by which the rate of interest will be  
 344 determined or ~~and/or~~ specific number of discount points will be  
 345 given, if the loan is approved and closed within the stated  
 346 period of time.

347 (16)~~(17)~~ "Make a mortgage loan" means closing ~~to~~  
 348 ~~close~~ a mortgage loan in a person's name, advancing ~~or to~~  
 349 ~~advance~~ funds, offering ~~offer~~ to advance funds, or making ~~make~~ a  
 350 commitment to advance funds to an applicant for a mortgage loan.

351 (17) "Material change" means a change that would be  
 352 important to a reasonable borrower in making a borrowing  
 353 decision and includes a change in the interest rate previously  
 354 offered a borrower, a change in the type of loan offered to a  
 355 borrower, or a change in fees to be charged to a borrower  
 356 resulting in total fees greater than \$100.

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

361 (19) "Mortgage lender" means a person making a mortgage  
 362 loan or servicing a mortgage loan for others or, for  
 363 compensation or gain, directly or indirectly, selling or  
 364 offering to sell a mortgage loan to a noninstitutional investor.

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

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

369 (20) "Mortgage loan" means any:

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

376 (b) Loan on commercial real property if the borrower is an  
 377 individual ~~a natural person~~ or the lender is a noninstitutional  
 378 investor; or

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

382 (21) "Mortgage loan application" means the submission of a  
 383 borrower's financial information in anticipation of a credit  
 384 decision, which includes the borrower's name, the borrower's  
 385 monthly income, the borrower's social security number to obtain  
 386 a credit report, the property address, an estimate of the value  
 387 of the property, the mortgage loan amount sought, and any other  
 388 information deemed necessary by the loan originator. An  
 389 application may be in writing or electronically submitted,  
 390 including a written record of an oral application.

391 (22) ~~(21)~~ "Net worth" means total assets minus total  
 392 liabilities pursuant to United States generally accepted

393 accounting principles.

394 (23)~~(22)~~ "Noninstitutional investor" means an investor  
 395 other than an institutional investor.

396 ~~(23) "Nonresidential mortgage loan" means a mortgage loan  
 397 other than a residential mortgage loan.~~

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

399 (25)~~(24)~~ "Person" has the same meaning as in s. 1.01 means  
 400 ~~an individual, partnership, corporation, association, or other~~  
 401 ~~group, however organized.~~

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

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

411 (27)~~(26)~~ "Principal place of business" means a mortgage  
 412 broker's or mortgage lender's licensee's primary business office  
 413 at the street address or physical location of which is  
 414 designated on the application for licensure or any amendment to  
 415 such application.

416 (28) "Registered loan originator" means a loan originator  
 417 who is employed by a depository institution, by a subsidiary  
 418 that is owned and controlled by a depository institution and  
 419 regulated by a federal banking agency, or by an institution  
 420 regulated by the Farm Credit Administration and who is

421 registered with and maintains a unique identifier through the  
 422 registry.

423 (29) "Registry" means the Nationwide Mortgage Licensing  
 424 System and Registry, which is the mortgage licensing system  
 425 developed and maintained by the Conference of State Bank  
 426 Supervisors and the American Association of Residential Mortgage  
 427 Regulators for the licensing and registration of loan  
 428 originators.

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

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

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

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

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

440 (31)~~(28)~~ "Servicing Service a mortgage loan" means  
 441 receiving to receive, or causing cause to be received or  
 442 transferred for another, installment payments of principal,  
 443 interest, or other payments pursuant to a mortgage loan.

444 (32) "Servicing endorsement" means authorizing a mortgage  
 445 lender to service a loan for more than 4 months.

446 (33)~~(29)~~ "Substantial fault of the borrower" means that  
 447 the borrower:

448 (a) Failed to provide information or documentation



449 required by the lender or broker in a timely manner;

450 (b) Provided information, in the application or  
 451 subsequently, which upon verification proved to be significantly  
 452 inaccurate, causing the need for review or further investigation  
 453 by the lender or broker;

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

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

459

460 For purposes of this definition, a borrower is considered to  
 461 have provided information or documentation in a timely manner if  
 462 such information and documentation was received by the lender  
 463 within 7 days after the borrower received a request for same,  
 464 and information is considered significantly inaccurate if the  
 465 correct information materially affects the eligibility of the  
 466 borrower for the loan for which application is made.

467 ~~(34)-(30)~~ "Ultimate equitable owner" means an individual ~~a~~  
 468 ~~natural person~~ who, directly or indirectly, owns or controls an  
 469 ownership interest in a corporation, a foreign corporation, an  
 470 alien business organization, or any other form of business  
 471 organization, regardless of whether the individual ~~such natural~~  
 472 ~~person~~ owns or controls such ~~ownership~~ interest through one or  
 473 more individuals ~~natural persons~~ or one or more proxies, powers  
 474 of attorney, nominees, corporations, associations, partnerships,  
 475 trusts, joint stock companies, or other entities or devices, or  
 476 any combination thereof.

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

479 ~~(32) "Mortgage loan application" means a submission of a~~  
 480 ~~borrower's financial information in anticipation of a credit~~  
 481 ~~decision, whether written or computer-generated, relating to a~~  
 482 ~~mortgage loan. If the submission does not state or identify a~~  
 483 ~~specific property, the submission is an application for a~~  
 484 ~~prequalification and not an application for a mortgage loan~~  
 485 ~~under this part. The subsequent addition of an identified~~  
 486 ~~property to the submission converts the submission to an~~  
 487 ~~application for a mortgage loan.~~

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

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

493 Section 2. Section 494.0011, Florida Statutes, is amended  
 494 to read:

495 494.0011 Powers and duties of the commission and office.--

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

498 (2) ~~The commission may adopt rules pursuant to ss.~~  
 499 ~~120.536(1) and 120.54 To administer~~ implement ss. 494.001-  
 500 494.0077, the commission may adopt rules:

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

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

505 Licensing Act of 2008, including rules to:

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

508 2. Require the use of uniform forms that have been  
509 approved by the registry, and any subsequent amendments to such  
510 forms if the forms are substantially in compliance with the  
511 provisions of this chapter. Uniform forms that the commission  
512 may adopt include, but are not limited to:

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

514 b. Uniform Mortgage Biographical Statement & Consent Form,  
515 MU2.

516 c. Uniform Mortgage Branch Office Form, MU3.

517 d. Uniform Individual Mortgage License/Registration &  
518 Consent Form, MU4.

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

521 4. Prescribe requirements for amending or surrendering a  
522 license or other activities as the commission deems necessary  
523 for the office's participation in the registry.

524 5. Prescribe procedures that allow a licensee to challenge  
525 information contained in the registry.

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

528 (c) Establishing time periods during which a loan  
529 originator, mortgage broker, or mortgage lender license  
530 applicant under part II or part III is barred from licensure due  
531 to prior criminal convictions of, or guilty or nolo contendere  
532 pleas by, any of the applicant's control persons, regardless of

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533 adjudication.

534 1. The rules must provide:

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

537 b. A 15-year disqualifying period for felonies involving  
538 moral turpitude;

539 c. A 7-year disqualifying period for all other felonies;  
540 and

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

544 2. The rules may provide for an additional waiting period  
545 due to dates of imprisonment or community supervision, the  
546 commitment of multiple crimes, and other factors reasonably  
547 related to the applicant's criminal history.

548 3. The rules may provide for mitigating factors for crimes  
549 identified in sub-subparagraph 1.b. However, the mitigation may  
550 not result in a period of disqualification less than 7 years.  
551 The rule may not mitigate the disqualifying periods in sub-  
552 paragraphs 1.a., 1.c., and 1.d.

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

555 5. Section 112.011 is not applicable to eligibility for  
556 licensure under this part. ~~The commission may prescribe by rule~~  
557 ~~requirements and procedures for obtaining an exemption due to a~~  
558 ~~technological or financial hardship. The commission may also~~  
559 ~~adopt rules to accept certification of compliance with~~  
560 ~~requirements of this act in lieu of requiring submission of~~

561 ~~documents.~~

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

566 (4) The office shall participate in the registry and shall  
567 regularly report to the registry violations of this chapter,  
568 disciplinary actions, and other information deemed relevant by  
569 the office under this chapter.

570 ~~(4)(a) The office has the power to issue and to serve~~  
571 ~~subpoenas and subpoenas duces tecum to compel the attendance of~~  
572 ~~witnesses and the production of all books, accounts, records,~~  
573 ~~and other documents and materials relevant to an examination or~~  
574 ~~investigation. The office, or its duly authorized~~  
575 ~~representative, has the power to administer oaths and~~  
576 ~~affirmations to any person.~~

577 ~~(b) The office may, in its discretion, seek subpoenas or~~  
578 ~~subpoenas duces tecum from any court of competent jurisdiction~~  
579 ~~commanding the appearance of witnesses and the production of~~  
580 ~~books, accounts, records, and other documents or materials at a~~  
581 ~~time and place named in the subpoenas; and any authorized~~  
582 ~~representative of the office may serve any subpoena.~~

583 ~~(5)(a) In the event of substantial noncompliance with a~~  
584 ~~subpoena or subpoena duces tecum issued or caused to be issued~~  
585 ~~by the office, the office may petition the circuit court or any~~  
586 ~~other court of competent jurisdiction of the county in which the~~  
587 ~~person subpoenaed resides or has its principal place of business~~  
588 ~~for an order requiring the subpoenaed person to appear and~~

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589 ~~testify and to produce such books, accounts, records, and other~~  
590 ~~documents as are specified in the subpoena duces tecum. The~~  
591 ~~court may grant injunctive relief restraining the person from~~  
592 ~~advertising, promoting, soliciting, entering into, offering to~~  
593 ~~enter into, continuing, or completing any mortgage loan~~  
594 ~~transaction or mortgage loan servicing transaction. The court~~  
595 ~~may grant such other relief, including, but not limited to, the~~  
596 ~~restraint, by injunction or appointment of a receiver, of any~~  
597 ~~transfer, pledge, assignment, or other disposition of the~~  
598 ~~person's assets or any concealment, alteration, destruction, or~~  
599 ~~other disposition of books, accounts, records, or other~~  
600 ~~documents and materials as the court deems appropriate, until~~  
601 ~~the person has fully complied with the subpoena duces tecum and~~  
602 ~~the office has completed its investigation or examination. In~~  
603 ~~addition, the court may order the refund of any fees collected~~  
604 ~~in a mortgage loan transaction whenever books and documents~~  
605 ~~substantiating the transaction are not produced or cannot be~~  
606 ~~produced. The office is entitled to the summary procedure~~  
607 ~~provided in s. 51.011, and the court shall advance such cause on~~  
608 ~~its calendar. Attorney's fees and any other costs incurred by~~  
609 ~~the office to obtain an order granting, in whole or part, a~~  
610 ~~petition for enforcement of a subpoena or subpoena duces tecum~~  
611 ~~shall be taxed against the subpoenaed person, and failure to~~  
612 ~~comply with such order is a contempt of court.~~

613 ~~(b) When it appears to the office that the compliance with~~  
614 ~~a subpoena or subpoena duces tecum issued or caused to be issued~~  
615 ~~by the office pursuant to this section is essential and~~  
616 ~~otherwise unavailable to an investigation or examination, the~~

617 ~~office, in addition to the other remedies provided for in this~~  
 618 ~~section, may apply to the circuit court or any other court of~~  
 619 ~~competent jurisdiction of the county in which the subpoenaed~~  
 620 ~~person resides or has its principal place of business for a writ~~  
 621 ~~of ne exeat. The court shall thereupon direct the issuance of~~  
 622 ~~the writ against the subpoenaed person requiring sufficient bond~~  
 623 ~~conditioned on compliance with the subpoena or subpoena duces~~  
 624 ~~tecum. The court shall cause to be endorsed on the writ a~~  
 625 ~~suitable amount of bond upon the payment of which the person~~  
 626 ~~named in the writ shall be freed, having a due regard to the~~  
 627 ~~nature of the case.~~

628 ~~(c) Alternatively, the office may seek a writ of~~  
 629 ~~attachment from the court having jurisdiction over the person~~  
 630 ~~who has refused to obey a subpoena, who has refused to give~~  
 631 ~~testimony, or who has refused to produce the matters described~~  
 632 ~~in the subpoena duces tecum.~~

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

635 Section 3. Section 494.00115, Florida Statutes, is created  
 636 to read:

637 494.00115 Exemptions.--

638 (1) The following are exempt from regulation as a loan  
 639 originator, mortgage broker, or mortgage lender under part I,  
 640 part II, or part III of this chapter:

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

644 (b) A depository institution; subsidiaries that are owned

645 and controlled by a depository institution and regulated by the  
646 Board of Governors of the Federal Reserve System, the  
647 Comptroller of the Currency, the Director of the Office of  
648 Thrift Supervision, the National Credit Union Administration, or  
649 the Federal Deposit Insurance Corporation; or institutions  
650 regulated by the Farm Credit Administration.

651 (c) The Federal National Mortgage Association; the Federal  
652 Home Loan Mortgage Corporation; any agency of the Federal  
653 Government; any state, county, or municipal government; or any  
654 quasi-governmental agency that acts in such capacity under the  
655 specific authority of the laws of any state or the United  
656 States.

657 (d) A licensed attorney who negotiates the terms of a  
658 mortgage loan on behalf of a client as an ancillary matter to  
659 the attorney's representation of the client.

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

663 (2) The following persons are exempt from regulation as  
664 mortgage lender under part III of this chapter:

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

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

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



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

675 (e) An individual making or acquiring a mortgage loan  
676 using his or her own funds for his or her own investment and who  
677 does not hold himself or herself out to the public as being in  
678 the mortgage lending business.

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

683 (3) It is not necessary to negate any of the exemptions  
684 provided in this section in any complaint, information,  
685 indictment, or other writ or proceeding brought under ss.  
686 494.001-494.0077. The burden of establishing the right to an  
687 exemption is on the party claiming the benefit of the exemption.

688 Section 4. Section 494.00135, Florida Statutes, is created  
689 to read:

690 494.00135 Subpoenas.--

691 (1) The office may:

692 (a) Issue and serve subpoenas and subpoenas duces tecum to  
693 compel the attendance of witnesses and the production of all  
694 books, accounts, records, and other documents and materials  
695 relevant to an examination or investigation conducted by the  
696 office. The office, or its authorized representative, may  
697 administer oaths and affirmations to any person.

698 (b) Seek subpoenas or subpoenas duces tecum from any court  
699 to command the appearance of witnesses and the production of  
700 books, accounts, records, and other documents or materials at a

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701 time and place named in the subpoenas, and an authorized  
702 representative of the office may serve such subpoena.

703 (2) If there is substantial noncompliance with a subpoena  
704 or subpoena duces tecum issued by the office, the office may  
705 petition the court in the county where the person subpoenaed  
706 resides or has his or her principal place of business for an  
707 order requiring the person to appear, testify, or produce such  
708 books, accounts, records, and other documents as are specified  
709 in the subpoena or subpoena duces tecum.

710 (a) The court may grant injunctive relief restraining the  
711 person from advertising, promoting, soliciting, entering into,  
712 offering to enter into, continuing, or completing a mortgage  
713 loan or servicing a mortgage loan.

714 (b) The court may grant such other relief, including, but  
715 not limited to, the restraint, by injunction or appointment of a  
716 receiver, of any transfer, pledge, assignment, or other  
717 disposition of the person's assets or any concealment,  
718 alteration, destruction, or other disposition of books,  
719 accounts, records, or other documents and materials as the court  
720 deems appropriate, until the person has fully complied with the  
721 subpoena duces tecum and the office has completed its  
722 investigation or examination.

723 (c) The court may order the refund of any fees collected  
724 in a mortgage loan transaction if books and documents  
725 substantiating the transaction are not produced or cannot be  
726 produced.

727 (d) If it appears to the office that compliance with a  
728 subpoena or subpoena duces tecum issued is essential and

729 otherwise unavailable to an investigation or examination, the  
 730 office may apply to the court for a writ of ne exeat pursuant to  
 731 s. 68.02.

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

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

742 Section 5. Section 494.0014, Florida Statutes, is amended  
 743 to read:

744 494.0014 Cease and desist orders; ~~administrative fines;~~  
 745 refund orders.--

746 (1) The office may ~~has the power to~~ issue and serve upon  
 747 any person an order to cease and desist and to take corrective  
 748 action if ~~whenever~~ it has reason to believe the person is  
 749 violating, has violated, or is about to violate any provision of  
 750 ss. 494.001-494.0077, any rule or order issued under ss.  
 751 494.001-494.0077, or any written agreement between the person  
 752 and the office. All procedural matters relating to issuance and  
 753 enforcement of such a ~~cease and desist~~ order are governed by the  
 754 Administrative Procedure Act.

755 (2) The office may ~~has the power to~~ order the refund of  
 756 any fee directly or indirectly assessed and charged on a

757 mortgage loan transaction which is unauthorized or exceeds the  
 758 maximum fee specifically authorized in ss. 494.001-494.0077, or  
 759 any amount collected for the payment of third-party fees which  
 760 exceeds the cost of the service provided.

761 ~~(3) The office may prohibit the association by a mortgage~~  
 762 ~~broker business, or the employment by a mortgage lender or~~  
 763 ~~correspondent mortgage lender, of any person who has engaged in~~  
 764 ~~a pattern of misconduct while an associate of a mortgage~~  
 765 ~~brokerage business or an employee of a mortgage lender or~~  
 766 ~~correspondent mortgage lender. For the purpose of this~~  
 767 ~~subsection, the term "pattern of misconduct" means the~~  
 768 ~~commission of three or more violations of ss. 494.001-494.0077~~  
 769 ~~or the provisions of chapter 494 in effect prior to October 1,~~  
 770 ~~1991, during any 1-year period or any criminal conviction for~~  
 771 ~~violating ss. 494.001-494.0077 or the provisions of chapter 494~~  
 772 ~~in effect prior to October 1, 1991.~~

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

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

780 494.00165 Prohibited advertising; record requirements.--

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

782 (a) Advertise that an applicant shall ~~will~~ have  
 783 unqualified access to credit without disclosing the ~~what~~  
 784 material limitations on the availability of such credit ~~exist~~.

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785 ~~Such~~ Material limitations include, but are not limited to, the  
 786 percentage of down payment required, that a higher rate or  
 787 points could be required, or that restrictions on ~~as to~~ the  
 788 maximum principal amount of the loan offered could apply.

789 (b) Advertise a mortgage loan at an expressed interest  
 790 rate unless the advertisement specifically states that the  
 791 expressed rate could change or not be available at commitment or  
 792 closing.

793 (c) Advertise mortgage loans, including rates, margins,  
 794 discounts, points, fees, commissions, or other material  
 795 information, including material limitations on such loans,  
 796 unless the ~~such~~ person is able to make such mortgage loans  
 797 available to a reasonable number of qualified applicants.

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

800 (e) Engage in unfair, deceptive, or misleading advertising  
 801 regarding mortgage loans, brokering services, or lending  
 802 services.

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

808 Section 7. Section 494.0017, Florida Statutes, is  
 809 repealed.

810 Section 8. Section 494.00172, Florida Statutes, is created  
 811 to read:

812 494.00172 Mortgage Guaranty Trust Fund; payment of fees

813 and claims.--A nonrefundable fee is imposed on each application  
814 for a mortgage broker, mortgage lender, or loan originator  
815 license and on each annual application for a renewal of such  
816 license. For a loan originator, the initial and renewal fee is  
817 \$20. For mortgage brokers and lenders, the initial and renewal  
818 fee is \$100. This fee is in addition to the regular application  
819 or renewal fee assessed and shall be deposited into the Mortgage  
820 Guaranty Trust Fund of the office for the payment of claims in  
821 accordance with this section.

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

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

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

833 (b) The borrower has caused a writ of execution to be  
834 issued upon such judgment, and the officer executing the  
835 judgment has made a return showing that no personal or real  
836 property of the judgment debtor liable to be levied upon in  
837 satisfaction of the judgment can be found or that the amount  
838 realized on the sale of the judgment debtor's property pursuant  
839 to such execution is insufficient to satisfy the judgment.

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

841 inquiries to ascertain whether the judgment debtor possesses  
842 real or personal property or other assets subject to being sold  
843 or applied in satisfaction of the judgment and has discovered no  
844 such property or assets; or he or she has discovered property  
845 and assets and has taken all necessary action and proceedings  
846 for the application thereof to the judgment, but the amount  
847 realized is insufficient to satisfy the judgment.

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

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

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

857 (3) The requirements of subsection (2) are not applicable  
858 if the licensee upon which the claim is sought has filed for  
859 bankruptcy or has been adjudicated bankrupt. However, the  
860 claimant must file a proof of claim in the bankruptcy  
861 proceedings and must notify the office by certified mail of the  
862 claim by enclosing a copy of the proof of claim and all  
863 supporting documents.

864 (4) Any person who meets all of the conditions in  
865 subsection (2) may apply to the office for payment from the  
866 trust fund equal to the unsatisfied portion of that person's  
867 judgment or \$50,000, whichever is less, but only to the extent  
868 that the amount reflected in the judgment is for actual or

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869 compensatory damages, plus any attorney's fees and costs awarded  
870 by the trial court which have been determined by the court, and  
871 the documented costs associated with attempting to collect the  
872 judgment. Actual or compensatory damages may not include  
873 postjudgment interest. Attorney's fees may not exceed \$5,000 or  
874 20 percent of the actual or compensatory damages, whichever is  
875 less. If actual or compensatory damages, plus attorney's fees  
876 and costs, exceed \$50,000, actual or compensatory damages must  
877 be paid first. The cumulative payment for actual or compensatory  
878 damages, plus attorney's fees and costs, may not exceed \$50,000  
879 as described in this section.

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

883 (b) Payments for claims are limited in the aggregate to  
884 \$250,000 against any one licensee under this chapter. If the  
885 total claims exceed the aggregate limit of \$250,000, the office  
886 shall prorate payments based on the ratio that a claim bears to  
887 the total claims filed.

888 (c) Payments shall be made to all persons meeting the  
889 requirements of subsection (2) 2 years after the date the first  
890 complete and valid notice is received by the office. Persons who  
891 give notice after 2 years and who otherwise comply with the  
892 conditions precedent to recovery may recover from any remaining  
893 portion of the \$250,000 aggregate as provided in this  
894 subsection, with claims being paid in the order notice was  
895 received until the \$250,000 aggregate has been disbursed.

896 (d) The claimant shall assign his or her right, title, and



897 interest in the judgment, to the extent of his recovery from the  
 898 fund, to the office and shall record, at his or her own expense,  
 899 the assignment of judgment in every county where the judgment is  
 900 recorded.

901 (e) If the money in the fund is insufficient to satisfy  
 902 any valid claim or portion thereof, the office shall satisfy  
 903 such unpaid claim or portion as soon as a sufficient amount of  
 904 money has been deposited in the trust fund. If there is more  
 905 than one unsatisfied claim outstanding, such claims shall be  
 906 paid in the order in which the claims were filed with the  
 907 office.

908 (f) The payment of any amount from the fund in settlement  
 909 of a claim or in satisfaction of a judgment against a licensee  
 910 constitutes prima facie grounds for the revocation of the  
 911 license.

912 Section 9. Section 494.0018, Florida Statutes, is amended  
 913 to read:

914 494.0018 Penalties.--

915 (1) Whoever knowingly violates any provision of s.  
 916 494.00255(1) (a), (b), or (c) s. 494.0041(2) (e), (f), or (g); s.  
 917 494.0072(2) (e), (f), or (g); or s. 494.0025(1), (2), (3), (4),  
 918 or (5), except as provided in subsection (2) of this section,  
 919 commits is guilty of a felony of the third degree, punishable as  
 920 provided in s. 775.082, s. 775.083, or s. 775.084. Each such  
 921 violation constitutes a separate offense.

922 (2) Any person who commits convicted of a violation of any  
 923 provision of ss. 494.001-494.0077, in which ~~violation~~ the total  
 924 value of money and property unlawfully obtained exceeds exceeded

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925 \$50,000 and there are ~~were~~ five or more victims, commits ~~is~~  
 926 ~~guilty~~ of a felony of the first degree, punishable as provided  
 927 in s. 775.082, s. 775.083, or s. 775.084.

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

930 494.0019 Liability in case of unlawful transaction.--

931 (1) If a mortgage loan transaction is made in violation of  
 932 any provision of ss. 494.001-494.0077, the person making the  
 933 transaction and every licensee, director, or officer who  
 934 participated in making the transaction are jointly and severally  
 935 liable to every party to the transaction in an action for  
 936 damages incurred by the party or parties.

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

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

945 494.002 Statutory or common-law remedies.--Sections  
 946 ~~Nothing in ss.~~ 494.001-494.0077 do not limit ~~limits~~ any  
 947 statutory or common-law right of any person to bring any action  
 948 in any court for any act involved in the mortgage loan business  
 949 or the right of the state to punish any person for any violation  
 950 of any law.

951 Section 12. Section 494.0023, Florida Statutes, is amended  
 952 to read:

953 494.0023 Conflicting interest.--

954 (1) If, in a mortgage transaction, a licensee has a  
 955 conflicting interest as specified in subsection (2), the  
 956 licensee shall, at a minimum, provide the following disclosures  
 957 to the borrower in writing:

958 (a) The nature of the relationship, ownership, or  
 959 financial interest between the provider of products or services,  
 960 or business incident thereto, and the licensee making the  
 961 referral; ~~The type of conflicting interest shall be fully and~~  
 962 fairly disclosed.

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

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

968 (d) ~~(c)~~ The borrower shall be informed That alternative  
 969 sources may be chosen by the borrower to provide the any  
 970 required products or services. ~~The following language must be~~  
 971 ~~contained in 12-point type in any agreement between a mortgage~~  
 972 ~~broker, mortgage lender, or correspondent mortgage lender and a~~  
 973 ~~borrower in substantially this form:~~

974  
 975 ~~You are not required to purchase additional products or services~~  
 976 ~~from any person or entity suggested or recommended by~~  
 977 ~~(Broker/Lender/Correspondent Lender). However, the~~  
 978 ~~(Broker/Lender/Correspondent Lender) hereby reserves the right~~  
 979 ~~to approve the entity selected by the borrower, which approval~~  
 980 ~~may not be unreasonably withheld.~~

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

982 (a) The licensee or the licensee's relative provides the

983 borrower with additional products or services;

984 (b) The licensee or licensee's relative, ~~either~~ directly

985 or indirectly, owns, controls, or holds with power to vote, or

986 holds proxies representing, 1 ~~10~~ percent or more of any class of

987 equity securities or other beneficial interest in the ~~such~~

988 person providing the additional products or services;

989 (c) The person providing the additional products or

990 services, ~~either~~ directly or indirectly, owns, controls, or

991 holds the power to vote, or holds proxies representing, 1 ~~10~~

992 percent or more of any class of equity securities or other

993 beneficial interest in the licensee;

994 (d) A holding company, ~~either~~ directly or indirectly,

995 owns, controls, or holds with power to vote, or holds proxies

996 representing, 1 ~~10~~ percent or more of any class of equity

997 securities or other beneficial interest in both the licensee and

998 the person providing the additional products or services;

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

1000 as an officer or director, or performs similar functions as an

1001 officer or director, for both the licensee and the person

1002 providing the additional products or services; or

1003 (f) The licensee or the licensee's relative sits as an

1004 officer or director, or performs similar functions as an officer

1005 or director, of the person providing the additional products or

1006 services.

1007 (3) The commission may adopt rules to administer the

1008 disclosure requirements of this section. The rules must consider

1009 the disclosure requirements of the federal Real Estate  
 1010 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the  
 1011 federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.; and  
 1012 related federal regulations. ~~As used in this section, the term~~  
 1013 ~~"relative" of any natural person means any of the following~~  
 1014 ~~persons, whether by the full or half blood or by adoption:~~

1015 ~~(a) Such person's spouse, father, mother, children,~~  
 1016 ~~brothers, and sisters.~~

1017 ~~(b) The father, mother, brothers, and sisters of such~~  
 1018 ~~person's spouse.~~

1019 ~~(c) The spouses of children, brothers, or sisters of such~~  
 1020 ~~person.~~

1021 Section 13. Section 494.0025, Florida Statutes, is amended  
 1022 to read:

1023 494.0025 Prohibited practices.--It is unlawful for any  
 1024 person:

1025 ~~(1) To act as a mortgage lender in this state without a~~  
 1026 ~~current, active license issued by the office pursuant to ss.~~  
 1027 ~~494.006-494.0077.~~

1028 (1)~~(2)~~ To act as a loan originator ~~correspondent mortgage~~  
 1029 ~~lender~~ in this state without a current, active license issued by  
 1030 the office pursuant to part II of this chapter ~~ss. 494.006-~~  
 1031 ~~494.0077.~~

1032 (2)~~(3)~~ To act as a mortgage broker in this state without a  
 1033 current, active license issued by the office pursuant to part II  
 1034 of this chapter ~~ss. 494.003-494.0043.~~

1035 (3) To act as a mortgage lender in this state without a  
 1036 current, active license issued by the office pursuant to part

1037 III of this chapter.

1038 (4) In any practice or transaction or course of business  
 1039 relating to the sale, purchase, negotiation, promotion,  
 1040 advertisement, or hypothecation of mortgage loan transactions,  
 1041 directly or indirectly:

1042 (a) To knowingly or willingly employ any device, scheme,  
 1043 or artifice to defraud;

1044 (b) To engage in any transaction, practice, or course of  
 1045 business which operates as a fraud upon any person in connection  
 1046 with the purchase or sale of any mortgage loan; or

1047 (c) To obtain property by fraud, willful misrepresentation  
 1048 of a future act, or false promise.

1049 (5) In any matter within the jurisdiction of the office,  
 1050 to knowingly and willfully falsify, conceal, or cover up by a  
 1051 trick, scheme, or device a material fact, make any false or  
 1052 fraudulent statement or representation, or make or use any false  
 1053 writing or document, knowing the same to contain any false or  
 1054 fraudulent statement or entry.

1055 (6) To violate s. 655.922(2), subject to ss. 494.001-  
 1056 494.0077.

1057 ~~(7) Who is required to be licensed under ss. 494.006-~~  
 1058 ~~494.0077, to fail to report to the office the failure to meet~~  
 1059 ~~the net worth requirements of s. 494.0061, s. 494.0062, or s.~~  
 1060 ~~494.0065 within 48 hours after the person's knowledge of such~~  
 1061 ~~failure or within 48 hours after the person should have known of~~  
 1062 ~~such failure.~~

1063 (7)~~(8)~~ To pay a fee or commission in any mortgage loan  
 1064 transaction to any person or entity other than a licensed

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1065 mortgage broker ~~brokerage business, mortgage lender,~~ or  
 1066 ~~correspondent mortgage lender, operating under an active~~  
 1067 ~~license,~~ or a person exempt from licensure under this chapter.

1068 ~~(8)-(9)~~ To record a mortgage broker ~~brokerage~~ agreement or  
 1069 any other document, not rendered by a court of competent  
 1070 jurisdiction, which purports to enforce the terms of the  
 1071 ~~mortgage brokerage~~ agreement.

1072 ~~(9)-(10)~~ To use the name or logo of a financial  
 1073 institution, as defined in s. 655.005(1), or its affiliates or  
 1074 subsidiaries when marketing or soliciting existing or  
 1075 prospective customers if such marketing materials are used  
 1076 without the written consent of the financial institution and in  
 1077 a manner that would lead a reasonable person to believe that the  
 1078 material or solicitation originated from, was endorsed by, or is  
 1079 related to or the responsibility of the financial institution or  
 1080 its affiliates or subsidiaries.

1081 (10) Subject to investigation or examination under this  
 1082 chapter, to knowingly alter, withhold, conceal, or destroy any  
 1083 books, records, computer records, or other information relating  
 1084 to a person's activities which subject the person to the  
 1085 jurisdiction of this chapter.

1086 Section 14. Section 494.00255, Florida Statutes, is  
 1087 created to read:

1088 494.00255 Administrative penalties and fines; license  
 1089 violations.--

1090 (1) Each of the following acts constitutes a ground for  
 1091 which the disciplinary actions specified in subsection (2) may  
 1092 be taken against a person licensed or required to be licensed

1093 under part II or part III of this chapter:

1094 (a) Failure to immediately place upon receipt, and  
 1095 maintain until authorized to disburse, any money entrusted to  
 1096 the licensee as a licensee in a segregated account of a  
 1097 federally insured financial institution in this state.

1098 (b) Failure to account or deliver to any person any  
 1099 property that is not the licensee's, or that the licensee is not  
 1100 entitled to retain, under the circumstances and at the time that  
 1101 has been agreed upon or as required by law or, in the absence of  
 1102 a fixed time, upon demand of the person entitled to such  
 1103 accounting and delivery.

1104 (c) Failure to disburse funds in accordance with  
 1105 agreements.

1106 (d) Any misuse, misapplication, or misappropriation of  
 1107 personal property entrusted to the licensee's care to which the  
 1108 licensee had no current property right at the time of  
 1109 entrustment.

1110 (e) Fraud, misrepresentation, deceit, negligence, or  
 1111 incompetence in any mortgage financing transaction.

1112 (f) Requesting a specific valuation, orally or in writing,  
 1113 from an appraiser for a particular property, implying to an  
 1114 appraiser that a specific valuation is needed for a particular  
 1115 property, or in any manner conditioning the order for an  
 1116 appraisal on the appraisal meeting a specific valuation. The  
 1117 numeric value of the specific valuation sought need not be  
 1118 stated, but rather the mere statement that a specific valuation  
 1119 is sought violates this section.

1120 (g) Consistently and materially underestimating maximum



1121 closing costs.

1122 (h) Disbursement, or an act which has caused or will cause  
 1123 disbursement, to any person in any amount from the Mortgage  
 1124 Guaranty Trust Fund, the Securities Guaranty Fund, or the  
 1125 Florida Real Estate Recovery Fund, regardless of any repayment  
 1126 or restitution to the disbursed fund by the licensee or any  
 1127 person acting on behalf of the licensee.

1128 (i) Commission of fraud, misrepresentation, concealment,  
 1129 or dishonest dealing by trick, scheme, or device; culpable  
 1130 negligence; breach of trust in any business transaction in any  
 1131 state, nation, or territory; or aiding, assisting, or conspiring  
 1132 with any other person engaged in any such misconduct and in  
 1133 furtherance thereof.

1134 (j) Being convicted of, or entering a plea of guilty or  
 1135 nolo contendere to, regardless of adjudication, any felony or  
 1136 any crime involving fraud, dishonesty, breach of trust, money  
 1137 laundering, or act of moral turpitude.

1138 (k) Having a final judgment entered against the licensee  
 1139 in a civil action upon grounds of fraud, embezzlement,  
 1140 misrepresentation, or deceit.

1141 (l) Having been the subject of any:

1142 1. Decision, finding, injunction, suspension, prohibition,  
 1143 revocation, denial, judgment, or administrative order by any  
 1144 court, administrative law judge, state or federal agency,  
 1145 national securities exchange, national commodities exchange,  
 1146 national option exchange, national securities association,  
 1147 national commodities association, or national option association  
 1148 involving a violation of any federal or state securities or

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1149 commodities law or rule or regulation adopted under such law or  
1150 involving a violation of any rule or regulation of any national  
1151 securities, commodities, or options exchange or association.

1152 2. Injunction or adverse administrative order by a state  
1153 or federal agency regulating banking, insurance, finance or  
1154 small loan companies, real estate, mortgage brokers or lenders,  
1155 money transmitters, or other related or similar industries.

1156 (m) In any mortgage transaction, violating any provision  
1157 of the federal Real Estate Settlement Procedure Act, as amended,  
1158 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as  
1159 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted  
1160 under such acts.

1161 (n) Having a loan originator, mortgage broker, or mortgage  
1162 lender license, or the equivalent of such license, revoked in  
1163 any jurisdiction.

1164 (o) Having a license, or the equivalent of a license, to  
1165 practice any profession or occupation revoked, suspended, or  
1166 otherwise acted against, including the denial of licensure by a  
1167 licensing authority of this state or another state, territory,  
1168 or country.

1169 (p) Acting as a loan originator, mortgage broker, or  
1170 mortgage lender without a current license issued under part II  
1171 or part III of this chapter.

1172 (q) Operating a mortgage broker or mortgage lender branch  
1173 office without a current license issued under part II or part  
1174 III of this chapter.

1175 (r) Conducting any mortgage brokering or mortgage lending  
1176 activities in the absence of a properly designated principal

1177 loan originator or mortgage brokering or mortgage lending  
 1178 activities at any particular branch office without a properly  
 1179 designated branch manager.

1180 (s) A material misstatement or omission of fact on an  
 1181 initial or renewal license application.

1182 (t) Payment to the office for a license or permit with a  
 1183 check or electronic transmission of funds which is dishonored by  
 1184 the applicant's or licensee's financial institution.

1185 (u) Failure to comply with, or violations of, any  
 1186 provision of ss. 494.001-494.0077, or any rule or order made or  
 1187 issued under ss. 494.001-494.0077.

1188 (v) Failure to maintain, preserve, and keep available for  
 1189 examination all books, accounts, or other documents required by  
 1190 ss. 494.001-494.0077 and the rules of the commission.

1191 (w) Refusal to permit an investigation or examination of  
 1192 books and records or refusal to comply with an office subpoena  
 1193 or subpoena duces tecum.

1194 (x) Failure to timely pay any fee, charge, or fine imposed  
 1195 or assessed pursuant to ss. 494.001-494.0077 or related rules.

1196 (2) If the office finds a person in violation of any act  
 1197 specified in this section, it may enter an order imposing one or  
 1198 more of the following penalties:

1199 (a) Issuance of a reprimand.

1200 (b) Suspension of a license, subject to reinstatement upon  
 1201 satisfying all reasonable conditions imposed by the office.

1202 (c) Revocation of a license.

1203 (d) Denial of a license.

1204 (e) Imposition of a fine in an amount up to \$25,000 for

1205 each count or separate offense.

1206 (f) An administrative fine of up to \$1,000 per day, but  
 1207 not to exceed \$25,000 cumulatively, for each day that:

1208 1. A mortgage broker or mortgage lender conducts business  
 1209 at an unlicensed branch office.

1210 2. An unlicensed person acts as a loan originator, a  
 1211 mortgage broker, or a mortgage lender.

1212 (3) A mortgage broker or mortgage lender, as applicable,  
 1213 is subject to the disciplinary actions specified in subsection  
 1214 (2) for a violation of subsection (1) by:

1215 (a) A control person of the mortgage broker or mortgage  
 1216 lender; or

1217 (b) A loan originator employed by or contracting with the  
 1218 mortgage broker.

1219 (4) A principal loan originator of a mortgage broker is  
 1220 subject to the disciplinary actions specified in subsection (2)  
 1221 for violations of subsection (1) by a loan originator in the  
 1222 course of an association with the mortgage broker if there is a  
 1223 pattern of repeated violations by the loan originator or if the  
 1224 principal loan originator has knowledge of the violations.

1225 (5) A principal loan originator of a mortgage lender is  
 1226 subject to the disciplinary actions specified in subsection (2)  
 1227 for violations of subsection (1) by an associate of a mortgage  
 1228 lender if there is a pattern of repeated violations by the  
 1229 associate or if the principal loan originator has knowledge of  
 1230 the violations.

1231 (6) A branch manager is subject to the disciplinary  
 1232 actions specified in subsection (2) for violations of subsection

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1233 (1) by a loan originator in the course of an association with  
 1234 the mortgage broker or mortgage lender if there is a pattern of  
 1235 repeated violations by the loan originator or if the branch  
 1236 manager has knowledge of the violations.

1237 (7) An individual who is associated with a mortgage broker  
 1238 is subject to the disciplinary actions specified in subsection  
 1239 (2) for a violation of subsection (1) with respect to an action  
 1240 in which such person was involved.

1241 (8) Pursuant to s. 120.60(6), the office may summarily  
 1242 suspend the license of a loan originator, mortgage broker, or  
 1243 mortgage lender if the office has reason to believe that a  
 1244 licensee poses an immediate, serious danger to the public's  
 1245 health, safety, or welfare. The arrest of the licensee, or the  
 1246 mortgage broker or the mortgage lender's control person, for any  
 1247 felony or any crime involving fraud, dishonesty, breach of  
 1248 trust, money laundering, or any other act of moral turpitude is  
 1249 deemed sufficient to constitute an immediate danger to the  
 1250 public's health, safety, or welfare. Any proceeding for the  
 1251 summary suspension of a license must be conducted by the  
 1252 commissioner of the office, or his or her designee, who shall  
 1253 issue the final summary order.

1254 (9) The office may deny any request to terminate or  
 1255 withdraw any license application or license if the office  
 1256 believes that an act that would be a ground for license denial,  
 1257 suspension, restriction, or revocation under this chapter has  
 1258 been committed.

1259 Section 15. Section 494.0026, Florida Statutes, is amended  
 1260 to read:

1261           494.0026   Disposition of insurance proceeds.--The following  
 1262 provisions apply to mortgage loans held by a mortgagee or  
 1263 assignee that is subject to parts II and III ~~ss. 494.003-~~  
 1264 ~~494.0077~~.

1265           (1)   The mortgagee or assignee must promptly endorse a  
 1266 check, draft, or other negotiable instrument payable jointly to  
 1267 the mortgagee or assignee and the insured by the insurance  
 1268 company. However, the mortgagee or assignee is not required to  
 1269 endorse such instrument if the insured or a payee who is not  
 1270 subject to parts II and III ~~ss. 494.003-494.0077~~ refuses to  
 1271 endorse the instrument.

1272           (2)   Insurance proceeds received by a mortgagee or assignee  
 1273 that relate to compensation for damage to property or contents  
 1274 insurance coverage in which the mortgagee or assignee has a  
 1275 security interest must be promptly deposited by the mortgagee or  
 1276 assignee into a segregated account of a federally insured  
 1277 financial institution.

1278           (3)   Insurance proceeds received by a mortgagee or assignee  
 1279 that relate to contents insurance coverage in which the  
 1280 mortgagee or assignee does not have a security interest in the  
 1281 contents must be promptly distributed to the insured by the  
 1282 mortgagee or assignee.

1283           (4)   Insurance proceeds received by a mortgagee or assignee  
 1284 that relate to additional living expenses must be promptly  
 1285 distributed to the insured by the mortgagee or assignee.

1286           (5)   The mortgagee or assignee is not required to remit the  
 1287 portion of the proceeds relating to additional living expenses  
 1288 and contents insurance if the mortgagee or assignee is not able

1289 to determine which part of the proceeds relates to additional  
 1290 living expenses and contents insurance.

1291  
 1292 Nothing in this section shall be construed to prevent an  
 1293 insurance company from paying the insured directly for  
 1294 additional living expenses or paying the insured directly for  
 1295 contents insurance coverage if the mortgagee or assignee does  
 1296 not have a security interest in the contents.

1297 Section 16. Section 494.0028, Florida Statutes, is amended  
 1298 to read:

1299 494.0028 Arbitration.--

1300 (1) This section applies to any mortgage broker ~~brokerage~~  
 1301 agreement, servicing agreement, loan application, or purchase  
 1302 agreement that ~~which~~ provides for arbitration between:

1303 (a) A noninstitutional investor and a mortgage lender  
 1304 servicing ~~or correspondent mortgage lender to service~~ a mortgage  
 1305 loan.

1306 (b) A borrower and a mortgage broker ~~brokerage business,~~  
 1307 ~~mortgage lender,~~ or ~~correspondent~~ mortgage lender to obtain a  
 1308 mortgage loan.

1309 (c) A noninstitutional investor and a mortgage broker  
 1310 ~~brokerage business, mortgage lender,~~ or ~~correspondent~~ mortgage  
 1311 lender to fund or purchase a mortgage loan.

1312 (2) All agreements subject to this section must ~~shall~~  
 1313 provide that, at the voluntary election of the noninstitutional  
 1314 investor or borrower, disputes shall be handled by ~~either~~ a  
 1315 court ~~of competent jurisdiction~~ or by binding arbitration.

1316 (3) All agreements subject to this section must ~~shall~~

1317 provide the noninstitutional investor or borrower with the  
 1318 option to elect arbitration before the American Arbitration  
 1319 Association or other independent nonindustry arbitration forum.  
 1320 Any other nonindustry arbitration forum may apply to the office  
 1321 to allow such forum to provide arbitration services. The office  
 1322 shall grant the application if the applicant's fees, practices,  
 1323 and procedures do not materially differ from those of the  
 1324 American Arbitration Association.

1325 (4) At the election of the noninstitutional investor or  
 1326 borrower, venue shall be in the county in which the  
 1327 noninstitutional investor or borrower entered into the agreement  
 1328 or at a business location of the mortgage broker or brokerage  
 1329 ~~business, mortgage lender, or correspondent lender.~~

1330 (5) Any fees or charges must be in accordance with ~~shall~~  
 1331 ~~be made as provided in~~ the rules of the American Arbitration  
 1332 Association or other approved nonindustry arbitration forum and  
 1333 may ~~shall~~ not be set in the agreement.

1334 (6) Any election made under this section is ~~shall be~~  
 1335 irrevocable.

1336 (7) This section does ~~shall~~ not ~~be construed to~~ require an  
 1337 agreement that ~~which~~ is subject to this section to contain an  
 1338 arbitration clause.

1339 Section 17. Sections 494.0029 and 494.00295, Florida  
 1340 Statutes, are repealed.

1341 Section 18. Effective January 1, 2010, section 494.00296,  
 1342 Florida Statutes, is created to read:

1343 494.00296 Loan modification.--

1344 (1) PROHIBITED ACTS.--When offering or providing loan



1345 modification services, a mortgage broker, mortgage brokerage  
 1346 business, mortgage lender, or correspondent mortgage lender  
 1347 licensed, or required to be licensed, under ss. 494.001-494.0077  
 1348 may not:

1349 (a) Engage in or initiate loan modification services  
 1350 without first executing a written agreement for loan  
 1351 modification services with the borrower;

1352 (b) Execute a loan modification without the consent of the  
 1353 borrower after the borrower is made aware of each modified term;  
 1354 or

1355 (c) Solicit, charge, receive, or attempt to collect or  
 1356 secure payment, directly or indirectly, for loan modification  
 1357 services before completing or performing all services included  
 1358 in the agreement for loan modification services. A fee may be  
 1359 charged only if the loan modification results in a material  
 1360 benefit to the borrower. The commission may adopt rules to  
 1361 provide guidance on what constitutes a material benefit to the  
 1362 borrower.

1363 (2) LOAN MODIFICATION AGREEMENT.--

1364 (a) The written agreement for loan modification services  
 1365 must be printed in at least 12-point uppercase type and signed  
 1366 by both parties. The agreement must include the name and address  
 1367 of the person providing loan modification services, the exact  
 1368 nature and specific detail of each service to be provided, the  
 1369 total amount and terms of charges to be paid by the borrower for  
 1370 the services, and the date of the agreement. The date of the  
 1371 agreement may not be earlier than the date the borrower signed  
 1372 the agreement. The mortgage brokerage business, mortgage lender,

1373 or correspondent mortgage lender must give the borrower a copy  
 1374 of the agreement to review at least 1 business day before the  
 1375 borrower is to sign the agreement.

1376 (b) The borrower has the right to cancel the written  
 1377 agreement without any penalty or obligation if the borrower  
 1378 cancels the agreement within 3 business days after signing the  
 1379 agreement. The right to cancel may not be waived by the borrower  
 1380 or limited in any manner by the mortgage broker, mortgage  
 1381 brokerage business, mortgage lender, or correspondent mortgage  
 1382 lender. If the borrower cancels the agreement, any payments made  
 1383 must be returned to the borrower within 10 business days after  
 1384 receipt of the notice of cancellation.

1385 (c) An agreement for loan modification services must  
 1386 contain, immediately above the signature line, a statement in at  
 1387 least 12-point uppercase type which substantially complies with  
 1388 the following:

1389 BORROWER'S RIGHT OF CANCELLATION

1391 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION  
 1392 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS  
 1393 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1394 THE MORTGAGE BROKER, MORTGAGE BROKERAGE BUSINESS, MORTGAGE  
 1395 LENDER, OR CORRESPONDENT MORTGAGE LENDER IS PROHIBITED BY LAW  
 1396 FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT  
 1397 FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR  
 1398 ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION,  
 1399 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10 BUSINESS DAYS  
 1400 AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

1401 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
 1402 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED  
 1403 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO  
 1404 LATER THAN MIDNIGHT OF ... (DATE) ....

1405 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE  
 1406 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR  
 1407 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR  
 1408 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1410 (d) The inclusion of the statement does not prohibit a  
 1411 mortgage broker, mortgage brokerage business, mortgage lender,  
 1412 or correspondent mortgage lender from giving the homeowner more  
 1413 time to cancel the agreement than is set forth in the statement  
 1414 if all other requirements of this subsection are met.

1415 (e) The person offering or providing the loan modification  
 1416 services must give the borrower a copy of the signed agreement  
 1417 within 3 hours after the borrower signs the agreement.

1418 (3) REMEDIES.--

1419 (a) Without regard to any other remedy or relief to which  
 1420 a person is entitled, anyone aggrieved by a violation of this  
 1421 section may bring an action to obtain a declaratory judgment  
 1422 that an act or practice violates this section and to enjoin a  
 1423 person who has violated, is violating, or is otherwise likely to  
 1424 violate this section.

1425 (b) In any action brought by a person who has suffered a  
 1426 loss as a result of a violation of this section, such person may  
 1427 recover actual damages, plus attorney's fees and court costs, as  
 1428 follows:

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1429 1. In any action brought under this section, upon motion  
1430 of the party against whom such action is filed alleging that the  
1431 action is frivolous, without legal or factual merit, or brought  
1432 for the purpose of harassment, the court may, after hearing  
1433 evidence as to the necessity therefor, require the party  
1434 instituting the action to post a bond in the amount that the  
1435 court finds reasonable to indemnify the defendant for any  
1436 damages incurred, including reasonable attorney's fees.

1437 2. In any civil litigation resulting from an act or  
1438 practice involving a violation of this section, the prevailing  
1439 party, after judgment in the trial court and exhaustion of all  
1440 appeals, if any, may receive reasonable attorney's fees and  
1441 costs from the nonprevailing party.

1442 3. The attorney for the prevailing party shall submit a  
1443 sworn affidavit of time spent on the case and costs incurred for  
1444 all the motions, hearings, and appeals to the trial judge who  
1445 presided over the civil case.

1446 4. The trial judge may award the prevailing party the sum  
1447 of reasonable costs incurred in the action plus a reasonable  
1448 legal fee for the hours actually spent on the case as sworn to  
1449 in an affidavit.

1450 5. Any award of attorney's fees or costs becomes part of  
1451 the judgment and is subject to execution as the law allows.

1452 (c) The provisions of this subsection do not apply to any  
1453 action initiated by the enforcing authority.

1454 (4) DEFINITIONS.--Notwithstanding s. 494.001, as used in  
1455 this section, the term:

1456 (a) "Borrower" means a person who is obligated to repay a

1457 mortgage loan and includes, but is not limited to, a coborrower,  
 1458 cosignor, or guarantor.

1459 (b) "Loan modification" means a modification to an  
 1460 existing loan. The term does not include a refinancing  
 1461 transaction.

1462 (c) "Mortgage broker" means a person who, for compensation  
 1463 or gain, directly or indirectly, accepts or offers to accept an  
 1464 application for a mortgage loan, solicits or offers to solicit a  
 1465 mortgage loan on behalf of a borrower, negotiates or offers to  
 1466 negotiate the terms or conditions of a new or existing mortgage  
 1467 loan on behalf of a borrower or lender, or negotiates or offers  
 1468 to negotiate the sale of an existing mortgage loan to a  
 1469 noninstitutional investor. An employee whose activities are  
 1470 ministerial and clerical, which may include quoting available  
 1471 interest rates or loan terms and conditions, is not acting as a  
 1472 mortgage broker.

1473 Section 19. Subsections (1), (2), and (4) of section  
 1474 494.00296, Florida Statutes, as created by this act, are amended  
 1475 to read:

1476 494.00296 Loan modification.--

1477 (1) PROHIBITED ACTS.--When offering or providing loan  
 1478 modification services, a loan originator, mortgage broker,  
 1479 ~~mortgage brokerage business, mortgage lender, or correspondent~~  
 1480 ~~mortgage lender licensed, or required to be licensed, under ss.~~  
 1481 ~~494.001-494.0077~~ may not:

1482 (a) Engage in or initiate loan modification services  
 1483 without first executing a written agreement for loan  
 1484 modification services with the borrower;

1485 (b) Execute a loan modification without the consent of the  
 1486 borrower after the borrower is made aware of each modified term;  
 1487 or

1488 (c) Solicit, charge, receive, or attempt to collect or  
 1489 secure payment, directly or indirectly, for loan modification  
 1490 services before completing or performing all services included  
 1491 in the agreement for loan modification services. A fee may be  
 1492 charged only if the loan modification results in a material  
 1493 benefit to the borrower. The commission may adopt rules to  
 1494 provide guidance on what constitutes a material benefit to the  
 1495 borrower.

1496 (2) LOAN MODIFICATION AGREEMENT.--

1497 (a) The written agreement for loan modification services  
 1498 must be printed in at least 12-point uppercase type and signed  
 1499 by both parties. The agreement must include the name and address  
 1500 of the person providing loan modification services, the exact  
 1501 nature and specific detail of each service to be provided, the  
 1502 total amount and terms of charges to be paid by the borrower for  
 1503 the services, and the date of the agreement. The date of the  
 1504 agreement may not be earlier than the date the borrower signed  
 1505 the agreement. The mortgage broker ~~brokerage business, mortgage~~  
 1506 ~~lender, or correspondent~~ mortgage lender must give the borrower  
 1507 a copy of the agreement to review at least 1 business day before  
 1508 the borrower is to sign the agreement.

1509 (b) The borrower has the right to cancel the written  
 1510 agreement without any penalty or obligation if the borrower  
 1511 cancels the agreement within 3 business days after signing the  
 1512 agreement. The right to cancel may not be waived by the borrower

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1513 or limited in any manner by the loan originator, mortgage  
 1514 broker, ~~mortgage brokerage business, mortgage lender, or~~  
 1515 ~~correspondent~~ mortgage lender. If the borrower cancels the  
 1516 agreement, any payments made must be returned to the borrower  
 1517 within 10 business days after receipt of the notice of  
 1518 cancellation.

1519 (c) An agreement for loan modification services must  
 1520 contain, immediately above the signature line, a statement in at  
 1521 least 12-point uppercase type which substantially complies with  
 1522 the following:

1523 BORROWER'S RIGHT OF CANCELLATION

1524  
 1525 YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION  
 1526 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS  
 1527 DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

1528 THE LOAN ORIGINATOR, MORTGAGE BROKER, ~~MORTGAGE BROKERAGE~~  
 1529 ~~BUSINESS, MORTGAGE LENDER,~~ OR CORRESPONDENT MORTGAGE LENDER IS  
 1530 PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER  
 1531 FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN  
 1532 COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE  
 1533 CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
 1534 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION  
 1535 NOTICE.

1536 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
 1537 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED  
 1538 (POSTMARKED) OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ... NO  
 1539 LATER THAN MIDNIGHT OF ... (DATE) ....

1540 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE

1541 LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR  
 1542 LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR  
 1543 A RESTRUCTURING WITH YOU FREE OF CHARGE.

1544  
 1545 (d) The inclusion of the statement does not prohibit a  
 1546 loan originator, mortgage broker, ~~mortgage brokerage business,~~  
 1547 ~~mortgage lender,~~ or correspondent mortgage lender from giving  
 1548 the homeowner more time to cancel the agreement than is set  
 1549 forth in the statement if all other requirements of this  
 1550 subsection are met.

1551 (e) The person offering or providing the loan modification  
 1552 services must give the borrower a copy of the signed agreement  
 1553 within 3 hours after the borrower signs the agreement.

1554 ~~(4) DEFINITIONS. Notwithstanding s. 494.001, as used in~~  
 1555 ~~this section, the term:~~

1556 ~~(a) "Borrower" means a person obligated to repay a~~  
 1557 ~~mortgage loan and includes, but is not limited to, a coborrower,~~  
 1558 ~~cosignor, or guarantor.~~

1559 ~~(b) "Loan modification" means a modification to an~~  
 1560 ~~existing loan. The term does not include a refinancing~~  
 1561 ~~transaction.~~

1562 ~~(c) "Mortgage broker" means a person who, for compensation~~  
 1563 ~~or gain, directly or indirectly, accepts or offers to accept an~~  
 1564 ~~application for a mortgage loan, solicits or offers to solicit a~~  
 1565 ~~mortgage loan on behalf of a borrower, negotiates or offers to~~  
 1566 ~~negotiate the terms or conditions of a new or existing mortgage~~  
 1567 ~~loan on behalf of a borrower or lender, or negotiates or offers~~  
 1568 ~~to negotiate the sale of an existing mortgage loan to a~~



1569 ~~noninstitutional investor. An employee whose activities are~~  
 1570 ~~ministerial and clerical, which may include quoting available~~  
 1571 ~~interest rates or loan terms and conditions, is not acting as a~~  
 1572 ~~mortgage broker.~~

1573       Section 20. The Division of Statutory Revision is  
 1574 requested to rename part II of chapter 494, Florida Statutes,  
 1575 consisting of ss. 494.00312-491.0043, Florida Statutes, as "Loan  
 1576 Originators and Mortgage Brokers."

1577       Section 21. Sections 494.003 and 494.0031, Florida  
 1578 Statutes, are repealed.

1579       Section 22. Section 494.00312, Florida Statutes, is  
 1580 created to read:

1581       494.00312 Loan originator license.--

1582       (1) An individual who acts as a loan originator must be  
 1583 licensed under this section.

1584       (2) In order to apply for loan originator license, an  
 1585 applicant must:

1586       (a) Be at least 18 years of age and have a high school  
 1587 diploma or its equivalent.

1588       (b) Complete a 20-hour prelicensing class approved by the  
 1589 registry.

1590       (c) Pass a written test developed by the registry and  
 1591 administered by a provider approved by the registry.

1592       (d) Submit a completed license application form as  
 1593 prescribed by commission rule.

1594       (e) Submit a nonrefundable application fee of \$195, and  
 1595 the \$20 nonrefundable fee if required by s. 494.00172.

1596 Application fees may not be prorated for partial years of

1597 licensure.

1598 (f) Submit fingerprints in accordance with rules adopted  
1599 by the commission.

1600 1. The fingerprints may be submitted to the registry, the  
1601 office, or a vendor acting on behalf of the registry or the  
1602 office.

1603 2. The office may contract with a third-party vendor to  
1604 provide live-scan fingerprinting in lieu of a paper fingerprint  
1605 card.

1606 3. A state criminal history background check must be  
1607 conducted through the Department of Law Enforcement, and a  
1608 federal criminal history background check must be conducted  
1609 through the Federal Bureau of Investigation.

1610 4. All fingerprints submitted to the Department of Law  
1611 Enforcement must be submitted electronically and entered into  
1612 the statewide automated fingerprint identification system  
1613 established in s. 943.05(2) (b) and available for use in  
1614 accordance with s. 943.05(2) (g) and (h). The office shall pay an  
1615 annual fee to the Department or Law Enforcement to participate  
1616 in the system and inform the Department of Law Enforcement of  
1617 any person whose fingerprints are no longer required to be  
1618 retained.

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

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

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

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

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

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

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

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1653 of licensure if the applicant:

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

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

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

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

1680 3. The office may not use a credit score or the absence or

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1681 insufficiency of credit history information to determine  
1682 character, general fitness, or financial responsibility.

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

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

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

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

1707 Section 23. Section 494.00313, Florida Statutes, is  
1708 created to read:

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1709 494.00313 Loan originator license renewal.--

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

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

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

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

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

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

1736 (2) The office may not renew a loan originator license

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1737 unless the loan originator continues to meet the minimum  
1738 standards for initial license issuance pursuant to s. 494.00312  
1739 and adopted rule.

1740 Section 24. Section 494.0032, Florida Statutes, is  
1741 repealed.

1742 Section 25. Section 494.00321, Florida Statutes, is  
1743 created to read:

1744 494.00321 Mortgage broker license.--

1745 (1) Each individual who acts as a mortgage broker must be  
1746 licensed under this section.

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

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

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

1753 (c) Submit a nonrefundable application fee of \$425, and  
1754 the \$100 nonrefundable fee if required by s. 494.00172.  
1755 Application fees may not be prorated for partial years of  
1756 licensure.

1757 (d) Submit fingerprints for each of the applicant's  
1758 control persons in accordance with rules adopted by the  
1759 commission.

1760 1. The fingerprints may be submitted to the registry, the  
1761 office, or a vendor acting on behalf of the registry or the  
1762 office.

1763 2. The office may contract with a third-party vendor to  
1764 provide live-scan fingerprinting in lieu of a paper fingerprint

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1765 card.

1766 3. A state criminal history background check must be  
1767 conducted through the Department of Law Enforcement, and a  
1768 federal criminal history background check must be conducted  
1769 through the Federal Bureau of Investigation.

1770 4. All fingerprints submitted to the Department of Law  
1771 Enforcement must be submitted electronically and entered into  
1772 the statewide automated fingerprint identification system  
1773 established in s. 943.05(2)(b) and available for use in  
1774 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
1775 annual fee to the Department of Law Enforcement to participate  
1776 in the system and inform the Department of Law Enforcement of  
1777 any person whose fingerprints are no longer required to be  
1778 retained.

1779 5. The costs of fingerprint processing, including the cost  
1780 of retaining the fingerprints, shall be borne by the person  
1781 subject to the background check.

1782 6. The office is responsible for reviewing the results of  
1783 the state and federal criminal history checks and determining  
1784 whether the applicant meets licensure requirements.

1785 (e) Authorize the registry to obtain an independent credit  
1786 report on each of the applicant's control persons from a  
1787 consumer reporting agency, and transmit or provide access to the  
1788 report to the office. The cost of the credit report shall be  
1789 borne by the applicant.

1790 (f) Submit additional information or documentation  
1791 requested by the office and required by rule concerning the  
1792 applicant or a control person of the applicant. Additional



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1793 information may include documentation of pending and prior  
1794 disciplinary and criminal history events, including arrest  
1795 reports and certified copies of charging documents, plea  
1796 agreements, judgments and sentencing documents, documents  
1797 relating to pretrial intervention, orders terminating probation  
1798 or supervised release, final administrative agency orders, or  
1799 other comparable documents that may provide the office with the  
1800 appropriate information to determine eligibility for licensure.

1801 (g) Submit any other information required by the registry  
1802 for the processing of the application.

1803 (3) An application is considered received for the purposes  
1804 of s. 120.60 upon the office's receipt of all documentation from  
1805 the registry, including the completed application form, criminal  
1806 history information, and independent credit reports, as well as  
1807 the license application fee, the fee required by s. 494.00172,  
1808 and all applicable fingerprinting processing fees.

1809 (4) The office shall issue a mortgage broker license to  
1810 each person who is not otherwise ineligible and who meets the  
1811 requirements of this section. However, it is a ground for denial  
1812 of licensure if the applicant or one of the applicant's control  
1813 persons:

1814 (a) Has committed any violation specified in ss. 494.001-  
1815 494.0077, or is the subject of a pending felony criminal  
1816 prosecution or a prosecution or an administrative enforcement  
1817 action, in any jurisdiction, which involves fraud, dishonesty,  
1818 breach of trust, money laundering, or any other act of moral  
1819 turpitude.

1820 (b) Has failed to demonstrate the character, general

1821 fitness, and financial responsibility necessary to command the  
1822 confidence of the community and warrant a determination that the  
1823 applicant will operate honestly, fairly, and efficiently.

1824 1. If the office has information that could form the basis  
1825 for license denial under this paragraph, before denying the  
1826 license, the office must notify the applicant in writing of the  
1827 specific items of concern and provide the applicant with an  
1828 opportunity to explain the circumstances surrounding the  
1829 specific items and provide any information that the applicant  
1830 believes is relevant to the office's determination.

1831 2. For purposes of evaluating adverse information found in  
1832 an applicant's credit report, the information must be considered  
1833 within the totality of the circumstances. Information provided  
1834 by the applicant under subparagraph 1., or information obtained  
1835 by the office by other means, may be used to provide a context  
1836 for the adverse items. For example, the adverse items may have  
1837 resulted from factors that do not necessarily reflect negatively  
1838 upon the applicant's character, general fitness, or financial  
1839 responsibility.

1840 3. The office may not use a credit score or the absence or  
1841 insufficiency of credit history information to determine  
1842 character, general fitness, or financial responsibility.

1843 4. If information contained in a credit report is used as  
1844 the basis for denying a license, the office shall, in accordance  
1845 with s. 120.60(3), provide with particularity the grounds or  
1846 basis for denial. The use of the terms "poor credit history" or  
1847 "poor credit rating" or similar language does not meet the  
1848 requirements of this paragraph.

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1849        (5) The office may not issue a license if the applicant  
1850 has had a mortgage broker license or its equivalent revoked in  
1851 any jurisdiction, or if any of the applicant's control persons  
1852 has had a loan originator license or its equivalent revoked in  
1853 any jurisdiction.

1854        (6) A mortgage broker license shall be annulled pursuant  
1855 to s. 120.60 if it was issued by the office by mistake. A  
1856 license must be reinstated if the applicant demonstrates that  
1857 the requirements for obtaining the license under this chapter  
1858 have been satisfied.

1859        (7) All mortgage broker licenses must be renewed annually  
1860 by December 31 pursuant to s. 494.00322. If a person holding an  
1861 active mortgage broker license has not applied to renew the  
1862 license annually on or before December 31, the mortgage broker  
1863 license expires on December 31. If a person holding an active  
1864 mortgage broker license has applied to renew the license on or  
1865 before December 31, the mortgage broker license remains active  
1866 until the renewal application is approved or denied. A mortgage  
1867 broker is not precluded from reapplying for licensure upon  
1868 expiration of a previous license.

1869        Section 26. Section 494.00322, Florida Statutes, is  
1870 created to read:

1871        494.00322 Mortgage broker license renewal.--

1872        (1) In order to renew a mortgage broker license, a  
1873 mortgage broker must:

1874        (a) Submit a completed license renewal form as prescribed  
1875 by commission rule.

1876        (b) Submit a nonrefundable renewal fee of \$375, the \$100

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1877 nonrefundable fee if required by s. 494.00172, and nonrefundable  
 1878 fees to cover the cost of further fingerprint processing and  
 1879 retention as set forth in commission rule.

1880 (c) Submit fingerprints in accordance with s.  
 1881 494.00321(2)(d) for any new control persons who have not been  
 1882 screened.

1883 (d) Authorize the registry to obtain an independent credit  
 1884 report on each of the licensee's control persons from a consumer  
 1885 reporting agency, and transmit or provide access to the report  
 1886 to the office. The cost of the credit report shall be borne by  
 1887 the licensee.

1888 (e) Submit any additional information or documentation  
 1889 requested by the office and required by rule concerning the  
 1890 licensee or a control person of the licensee. Additional  
 1891 information may include documentation of pending and prior  
 1892 disciplinary and criminal history events, including arrest  
 1893 reports and certified copies of charging documents, plea  
 1894 agreements, judgments and sentencing documents, documents  
 1895 relating to pretrial intervention, orders terminating probation  
 1896 or supervised release, final administrative agency orders, or  
 1897 other comparable documents that may provide the office with the  
 1898 appropriate information to determine eligibility for renewal of  
 1899 licensure.

1900 (2) The office may not renew a mortgage broker license  
 1901 unless the licensee continues to meet the minimum requirements  
 1902 for initial licensure pursuant to s. 494.00321 and adopted rule.

1903 Section 27. Section 494.0033, Florida Statutes, is  
 1904 repealed.

1905 Section 28. Section 494.00331, Florida Statutes, is  
 1906 amended to read:

1907 494.00331 Loan originator employment ~~Mortgage broker~~  
 1908 ~~association.--An individual may not act as a loan originator~~  
 1909 unless he or she is an employee of, or an independent contractor  
 1910 for, a mortgage broker or a mortgage lender and may not be  
 1911 employed by or contract with more than one mortgage broker or  
 1912 mortgage lender, or either simultaneously. ~~No person required to~~  
 1913 ~~be licensed as a mortgage broker under this chapter shall be~~  
 1914 ~~simultaneously an associate of more than one licensed mortgage~~  
 1915 ~~brokerage business, licensed mortgage lender, or licensed~~  
 1916 ~~correspondent mortgage lender.~~

1917 Section 29. Section 494.0034, Florida Statutes, is  
 1918 repealed.

1919 Section 30. Section 494.0035, Florida Statutes, is amended  
 1920 to read:

1921 494.0035 Principal loan originator ~~broker~~ and branch  
 1922 manager for mortgage broker requirements.--

1923 (1) Each mortgage broker ~~brokerage business~~ must be  
 1924 operated by a principal loan originator who shall have a  
 1925 ~~principal broker who shall operate the business under such~~  
 1926 ~~broker's~~ full charge, control, and supervision of the mortgage  
 1927 broker business. The principal loan originator must have been  
 1928 licensed as a loan originator ~~broker must have been a licensed~~  
 1929 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year  
 1930 before ~~prior to~~ being designated as the a principal loan  
 1931 originator ~~broker,~~ or must ~~shall~~ demonstrate to the satisfaction  
 1932 of the office that he or she ~~such principal broker~~ has been

1933 actively engaged in a mortgage broker-related ~~mortgage-related~~  
 1934 business for at least 1 year before ~~prior to~~ being designated as  
 1935 a principal loan originator ~~broker~~. Each mortgage broker must  
 1936 keep the office informed of the person designated as the  
 1937 principal loan originator as prescribed by commission rule  
 1938 ~~brokerage business shall maintain a form as prescribed by the~~  
 1939 ~~commission indicating the business's designation of principal~~  
 1940 ~~broker and the individual's acceptance of such responsibility.~~  
 1941 If the designation is inaccurate, the business shall be deemed  
 1942 to be operated under ~~form is unavailable, inaccurate, or~~  
 1943 ~~incomplete, it is deemed that the business was operated in the~~  
 1944 full charge, control, and supervision of ~~by~~ each officer,  
 1945 director, or ultimate equitable owner of a 10-percent or greater  
 1946 interest in the mortgage broker ~~brokerage business~~, or any other  
 1947 person in a similar capacity. A loan originator may not be a  
 1948 principal loan originator for more than one mortgage broker at  
 1949 any given time.

1950 (2) Each branch office of a mortgage broker ~~brokerage~~  
 1951 ~~business~~ must be operated by a ~~have a designated~~ branch manager  
 1952 ~~broker~~ who shall have ~~operate the business under such broker's~~  
 1953 full charge, control, and supervision of the branch office. The  
 1954 designated branch manager ~~broker~~ must be a licensed loan  
 1955 originator ~~mortgage broker~~ pursuant to s. 494.00312 ~~s. 494.0033~~.  
 1956 Each branch office must keep the office informed of the person  
 1957 designated as the branch manager as prescribed by commission  
 1958 rule, which includes documentation of ~~shall maintain a form as~~  
 1959 ~~prescribed by the commission logging the branch's designation of~~  
 1960 ~~a branch broker and the individual's acceptance of such~~

1961 responsibility. If the designation is inaccurate, the branch  
 1962 office shall be deemed to be operated under form is unavailable,  
 1963 inaccurate, or incomplete, it is deemed that the branch was  
 1964 operated in the full charge, control, and supervision of by each  
 1965 officer, director, or ultimate equitable owner of a 10-percent  
 1966 or greater interest in the mortgage broker ~~brokerage business~~,  
 1967 or any other person in a similar capacity.

1968 Section 31. Section 494.0036, Florida Statutes, is amended  
 1969 to read:

1970 494.0036 Mortgage broker branch office license ~~brokerage~~  
 1971 ~~business branch offices.--~~

1972 (1) Each branch office of a mortgage broker must be  
 1973 licensed under this section. ~~A mortgage brokerage business~~  
 1974 ~~branch office license is required for each branch office~~  
 1975 ~~maintained by a mortgage brokerage business.~~

1976 (2) The office shall issue a mortgage broker ~~brokerage~~  
 1977 ~~business~~ branch office license to a mortgage broker ~~brokerage~~  
 1978 ~~business~~ licensee after the office determines that the licensee  
 1979 has submitted a completed application for a branch office in a  
 1980 form ~~as~~ prescribed by commission rule and payment of an initial  
 1981 nonrefundable branch office license fee of \$225 per branch  
 1982 office. Application fees may not be prorated for partial years  
 1983 of licensure. The branch office license shall be issued in the  
 1984 name of the mortgage broker ~~brokerage business~~ that maintains  
 1985 the branch office. An application is considered received for  
 1986 purposes of s. 120.60 upon receipt of a completed application  
 1987 form as prescribed by commission rule and the required fees, ~~a~~  
 1988 ~~nonrefundable application fee of \$225, and any other fee~~

1989 ~~prescribed by law.~~

1990 (3) A branch office license must be renewed annually at  
 1991 the time of renewing the mortgage broker license under s.  
 1992 494.00322. A nonrefundable branch renewal fee of \$225 per branch  
 1993 office must be submitted at the time of renewal.

1994 Section 32. Section 494.0038, Florida Statutes, is amended  
 1995 to read:

1996 494.0038 Loan origination and mortgage broker fees and  
 1997 ~~Mortgage broker disclosures.--~~

1998 (1) ~~(a)1.~~ A loan origination fee may not be paid ~~person may~~  
 1999 ~~not receive a mortgage brokerage fee~~ except pursuant to a  
 2000 written mortgage broker ~~brokerage~~ agreement between the mortgage  
 2001 broker ~~brokerage business~~ and the borrower which is signed and  
 2002 dated by the principal loan originator or branch manager ~~the~~  
 2003 ~~business~~ and the borrower. The unique registry identifier of  
 2004 each loan originator responsible for providing loan originator  
 2005 services must be printed on the mortgage broker agreement.

2006 (a)2. The written mortgage broker ~~brokerage~~ agreement must  
 2007 describe the services to be provided by the mortgage broker  
 2008 ~~brokerage business~~ and specify the amount and terms of the loan  
 2009 origination ~~mortgage brokerage~~ fee that the mortgage broker  
 2010 ~~brokerage business~~ is to receive.

2011 1. Except for application and third-party fees, all fees  
 2012 received by a mortgage broker from a borrower must be identified  
 2013 as a loan origination fee.

2014 2. All fees on the mortgage broker agreement must be  
 2015 disclosed in dollar amounts.

2016 3. All loan origination fees must be paid to a mortgage



2017 broker.

2018 (b) The ~~written mortgage brokerage~~ agreement must be  
 2019 executed within 3 business days after a mortgage loan  
 2020 application is accepted if the borrower is present when the  
 2021 mortgage loan application is accepted. If the borrower is not  
 2022 present ~~when such an application is accepted~~, the licensee shall  
 2023 forward the ~~written mortgage brokerage~~ agreement to the borrower  
 2024 within 3 business days after the licensee's acceptance of the  
 2025 application and the licensee bears the burden of proving that  
 2026 the borrower received and approved the ~~written mortgage~~  
 2027 ~~brokerage~~ agreement.

2028 (2)(b)1. If the mortgage broker ~~brokerage business~~ is to  
 2029 receive any payment of any kind from the mortgage lender, the  
 2030 maximum total dollar amount of the payment must be disclosed to  
 2031 the borrower in the written mortgage broker ~~brokerage~~ agreement  
 2032 as described in paragraph (1)(a). The commission may prescribe  
 2033 by rule an acceptable form for disclosure of brokerage fees  
 2034 received from the lender. The ~~mortgage brokerage~~ agreement must  
 2035 state the nature of the relationship with the lender, describe  
 2036 how compensation is paid by the lender, and describe how the  
 2037 mortgage interest rate affects the compensation paid to the  
 2038 mortgage broker ~~brokerage business~~.

2039 (a)2. The exact amount of any payment of any kind by the  
 2040 lender to the mortgage broker ~~brokerage business~~ must be  
 2041 disclosed in writing to the borrower within 3 business days  
 2042 after the mortgage broker ~~brokerage business~~ is made aware of  
 2043 the exact amount of the payment from the lender but not less  
 2044 than 3 business days before the execution of the closing or

2045 settlement statement. The licensee bears the burden of proving  
 2046 such notification was provided to the borrower. Notification is  
 2047 waived if the exact amount of the payment is accurately  
 2048 disclosed in the written mortgage broker agreement.

2049 (b)(e) The commission may prescribe by rule the form of  
 2050 disclosure of brokerage fees.

2051 (3)(2) At the time a written mortgage broker ~~brokerage~~  
 2052 agreement is signed ~~executed~~ by the borrower or forwarded to the  
 2053 borrower for signature ~~execution~~, or at the time the mortgage  
 2054 broker ~~brokerage business~~ accepts an application fee, credit  
 2055 report fee, property appraisal fee, or any other third-party  
 2056 fee, but at least ~~not less than~~ 3 business days before execution  
 2057 of the closing or settlement statement, the mortgage broker  
 2058 ~~brokerage business~~ shall disclose in writing to any applicant  
 2059 for a mortgage loan the following information:

2060 (a) That the ~~such~~ mortgage broker ~~brokerage business~~ may  
 2061 not make mortgage loans or commitments. The mortgage broker  
 2062 ~~brokerage business~~ may make a commitment and may furnish a lock-  
 2063 in of the rate and program on behalf of the lender if ~~when~~ the  
 2064 mortgage broker ~~brokerage business~~ has obtained a written  
 2065 commitment or lock-in for the loan from the lender on behalf of  
 2066 the borrower for the loan. The commitment must be in the same  
 2067 form and substance as issued by the lender.

2068 (b) That the ~~such~~ mortgage broker ~~brokerage business~~  
 2069 cannot guarantee acceptance into any particular loan program or  
 2070 promise any specific loan terms or conditions.

2071 (c) A good faith estimate, signed and dated by the  
 2072 borrower, which discloses the total amount of each of the fees

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2073 ~~which~~ the borrower may reasonably expect to pay if the loan is  
 2074 closed, including, but not limited to, fees earned by the  
 2075 mortgage broker ~~brokerage business~~, lender fees, third-party  
 2076 fees, and official fees, together with the terms and conditions  
 2077 for obtaining a refund of such fees, if any. Any amount  
 2078 collected in excess of the actual cost shall be returned within  
 2079 60 days after rejection, withdrawal, or closing. The good faith  
 2080 estimate must identify the recipient of all payments charged the  
 2081 borrower and, except for all fees to be received by the mortgage  
 2082 broker ~~brokerage business~~, may be disclosed in generic terms,  
 2083 such as, but not limited to, paid to lender, appraiser,  
 2084 officials, title company, or any other third-party service  
 2085 provider. This requirement does not supplant or is not a  
 2086 substitute for the written mortgage broker ~~brokerage~~ agreement  
 2087 described in subsection (1).

2088 (4) ~~(3)~~ The disclosures required by this subsection must be  
 2089 furnished in writing at the time an adjustable rate mortgage  
 2090 loan is offered to the borrower and whenever the terms of the  
 2091 adjustable rate mortgage loan offered materially change prior to  
 2092 closing. The mortgage broker shall furnish the disclosures  
 2093 relating to adjustable rate mortgages in a format prescribed by  
 2094 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors  
 2095 of the Federal Reserve System, as amended; its commentary, as  
 2096 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.  
 2097 1601 et seq., as amended; together with the Consumer Handbook on  
 2098 Adjustable Rate Mortgages, as amended; published by the Federal  
 2099 Reserve Board and the Federal Home Loan Bank Board. The licensee  
 2100 bears the burden of proving such disclosures were provided to

2101 the borrower.

2102 (5)~~(4)~~ If the mortgage broker ~~brokerage~~ agreement includes  
 2103 a nonrefundable application fee, the following requirements are  
 2104 applicable:

2105 (a) The amount of the application fee, which must be  
 2106 clearly denominated as such, must ~~shall~~ be clearly disclosed.

2107 (b) The specific services that will be performed in  
 2108 consideration for the application fee must ~~shall~~ be disclosed.

2109 (c) The application fee must be reasonably related to the  
 2110 services to be performed and may not be based upon a percentage  
 2111 of the principal amount of the loan or the amount financed.

2112 (6)~~(5)~~ A mortgage broker ~~brokerage business~~ may not accept  
 2113 any fee in connection with a mortgage loan other than an  
 2114 application fee, credit report fee, property appraisal fee, or  
 2115 other third-party fee before ~~prior to~~ obtaining a written  
 2116 commitment from a qualified lender.

2117 (7)~~(6)~~ Any third-party fee entrusted to a mortgage broker  
 2118 must ~~brokerage business shall~~ immediately, upon receipt, be  
 2119 placed into a segregated account with a financial institution  
 2120 located in the state the accounts of which are insured by the  
 2121 Federal Government. Such funds shall be held in trust for the  
 2122 payor and shall be kept in the account until disbursement. Such  
 2123 funds may be placed in one account if adequate accounting  
 2124 measures are taken to identify the source of the funds.

2125 (8) A mortgage broker may not pay a commission to any  
 2126 person not licensed pursuant to this chapter.

2127 ~~(7) All mortgage brokerage fees shall be paid to a~~  
 2128 ~~mortgage brokerage business licensee.~~

2129            (9)~~(8)~~ This section does not prohibit a mortgage broker  
 2130 ~~brokerage business~~ from offering products and services, in  
 2131 addition to those offered in conjunction with the loan  
 2132 origination process, for a fee or commission.

2133            Section 33. Section 494.0039, Florida Statutes, is amended  
 2134 to read:

2135            494.0039 Principal place of business requirements.--Each  
 2136 mortgage broker ~~brokerage business~~ licensee shall maintain and  
 2137 transact business from a principal place of business.

2138            Section 34. Section 494.004, Florida Statutes, is amended  
 2139 to read:

2140            494.004 Requirements of licensees.--

2141            (1) Each licensee under this part ~~ss. 494.003-494.0043~~  
 2142 shall report to the office:~~r~~

2143            (a) In writing, any conviction of, or plea of nolo  
 2144 contendere to, regardless of adjudication, any felony or any  
 2145 crime or administrative violation that involves fraud,  
 2146 dishonesty, breach of trust, money laundering ~~dishonest dealing,~~  
 2147 or any other act of moral turpitude, in any jurisdiction, by the  
 2148 licensee or any control natural person within named in s.  
 2149 ~~494.0031(2)(d), not later than~~ 30 days after the date of  
 2150 conviction, entry of a plea of nolo contendere, or final  
 2151 administrative action.

2152            (b)~~(2)~~ ~~Each licensee under ss. 494.003-494.0043 shall~~  
 2153 ~~report,~~ In a form prescribed by rule of the commission, any  
 2154 conviction of, or plea of nolo contendere to, regardless of  
 2155 ~~whether~~ adjudication is withheld, any felony committed by the  
 2156 licensee or any control natural person within named in s.

2157 ~~494.0031(2)(d), not later than 30 days after the date of~~  
 2158 ~~conviction or the date the plea of nolo contendere is entered.~~

2159 ~~(c)(3) Each licensee under ss. 494.003-494.0043 shall~~  
 2160 ~~report~~ Any action in bankruptcy, voluntary or involuntary,  
 2161 within 30 ~~to the office not later than 7 business days after the~~  
 2162 ~~action is instituted.~~

2163 ~~(d)(4) Each licensee under ss. 494.003-494.0043 shall~~  
 2164 ~~report~~ On a form prescribed by rule of the commission, any  
 2165 change to the information contained in any initial application  
 2166 form or any amendment to the application within ~~not later than~~  
 2167 ~~30 days after the change is effective.~~

2168 ~~(5) A license issued under ss. 494.003-494.0043 is not~~  
 2169 ~~transferable or assignable.~~

2170 ~~(e)(6) Each licensee under ss. 494.003-494.0043 shall~~  
 2171 ~~report~~ Any change in the principal loan originator ~~broker, any~~  
 2172 addition or subtraction of a control person ~~partners, officers,~~  
 2173 ~~members, joint venturers, directors, control persons of any~~  
 2174 ~~licensee, or any individual who is the ultimate equitable owner~~  
 2175 ~~of a 10-percent or greater interest in the licensee, or any~~  
 2176 ~~change in the form of business organization, by written~~  
 2177 ~~amendment in the form and at the time the commission specifies~~  
 2178 ~~by rule.~~

2179 ~~(a) In any case in which a person or a group of persons,~~  
 2180 ~~directly or indirectly or acting by or through one or more~~  
 2181 ~~persons, proposes to purchase or acquire a controlling interest~~  
 2182 ~~in a licensee, such person or group shall submit an initial~~  
 2183 ~~application for licensure as a mortgage brokerage business~~  
 2184 ~~before such purchase or acquisition and at the time and in the~~

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2185 ~~form the commission prescribes by rule.~~

2186 ~~(b) As used in this subsection, the term "controlling~~  
2187 ~~interest" means possession of the power to direct or cause the~~  
2188 ~~direction of the management or policies of a company whether~~  
2189 ~~through ownership of securities, by contract, or otherwise. Any~~  
2190 ~~person who directly or indirectly has the right to vote 25~~  
2191 ~~percent or more of the voting securities of a company or is~~  
2192 ~~entitled to 25 percent or more of the company's profits is~~  
2193 ~~presumed to possess a controlling interest.~~

2194 ~~(2)(e) Any addition of a partner, officer, member, joint~~  
2195 ~~venturer, director, control person, or ultimate equitable owner~~  
2196 ~~of the applicant who does not have a controlling interest and~~  
2197 ~~who has not previously filed a Uniform Mortgage Biographical~~  
2198 ~~Statement & Consent Form, MU2, or has not previously complied~~  
2199 ~~with the fingerprinting and credit report requirements~~  
2200 ~~provisions of ss. 494.00321 and 494.00322 s. 494.0031(2)(c) and~~  
2201 ~~(d) is subject to the such provisions of such sections unless~~  
2202 ~~required to file an initial application in accordance with~~  
2203 ~~paragraph (a). If, after the addition of a control person, the~~  
2204 ~~office finds that the licensee does not continue to meet~~  
2205 ~~licensure requirements, the office may bring an administrative~~  
2206 ~~action in accordance with s. 494.00255 s. 494.0041 to enforce~~  
2207 ~~the provisions of this chapter.~~

2208 ~~(d) The commission shall adopt rules pursuant to ss.~~  
2209 ~~120.536(1) and 120.54 providing for the waiver of the~~  
2210 ~~application required by this subsection if the person or group~~  
2211 ~~of persons proposing to purchase or acquire a controlling~~  
2212 ~~interest in a licensee has previously complied with the~~

2213 ~~provisions of s. 494.0031(2)(c) and (d) with respect to the same~~  
 2214 ~~legal entity or is currently licensed by the office under this~~  
 2215 ~~chapter.~~

2216 ~~(7) On or before April 30, 2000, each mortgage brokerage~~  
 2217 ~~business shall file an initial report stating the name, social~~  
 2218 ~~security number, date of birth, mortgage broker license number,~~  
 2219 ~~date of hire and, if applicable, date of termination for each~~  
 2220 ~~person who was an associate of the mortgage brokerage business~~  
 2221 ~~during the immediate preceding quarter. Thereafter, A mortgage~~  
 2222 ~~brokerage business shall file a quarterly report only if a~~  
 2223 ~~person became an associate or ceased to be an associate of the~~  
 2224 ~~mortgage brokerage business during the immediate preceding~~  
 2225 ~~quarter. Such report shall be filed within 30 days after the~~  
 2226 ~~last day of each calendar quarter and shall contain the name,~~  
 2227 ~~social security number, date of birth, mortgage broker license~~  
 2228 ~~number, date of hire and, if applicable, the date of termination~~  
 2229 ~~of each person who became or ceased to be an associate of the~~  
 2230 ~~mortgage brokerage business during the immediate preceding~~  
 2231 ~~quarter. The commission shall prescribe, by rule, the procedures~~  
 2232 ~~for filing reports required by this subsection.~~

2233 ~~(3)(8)(a)~~ In every mortgage loan transaction, each  
 2234 licensee under this part ~~ss. 494.003-494.0043~~ shall notify  
 2235 a borrower of any material changes in the terms of a mortgage  
 2236 loan previously offered to the borrower within 3 business days  
 2237 after being made aware of such changes by the mortgage lender  
 2238 but at least ~~not less than~~ 3 business days before the signing of  
 2239 the settlement or closing statement. The licensee bears the  
 2240 burden of proving such notification was provided and accepted by



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2241 the borrower.

2242 ~~(b)~~ A borrower may waive the right to receive notice of a  
 2243 material change ~~that is granted under paragraph (a)~~ if the  
 2244 borrower determines that the extension of credit is needed to  
 2245 meet a bona fide personal financial emergency and the right to  
 2246 receive notice would delay the closing of the mortgage loan. The  
 2247 imminent sale of the borrower's home at foreclosure during the  
 2248 3-day period before the signing of the settlement or closing  
 2249 statement is ~~constitutes~~ an example of a bona fide personal  
 2250 financial emergency. In order to waive the borrower's right to  
 2251 receive notice ~~not less than 3 business days before the signing~~  
 2252 ~~of the settlement or closing statement of any such material~~  
 2253 ~~change~~, the borrower must provide the licensee with a dated  
 2254 written statement that describes the personal financial  
 2255 emergency, waives the right to receive the notice, bears the  
 2256 borrower's signature, and is not on a printed form prepared by  
 2257 the licensee for the purpose of such a waiver.

2258 (4) Each mortgage broker shall submit to the registry  
 2259 reports of condition, which must be in such form and shall  
 2260 contain such information as the registry may require.

2261 (5) A license issued under this part is not transferable  
 2262 or assignable.

2263 Section 35. Section 494.0041, Florida Statutes, is  
 2264 repealed.

2265 Section 36. Section 494.0042, Florida Statutes, is amended  
 2266 to read:

2267 494.0042 Loan originator ~~Brokerage~~ fees.--

2268 (1) A loan originator ~~mortgage brokerage~~ fee earned by a

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2269 licensee, pursuant to this part ~~ss. 494.003-494.0043~~, is not  
 2270 considered interest or a finance charge under chapter 687.

2271 (2) A person may not charge or exact, directly or  
 2272 indirectly, from the borrower ~~mortgager~~ a fee or commission in  
 2273 excess of the maximum fee or commission specified in this  
 2274 section. The maximum fees or commissions that may be charged for  
 2275 mortgage loans are as follows:

2276 (a) On a mortgage loan of \$1,000 or less: \$250.

2277 (b) On a mortgage loan exceeding \$1,000 and not exceeding  
 2278 \$2,000: \$250 for the first \$1,000 of the mortgage loan, plus \$10  
 2279 for each additional \$100 of the mortgage loan.

2280 (c) On a mortgage loan exceeding \$2,000 and not exceeding  
 2281 \$5,000: \$350 for the first \$2,000 of the mortgage loan, plus \$10  
 2282 for each additional \$100 of the mortgage loan.

2283 (d) On a mortgage loan exceeding \$5,000: \$250 plus 10  
 2284 percent of the entire mortgage loan.

2285

2286 For the purpose of determining the maximum fee, the amount of  
 2287 the mortgage loan is based on the amount of mortgage loan  
 2288 actually funded exclusive of the authorized maximum fees or  
 2289 commissions.

2290 (3) At the time of accepting a mortgage loan application,  
 2291 a mortgage broker ~~brokerage business~~ may receive from the  
 2292 borrower a nonrefundable application fee. If the mortgage loan  
 2293 is funded, the nonrefundable application fee shall be credited  
 2294 against the amount owed as a result of the loan being funded. A  
 2295 person may not receive any form of compensation for acting as a  
 2296 loan originator ~~mortgage broker~~ other than a nonrefundable

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2297 application fee, a fee based on the mortgage amount being  
 2298 funded, or a fee which complies with s. 494.00421.

2299 Section 37. Section 494.00421, Florida Statutes, is  
 2300 amended to read:

2301 494.00421 Fees earned upon obtaining a bona fide  
 2302 commitment.--Notwithstanding the provisions of ss. 494.001-  
 2303 494.0077, any mortgage broker ~~brokerage business~~ which contracts  
 2304 to receive ~~from a borrower~~ a mortgage broker ~~brokerage~~ fee from  
 2305 a borrower upon obtaining a bona fide commitment shall  
 2306 accurately disclose in the mortgage broker ~~brokerage~~ agreement:

- 2307 (1) The gross loan amount.
- 2308 (2) In the case of a fixed-rate mortgage, the note rate.
- 2309 (3) In the case of an adjustable rate mortgage:
  - 2310 (a) The initial note rate.
  - 2311 (b) The length of time for which the initial note rate is
  - 2312 effective.
  - 2313 (c) The frequency of changes.
  - 2314 (d) The limitation upon such changes including adjustment
  - 2315 to adjustment cap and life cap.
  - 2316 (e) Whether the loan has any potential for negative
  - 2317 amortization.
  - 2318 (f) Identification of the margin-interest rate
  - 2319 differential.
  - 2320 (g) Identification of a nationally recognized index which
  - 2321 index must be free from control of the mortgage broker, ~~mortgage~~
  - 2322 ~~brokerage business, mortgage lender, or correspondent mortgage~~
  - 2323 lender.
  - 2324 (4) The estimated net proceeds to be paid directly to the

2325 borrower. "Estimated net proceeds" means the cash to be received  
 2326 by the borrower after payment of any fees, charges, debts,  
 2327 liens, or encumbrances to perfect the lien of the new mortgage  
 2328 and establish the agreed-upon priority of the new mortgage.

2329 (5) The lien priority of the new proposed mortgage.

2330 (6) The number of calendar days, which are mutually agreed  
 2331 upon, within which the mortgage broker ~~brokerage business~~ shall  
 2332 obtain a bona fide mortgage commitment.

2333 (7) (a) The following statement, in at least ~~no less than~~  
 2334 12-point boldface type immediately above the signature lines for  
 2335 the borrowers:

2336  
 2337 "You are entering into a contract with a mortgage broker  
 2338 ~~brokerage business~~ to obtain a bona fide mortgage loan  
 2339 commitment under the same terms and conditions as stated  
 2340 hereinabove or in a separate executed good faith estimate form.  
 2341 If the mortgage broker ~~brokerage business~~ obtains a bona fide  
 2342 commitment under the same terms and conditions, you will be  
 2343 obligated to pay the mortgage broker ~~brokerage business~~ fees,  
 2344 including, but not limited to, a mortgage broker ~~brokerage~~ fee,  
 2345 even if you choose not to complete the loan transaction. If the  
 2346 provisions of s. 494.00421, Florida Statutes, are not met, the  
 2347 mortgage broker ~~brokerage~~ fee can only be earned upon the  
 2348 funding of the mortgage loan. The borrower may contact the  
 2349 Department of Financial Services, Tallahassee, Florida,  
 2350 regarding any complaints that the borrower may have against the  
 2351 mortgage broker ~~or the mortgage brokerage business~~. The  
 2352 telephone number of the department is: ...~~(insert telephone~~

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2353 number)+..."

2354 (b) Paragraph (a) does not apply to nonresidential  
2355 mortgage loan commitments in excess of \$1 million.

2356 (8) Any other disclosure required pursuant to s. 494.0038.  
2357 Section 38. Section 494.0043, Florida Statutes, is amended  
2358 to read:

2359 494.0043 Requirements for brokering loans to  
2360 noninstitutional investors.--

2361 (1) A loan originator ~~mortgage broker~~, when arranging a  
2362 mortgage loan for a noninstitutional investor, shall:

2363 (a) Before any payment of money by the ~~a~~ noninstitutional  
2364 investor, provide an opinion of value from an appraiser stating  
2365 the value of the security property unless the opinion is waived  
2366 in writing. The opinion must state the value of the property as  
2367 it exists on the date of the opinion. If any relationship exists  
2368 between the mortgage broker and the appraiser, that relationship  
2369 shall be disclosed to the investor.

2370 (b) Provide to the noninstitutional investor a mortgagee's  
2371 title insurance policy or an opinion of title by an attorney  
2372 licensed to practice law in the state, or a copy thereof.

2373 1. If a title insurance policy is issued, it must insure  
2374 the noninstitutional investor against the unmarketability of the  
2375 mortgagee's interest in such title. It must ~~shall~~ also specify  
2376 any superior liens that exist against the property. If an  
2377 opinion of title is issued by an attorney ~~licensed to practice~~  
2378 ~~law in the state~~, the opinion must include a statement as to the  
2379 marketability of the title to the property described in the  
2380 mortgage and specify the priority of the mortgage being closed.

2381           2. If the title insurance policy or opinion of title is  
 2382 not available at the time of purchase, the licensee shall  
 2383 provide a binder of the title insurance or conditional opinion  
 2384 of title. This binder or opinion must include any conditions or  
 2385 requirements that need ~~needed~~ to be corrected before ~~prior to~~  
 2386 the issuance of the final title policy or opinion of title. The  
 2387 binder or opinion must also include information concerning the  
 2388 requirements specified in subparagraph 1. Any conditions must be  
 2389 eliminated or waived in writing by the investor before ~~prior to~~  
 2390 delivery to the noninstitutional investor. The policy or  
 2391 opinion, or a copy thereof, shall be delivered to the investor  
 2392 within a reasonable period of time, not exceeding 6 months,  
 2393 after closing.

2394           3. The requirements of this paragraph may be waived in  
 2395 writing. If the requirements are waived by the noninstitutional  
 2396 investor, the waiver must include the following statement  
 2397 ~~wording~~: "The noninstitutional investor acknowledges that the  
 2398 mortgage broker or mortgage lender brokering this mortgage loan  
 2399 is not providing a title insurance policy or opinion of title  
 2400 issued by an attorney who is licensed to practice law in the  
 2401 State of Florida. Any requirement for title insurance or for a  
 2402 legal opinion of title is the sole responsibility of the  
 2403 noninstitutional mortgage investor."

2404           (c) Provide, if the loan is other than a first mortgage, a  
 2405 statement showing the balance owed by the mortgagor on any  
 2406 existing mortgages prior to this investment and the status of  
 2407 such existing mortgages.

2408           (d) Provide a disclosure if the licensee is directly or

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2409 indirectly acting as a borrower or principal in the transaction.

2410 (2) Each original or certified copy of the mortgage, or  
 2411 other instrument securing a note or assignment thereof, must  
 2412 ~~shall~~ be recorded before being delivered to the noninstitutional  
 2413 investor. A mortgage broker shall cause the properly endorsed  
 2414 original note to be delivered to the noninstitutional investor.

2415 (3) Each mortgage and assignment must ~~shall~~ be recorded as  
 2416 soon as practical, but no later than 30 business days after the  
 2417 date of closing.

2418 (4) Any money from a noninstitutional investor for  
 2419 disbursement at a mortgage loan closing must ~~shall~~ be deposited  
 2420 with and disbursed by an attorney duly licensed in this state or  
 2421 by a title company duly licensed in this state. A person acting  
 2422 as a loan originator ~~mortgage broker~~ may not have control of any  
 2423 money from a noninstitutional investor. This subsection does not  
 2424 prohibit a licensee under this part ~~ss. 494.003-494.0043~~ from  
 2425 receiving a loan originator ~~mortgage brokerage~~ fee upon the  
 2426 closing of the mortgage loan funded by the noninstitutional  
 2427 investor.

2428 Section 39. Sections 494.006 and 494.0061, Florida  
 2429 Statutes, are repealed.

2430 Section 40. Section 494.00611, Florida Statutes, is  
 2431 created to read:

2432 494.00611 Mortgage lender license.--

2433 (1) Each individual who acts as a mortgage lender must be  
 2434 licensed under this section.

2435 (2) In order to apply for a mortgage lender license, an  
 2436 applicant must:

2437 (a) Submit a completed application form as prescribed by  
 2438 the commission by rule.

2439 (b) Designate a qualified principal loan originator who  
 2440 meets the requirements of s. 494.0035 on the application form.

2441 (c) Submit a nonrefundable application fee of \$500, and  
 2442 the \$100 nonrefundable fee if required by s. 494.00172.

2443 Application fees may not be prorated for partial years of  
 2444 licensure.

2445 (d) Submit fingerprints for each of the applicant's  
 2446 control persons in accordance with rules adopted by the  
 2447 commission.

2448 1. The fingerprints may be submitted to the registry, the  
 2449 office, or a vendor acting on behalf of the registry or the  
 2450 office.

2451 2. The office may contract with a third-party vendor to  
 2452 provide live-scan fingerprinting in lieu of a paper fingerprint  
 2453 card.

2454 3. A state criminal history background check must be  
 2455 conducted through the Department of Law Enforcement, and a  
 2456 federal criminal history background check must be conducted  
 2457 through the Federal Bureau of Investigation.

2458 4. All fingerprints submitted to the Department of Law  
 2459 Enforcement must be submitted electronically and entered into  
 2460 the statewide automated fingerprint identification system  
 2461 established in s. 943.05(2)(b) and available for use in  
 2462 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
 2463 annual fee to the Department of Law Enforcement to participate  
 2464 in the system and inform the Department of Law Enforcement of



2465 any person whose fingerprints are no longer required to be  
2466 retained.

2467 5. The costs of fingerprint processing, including the cost  
2468 of retaining the fingerprints, shall be borne by the person  
2469 subject to the background check.

2470 6. The office is responsible for reviewing the results of  
2471 the state and federal criminal history checks and determining  
2472 whether the applicant meets licensure requirements.

2473 (e) Indicate whether the applicant will be seeking a  
2474 servicing endorsement on the application form.

2475 (f) Submit a copy of the applicant's financial audit  
2476 report for the most recent fiscal year pursuant to United States  
2477 generally accepted accounting principles. If the applicant is a  
2478 wholly owned subsidiary of another corporation, the financial  
2479 audit report for the parent corporation satisfies this  
2480 requirement. The commission may establish by rule the form and  
2481 procedures for filing the financial audit report, including the  
2482 requirement to file the report with the registry when technology  
2483 is available. The financial audit report must document that the  
2484 applicant has a bona fide and verifiable net worth, of at least  
2485 \$63,000 if the applicant is not seeking a servicing endorsement,  
2486 or at least \$250,000 if the applicant is seeking a servicing  
2487 endorsement, which must be continuously maintained as a  
2488 condition of licensure. However, if the applicant held an active  
2489 license issued before October 1, 2010, pursuant to former s.  
2490 494.0065, and the applicant is seeking a servicing endorsement,  
2491 the minimum net worth requirement:

2492 1. Until September 30, 2011, is \$63,000.

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2493 2. Between October 1, 2011, and September 30, 2012, is  
2494 \$125,000.

2495 3. On or after October 1, 2012, is \$250,000.

2496 (g) Authorize the registry to obtain an independent credit  
2497 report on each of the applicant's control persons from a  
2498 consumer reporting agency, and transmit or provide access to the  
2499 report to the office. The cost of the credit report shall be  
2500 borne by the applicant.

2501 (h) Submit additional information or documentation  
2502 requested by the office and required by rule concerning the  
2503 applicant or a control person of the applicant. Additional  
2504 information may include documentation of pending and prior  
2505 disciplinary and criminal history events, including arrest  
2506 reports and certified copies of charging documents, plea  
2507 agreements, judgments and sentencing documents, documents  
2508 relating to pretrial intervention, orders terminating probation  
2509 or supervised release, final administrative agency orders, or  
2510 other comparable documents that may provide the office with the  
2511 appropriate information to determine eligibility for licensure.

2512 (i) Submit any other information required by the registry  
2513 for the processing of the application.

2514 (3) An application is considered received for the purposes  
2515 of s. 120.60 upon the office's receipt of all documentation from  
2516 the registry, including the completed application form, criminal  
2517 history information, and independent credit reports, as well as  
2518 the license application fee, the fee required by s. 494.00172,  
2519 and all applicable fingerprinting processing fees.

2520 (4) The office shall issue a mortgage lender license to

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2521 each person who is not otherwise ineligible and who meets the  
2522 requirements of this section. However, it is a ground for denial  
2523 of licensure if the applicant or one of the applicant's control  
2524 persons:

2525 (a) Has committed any violation specified in ss. 494.001-  
2526 494.0077, or is the subject of a pending felony criminal  
2527 prosecution or a prosecution or an administrative enforcement  
2528 action, in any jurisdiction, which involves fraud, dishonesty,  
2529 breach of trust, money laundering, or any other act of moral  
2530 turpitude.

2531 (b) Has failed to demonstrate the character, general  
2532 fitness, and financial responsibility necessary to command the  
2533 confidence of the community and warrant a determination that the  
2534 applicant will operate honestly, fairly, and efficiently.

2535 1. If the office has information that could form the basis  
2536 for license denial under this paragraph, before denying the  
2537 license, the office must notify the applicant in writing of the  
2538 specific items of concern and provide the applicant with an  
2539 opportunity to explain the circumstances surrounding the  
2540 specific items and provide any information that the applicant  
2541 believes is relevant to the office's determination.

2542 2. For purposes of evaluating adverse information found in  
2543 an applicant's credit report, the information must be considered  
2544 within the totality of the circumstances. Information provided  
2545 by the applicant under subparagraph 1., or information obtained  
2546 by the office by other means, may be used to provide a context  
2547 for the adverse items. For example, the adverse items may have  
2548 resulted from factors that do not necessarily reflect negatively

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2549 upon the applicant's character, general fitness, or financial  
2550 responsibility.

2551 3. The office may not use a credit score or the absence or  
2552 insufficiency of credit history information to determine  
2553 character, general fitness, or financial responsibility.

2554 4. If information contained in a credit report is used as  
2555 the basis for denying a license, the office shall, in accordance  
2556 with s. 120.60(3), provide with particularity the grounds or  
2557 basis for denial. The use of the terms "poor credit history" or  
2558 "poor credit rating" or similar language does not meet the  
2559 requirements of this paragraph.

2560 (5) The office may not issue a license if the applicant  
2561 has had a mortgage lender license or its equivalent revoked in  
2562 any jurisdiction, or if any of the applicant's control persons  
2563 has had a loan originator license or its equivalent revoked in  
2564 any jurisdiction.

2565 (6) A person required to be licensed under this part, or  
2566 an agent or employee thereof, is deemed to have consented to the  
2567 venue of courts in this state regarding any matter within the  
2568 authority of ss. 494.001-494.0077 regardless of where an act or  
2569 violation was committed.

2570 (7) A license issued in accordance with this part is not  
2571 transferable or assignable.

2572 (8) A mortgage lender or branch office license may be  
2573 annulled pursuant to s. 120.60 if it was issued by the office by  
2574 mistake. A license must be reinstated if the applicant  
2575 demonstrates that the requirements for obtaining the license  
2576 under this chapter have been satisfied.

2577       (9) Each lender, regardless of the number of branches it  
 2578 operates, shall designate a principal loan originator  
 2579 representative who exercises control of the licensee's business  
 2580 and a branch manager for each branch office. Each mortgage  
 2581 lender must keep the office informed of the persons designated  
 2582 as prescribed by commission rule, which includes documentation  
 2583 of the individual's acceptance of such responsibility. If the  
 2584 designation is inaccurate, the branch shall be deemed to be  
 2585 operated under the full charge, control, and supervision by each  
 2586 officer, director, or ultimate equitable owner of a 10-percent  
 2587 or greater interest in the mortgage lender business, or any  
 2588 other person in a similar capacity during that time.

2589       (10) All mortgage lender licenses must be renewed annually  
 2590 by December 31 pursuant to s. 494.00612. If a person holding an  
 2591 active mortgage lender license has not applied to renew the  
 2592 license annually on or before December 31, the mortgage lender  
 2593 license expires on December 31. If a person holding an active  
 2594 mortgage lender license has applied to renew the license on or  
 2595 before December 31, the mortgage lender license remains active  
 2596 until the renewal application is approved or denied. A mortgage  
 2597 lender is not precluded from reapplying for licensure upon  
 2598 expiration of a previous license.

2599       Section 41. Section 494.00612, Florida Statutes, is  
 2600 created to read:

2601       494.00612 Mortgage lender license renewal.--

2602       (1) In order to renew a mortgage lender license, a  
 2603 mortgage lender must:

2604       (a) Submit a completed license renewal form as prescribed

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2605 by commission rule.

2606 (b) Submit a nonrefundable renewal fee of \$475, the \$100  
 2607 nonrefundable fee if required by s. 494.00172, and nonrefundable  
 2608 fees to cover the cost of further fingerprint processing and  
 2609 retention as set forth in commission rule.

2610 (c) Submit fingerprints in accordance with s.  
 2611 494.00611(2) (d) for any new control persons who have not been  
 2612 screened.

2613 (d) Provide proof that the mortgage lender continues to  
 2614 meet the applicable net worth requirement in a form prescribed  
 2615 by commission rule.

2616 (e) Authorize the registry to obtain an independent credit  
 2617 report on the mortgage lender from a consumer reporting agency,  
 2618 and transmit or provide access to the report to the office. The  
 2619 cost of the credit report shall be borne by the licensee.

2620 (f) Submit any additional information or documentation  
 2621 requested by the office and required by rule concerning the  
 2622 licensee. Additional information may include documentation of  
 2623 pending and prior disciplinary and criminal history events,  
 2624 including arrest reports and certified copies of charging  
 2625 documents, plea agreements, judgments and sentencing documents,  
 2626 documents relating to pretrial intervention, orders terminating  
 2627 probation or supervised release, final administrative agency  
 2628 orders, or other comparable documents that may provide the  
 2629 office with the appropriate information to determine eligibility  
 2630 for renewal of licensure.

2631 (2) The office may not renew a mortgage lender license  
 2632 unless the mortgage lender continues to meet the minimum

2633 requirements for initial licensure pursuant to s. 494.00611 and  
 2634 adopted rule.

2635 Section 42. Section 494.0062, Florida Statutes, is  
 2636 repealed.

2637 Section 43. Section 494.0063, Florida Statutes, is amended  
 2638 to read:

2639 494.0063 Audited financial statements.--All audited  
 2640 financial statements required by ss. 494.001-494.0077 must be  
 2641 prepared by an independent licensed certified public accountant.  
 2642 A mortgage lender must obtain an annual financial audit report  
 2643 as of the date of the licensee's fiscal year end, as disclosed  
 2644 to the office on the application or a subsequent amendment to  
 2645 the application. The mortgage lender shall submit a copy of the  
 2646 report to the office within 120 days after the end of the  
 2647 licensee's fiscal year. If the applicant is a wholly owned  
 2648 subsidiary of another corporation, the financial audit report of  
 2649 the parent corporation satisfies this requirement. If the  
 2650 licensee changes its fiscal year, the licensee must file a  
 2651 report within 18 months after the previously submitted report.  
 2652 The commission may establish by rule the procedures and form for  
 2653 filing a financial audit report, including the requirement to  
 2654 file the report with the registry when technology is available.

2655 Section 44. Sections 494.0064 and 494.0065, Florida  
 2656 Statutes, are repealed.

2657 Section 45. Section 494.0066, Florida Statutes, is amended  
 2658 to read:

2659 494.0066 Branch offices.--

2660 (1) Each branch office of a mortgage lender must be

2661 licensed under this section ~~A branch office license is required~~  
 2662 ~~for each branch office maintained by a licensee under ss.~~  
 2663 ~~494.006-494.0077.~~

2664 (2) The office shall issue a branch office license to a  
 2665 mortgage lender licensee ~~licensed under ss. 494.006-494.0077~~  
 2666 after the office determines that the mortgage lender licensee  
 2667 has submitted a completed branch office application form as  
 2668 prescribed by rule by the commission ~~and~~ an initial  
 2669 nonrefundable branch office license fee of \$225 per branch  
 2670 office \$325. Application fees may not be prorated for partial  
 2671 years of licensure. The branch office application must include  
 2672 the name and license number of the mortgage lender licensee  
 2673 under this part ss. 494.006-494.0077, the name of the branch  
 2674 manager licensee's ~~employee~~ in charge of the branch office, and  
 2675 the address of the branch office. The branch office license  
 2676 shall be issued in the name of the mortgage lender licensee  
 2677 ~~under ss. 494.006-494.0077~~ and must be renewed in conjunction  
 2678 with the license renewal. An application is considered received  
 2679 for purposes of s. 120.60 upon receipt of a completed branch  
 2680 office renewal form, as prescribed by commission rule, and the  
 2681 required fees.

2682 (3) A branch office license must be renewed at the time of  
 2683 renewing the mortgage lender license. A nonrefundable fee of  
 2684 \$225 per branch office must be submitted at the time of renewal.

2685 Section 46. Section 494.00665, Florida Statutes, is  
 2686 created to read:

2687 494.00665 Principal loan originator and branch manager for  
 2688 mortgage lender.--



2689       (1) Each mortgage lender business must be operated by a  
 2690 principal loan originator who shall have full charge, control,  
 2691 and supervision of the mortgage lender business. The principal  
 2692 loan originator must be licensed as a loan originator pursuant  
 2693 to s. 494.00312. Each mortgage lender must keep the office  
 2694 informed of the person designated as the principal loan  
 2695 originator as prescribed by commission rule. If the designation  
 2696 is inaccurate, the business shall be deemed to be operated under  
 2697 the full charge, control, and supervision of each officer,  
 2698 director, or ultimate equitable owner of a 10-percent or greater  
 2699 interest in the mortgage lender business, or any other person in  
 2700 a similar capacity during that time.

2701       (2) Each branch office of a mortgage lender must be  
 2702 operated by a branch manager who shall have full charge,  
 2703 control, and supervision of the branch office. The designated  
 2704 branch manager must be a licensed loan originator pursuant to s.  
 2705 494.00312. Each mortgage lender must keep the office informed of  
 2706 the person designated as the branch manager as prescribed by  
 2707 commission rule, which includes documentation of the  
 2708 individual's acceptance of such responsibility. If the  
 2709 designation is inaccurate, the branch office shall be deemed to  
 2710 be operated under the full charge, control, and supervision of  
 2711 each officer, director, or ultimate equitable owner of a 10-  
 2712 percent or greater interest in the mortgage lender business, or  
 2713 any other person in a similar capacity during that time.

2714       Section 47. Section 494.0067, Florida Statutes, is amended  
 2715 to read:

2716       494.0067 Requirements of mortgage lenders ~~licensees~~ under

2717 ~~ss. 494.006-494.0077.--~~

2718 (1) A mortgage lender that ~~Each licensee under ss.~~  
 2719 ~~494.006-494.0077~~ which makes mortgage loans on real estate in  
 2720 this state shall transact business from a principal place of  
 2721 business. Each principal place of business and each branch  
 2722 office shall be operated under the full charge, control, and  
 2723 supervision of the licensee pursuant to this part ~~under ss.~~  
 2724 ~~494.006-494.0077.~~

2725 (2) A license issued under this part ~~ss. 494.006-494.0077~~  
 2726 is not transferable or assignable.

2727 (3) A mortgage lender ~~Each licensee under ss. 494.006-~~  
 2728 ~~494.0077~~ shall report, on a form prescribed by rule of the  
 2729 commission, any change in the information contained in any  
 2730 initial application form, or any amendment thereto, within not  
 2731 ~~later than~~ 30 days after the change is effective.

2732 (4) A mortgage lender ~~Each licensee under ss. 494.006-~~  
 2733 ~~494.0077~~ shall report any changes in the principal loan  
 2734 originator, any addition or subtraction of a control person,  
 2735 ~~partners, officers, members, joint venturers, directors, or~~  
 2736 ~~control persons of any licensee or~~ any change ~~changes~~ in the  
 2737 form of business organization by written amendment in such form  
 2738 and at such time that the commission specifies by rule.

2739 (a) In any case in which a person or a group of persons,  
 2740 directly or indirectly or acting by or through one or more  
 2741 persons, proposes to purchase or acquire a controlling interest  
 2742 in a licensee, such person or group must submit an initial  
 2743 application for licensure as a mortgage lender ~~or correspondent~~  
 2744 ~~mortgage lender~~ before such purchase or acquisition and at the

2745 time and in the form prescribed by the commission by rule.

2746 ~~(b) As used in this subsection, the term "controlling~~  
 2747 ~~interest" means possession of the power to direct or cause the~~  
 2748 ~~direction of the management or policies of a company whether~~  
 2749 ~~through ownership of securities, by contract, or otherwise. Any~~  
 2750 ~~person who directly or indirectly has the right to vote 25~~  
 2751 ~~percent or more of the voting securities of a company or who is~~  
 2752 ~~entitled to 25 percent or more of the company's profits is~~  
 2753 ~~presumed to possess a controlling interest.~~

2754 ~~(b)(e) Any addition of a designated principal~~  
 2755 ~~representative, partner, officer, member, joint venturer,~~  
 2756 ~~director, or control person of the applicant who does not have a~~  
 2757 ~~controlling interest and who has not previously filed a Uniform~~  
 2758 ~~Mortgage Biographical Statement & Consent Form, MU2, or has not~~  
 2759 ~~previously complied with the fingerprinting and credit report~~  
 2760 ~~requirements of s. 494.00611 is provisions of s. 494.0061(2)(g)~~  
 2761 ~~and (h), s. 494.0062(2)(g) and (h), or s. 494.0065(5)(e) and (f)~~  
 2762 ~~shall be subject to the such provisions of this section unless~~  
 2763 ~~required to file an initial application in accordance with~~  
 2764 ~~paragraph (a). If, after the addition of a control person, the~~  
 2765 ~~office determines that the licensee does not continue to meet~~  
 2766 ~~licensure requirements, the office may bring administrative~~  
 2767 ~~action in accordance with s. 494.00255 s. 494.0072 to enforce~~  
 2768 ~~the provisions of this section.~~

2769 ~~(d) The commission shall adopt rules pursuant to ss.~~  
 2770 ~~120.536(1) and 120.54 providing for the waiver of the~~  
 2771 ~~application required by this subsection if the person or group~~  
 2772 ~~of persons proposing to purchase or acquire a controlling~~

2773 ~~interest in a licensee has previously complied with the~~  
 2774 ~~provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and~~  
 2775 ~~(h), or s. 494.0065(5)(e) and (f) with the same legal entity or~~  
 2776 ~~is currently licensed with the office under this chapter.~~

2777 (5) Each mortgage lender licensee ~~under ss. 494.006-~~  
 2778 ~~494.0077~~ shall report in a form prescribed by rule by the  
 2779 commission any indictment, information, charge, conviction, or  
 2780 plea of guilty or nolo contendere, regardless of adjudication,  
 2781 ~~or plea of guilty~~ to any felony or any crime or administrative  
 2782 violation that involves fraud, dishonesty, breach of trust,  
 2783 money laundering ~~dishonest dealing~~, or any other act of moral  
 2784 turpitude, in any jurisdiction, by the licensee ~~under ss.~~  
 2785 ~~494.006-494.0077~~ or any principal officer, director, or ultimate  
 2786 equitable owner of 10 percent or more of the licensed  
 2787 corporation within, ~~not later than~~ 30 business days after the  
 2788 indictment, information, charge, conviction, or final  
 2789 administrative action.

2790 (6) Each mortgage lender licensee ~~under ss. 494.006-~~  
 2791 ~~494.0077~~ shall report any action in bankruptcy, voluntary or  
 2792 involuntary, to the office within, ~~not later than~~ 7 business  
 2793 days after the action is instituted.

2794 (7) Each mortgage lender licensee ~~under ss. 494.006-~~  
 2795 ~~494.0077~~ shall designate a registered agent in this state for  
 2796 service of process.

2797 (8) Each mortgage lender licensee ~~under ss. 494.006-~~  
 2798 ~~494.0077~~ shall provide an applicant for a mortgage loan a good  
 2799 faith estimate of the costs the applicant can reasonably expect  
 2800 to pay in obtaining a mortgage loan. The good faith estimate of

2801 costs must ~~shall~~ be mailed or delivered to the applicant within  
 2802 3 business days ~~a reasonable time~~ after the licensee receives a  
 2803 written loan application from the applicant. The estimate of  
 2804 costs may be provided to the applicant by a person other than  
 2805 the licensee making the loan. The good faith estimate must  
 2806 identify the recipient of all payments charged to the borrower  
 2807 and, except for all fees to be received by the mortgage broker  
 2808 ~~brokerage business~~ and the mortgage lender ~~or correspondent~~  
 2809 ~~mortgage lender~~, may be disclosed in generic terms, such as, but  
 2810 not limited to, paid to appraiser, officials, title company, or  
 2811 any other third-party service provider. The licensee bears the  
 2812 burden of proving such disclosures were provided to the  
 2813 borrower. The commission may adopt rules that set forth the  
 2814 disclosure requirements of this section.

2815 ~~(9) On or before April 30, 2000, each mortgage lender or~~  
 2816 ~~correspondent mortgage lender shall file an initial report~~  
 2817 ~~stating the full legal name, residential address, social~~  
 2818 ~~security number, date of birth, mortgage broker license number,~~  
 2819 ~~date of hire, and, if applicable, date of termination for each~~  
 2820 ~~person who acted as a loan originator or an associate of the~~  
 2821 ~~mortgage lender or correspondent mortgage lender during the~~  
 2822 ~~immediate preceding quarter. Thereafter, a mortgage lender or~~  
 2823 ~~correspondent mortgage lender shall file a report only if a~~  
 2824 ~~person became or ceased to be a loan originator or an associate~~  
 2825 ~~of the mortgage lender or correspondent mortgage lender during~~  
 2826 ~~the immediate preceding quarter. Such report shall be filed~~  
 2827 ~~within 30 days after the last day of each calendar quarter and~~  
 2828 ~~shall contain the full legal name, residential address, social~~

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2829 ~~security number, date of birth, date of hire and, if applicable,~~  
2830 ~~the mortgage broker license number and date of termination of~~  
2831 ~~each person who became or ceased to be a loan originator or an~~  
2832 ~~associate of the mortgage lender or correspondent mortgage~~  
2833 ~~lender during the immediate preceding quarter. The commission~~  
2834 ~~shall prescribe, by rule, the procedures for filing reports~~  
2835 ~~required by this subsection.~~

2836 ~~(10)(a) Each mortgage lender or correspondent mortgage~~  
2837 ~~lender licensee shall require the principal representative and~~  
2838 ~~all loan originators, not currently licensed as mortgage brokers~~  
2839 ~~pursuant to s. 494.0033, who perform services for the licensee~~  
2840 ~~to complete 14 hours of professional continuing education during~~  
2841 ~~each biennial license period. The education shall cover primary~~  
2842 ~~and subordinate mortgage financing transactions and the~~  
2843 ~~provisions of this chapter and the rules adopted under this~~  
2844 ~~chapter.~~

2845 ~~(b) The licensee shall maintain records of such training~~  
2846 ~~for a period of 4 years, including records of the content of and~~  
2847 ~~hours designated for each program and the date and location of~~  
2848 ~~the program.~~

2849 ~~(c) Evidence of completion of such programs shall be~~  
2850 ~~included with the licensee's renewal application.~~

2851 ~~(9)(11)~~ (9) The disclosures in this subsection must be  
2852 furnished in writing at the time an adjustable rate mortgage  
2853 loan is offered to the borrower and whenever the terms of the  
2854 adjustable rate mortgage loan offered have a material change  
2855 prior to closing. The lender shall furnish the disclosures  
2856 relating to adjustable rate mortgages in a format prescribed by

2857 ss. 226.18 and 226.19 of Regulation Z of the Board of Governors  
 2858 of the Federal Reserve System, as amended; its commentary, as  
 2859 amended; and the federal Truth in Lending Act, 15 U.S.C. ss.  
 2860 1601 et seq., as amended; together with the Consumer Handbook on  
 2861 Adjustable Rate Mortgages, as amended; published by the Federal  
 2862 Reserve Board and the Federal Home Loan Bank Board. The licensee  
 2863 bears the burden of proving such disclosures were provided to  
 2864 the borrower.

2865 (10) ~~(12)~~ (a) In every mortgage loan transaction, each  
 2866 mortgage lender licensee ~~under ss. 494.006-494.0077~~ shall notify  
 2867 a borrower of any material changes in the terms of a mortgage  
 2868 loan previously offered to the borrower within 3 business days  
 2869 after being made aware of such changes by the lender but at  
 2870 least ~~not less than~~ 3 business days before ~~the~~ signing ~~of~~ the  
 2871 settlement or closing statement. The licensee bears the burden  
 2872 of proving such notification was provided and accepted by the  
 2873 borrower.

2874 ~~(b)~~ A borrower may waive the right to receive notice of a  
 2875 material change ~~that is granted under paragraph (a)~~ if the  
 2876 borrower determines that the extension of credit is needed to  
 2877 meet a bona fide personal financial emergency and the right to  
 2878 receive notice would delay the closing of the mortgage loan. The  
 2879 imminent sale of the borrower's home at foreclosure during the  
 2880 3-day period before the signing of the settlement or closing  
 2881 statement is ~~constitutes~~ an example of a bona fide personal  
 2882 financial emergency. In order to waive the borrower's right to  
 2883 receive notice ~~not less than 3 business days before the signing~~  
 2884 ~~of the settlement or closing statement of any such material~~

2885 ~~change~~, the borrower must provide the licensee with a dated  
 2886 written statement that describes the personal financial  
 2887 emergency, waives the right to receive the notice, bears the  
 2888 borrower's signature, and is not on a printed form prepared by  
 2889 the licensee for the purpose of such a waiver.

2890 (11) A mortgage lender may close loans in its own name but  
 2891 may not service the loan for more than 4 months unless the  
 2892 lender has a servicing endorsement. Only a mortgage lender who  
 2893 continuously maintains a net worth of at least \$250,000 may  
 2894 obtain a servicing endorsement.

2895 (12) A mortgage lender must report to the office the  
 2896 failure to meet the applicable net worth requirements of s.  
 2897 494.00611 within 2 days after the mortgage lender's knowledge of  
 2898 such failure or after the mortgage lender should have known of  
 2899 such failure.

2900 Section 48. Section 494.0068, Florida Statutes, is amended  
 2901 to read:

2902 494.0068 Loan application process.--

2903 (1) In addition to the requirements set forth in s.  
 2904 494.0067(8), before accepting an application fee in whole or in  
 2905 part, a credit report fee, an appraisal fee, or a fee charged as  
 2906 reimbursement for third-party charges, a mortgage lender shall  
 2907 make a written disclosure to the borrower, which disclosure may  
 2908 be contained in the application, setting forth:

2909 (a) Whether all or any part of such fees or charges is  
 2910 refundable.

2911 (b) The terms and conditions for the refund, if all or any  
 2912 part of the fees or charges is refundable.



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2913 (c) A realistic estimate of the number of days required to  
 2914 issue a commitment following receipt of the application by the  
 2915 lender.

2916 (d) The name or title of a person within the lender's  
 2917 organization to whom the borrower may address written questions,  
 2918 comments, or complaints and who is required to promptly respond  
 2919 to such inquiries.

2920 (2) The disclosures required in subsection (1) must ~~shall~~  
 2921 be acknowledged in writing by the borrower and maintained by the  
 2922 mortgage lender, and a copy of such acknowledgment shall be  
 2923 given to the borrower.

2924 (3) The borrower may, without penalty or responsibility  
 2925 for paying additional fees and charges, withdraw an application  
 2926 at any time prior to acceptance of commitment. Upon such  
 2927 withdrawal, the mortgage lender is responsible for refunding to  
 2928 the borrower only those fees and charges to which the borrower  
 2929 may be entitled pursuant to the terms set forth in the written  
 2930 disclosure required by subsection (1), except that:

2931 (a) If the lender failed to provide the borrower with the  
 2932 written disclosure required by subsection (1), the lender shall  
 2933 promptly refund to the borrower all funds paid to the lender; or

2934 (b) If the lender failed to make a good faith effort to  
 2935 approve the loan, the lender shall promptly refund to the  
 2936 borrower all funds paid to the lender.

2937 (4) The application fee must be reasonably related to the  
 2938 services to be performed and may not be based upon a percentage  
 2939 of the principal amount of the loan or the amount financed.

2940 (5) For the purposes of this section, the term

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2941 "application fee" means any moneys advanced by the borrower upon  
 2942 filing an application with a mortgage lender to offset the  
 2943 lender's expenses for determining whether the borrower is  
 2944 qualified for the mortgage loan or whether the mortgage loan  
 2945 should be funded.

2946 Section 49. Section 494.0069, Florida Statutes, is amended  
 2947 to read:

2948 494.0069 Lock-in agreement.--

2949 (1) Each lock-in agreement must be in writing and must  
 2950 contain:

2951 (a) The expiration date of the lock-in, if any;

2952 (b) The interest rate locked in, if any;

2953 (c) The discount points locked in, if any;

2954 (d) The commitment fee locked in, if any;

2955 (e) The lock-in fee, if any; and

2956 (f) A statement advising of the provisions of this part  
 2957 ~~ss. 494.006-494.0077~~ regarding lock-in agreements.

2958 (2) The mortgage lender ~~or correspondent mortgage lender~~  
 2959 shall make a good faith effort to process the mortgage loan  
 2960 application and stand ready to fulfill the terms of its  
 2961 commitment before the expiration date of the lock-in agreement  
 2962 or any extension thereof.

2963 (3) Any lock-in agreement received by a mortgage lender ~~or~~  
 2964 ~~correspondent mortgage lender~~ by mail or through a mortgage  
 2965 broker must be signed by the mortgage lender ~~or correspondent~~  
 2966 ~~mortgage lender~~ in order to become effective. The borrower may  
 2967 rescind any lock-in agreement until a written confirmation of  
 2968 the agreement has been signed by the lender and mailed to the

2969 borrower or to the mortgage broker ~~brokerage business~~ pursuant  
 2970 to its contractual relationship with the borrower. If a borrower  
 2971 elects to so rescind, the mortgage lender ~~or correspondent~~  
 2972 ~~mortgage lender~~ shall promptly refund any lock-in fee paid.

2973 (4) (a) Before ~~Any correspondent mortgage lender or~~  
 2974 ~~mortgage lender prior to~~ issuing a mortgage loan rate lock-in  
 2975 agreement, a mortgage lender must have the ability to timely  
 2976 advance funds on all mortgage loans for which rate lock-in  
 2977 agreements have been issued. As used in this section, "ability  
 2978 to timely advance funds" means having sufficient liquid assets  
 2979 or a line of credit necessary to cover all rate lock-in  
 2980 agreements issued with respect to which a lock-in fee is  
 2981 collected.

2982 (b) A ~~correspondent mortgage lender or~~ mortgage lender  
 2983 that does not comply with this subsection ~~paragraph (a)~~ may  
 2984 issue mortgage rate lock-in agreements only if, prior to the  
 2985 issuance, the ~~correspondent mortgage lender or~~ mortgage lender:

2986 1. Has received a written rate lock-in agreement from a  
 2987 ~~correspondent mortgage lender or~~ mortgage lender that complies  
 2988 with this subsection ~~paragraph (a)~~; or

2989 2. Has received a written rate lock-in agreement from an  
 2990 institutional investor or an agency of the Federal Government or  
 2991 the state or local government that will be funding, making, or  
 2992 purchasing the mortgage loan.

2993 (c) All rate lock-in fees collected by a mortgage lender  
 2994 ~~or correspondent mortgage lender~~ who is not in compliance with  
 2995 this subsection ~~paragraph (a)~~ must be deposited into an escrow  
 2996 account in a federally insured financial institution, and such

2997 fees may ~~shall~~ not be removed from such escrow account until:

2998 1. The mortgage loan closes and is funded;

2999 2. The applicant cancels the loan application or the loan

3000 application is rejected; or

3001 3. The mortgage lender ~~or correspondent mortgage lender~~ is

3002 required to forward a portion of the lock-in fee to another

3003 ~~correspondent mortgage lender,~~ mortgage lender, institutional

3004 investor, or agency that will be funding, making, or purchasing

3005 the loan. The mortgage lender ~~or correspondent mortgage lender~~

3006 may remove only the amount of the lock-in fee actually paid to

3007 another mortgage lender, ~~correspondent mortgage lender,~~

3008 institutional investor, or agency.

3009 (5) For purposes of this section, the term "lock-in fee"

3010 means any moneys advanced by the borrower to lock in for a

3011 specified period of time a specified interest rate or discount

3012 points.

3013 (6) The commission may adopt by rule a form for required

3014 lock-in agreement disclosures.

3015 Section 50. Effective July 1, 2009, section 494.007,

3016 Florida Statutes, is amended to read:

3017 494.007 Commitment process.--

3018 (1) If a commitment is issued, the mortgage lender shall

3019 disclose in writing:

3020 (a) The expiration date of the commitment;

3021 (b) The mortgage amount, meaning the face amount of credit

3022 provided to the borrower or in the borrower's behalf;

3023 (c) If the interest rate or other terms are subject to

3024 change before expiration of the commitment:

3025 1. The basis, index, or method, if any, which will be used  
 3026 to determine the rate at closing. Such basis, index, or method  
 3027 shall be established and disclosed with direct reference to the  
 3028 movement of an interest rate index or of a national or regional  
 3029 index that is available to and verifiable by the borrower and  
 3030 beyond the control of the lender; or

3031 2. The following statement, in at least 10-point bold  
 3032 type: "The interest rate will be the rate established by the  
 3033 lender in its discretion as its prevailing rate . . . days  
 3034 before closing.";

3035 (d) The amount of the commitment fee, if any, and whether  
 3036 and under what circumstances the commitment fee is refundable;  
 3037 and

3038 (e) The time, if any, within which the commitment must be  
 3039 accepted by the borrower.

3040 (2) The provisions of a commitment cannot be changed prior  
 3041 to expiration of the specified period within which the borrower  
 3042 must accept it. If any information necessary for an accurate  
 3043 disclosure required by subsection (1) is unknown to the mortgage  
 3044 lender at the time disclosure is required, the lender shall make  
 3045 the disclosure based upon the best information reasonably  
 3046 available to it and shall state that the disclosure is an  
 3047 estimate.

3048 (3) A commitment fee is refundable if:

3049 (a) The commitment is contingent upon approval by parties  
 3050 to whom the mortgage lender seeks to sell the loan.

3051 (b) The loan purchaser's requirements are not met due to  
 3052 circumstances beyond the borrower's control.

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3053 (c) The borrower is willing but unable to comply with the  
 3054 loan purchaser's requirements.

3055 Section 51. Section 494.0071, Florida Statutes, is amended  
 3056 to read:

3057 494.0071 Expiration of lock-in agreement or  
 3058 commitment.--If a lock-in agreement has been executed and the  
 3059 loan does not close before the expiration date of ~~either~~ the  
 3060 lock-in agreement or any commitment issued consistent therewith  
 3061 through no substantial fault of the borrower, the borrower may  
 3062 withdraw the application or reject or terminate any commitment,  
 3063 whereupon the mortgage lender ~~or correspondent mortgage lender~~  
 3064 shall promptly refund to the borrower any lock-in fee and any  
 3065 commitment fee paid by the borrower.

3066 Section 52. Section 494.0072, Florida Statutes, is  
 3067 repealed.

3068 Section 53. Section 494.00721, Florida Statutes, is  
 3069 amended to read:

3070 494.00721 Net worth.--

3071 (1) The net worth requirements ~~required~~ in s. 494.00611  
 3072 ~~ss. 494.0061, 494.0062, and 494.0065~~ shall be continually  
 3073 maintained as a condition of licensure.

3074 (2) If a mortgage lender ~~or correspondent mortgage lender~~  
 3075 fails to satisfy the net worth requirements, the mortgage lender  
 3076 ~~or correspondent mortgage lender~~ shall immediately cease taking  
 3077 any new mortgage loan applications. Thereafter, the mortgage  
 3078 lender ~~or correspondent mortgage lender~~ shall have up to 60 days  
 3079 within which to satisfy the net worth requirements. If the  
 3080 licensee makes the office aware, prior to an examination, that

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3081 the licensee no longer meets the net worth requirements, the  
 3082 mortgage lender ~~or correspondent mortgage lender~~ shall have 120  
 3083 days within which to satisfy the net worth requirements. A  
 3084 mortgage lender may ~~or correspondent mortgage lender~~ shall not  
 3085 resume acting as a mortgage lender ~~or correspondent mortgage~~  
 3086 ~~lender~~ without written authorization from the office, which  
 3087 authorization shall be granted if the mortgage lender ~~or~~  
 3088 ~~correspondent mortgage lender~~ provides the office with  
 3089 documentation which satisfies the requirements of s. 494.00611  
 3090 ~~s. 494.0061(2)(c), s. 494.0062(2)(c), or s. 494.0065(2),~~  
 3091 ~~whichever is applicable.~~

3092 (3) If the mortgage lender ~~or correspondent mortgage~~  
 3093 ~~lender~~ does not satisfy the net worth requirements within 120  
 3094 days ~~the 120-day period~~, the license of the mortgage lender ~~or~~  
 3095 ~~correspondent mortgage lender~~ shall be deemed to be relinquished  
 3096 and canceled and all servicing contracts shall be disposed of in  
 3097 a timely manner by the mortgage lender ~~or correspondent mortgage~~  
 3098 ~~lender.~~

3099 Section 54. Section 494.0073, Florida Statutes, is amended  
 3100 to read:

3101 494.0073 Mortgage lender ~~or correspondent mortgage lender~~  
 3102 when acting as a mortgage broker ~~brokerage business.~~--The  
 3103 provisions of this part Sections 494.006-494.0077 do not  
 3104 prohibit a mortgage lender ~~or correspondent mortgage lender~~ from  
 3105 acting as a mortgage broker ~~brokerage business.~~ However, in  
 3106 mortgage transactions in which a mortgage lender ~~or~~  
 3107 ~~correspondent mortgage lender~~ acts as a mortgage broker  
 3108 ~~brokerage business~~, the provisions of ss. 494.0038, 494.004(3)

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3109 ~~494.004(8)~~, 494.0042, and 494.0043(1), (2), and (3) apply.

3110 Section 55. Effective July 1, 2009, section 494.0075,  
 3111 Florida Statutes, is amended to read:

3112 494.0075 Requirements for selling loans to  
 3113 noninstitutional investors.--

3114 (1) A mortgage lender, when selling a mortgage loan to a  
 3115 noninstitutional investor, shall:

3116 (a) Before any payment of money by a noninstitutional  
 3117 investor, provide an opinion of value from an appraiser stating  
 3118 the value of the security property unless the opinion is waived  
 3119 in writing. The opinion must state the value of the property as  
 3120 it exists on the date of the opinion. If any relationship exists  
 3121 between the lender and the appraiser, that relationship must  
 3122 ~~shall~~ be disclosed.†

3123 (b) Provide to the noninstitutional investor a mortgagee's  
 3124 title insurance policy or an opinion of title by an attorney  
 3125 licensed to practice law in this state, or a copy thereof.†

3126 1. If a title insurance policy is issued, it must insure  
 3127 the noninstitutional investor against the unmarketability of the  
 3128 mortgagee's interest in such title. It must also specify any  
 3129 superior liens that exist against the property. If an opinion of  
 3130 title is issued by an attorney ~~licensed to practice law in this~~  
 3131 ~~state~~, the opinion must include a statement as to the  
 3132 marketability of the title to the property described in the  
 3133 mortgage and specify the priority of the mortgage being  
 3134 purchased.

3135 2. If the title insurance policy or opinion of title is  
 3136 not available at the time of purchase, the licensee shall



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

3148 3. The requirements of this paragraph may be waived in  
3149 writing. If the requirements are waived by the noninstitutional  
3150 investor, the waiver must include the following wording: "The  
3151 noninstitutional investor acknowledges that the mortgage lender  
3152 selling this mortgage loan is not providing a title insurance  
3153 policy or opinion of title issued by an attorney who is licensed  
3154 to practice law in the State of Florida. Any requirement for  
3155 title insurance or for a legal opinion of title is the sole  
3156 responsibility of the noninstitutional mortgage purchaser."

3157 (c) Provide, if the loan is other than a first mortgage, a  
3158 statement showing the balance owed by the mortgagor on any  
3159 existing mortgages prior to this investment and the status of  
3160 such existing mortgages.

3161 (d) Provide a disclosure if the licensee is directly or  
3162 indirectly acting as a borrower or principal in the transaction.

3163 (2) Each mortgage, or other instrument securing a note or  
3164 assignment thereof, must ~~shall~~ be recorded before being

3165 delivered to the noninstitutional investor.

3166 (3) Each mortgage and assignment shall be recorded as soon  
 3167 as practical, but within ~~no later than~~ 30 business days after  
 3168 the date of purchase.

3169 (4) If the loan is to be serviced by a licensee under this  
 3170 part ~~ss. 494.006-494.0077~~ for a noninstitutional investor, there  
 3171 shall be a written servicing agreement.

3172 (5) The mortgage lender shall cause the original note to  
 3173 be properly endorsed showing the assignment of the note to the  
 3174 noninstitutional investor.

3175 Section 56. Effective July 1, 2009, section 494.0077,  
 3176 Florida Statutes, is amended to read:

3177 494.0077 Other products and services.--This part does  
 3178 ~~Sections 494.006-494.0077~~ do not prohibit a mortgage lender from  
 3179 offering, for a fee or commission, products and services in  
 3180 addition to those offered in conjunction with making a mortgage  
 3181 loan.

3182 Section 57. Effective July 1, 2009, subsection (2) of  
 3183 section 501.1377, Florida Statutes, is amended to read:

3184 501.1377 Violations involving homeowners during the course  
 3185 of residential foreclosure proceedings.--

3186 (2) DEFINITIONS.--As used in this section, the term:

3187 (a) "Equity purchaser" means a ~~any~~ person who acquires a  
 3188 legal, equitable, or beneficial ownership interest in any  
 3189 residential real property as a result of a foreclosure-rescue  
 3190 transaction. The term does not apply to a person who acquires  
 3191 the legal, equitable, or beneficial interest in such property:

3192 1. By a certificate of title from a foreclosure sale

3193 | conducted under chapter 45;

3194 |       2. At a sale of property authorized by statute;

3195 |       3. By order or judgment of any court;

3196 |       4. From a spouse, parent, grandparent, child, grandchild,

3197 | or sibling of the person or the person's spouse; or

3198 |       5. As a deed in lieu of foreclosure, a workout agreement,

3199 | a bankruptcy plan, or any other agreement between a foreclosing

3200 | lender and a homeowner.

3201 |       (b) "Foreclosure-rescue consultant" means a person who

3202 | directly or indirectly makes a solicitation, representation, or

3203 | offer to a homeowner to provide or perform, in return for

3204 | payment of money or other valuable consideration, foreclosure-

3205 | related rescue services. The term does not apply to:

3206 |       1. A person excluded under s. 501.212.

3207 |       2. A person acting under the express authority or written

3208 | approval of the United States Department of Housing and Urban

3209 | Development or other department or agency of the United States

3210 | or this state to provide foreclosure-related rescue services.

3211 |       3. A charitable, not-for-profit agency or organization, as

3212 | determined by the United States Internal Revenue Service under

3213 | s. 501(c)(3) of the Internal Revenue Code, which offers

3214 | counseling or advice to an owner of residential real property in

3215 | foreclosure or loan default if the agency or organization does

3216 | not contract for foreclosure-related rescue services with a for-

3217 | profit lender or person facilitating or engaging in foreclosure-

3218 | rescue transactions.

3219 |       4. A person who holds or is owed an obligation secured by

3220 | a lien on any residential real property in foreclosure if the

3221 person performs foreclosure-related rescue services in  
 3222 connection with this obligation or lien and the obligation or  
 3223 lien was not the result of or part of a proposed foreclosure  
 3224 reconveyance or foreclosure-rescue transaction.

3225 5. A financial institution as defined in s. 655.005 and  
 3226 any parent or subsidiary of the financial institution or of the  
 3227 parent or subsidiary.

3228 6. A licensed mortgage broker, mortgage lender, or  
 3229 correspondent mortgage lender that provides mortgage counseling  
 3230 or advice regarding residential real property in foreclosure,  
 3231 which counseling or advice is within the scope of services set  
 3232 forth in chapter 494 and is provided without payment of money or  
 3233 other consideration other than a mortgage brokerage fee as  
 3234 defined in s. 494.001.

3235 7. A licensed attorney who negotiates the terms of a  
 3236 mortgage loan on behalf of a client as an ancillary matter to  
 3237 the attorney's representation of the client.

3238 (c) "Foreclosure-related rescue services" means any good  
 3239 or service related to, or promising assistance in connection  
 3240 with:

3241 1. Stopping, avoiding, or delaying foreclosure proceedings  
 3242 concerning residential real property; or

3243 2. Curing or otherwise addressing a default or failure to  
 3244 timely pay with respect to a residential mortgage loan  
 3245 obligation.

3246 (d) "Foreclosure-rescue transaction" means a transaction:

3247 1. By which residential real property in foreclosure is  
 3248 conveyed to an equity purchaser and the homeowner maintains a

3249 | legal or equitable interest in the residential real property  
 3250 | conveyed, including, without limitation, a lease option  
 3251 | interest, an option to acquire the property, an interest as  
 3252 | beneficiary or trustee to a land trust, or other interest in the  
 3253 | property conveyed; and

3254 |         2. That is designed or intended by the parties to stop,  
 3255 | avoid, or delay foreclosure proceedings against a homeowner's  
 3256 | residential real property.

3257 |         (e) "Homeowner" means the ~~any~~ record title owner of  
 3258 | residential real property ~~that is the subject of foreclosure~~  
 3259 | ~~proceedings.~~

3260 |         (f) "Residential real property" means real property  
 3261 | consisting of one-family to four-family dwelling units, ~~one of~~  
 3262 | ~~which is occupied by the owner as his or her principal place of~~  
 3263 | ~~residence.~~

3264 |         (g) "Residential real property in foreclosure" means  
 3265 | residential real property against which there is an outstanding  
 3266 | notice of the pendency of foreclosure proceedings recorded  
 3267 | pursuant to s. 48.23.

3268 |         Section 58. Paragraph (b) of subsection (2) of section  
 3269 | 501.1377, Florida Statutes, as amended by this act, is amended  
 3270 | to read:

3271 |         501.1377 Violations involving homeowners during the course  
 3272 | of residential foreclosure proceedings.--

3273 |         (2) DEFINITIONS.--As used in this section, the term:

3274 |         (b) "Foreclosure-rescue consultant" means a person who  
 3275 | directly or indirectly makes a solicitation, representation, or  
 3276 | offer to a homeowner to provide or perform, in return for

3277 payment of money or other valuable consideration, foreclosure-  
 3278 related rescue services. The term does not apply to:

3279 1. A person excluded under s. 501.212.

3280 2. A person acting under the express authority or written  
 3281 approval of the United States Department of Housing and Urban  
 3282 Development or other department or agency of the United States  
 3283 or this state to provide foreclosure-related rescue services.

3284 3. A charitable, not-for-profit agency or organization, as  
 3285 determined by the United States Internal Revenue Service under  
 3286 s. 501(c)(3) of the Internal Revenue Code, which offers  
 3287 counseling or advice to an owner of residential real property in  
 3288 foreclosure or loan default if the agency or organization does  
 3289 not contract for foreclosure-related rescue services with a for-  
 3290 profit lender or person facilitating or engaging in foreclosure-  
 3291 rescue transactions.

3292 4. A person who holds or is owed an obligation secured by  
 3293 a lien on any residential real property in foreclosure if the  
 3294 person performs foreclosure-related rescue services in  
 3295 connection with this obligation or lien and the obligation or  
 3296 lien was not the result of or part of a proposed foreclosure  
 3297 reconveyance or foreclosure-rescue transaction.

3298 5. A financial institution as defined in s. 655.005 and  
 3299 any parent or subsidiary of the financial institution or of the  
 3300 parent or subsidiary.

3301 6. A licensed mortgage broker, ~~mortgage lender,~~ or  
 3302 ~~correspondent~~ mortgage lender that provides mortgage counseling  
 3303 or advice regarding residential real property in foreclosure,  
 3304 which counseling or advice is within the scope of services set

3305 | forth in chapter 494 and is provided without payment of money or  
 3306 | other consideration other than a mortgage broker ~~brokerage~~ fee  
 3307 | ~~as defined in s. 494.001.~~

3308 |         7. A licensed attorney who negotiates the terms of a  
 3309 | mortgage loan on behalf of a client as an ancillary matter to  
 3310 | the attorney's representation of the client.

3311 |         Section 59. Paragraph (c) of subsection (1) of section  
 3312 | 201.23, Florida Statutes, is amended to read:

3313 |         201.23 Foreign notes and other written obligations  
 3314 | exempt.--

3315 |         (1) There shall be exempt from all excise taxes imposed by  
 3316 | this chapter:

3317 |         (c) Any promissory note, nonnegotiable note, or other  
 3318 | written obligation to pay money if said note or obligation is  
 3319 | executed and delivered outside this state and at the time of its  
 3320 | making is secured only by a mortgage, deed of trust, or similar  
 3321 | security agreement encumbering real estate located outside this  
 3322 | state and if such promissory note, nonnegotiable note, or other  
 3323 | written obligation for payment of money is brought into this  
 3324 | state for deposit as collateral security under a wholesale  
 3325 | warehouse mortgage agreement or for inclusion in a pool of  
 3326 | mortgages deposited with a custodian as security for obligations  
 3327 | issued by an agency of the United States Government or for  
 3328 | inclusion in a pool of mortgages to be serviced for the account  
 3329 | of a customer by a mortgage lender licensed or exempt from  
 3330 | licensing under part III of chapter 494 ~~ss. 494.006-494.0077~~.

3331 |         Section 60. Paragraph (a) of subsection (21) of section  
 3332 | 420.507, Florida Statutes, is amended to read:

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3333           420.507 Powers of the corporation.--The corporation shall  
 3334 have all the powers necessary or convenient to carry out and  
 3335 effectuate the purposes and provisions of this part, including  
 3336 the following powers which are in addition to all other powers  
 3337 granted by other provisions of this part:

3338           (21) Review all reverse mortgage provisions proposed to be  
 3339 used by an individual lender or a consortium to determine that  
 3340 such provisions are consistent with the purposes and intent of  
 3341 this act. If the corporation finds that the provisions are  
 3342 consistent, it shall approve those provisions. If the  
 3343 corporation finds that the provisions are inconsistent, it shall  
 3344 state its objections and give the parties an opportunity to  
 3345 amend the provisions to overcome such objections. In approving  
 3346 these provisions, the corporation must determine:

3347           (a) That the mortgagee is either licensed pursuant to part  
 3348 II of chapter 494 ss. 494.006-494.0077 or specifically exempt  
 3349 from part III of chapter 494 ss. 494.006-494.0077.

3350           Section 61. Paragraph (a) of subsection (1) of section  
 3351 494.0076, Florida Statutes, is amended to read:

3352           494.0076 Servicing audits.--

3353           (1) (a) Each licensee under part III of chapter ss.  
 3354 494.006-494.0077 which services mortgage loans shall:

3355           1. Maintain a segregated set of records for accounts that  
 3356 are serviced by the licensee.

3357           2. Have a separate, segregated depository account for all  
 3358 receipts relating to servicing.

3359           Section 62. Subsection (1) of section 520.52, Florida  
 3360 Statutes, is amended to read:



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3361 520.52 Licensees.--

3362 (1) A person may not engage in the business of a sales  
 3363 finance company or operate a branch of such business without a  
 3364 license as provided in this section; however, a bank, trust  
 3365 company, savings and loan association, or credit union  
 3366 authorized to do business in this state is not required to  
 3367 obtain a license under this part. Any person authorized as a  
 3368 licensee or registrant pursuant to part III of chapter 494 ~~ss.~~  
 3369 ~~494.006-494.0077~~ is not required to obtain a license under this  
 3370 part in order to become an assignee of a home improvement  
 3371 finance seller.

3372 Section 63. Subsection (1) of section 520.63, Florida  
 3373 Statutes, is amended to read:

3374 520.63 Licensees.--

3375 (1) A person may not engage in or transact any business as  
 3376 a home improvement finance seller or operate a branch without  
 3377 first obtaining a license from the office, except that a banking  
 3378 institution, trust company, savings and loan association, credit  
 3379 union authorized to do business in this state, or licensee under  
 3380 part III of chapter 494 ~~ss. 494.006-494.0077~~ is not required to  
 3381 obtain a license to engage in home improvement financing.

3382 Section 64. Paragraph (b) of subsection (11) of section  
 3383 607.0505, Florida Statutes, is amended to read:

3384 607.0505 Registered agent; duties.--

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

3386 (b) "Financial institution" means:

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

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

3393           3. Any person licensed under part III of chapter 494 ~~the~~  
 3394 ~~provisions of ss. 494.006-494.0077.~~

3395           Section 65. Subsection (1) of section 687.12, Florida  
 3396 Statutes, is amended to read:

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

3399           (1) Any lender or creditor licensed or chartered under the  
 3400 provisions of chapter 516, chapter 520, chapter 657, chapter 658  
 3401 or former chapter 659, former chapter 664 or former chapter 656,  
 3402 chapter 665, or part XV of chapter 627; any lender or creditor  
 3403 located in the State of Florida and licensed or chartered under  
 3404 the laws of the United States and authorized to conduct a  
 3405 lending business; or any lender or creditor lending through a  
 3406 licensee under part III of chapter 494 ~~ss. 494.006-494.0077,~~  
 3407 shall be authorized to charge interest on loans or extensions of  
 3408 credit to any person as defined in s. 1.01(3), or to any firm or  
 3409 corporation, at the maximum rate of interest permitted by law to  
 3410 be charged on similar loans or extensions of credit made by any  
 3411 lender or creditor in the State of Florida, except that the  
 3412 statutes governing the maximum permissible interest rate on any  
 3413 loan or extension of credit, and other statutory restrictions  
 3414 relating thereto, shall also govern the amount, term,  
 3415 permissible charges, rebate requirements, and restrictions for a  
 3416 similar loan or extension of credit made by any lender or

3417 creditor.

3418 Section 66. Effective September 1, 2010:

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

3421 (2) All mortgage brokerage business licenses issued before  
3422 October 1, 2010, pursuant to s. 494.0031 or s. 494.0032, Florida  
3423 Statutes, expire on December 31, 2010. However, if a person  
3424 holding an active mortgage brokerage business license issued  
3425 before October 1, 2010, applies for a mortgage broker license  
3426 through the Nationwide Mortgage Licensing System and Registry  
3427 between October 1, 2010, and December 31, 2010, the mortgage  
3428 brokerage business license does not expire until the Office of  
3429 Financial Regulation approves or denies the mortgage broker  
3430 license application. A mortgage broker license approved on or  
3431 after October 1, 2010, is effective until December 31, 2011.  
3432 Application fees may not be prorated for partial years of  
3433 licensure.

3434 (3) All mortgage broker licenses issued before October 1,  
3435 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,  
3436 expire on December 31, 2010. However, if a person holding an  
3437 active mortgage broker license issued before October 1, 2010,  
3438 applies for a loan originator license through the Nationwide  
3439 Mortgage Licensing System and Registry between October 1, 2010,  
3440 and December 31, 2010, the mortgage broker license does not  
3441 expire until the Office of Financial Regulation approves or  
3442 denies the loan originator license application. Notwithstanding  
3443 s. 120.60, Florida Statutes, for mortgage broker applications  
3444 submitted between July 1, 2009, and December 31, 2009, or loan

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3445 originator applications submitted between October 1, 2010, and  
3446 December 31, 2010, the office has 60 days to notify the  
3447 applicant of any apparent errors or omissions in an application  
3448 and to request any additional information that the Office of  
3449 Financial Regulation may require, and the office has 180 days to  
3450 approve or deny a completed application. Application fees may  
3451 not be prorated for partial years of licensure.

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

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

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3473       (6) All correspondent mortgage lender licenses issued  
3474 before October 1, 2010, pursuant to s. 494.0062 or s. 494.0064,  
3475 Florida Statutes, expire on December 31, 2010. However, if a  
3476 person holding an active correspondent mortgage lender license  
3477 issued before October 1, 2010, applies for a mortgage broker or  
3478 mortgage lender license through the Nationwide Mortgage  
3479 Licensing System and Registry between October 1, 2010, and  
3480 December 31, 2010, the correspondent mortgage lender license  
3481 does not expire until the Office of Financial Regulation  
3482 approves or denies the mortgage broker or mortgage lender  
3483 license application. Application fees may not be prorated for  
3484 partial years of licensure.

3485       Section 67. Except as otherwise expressly provided in this  
3486 act and except for this section, which shall take effect July 1,  
3487 2009, this act shall take effect October 1, 2010.