

1                   A bill to be entitled  
2           An act relating to loan processing; amending s. 494.001,  
3           F.S.; creating and revising definitions; deleting a  
4           redundant definition; amending s. 494.0011, F.S.;  
5           specifying rulemaking powers of the Financial Services  
6           Commission; amending s. 494.00255, F.S.; including in-  
7           house loan processors in disciplinary provisions; amending  
8           s. 494.00331, F.S.; providing that specified provisions do  
9           not apply to a licensed contract loan processor who has on  
10          file with the office a declaration of intent to act solely  
11          as a contract loan processor; deleting a definition;  
12          providing restrictions on employment of persons acting as  
13          in-house loan processors; amending s. 494.0035, F.S.;  
14          clarifying provisions concerning operation of mortgage  
15          brokers; amending s. 494.0038, F.S.; revising provisions  
16          relating to disclosure of settlement charges and loan  
17          terms; amending s. 494.00421, F.S.; revising an agency  
18          reference in the mortgage broker agreement; providing that  
19          a borrower may contact the Office of Financial Regulation  
20          rather than the Department of Financial Services regarding  
21          any complaints against a loan originator; amending s.  
22          494.00612, F.S.; requiring that in order to renew a  
23          mortgage lender license a mortgage lender must authorize  
24          the Nationwide Mortgage Licensing System and Registry to  
25          obtain an independent credit report on each of the  
26          mortgage lender's control persons; amending s. 494.0067,  
27          F.S.; requiring each mortgage lender to submit certain

28 reports to the registry as may be required; providing an  
 29 effective date.

30

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

32

33 Section 1. Subsections (5) through (9), (10) through (14),  
 34 (15) through (24), and (26) through (34) of section 494.001,  
 35 Florida Statutes, are renumbered as subsections (6) through  
 36 (10), (12) through (16), (18) through (27), and (28) through  
 37 (36), respectively, new subsections (5), (11), and (17) are  
 38 added to that section, and present subsections (14), (25), and  
 39 (26) of that section are amended, to read:

40 494.001 Definitions.—As used in ss. 494.001-494.0077, the  
 41 term:

42 (5) "Contract loan processor" means an individual who is  
 43 licensed under part II of this chapter as a loan originator, who  
 44 is an independent contractor for a mortgage broker or mortgage  
 45 lender, and who engages only in loan processing.

46 (11) "In-house loan processor" means an individual who is  
 47 an employee of a mortgage broker or a mortgage lender who  
 48 engages only in loan processing.

49 ~~(16)-(14)~~ "Loan originator" means an individual who,  
 50 directly or indirectly, solicits or offers to solicit a mortgage  
 51 loan, accepts or offers to accept an application for a mortgage  
 52 loan, negotiates or offers to negotiate the terms or conditions  
 53 of a new or existing mortgage loan on behalf of a borrower or  
 54 lender, ~~processes a mortgage loan application,~~ or negotiates or  
 55 offers to negotiate the sale of an existing mortgage loan to a

56 noninstitutional investor for compensation or gain. The term  
57 includes an individual who is required to be licensed as a loan  
58 originator under the activities of a loan originator as that  
59 ~~term is defined in the S.A.F.E. Mortgage Licensing Act of 2008,~~  
60 ~~and an individual acting as a loan originator pursuant to that~~  
61 ~~definition is acting as a loan originator for purposes of this~~  
62 ~~definition.~~ The term does not include an employee of a mortgage  
63 broker or mortgage lender whose duties are limited to who  
64 ~~performs only administrative or clerical tasks, including~~  
65 ~~quoting available interest rates, physically handling a~~  
66 ~~completed application form,~~ or transmitting a completed  
67 application form to a lender on behalf of a prospective  
68 borrower.

69 (17) "Loan processing" means:

70 (a) Receiving, collecting, distributing, and analyzing  
71 information common for the processing of a mortgage loan; or

72 (b) Communicating with a consumer to obtain information  
73 necessary for the processing of a mortgage loan if such  
74 communication does not include offering or negotiating loan  
75 rates or terms, or counseling consumers about residential  
76 mortgage loan rates or terms.

77 ~~(25) "Person" has the same meaning as in s. 1.01.~~

78 (28)-(26) "Principal loan originator" means the licensed  
79 loan originator in charge of, and responsible for, the operation  
80 of a mortgage lender or mortgage broker, including all of the  
81 activities of the mortgage lender's or mortgage broker's loan  
82 originators, in-house loan processors, and branch managers,  
83 whether employees or independent contractors.

84 Section 2. Subsection (2) of section 494.0011, Florida  
 85 Statutes, is amended to read:

86 494.0011 Powers and duties of the commission and office.-

87 (2) ~~To administer ss. 494.001-494.0077,~~ The commission may  
 88 adopt rules to administer parts I, II, and III of this chapter,  
 89 including rules:

90 (a) Requiring electronic submission of any forms,  
 91 documents, or fees required by this act.

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

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

96 2. Require the use of uniform forms that have been  
 97 approved by the registry, and any subsequent amendments to such  
 98 forms if the forms are substantially in compliance with the  
 99 provisions of this chapter. Uniform forms that the commission  
 100 may adopt include, but are not limited to:

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

102 b. Uniform Mortgage Biographical Statement & Consent Form,  
 103 MU2.

104 c. Uniform Mortgage Branch Office Form, MU3.

105 d. Uniform Individual Mortgage License/Registration &  
 106 Consent Form, MU4.

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

109 4. Prescribe requirements for amending or surrendering a  
 110 license or other activities as the commission deems necessary  
 111 for the office's participation in the registry.

112           5. Prescribe procedures that allow a licensee to challenge  
113 information contained in the registry.

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

116           (c) Establishing time periods during which a loan  
117 originator, mortgage broker, or mortgage lender license  
118 applicant under part II or part III is barred from licensure due  
119 to prior criminal convictions of, or guilty or nolo contendere  
120 pleas by, any of the applicant's control persons, regardless of  
121 adjudication.

122           1. The rules must provide:

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

125           b. A 15-year disqualifying period for felonies involving  
126 moral turpitude;

127           c. A 7-year disqualifying period for all other felonies;  
128 and

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

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

136           3. The rules may provide for mitigating factors for crimes  
137 identified in sub-subparagraph 1.b. However, the mitigation may  
138 not result in a period of disqualification less than 7 years.

139 The rule may not mitigate the disqualifying periods in sub-  
 140 subparagraphs 1.a., 1.c., and 1.d.

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

143 5. Section 112.011 is not applicable to eligibility for  
 144 licensure under this part.

145 Section 3. Subsections (3), (4), (5), and (6) of section  
 146 494.00255, Florida Statutes, are amended, and paragraph (m) of  
 147 subsection (1) is reenacted, to read:

148 494.00255 Administrative penalties and fines; license  
 149 violations.—

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

154 (m) In any mortgage transaction, violating any provision  
 155 of the federal Real Estate Settlement Procedures Act, as  
 156 amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in  
 157 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any  
 158 regulations adopted under such acts.

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

162 (a) A control person of the mortgage broker or mortgage  
 163 lender; ~~or~~

164 (b) A loan originator employed by or contracting with the  
 165 mortgage broker or mortgage lender; or

166        (c) An in-house loan processor who is an employee of the  
167 mortgage broker or mortgage lender.

168        (4) A principal loan originator of a mortgage broker is  
169 subject to the disciplinary actions specified in subsection (2)  
170 for violations of subsection (1) by a loan originator or an in-  
171 house loan processor in the course of an association with the  
172 mortgage broker if there is a pattern of repeated violations by  
173 the loan originator or in-house loan processor or if the  
174 principal loan originator has knowledge of the violations.

175        (5) A principal loan originator of a mortgage lender is  
176 subject to the disciplinary actions specified in subsection (2)  
177 for violations of subsection (1) by a loan originator or an in-  
178 house loan processor in the course of an association with a  
179 mortgage lender if there is a pattern of repeated violations by  
180 the loan originator or in-house loan processor or if the  
181 principal loan originator has knowledge of the violations.

182        (6) A branch manager is subject to the disciplinary  
183 actions specified in subsection (2) for violations of subsection  
184 (1) by a loan originator or an in-house loan processor in the  
185 course of an association with the mortgage broker or mortgage  
186 lender if there is a pattern of repeated violations by the loan  
187 originator or in-house loan processor or if the branch manager  
188 has knowledge of the violations.

189        Section 4. Section 494.00331, Florida Statutes, is amended  
190 to read:

191        494.00331 Loan originator and loan processor employment.-

192        (1) LOAN ORIGINATORS.-An individual may not act as a loan  
193 originator unless he or she is an employee of, or an independent

194 contractor for, a mortgage broker or a mortgage lender, and may  
 195 not be employed by or contract with more than one mortgage  
 196 broker or mortgage lender, or either simultaneously.

197 (2) CONTRACT LOAN PROCESSORS.~~Subsection (1) However, this~~  
 198 ~~provision~~ does not apply to a contract loan processor who has a  
 199 declaration of intent to act solely as a contract loan processor  
 200 on file with the office. The declaration of intent must be on a  
 201 form as prescribed by commission rule ~~any licensed loan~~  
 202 ~~originator who acts solely as a loan processor and contracts~~  
 203 ~~with more than one mortgage broker or mortgage lender, or either~~  
 204 ~~simultaneously.~~

205 ~~(2) For purposes of this section, the term "loan~~  
 206 ~~processor" means an individual who is licensed as a loan~~  
 207 ~~originator who engages only in:~~

208 ~~(a) The receipt, collection, distribution, and analysis of~~  
 209 ~~information common for the processing or underwriting of a~~  
 210 ~~residential mortgage loan; or~~

211 ~~(b) Communication with consumers to obtain the information~~  
 212 ~~necessary for the processing or underwriting of a loan, to the~~  
 213 ~~extent that such communication does not include offering or~~  
 214 ~~negotiating loan rates or terms or does not include counseling~~  
 215 ~~consumers about residential mortgage loan rates or terms.~~

216 ~~(3) A person may not act as a loan processor unless the~~  
 217 ~~person is licensed as a loan originator under this chapter and~~  
 218 ~~has on file with the office a declaration of intent to engage~~  
 219 ~~solely in loan processing. The declaration of intent must be on~~  
 220 ~~such form as prescribed by the commission by rule.~~



221 (a)~~(4)~~ A loan originator ~~that currently has a declaration~~  
 222 ~~of intent to engage solely in loan processing on file with the~~  
 223 ~~office~~ may withdraw his or her declaration of intent ~~to engage~~  
 224 ~~solely in loan processing~~. The withdrawal of declaration of  
 225 intent must be on such form as prescribed by commission rule.

226 (b)~~(5)~~ A declaration of intent or a withdrawal of  
 227 declaration of intent is effective upon receipt by the office.

228 (c)~~(6)~~ The fee earned by a contract loan processor may be  
 229 paid to the company that employs the loan processor without  
 230 violating the restriction in s. 494.0025(8)~~(7)~~ requiring fees or  
 231 commissions to be paid to a licensed mortgage broker or mortgage  
 232 lender or a person exempt from licensure under this chapter.

233 (3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as  
 234 an in-house loan processor unless he or she is an employee of a  
 235 mortgage broker or a mortgage lender and may not be employed by  
 236 more than one mortgage broker or mortgage lender, or either,  
 237 simultaneously. An in-house loan processor must work at the  
 238 direction of and be subject to the supervision and instruction  
 239 of a loan originator licensed under this part.

240 Section 5. Subsection (1) of section 494.0035, Florida  
 241 Statutes, is amended to read:

242 494.0035 Principal loan originator and branch manager for  
 243 mortgage broker.—

244 (1) Each mortgage broker must be operated by a principal  
 245 loan originator who shall have full charge, control, and  
 246 supervision of the mortgage broker ~~business~~. The principal loan  
 247 originator must have been licensed as a loan originator for at  
 248 least 1 year before being designated as the principal loan

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249 | originator, or must demonstrate to the satisfaction of the  
250 | office that he or she has been actively engaged in a mortgage-  
251 | related ~~mortgage broker-related~~ business for at least 1 year  
252 | before being designated as a principal loan originator. Each  
253 | mortgage broker must keep the office informed of the person  
254 | designated as the principal loan originator as prescribed by  
255 | commission rule. If the designation is inaccurate, the mortgage  
256 | broker ~~business~~ shall be deemed to be operated under the full  
257 | charge, control, and supervision of each officer, director, or  
258 | ultimate equitable owner of a 10-percent or greater interest in  
259 | the mortgage broker, or any other person in a similar capacity.  
260 | A loan originator may not be a principal loan originator for  
261 | more than one mortgage broker at any given time.

262 |       Section 6. Paragraph (c) of subsection (3) of section  
263 | 494.0038, Florida Statutes, is amended to read:

264 |       494.0038 Loan origination and mortgage broker fees and  
265 | disclosures.—

266 |       (3) At the time a written mortgage broker agreement is  
267 | signed by the borrower or forwarded to the borrower for  
268 | signature, or at the time the mortgage broker business accepts  
269 | an application fee, credit report fee, property appraisal fee,  
270 | or any other third-party fee, but at least 3 business days  
271 | before execution of the closing or settlement statement, the  
272 | mortgage broker shall disclose in writing to any applicant for a  
273 | mortgage loan the following information:

274 |       (c) A good faith estimate that discloses settlement  
275 | charges and loan terms, ~~signed and dated by the borrower, which~~  
276 | ~~discloses the total amount of each of the fees the borrower may~~

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277 ~~reasonably expect to pay if the loan is closed, including, but~~  
278 ~~not limited to, fees earned by the mortgage broker, lender fees,~~  
279 ~~third-party fees, and official fees, together with the terms and~~  
280 ~~conditions for obtaining a refund of such fees, if any.~~

281 1. Any amount collected in excess of the actual cost shall  
282 be returned within 60 days after rejection, withdrawal, or  
283 closing.

284 2. At the time a good faith estimate is provided to the  
285 borrower, the loan originator must identify in writing an  
286 itemized list that provides the recipient of all payments  
287 charged the borrower, which, except for all fees to be received  
288 by the mortgage broker, may be disclosed in generic terms, such  
289 as, but not limited to, paid to lender, appraiser, officials,  
290 title company, or any other third-party service provider. This  
291 requirement does not supplant or is not a substitute for the  
292 written mortgage broker agreement described in subsection (1).  
293 The disclosure required under this subparagraph must be signed  
294 and dated by the borrower.

295 Section 7. Paragraph (a) of subsection (7) of section  
296 494.00421, Florida Statutes, is amended to read:

297 494.00421 Fees earned upon obtaining a bona fide  
298 commitment.—Notwithstanding the provisions of ss. 494.001-  
299 494.0077, any mortgage broker which contracts to receive a loan  
300 origination fee from a borrower upon obtaining a bona fide  
301 commitment shall accurately disclose in the mortgage broker  
302 agreement:

303 (7) (a) The following statement, in at least 12-point  
 304 boldface type immediately above the signature lines for the  
 305 borrowers:

306 "You are entering into a contract with a mortgage broker to  
 307 obtain a bona fide mortgage loan commitment under the same terms  
 308 and conditions as stated hereinabove or in a separate executed  
 309 good faith estimate form. If the mortgage broker obtains a bona  
 310 fide commitment under the same terms and conditions, you will be  
 311 obligated to pay the loan origination fees even if you choose  
 312 not to complete the loan transaction. If the provisions of s.  
 313 494.00421, Florida Statutes, are not met, the loan origination  
 314 fee can only be earned upon the funding of the mortgage loan.  
 315 The borrower may contact the Office of Financial Regulation  
 316 ~~Department of Financial Services~~, Tallahassee, Florida,  
 317 regarding any complaints that the borrower may have against the  
 318 loan originator. The telephone number of the office ~~department~~  
 319 is: ...(insert telephone number)...."

320 Section 8. Paragraph (e) of subsection (1) of section  
 321 494.00612, Florida Statutes, is amended to read:

322 494.00612 Mortgage lender license renewal.—

323 (1) In order to renew a mortgage lender license, a  
 324 mortgage lender must:

325 (e) Authorize the registry to obtain an independent credit  
 326 report on each of the mortgage lender's control persons ~~lender~~  
 327 from a consumer reporting agency, and transmit or provide access  
 328 to the report to the office. The cost of the credit report shall  
 329 be borne by the licensee.

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330 Section 9. Subsection (13) is added to section 494.0067,  
331 Florida Statutes, to read:

332 494.0067 Requirements of mortgage lenders.—

333 (13) Each mortgage lender shall submit to the registry  
334 reports of condition which are in a form and which contain such  
335 information as the registry may require.

336 Section 10. This act shall take effect July 1, 2011.