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

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

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

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

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

137  
 138 Be It Enacted by the Legislature of the State of Florida:  
 139

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

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141 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

223           (d) For a trust, each trustee.

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



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

228 (f) Principal loan originators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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337 applicant for a mortgage loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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477 and enforcement of ss. 494.001-494.0077.

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

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

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

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

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

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

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

496 c. Uniform Mortgage Branch Office Form, MU3.

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

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

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

504 5. Prescribe procedures that allow a licensee to challenge

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505 information contained in the registry.

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

508 ~~The commission may prescribe by rule requirements and procedures~~  
 509 ~~for obtaining an exemption due to a technological or financial~~  
 510 ~~hardship. The commission may also adopt rules to accept~~  
 511 ~~certification of compliance with requirements of this act in~~  
 512 ~~lieu of requiring submission of documents.~~

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

519 1. The rules must provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

615 494.00121 Subpoenas.--

616 (1) The office may:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

705 494.00165 Prohibited advertising; record requirements.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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757 damages were the result of that violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

839       494.0018 Penalties.--

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

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

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

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

855 494.0019 Liability in case of unlawful transaction.--

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

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

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

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869 to read:

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

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

878 494.0023 Conflicting interest.--

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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953 ~~494.006-494.0077.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1037 incompetence in any mortgage financing transaction.  
 1038 (f) Requesting a specific valuation, orally or in writing,  
 1039 from an appraiser for a particular property, implying to an  
 1040 appraiser that a specific valuation is needed for a particular  
 1041 property, or in any manner conditioning the order for an  
 1042 appraisal on the appraisal meeting a specific valuation. The  
 1043 numeric value of the specific valuation sought need not be  
 1044 stated, but rather the mere statement that a specific valuation  
 1045 is sought, violates this section.  
 1046 (g) Consistently and materially underestimating maximum  
 1047 closing costs.  
 1048 (h) Disbursement, or an act which has caused or will cause  
 1049 disbursement, to any person in any amount from the Mortgage  
 1050 Guaranty Trust Fund, the Securities Guaranty Fund, or the  
 1051 Florida Real Estate Recovery Fund, regardless of any repayment  
 1052 or restitution to the disbursed fund by the licensee or any  
 1053 person acting on behalf of the licensee.  
 1054 (i) Commission of fraud, misrepresentation, concealment,  
 1055 or dishonest dealing by trick, scheme, or device; culpable  
 1056 negligence; breach of trust in any business transaction in any  
 1057 state, nation, or territory; or aiding, assisting, or conspiring  
 1058 with any other person engaged in any such misconduct and in  
 1059 furtherance thereof.  
 1060 (j) Being convicted of, or entering a plea of guilty or  
 1061 nolo contendere to, regardless of adjudication, any felony or  
 1062 any crime involving fraud, dishonesty, breach of trust, money  
 1063 laundering, or act of moral turpitude.  
 1064 (k) Having a final judgment entered against the licensee

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

1067 (1) Having been the subject of any:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

1123 (a) Issuance of a reprimand.

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

1127 (c) Revocation of a license or registration.

1128 (d) Denial of a license or registration.

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

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

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

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

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

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

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

1144 (c) An associate of the mortgage lender.

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

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

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

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

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

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

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

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

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

1187 494.0028 Arbitration.--

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

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

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

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

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

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

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

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

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

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

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

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

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

1231 494.00296 Loan modification.--

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

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

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

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

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

1249 (2) LOAN MODIFICATION AGREEMENT.--

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

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

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

1274 BORROWER'S RIGHT OF CANCELLATION

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

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

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

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

1303 (3) REMEDIES.--

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

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

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

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

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

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

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

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

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

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

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



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1345 494.003 Exemptions.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1415 494.00312 Loan originator license.--

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

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

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

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

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

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

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

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1429 the \$20 nonrefundable fee if required by s. 494.00172.  
 1430 Application fees may not be prorated for partial years of  
 1431 licensure.  
 1432 (f) Submit fingerprints in accordance with rules adopted  
 1433 by the commission:  
 1434 1. The fingerprints may be submitted to the registry, the  
 1435 office, or a vendor acting on behalf of the registry or the  
 1436 office.  
 1437 2. The office may contract with a third-party vendor to  
 1438 provide live-scan fingerprinting in lieu of a paper fingerprint  
 1439 card.  
 1440 3. A state criminal history background check must be  
 1441 conducted through the Department of Law Enforcement and a  
 1442 federal criminal history background check must be conducted  
 1443 through the Federal Bureau of Investigation.  
 1444 4. All fingerprints submitted to the Department of Law  
 1445 Enforcement must be submitted electronically and entered into  
 1446 the statewide automated fingerprint identification system  
 1447 established in s. 943.05(2) (b) and available for use in  
 1448 accordance with s. 943.05(2) (g) and (h). The office shall pay an  
 1449 annual fee to the department to participate in the system and  
 1450 inform the department of any person whose fingerprints are no  
 1451 longer required to be retained.  
 1452 5. The costs of fingerprint processing, including the cost  
 1453 of retaining the fingerprints, shall be borne by the person  
 1454 subject to the background check.  
 1455 6. The office is responsible for reviewing the results of  
 1456 the state and federal criminal history checks and determining

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1457 whether the applicant meets licensure requirements.

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

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

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

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

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

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

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

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

- 1510 1. Current outstanding judgments, except judgments  
 1511 resulting solely from medical expenses;  
 1512 2. Current outstanding federal tax liens; or

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

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

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

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

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

1536           494.00313 Loan originator license renewal.--

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1689 494.00322 Mortgage broker license renewal.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1737 manager for mortgage broker requirements.--  
 1738 (1) Each mortgage broker ~~brokerage business~~ must be  
 1739 operated by a principal loan originator who shall have a  
 1740 ~~principal broker who shall operate the business under such~~  
 1741 ~~broker's~~ full charge, control, and supervision of the mortgage  
 1742 broker business. The principal loan originator must have been  
 1743 licensed as a loan originator ~~broker must have been a licensed~~  
 1744 ~~mortgage broker pursuant to s. 494.0033~~ for at least 1 year  
 1745 before ~~prior to~~ being designated as the a principal loan  
 1746 originator ~~broker~~, or must shall demonstrate to the satisfaction  
 1747 of the office that he or she ~~such principal broker~~ has been  
 1748 actively engaged in a mortgage broker-related ~~mortgage-related~~  
 1749 business for at least 1 year before ~~prior to~~ being designated as  
 1750 a principal loan originator ~~broker~~. Each mortgage broker must  
 1751 keep the office informed of the person designated as the  
 1752 principal loan originator as prescribed by commission rule  
 1753 ~~brokerage business shall maintain a form as prescribed by the~~  
 1754 ~~commission indicating the business's designation of principal~~  
 1755 ~~broker and the individual's acceptance of such responsibility.~~  
 1756 If the designation is inaccurate, the business shall be deemed  
 1757 to be operated under ~~form is unavailable, inaccurate, or~~  
 1758 ~~incomplete, it is deemed that the business was operated in the~~  
 1759 full charge, control, and supervision of ~~by~~ each officer,  
 1760 director, or ultimate equitable owner of a 10-percent or greater  
 1761 interest in the mortgage broker ~~brokerage business~~, or any other  
 1762 person in a similar capacity. A loan originator may not be a  
 1763 principal loan originator for more than one mortgage broker at  
 1764 any given time.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1955 494.004 Requirements of licensees.--

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

2246 494.006 Exemptions.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2324 494.00611 Mortgage lender license.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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2465 other person in a similar capacity during that time.

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

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

2478 494.00612 Mortgage lender license renewal.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2536 494.0066 Branch offices.--

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

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

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

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

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

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

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

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2577 | a similar capacity during that time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

2779 494.0068 Loan application process.--

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

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

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

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

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

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

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

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

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

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

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

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

2825 494.0069 Lock-in agreement.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2885 institutional investor, or agency.

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

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

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

2894 494.007 Commitment process.--

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

2897 (a) The expiration date of the commitment;

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

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

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

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

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



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

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

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

2925 (3) A commitment fee is refundable if:

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

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

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

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

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

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

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

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

2947 494.00721 Net worth.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3093 3. By order or judgment of any court;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

3220

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

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

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

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

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

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

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

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

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3249 | property.

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

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

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

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

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

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

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

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

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

3295  
 3296 NOTICE TO THE HOMEOWNER/SELLER  
 3297  
 3298 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
 3299 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.  
 3300  
 3301 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY  
 3302 CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE  
 3303 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.  
 3304

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3305 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU  
 3306 OR BY THE PURCHASER.

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

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

3317  
 3318 I (we) hereby cancel this transaction.

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

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

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

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

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

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

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



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

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

3376 Section 58. Effective October 1, 2009:

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

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

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3389 October 1, 2010, is effective until December 31, 2011.  
 3390 Application fees may not be prorated for partial years of  
 3391 licensure.  
 3392 (3) All mortgage broker licenses issued before October 1,  
 3393 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes,  
 3394 expire December 31, 2010. However, if a person holding an active  
 3395 mortgage broker license issued before October 1, 2010, applies  
 3396 for a loan originator license through the Nationwide Mortgage  
 3397 Licensing System and Registry between October 1, 2010, and  
 3398 December 31, 2010, the mortgage broker license does not expire  
 3399 until the Office of Financial Regulation approves or denies the  
 3400 loan originator license application. Notwithstanding s. 120.60,  
 3401 Florida Statutes, for mortgage broker applications submitted  
 3402 between July 1, 2009, and December 31, 2009, or loan originator  
 3403 applications submitted between October 1, 2010, and December 31,  
 3404 2010, the office has 60 days to notify the applicant of any  
 3405 apparent errors or omissions in an application and to request  
 3406 any additional information that the agency may require, and the  
 3407 office has 180 days to approve or deny a completed application.  
 3408 Application fees may not be prorated for partial years of  
 3409 licensure.  
 3410 (4) All mortgage lender licenses issued before October 1,  
 3411 2010, pursuant to s. 494.0061 or 494.0064, Florida Statutes,  
 3412 expire December 31, 2010. However, if a person holding an active  
 3413 mortgage lender license applies for a mortgage broker license or  
 3414 mortgage lender license through the Nationwide Mortgage  
 3415 Licensing System and Registry between October 1, 2010, and  
 3416 December 31, 2010, the mortgage lender license does not expire

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

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

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

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

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