

The Florida Senate

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TITLE XXXIII

REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

CHAPTER 494 LOAN ORIGINATORS AND MORTGAGE BROKERS

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

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

(2) "Branch manager" means the licensed loan originator in charge of, and responsible for, the operation of the branch office of a mortgage broker or mortgage lender.

(3) "Branch office" means a location, other than a mortgage broker's or mortgage lender's principal place of business:

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

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

(c) At which mortgage loans are originated, negotiated, funded, or serviced by a licensee.

(4) "Commission" means the Financial Services Commission.

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

(6) "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes, but is not limited to:

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

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

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

(d) For a trust, each trustee.

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

(f) Principal loan originators.

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

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

(9) “Depository institution” has the same meaning as in s. (3)(c) of the Federal Deposit Insurance Act, and includes any credit union.

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

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

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

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

(12) “Institutional investor” means a depository institution, real estate investment trust, insurance company, real estate company, accredited investor as defined in 17 C.F.R. ss. 230.501 et seq., mortgage broker or mortgage lender licensed under this chapter, or other business entity that invests in mortgage loans, including a secondary mortgage market institution including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, conduits, investment bankers, and any subsidiary of such entities.

(13) “Loan commitment” or “commitment” means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(14) “Loan modification” means a modification to an existing loan. The term does not include a refinancing transaction.

(15) “Loan origination fee” means the total compensation from any source received by a mortgage broker acting as a loan originator. Any payment for processing mortgage loan applications must be included in the fee and must be paid to the mortgage broker.

(16) “Loan originator” means an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.

(17) “Loan processing” means:

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

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

(18) “Lock-in agreement” means an agreement whereby the lender guarantees for a specified number of days or until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined or specific number of discount points will be given, if the loan is approved and closed within the stated period of time.

(19) “Making a mortgage loan” means closing a mortgage loan in a person’s name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.

(20) “Material change” means a change that would be important to a reasonable borrower in making a borrowing decision, and includes a change in the interest rate previously offered a borrower, a change in the type of loan offered to a borrower, or a change in fees to be charged to a borrower resulting in total fees greater than \$100.

(21) “Mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.

(22) “Mortgage lender” means a person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor.

(23) “Mortgage loan” means any:

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

(b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or

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

(24) “Mortgage loan application” means the submission of a borrower’s financial information in anticipation of a credit decision, which includes the borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may be

in writing or electronically submitted, including a written record of an oral application.

(25) “Net worth” means total assets minus total liabilities pursuant to United States generally accepted accounting principles.

(26) “Noninstitutional investor” means an investor other than an institutional investor.

(27) “Office” means the Office of Financial Regulation.

(28) “Principal loan originator” means the licensed loan originator in charge of, and responsible for, the operation of a mortgage lender or mortgage broker, including all of the activities of the mortgage lender’s or mortgage broker’s loan originators, in-house loan processors, and branch managers, whether employees or independent contractors.

(29) “Principal place of business” means a mortgage broker’s or mortgage lender’s primary business office, the street address, or physical location that is designated on the application for licensure or any amendment to such application.

(30) “Registered loan originator” means a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the registry.

(31) “Registry” means the Nationwide Mortgage Licensing System and Registry, which is the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators.

(32) “Relative” means any of the following, whether by the full or half blood or by adoption:

- (a) A person’s spouse, father, mother, children, brothers, and sisters.
- (b) The father, mother, brothers, and sisters of the person’s spouse.
- (c) The spouses of the person’s children, brothers, or sisters.

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

(34) "Servicing a mortgage loan" means to receive, cause to be received, or transferred for another, installment payments of principal, interest, or other payments pursuant to a mortgage loan.

(35) "Substantial fault of the borrower" means that the borrower:

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

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

(c) Failed to produce by the date specified by the lender all documentation specified in the commitment or closing instructions as being required for closing; or

(d) Failed to be ready, willing, or able to close the loan by the date specified by the lender or broker.

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

(36) "Ultimate equitable owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls such interest through one or more individuals or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

History.—ss. 1, 50, ch. 91-245; s. 4, ch. 91-429; s. 1, ch. 95-313; s. 1, ch. 99-213; s. 1, ch. 2001-228; s. 513, ch. 2003-261; s. 1, ch. 2006-213; s. 1, ch. 2007-182; ss. 1, 2, ch. 2009-241; s. 1, ch. 2011-71.

494.0011 Powers and duties of the commission and office.—

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

(2) The commission may adopt rules to administer parts I, II, and III of this chapter, including rules:

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

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

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

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

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

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

c. Uniform Mortgage Branch Office Form, MU3.

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

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

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

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

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

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

1. The rules must provide:
 - a. Permanent bars for felonies involving fraud, dishonesty, breach of trust, or money laundering;
 - b. A 15-year disqualifying period for felonies involving moral turpitude;
 - c. A 7-year disqualifying period for all other felonies; and
 - d. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.
2. The rules may provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant's criminal history.
3. The rules may provide for mitigating factors for crimes identified in sub-subparagraph 1.b. However, the mitigation may not result in a period of disqualification less than 7 years. The rule may not mitigate the disqualifying periods in sub-subparagraphs 1.a., 1.c., and 1.d.
4. An applicant is not eligible for licensure until the expiration of the disqualifying period set by rule.
5. Section 112.011 is not applicable to eligibility for licensure under this part.

(3) Except as provided in s. 494.00172, all fees, charges, and fines collected pursuant to ss. 494.001-494.0077 shall be deposited in the Regulatory Trust Fund of the office.

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

History.— ss. 2, 50, ch. 91-245; s. 4, ch. 91-429; s. 165, ch. 98-200; s. 20, ch. 99-155; s. 2, ch. 99-213; s. 514, ch. 2003-261; s. 2, ch. 2006-213; s. 3, ch. 2009-241; s. 2, ch. 2011-71.

494.00115 Exemptions.—

(1) The following are exempt from regulation under this part and parts II and III of this chapter.

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

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

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

(d) An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.

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

(f) A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of chapter 475, unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator. The term "real estate brokerage activity" has the same meaning as in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(2) The following persons are exempt from regulation under part III of this chapter:

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

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

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

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

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

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

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

History.—s. 4, ch. 2009-241; s. 3, ch. 2011-71.

494.0012 Investigations; complaints; examinations.—

(1) The office may conduct an investigation of any person whenever the office has reason to believe, either upon complaint or otherwise, that any violation of ss. 494.001-494.0077 has been committed or is about to be committed.

(2) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the office setting forth details of the alleged violation.

(3)(a) The office may, at intermittent periods, conduct examinations of any licensee or other person under the provisions of ss. 494.001-494.0077.

(b) The office shall conduct all examinations at a convenient location in this state unless the office determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law

for up to thirty 8-hour days per year for each office examiner who participates in such an examination. However, if the examination involves or reveals fraudulent conduct by the licensee, the licensee shall pay the travel expense and per diem subsistence provided by law, without limitation, for each participating examiner.

History.— ss. 3, 50, ch. 91-245; s. 4, ch. 91-429; s. 1, ch. 92-9; s. 3, ch. 99-213; s. 515, ch. 2003-261.

494.00125 Public records exemptions.—

(1) INVESTIGATIONS OR EXAMINATIONS.—

(a) Except as otherwise provided by this subsection, information relative to an investigation or examination by the office pursuant to this chapter, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. For purposes of this subsection, an investigation or examination is considered active if the office or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license.

(b) This subsection does not prohibit the disclosure of information that is filed with the office as a normal condition of licensure and which, but for the investigation or examination, would be subject to s. 119.07(1).

(c) Except as necessary for the office to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.
2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.
3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(d) If office personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(e) This subsection does not prohibit the office from providing confidential and exempt information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential and exempt information in connection with its official duties shall maintain the confidentiality of the information if it would otherwise be confidential.

(f) All information obtained by the office from any person which is only made available to the office on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1).

(g) If information subject to this subsection is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may prevent the disclosure of information that would be confidential pursuant to paragraph (c).

(h) A privilege against civil liability is granted to a person who furnishes information or evidence to the office, unless such person acts in bad faith or with malice in providing such information or evidence.

(2) FINANCIAL STATEMENTS.—All audited financial statements submitted pursuant to ss. 494.001-494.0077 are confidential and exempt from the requirements of s. 119.07(1), except that office employees may have access to such information in the administration and enforcement of ss. 494.001-494.0077 and such information may be used by office personnel in the prosecution of violations under ss. 494.001-494.0077.

(3) CREDIT INFORMATION.—

(a) Credit history information and credit scores held by the office and related to licensing under ss. 494.001-494.0077 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Credit history information and credit scores made confidential and exempt pursuant to paragraph (a) may be provided by the office to another governmental entity having oversight or regulatory or law enforcement authority.

(c) This subsection does not apply to information that is otherwise publicly available.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—ss. 12, 50, ch. 91-245; s. 4, ch. 91-429; s. 2, ch. 92-9; s. 1, ch. 95-131; ss. 328, 329, ch. 96-406; s. 1140, ch. 97-103; s. 4, ch. 99-213; ss. 516, 522, ch. 2003-261; s. 1, ch. 2010-169.

Note.— Subsection (2) former s. 494.0021.

494.0013 Injunction to restrain violations.—

(1) The office may bring action through its own counsel in the name and on behalf of the state against any person who has violated or is about to violate any provision of ss. 494.001-494.0077 or any rule of the commission or order of the office issued under ss. 494.001-494.0077 to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(2) In any injunctive proceeding, the court may, on due showing by the office, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(3) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceeding, the court has the power and

jurisdiction, upon application of the office, to impound, and to appoint a receiver or administrator for, the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, has all powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business as are from time to time conferred upon him or her by the court. In any such action, the court may issue an order staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the property, assets, and business, or the court, in its discretion and with the consent of the chief judge of the circuit, may require that all such suits be assigned to the circuit court judge who appoints the receiver or administrator.

History.— ss. 4, 50, ch. 91-245; s. 4, ch. 91-429; s. 541, ch. 97-103; s. 517, ch. 2003-261.

494.00135 Subpoenas.—

(1) The office may:

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

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

(2) If there is substantial noncompliance with a subpoena or subpoena duces tecum issued by the office, the office may petition the court in the county where the person subpoenaed resides or has his or her principal place of business for an order requiring the person to appear, testify, or produce

such books, accounts, records, and other documents as are specified in the subpoena or subpoena duces tecum.

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

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

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

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

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

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

History.—s. 5, ch. 2009-241.

494.0014 Cease and desist orders; refund orders.—

(1) The office may issue and serve upon any person an order to cease and desist and to take corrective action if it has reason to believe the person is

violating, has violated, or is about to violate any provision of ss. 494.001-494.0077, any rule or order issued under ss. 494.001-494.0077, or any written agreement between the person and the office. All procedural matters relating to issuance and enforcement of such order are governed by the Administrative Procedure Act.

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

History.—ss. 5, 50, ch. 91-245; s. 4, ch. 91-429; s. 518, ch. 2003-261; s. 2, ch. 2007-182; s. 6, ch. 2009-241.

494.0015 Evidence; examiner's worksheets, investigative reports, other related documents.— In any hearing in which the financial examiner acting under authority of ss. 494.001-494.0077 is available for cross-examination, any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by the financial examiner, after being duly authenticated by the examiner, may be admitted as competent evidence upon the oath of the examiner that the report, worksheet, or related paper was prepared as a result of an examination of the books and records of a licensee or other person conducted pursuant to the authority of ss. 494.001-494.0077.

History.—ss. 6, 50, ch. 91-245; s. 4, ch. 91-429.

494.0016 Books, accounts, and records; maintenance; examinations by the office.—

(1) Each licensee shall maintain, at the principal place of business designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with ss. 494.001-494.0077.

(2) The office may authorize maintenance of records at a location other than a principal place of business. The office may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) All books, accounts, records, documents, and receipts for expenses paid by the licensee on behalf of the borrower, including each closing statement signed by a borrower, shall be preserved and kept available for examination by the office for at least 3 years after the date of original entry.

(4) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees so that such records will enable the office to determine the licensee's compliance with ss. 494.001-494.0077. In addition, the commission may prescribe by rule requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the time period specified in subsection (3).

History.— ss. 7, 50, ch. 91-245; s. 4, ch. 91-429; s. 5, ch. 99-213; s. 519, ch. 2003-261; s. 3, ch. 2006-213.

494.00165 Prohibited advertising; record requirements.—

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

(a) Advertise that an applicant shall have unqualified access to credit without disclosing the material limitations on the availability of such credit. Material limitations include, but are not limited to, the percentage of down payment required, that a higher rate or points could be required, or that restrictions on the maximum principal amount of the loan offered could apply.

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

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

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

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

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

History.—s. 6, ch. 99-213; s. 520, ch. 2003-261; s. 7, ch. 2009-241.

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

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

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

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

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

(c) The borrower has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and has discovered no such property or assets; or he or she has discovered

property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount realized is insufficient to satisfy the judgment.

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

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

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

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

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

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

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

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

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

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

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

History.—s. 9, ch. 2009-241.

494.00173 Mortgage Guaranty Trust Fund; creation.—

(1) The Mortgage Guaranty Trust Fund is created within, and shall be administered by, the Office of Financial Regulation.

(2) Funds to be credited to the trust fund shall consist of the fee imposed pursuant to s. 494.00172 on loan originators, mortgage brokers, and mortgage lenders licensed under this chapter. Moneys in the trust fund shall be used to pay claims against loan originators, mortgage brokers, and mortgage lenders pursuant to s. 494.00172.

(3) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(4) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Mortgage Guaranty Trust Fund shall, unless terminated sooner, be terminated on July 1, 2014. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

History.—s. 1, ch. 2010-135.

494.0018 Penalties.—

(1) Whoever knowingly violates any provision of s. 494.00255(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4), or (5), except as provided in subsection (2) of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each such violation constitutes a separate offense.

(2) Any person who violates any provision of ss. 494.001-494.0077, in which the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 9, 50, ch. 91-245; s. 4, ch. 91-429; s. 10, ch. 2009-241.

494.0019 Liability in case of unlawful transaction.—

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

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

History.—ss. 10, 50, ch. 91-245; s. 4, ch. 91-429; s. 210, ch. 92-303; s. 11, ch. 2009-241.

494.002 Statutory or common-law remedies.— Sections 494.001-494.0077 do not limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage loan business or the right of the state to punish any person for any violation of any law.

History.—ss. 11, 50, ch. 91-245; s. 4, ch. 91-429; s. 12, ch. 2009-241.

494.0022 Applicability of act.— Failure to comply with the provisions of ss. 494.001-494.0077 does not affect the validity or enforceability of any mortgage loan; and no person acquiring a mortgage loan, as mortgagee or assignee, is required to ascertain whether or not the provisions of ss. 494.001-494.0077 have been complied with.

History.—ss. 13, 50, ch. 91-245; s. 4, ch. 91-429.

494.0023 Conflicting interest.—

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

(a) The nature of the relationship, ownership, or financial interest between the provider of products or services, or business incident thereto, and the licensee making the referral;

(b) An estimated charge or range of charges generally made by such a provider;

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

(d) That alternative sources may be chosen by the borrower to provide the required products or services.

(2) A licensee has a conflicting interest if:

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

(b) The licensee or licensee's relative, directly or indirectly, owns, controls, or holds with power to vote, or holds proxies representing, 1 percent

or more of any class of equity securities or other beneficial interest in the person providing the additional products or services;

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

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

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

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

(3) The commission may adopt rules to administer the disclosure requirements of this section. The rules must consider the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.; and related federal regulations.

History.— ss. 14, 50, ch. 91-245; s. 4, ch. 91-429; s. 13, ch. 2009-241.

494.0024 Waiver.— Unless otherwise indicated, any waiver of ss. 494.001-494.0077 is unenforceable and void.

History.— ss. 15, 50, ch. 91-245; s. 4, ch. 91-429.

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

(1) To act as a loan originator in this state without a current, active license issued by the office pursuant to part II of this chapter.

(2) To act as a mortgage broker in this state without a current, active license issued by the office pursuant to part II of this chapter.

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

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

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

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

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

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

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

(7) To pay a fee or commission in any mortgage loan transaction to any person or entity other than a licensed mortgage broker or mortgage lender, or a person exempt from licensure under this chapter.

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

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

(10) Subject to investigation or examination under this chapter, to knowingly alter, withhold, conceal, or destroy any books, records, computer

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

History.—ss. 16, 50, ch. 91-245; s. 4, ch. 91-429; s. 4, ch. 95-313; s. 7, ch. 99-213; s. 523, ch. 2003-261; s. 1, ch. 2004-340; s. 84, ch. 2004-390; s. 14, ch. 2009-241.

494.00255 Administrative penalties and fines; license violations.—

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

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

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

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

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

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

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

(g) Consistently and materially underestimating maximum closing costs.

(h) Disbursement, or an act which has caused or will cause disbursement, to any person in any amount from the Mortgage Guaranty Trust Fund, the

Securities Guaranty Fund, or the Florida Real Estate Recovery Fund, regardless of any repayment or restitution to the disbursed fund by the licensee or any person acting on behalf of the licensee.

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

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

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

(l) Having been the subject of any:

1. Decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court, administrative law judge, state or federal agency, national securities exchange, national commodities exchange, national option exchange, national securities association, national commodities association, or national option association involving a violation of any federal or state securities or commodities law or rule or regulation adopted under such law or involving a violation of any rule or regulation of any national securities, commodities, or options exchange or association.

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

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

- (n) Having a loan originator, mortgage broker, or mortgage lender license, or the equivalent of such license, revoked in any jurisdiction.
 - (o) Having a license, or the equivalent of such license, to practice any profession or occupation revoked, suspended, or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory, or country.
 - (p) Acting as a loan originator, mortgage broker, or mortgage lender without a current license issued under part II or part III of this chapter.
 - (q) Operating a mortgage broker or mortgage lender branch office without a current license issued under part II or part III of this chapter.
 - (r) Conducting any mortgage brokering or mortgage lending activities in the absence of a properly designated principal loan originator or mortgage brokering or mortgage lending activities at any particular branch office without a properly designated branch manager.
 - (s) A material misstatement or omission of fact on an initial or renewal license application.
 - (t) Payment to the office for a license or permit with a check or electronic transmission of funds which is dishonored by the applicant's or licensee's financial institution.
 - (u) Failure to comply with, or violations of, any provision of ss. 494.001-494.0077, or any rule or order made or issued under ss. 494.001-494.0077.
 - (v) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 and the rules of the commission.
 - (w) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office subpoena or subpoena duces tecum.
 - (x) Failure to timely pay any fee, charge, or fine imposed or assessed pursuant to ss. 494.001-494.0077 or related rules.
- (2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

- (a) Issuance of a reprimand.
- (b) Suspension of a license, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.
- (c) Revocation of a license.
- (d) Denial of a license.
- (e) Imposition of a fine in an amount up to \$25,000 for each count or separate offense.
- (f) An administrative fine of up to \$1,000 per day, but not to exceed \$25,000 cumulatively, for each day that:
 - 1. A mortgage broker or mortgage lender conducts business at an unlicensed branch office.
 - 2. An unlicensed person acts as a loan originator, a mortgage broker, or a mortgage lender.
 - (3) A mortgage broker or mortgage lender, as applicable, is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by:
 - (a) A control person of the mortgage broker or mortgage lender;
 - (b) A loan originator employed by or contracting with the mortgage broker or mortgage lender; or
 - (c) An in-house loan processor who is an employee of the mortgage broker or mortgage lender.
 - (4) A principal loan originator of a mortgage broker is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.
 - (5) A principal loan originator of a mortgage lender is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with a mortgage lender if there is a pattern of repeated violations

by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

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

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

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

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

History.—s. 15, ch. 2009-241; s. 1, ch. 2010-67; s. 4, ch. 2011-71.

494.0026 Disposition of insurance proceeds.— The following provisions apply to mortgage loans held by a mortgagee or assignee that is subject to part II or part III of this chapter.

(1) The mortgagee or assignee must promptly endorse a check, draft, or other negotiable instrument payable jointly to the mortgagee or assignee and the insured by the insurance company. However, the mortgagee or assignee is

not required to endorse such instrument if the insured or a payee who is not subject to part II or part III of this chapter refuses to endorse the instrument.

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

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

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

(5) The mortgagee or assignee is not required to remit the portion of the proceeds relating to additional living expenses and contents insurance if the mortgagee or assignee is not able to determine which part of the proceeds relates to additional living expenses and contents insurance.

This section may not be construed to prevent an insurance company from paying the insured directly for additional living expenses or paying the insured directly for contents insurance coverage if the mortgagee or assignee does not have a security interest in the contents.

History.—s. 5, ch. 95-313; s. 16, ch. 2009-241.

494.0028 Arbitration.—

(1) This section applies to any mortgage broker agreement, servicing agreement, loan application, or purchase agreement that provides for arbitration between:

(a) A noninstitutional investor and a mortgage lender servicing a mortgage loan.

(b) A borrower and a mortgage broker or mortgage lender to obtain a mortgage loan.

(c) A noninstitutional investor and a mortgage broker or mortgage lender to fund or purchase a mortgage loan.

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

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

(4) At the election of the noninstitutional investor or borrower, venue shall be in the county in which the noninstitutional investor or borrower entered into the agreement or at a business location of the mortgage broker or mortgage lender.

(5) Any fees or charges must be in accordance with the rules of the American Arbitration Association or other approved nonindustry arbitration forum and may not be set in the agreement.

(6) Any election made under this section is irrevocable.

(7) This section does not require an agreement that is subject to this section to contain an arbitration clause.

History.—s. 6, ch. 95-313; s. 524, ch. 2003-261; s. 17, ch. 2009-241.

494.00296 Loan modification.—

(1) PROHIBITED ACTS.—When offering or providing loan modification services, a loan originator, mortgage broker, or mortgage lender may not:

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

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

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

(2) LOAN MODIFICATION AGREEMENT. —

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

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

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

BORROWER'S RIGHT OF CANCELLATION

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

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

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

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

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

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

(3) REMEDIES.—

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

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

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

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

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

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

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

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

History.— ss. 19, 20, ch. 2009-241.

PART II
MORTGAGE BROKERS

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494.00312 Loan originator license.—

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

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

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

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

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

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

(e) Submit a nonrefundable application fee of \$195, and the \$20 nonrefundable fee if required by s. 494.00172. Application fees may not be prorated for partial years of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. If information contained in a credit report is used as the basis for denying a license, the office shall, in accordance with s. 120.60(3), provide with particularity the grounds or basis for denial. The use of the terms "poor

credit history,” “poor credit rating,” or similar language does not meet the requirements of this paragraph.

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

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

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

History.—s. 24, ch. 2009-241.

494.00313 Loan originator license renewal.—

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

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

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

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

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

(e) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information

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

(2) The office may not renew a loan originator license unless the loan originator continues to meet the minimum requirements for initial licensure pursuant to s. 494.00312 and adopted rule.

History.—s. 25, ch. 2009-241.

494.00321 Mortgage broker license.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. If information contained in a credit report is used as the basis for denying a license, the office shall, in accordance with s. 120.60(3), provide with particularity the grounds or basis for denial. The use of the terms "poor

credit history," "poor credit rating," or similar language does not meet the requirements of this paragraph.

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

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

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

History.—s. 27, ch. 2009-241; s. 109, ch. 2010-5.

494.00322 Mortgage broker license renewal.—

- (1) In order to renew a mortgage broker license, a mortgage broker must:
 - (a) Submit a completed license renewal form as prescribed by commission rule.
 - (b) Submit a nonrefundable renewal fee of \$375, the \$100 nonrefundable fee if required by s. 494.00172, and nonrefundable fees to cover the cost of further fingerprint processing and retention as set forth in commission rule.
 - (c) Submit fingerprints in accordance with s. 494.00321(2)(d) for any new control persons who have not been screened.
 - (d) Authorize the registry to obtain an independent credit report on each of the licensee's control persons from a consumer reporting agency, and transmit or provide access to the report to the office. The cost of the credit report shall be borne by the licensee.

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

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

History.—s. 28, ch. 2009-241.

494.00331 Loan originator and loan processor employment.—

(1) LOAN ORIGINATORS.—An individual may not act as a loan originator unless he or she is an employee of, or an independent contractor for, a mortgage broker or a mortgage lender, and may not be employed by or contract with more than one mortgage broker or mortgage lender, or either simultaneously.

(2) CONTRACT LOAN PROCESSORS.—Subsection (1) does not apply to a contract loan processor who has a declaration of intent to act solely as a contract loan processor on file with the office. The declaration of intent must be on a form as prescribed by commission rule.

(a) A loan originator may withdraw his or her declaration of intent. The withdrawal of declaration of intent must be on such form as prescribed by commission rule.

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

(c) The fee earned by a contract loan processor may be paid to the company that employs the loan processor without violating the restriction in s. 494.0025(7) requiring fees or commissions to be paid to a licensed mortgage

broker or mortgage lender or a person exempt from licensure under this chapter.

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

History.— s. 11, ch. 95-313; s. 11, ch. 99-213; s. 30, ch. 2009-241; s. 2, ch. 2010-67; s. 39, ch. 2011-4; s. 5, ch. 2011-71.

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

(1) Each mortgage broker must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage broker. The principal loan originator must have been licensed as a loan originator for at least 1 year before being designated as the principal loan originator, or must demonstrate to the satisfaction of the office that he or she has been actively engaged in a mortgage-related business for at least 1 year before being designated as a principal loan originator. Each mortgage broker must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the mortgage broker shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity. A loan originator may not be a principal loan originator for more than one mortgage broker at any given time.

(2) Each branch office of a mortgage broker must be operated by a branch manager who shall have full charge, control, and supervision of the branch office. The designated branch manager must be a licensed loan originator pursuant to s. 494.00312. Each branch office must keep the office informed of the person designated as the branch manager as prescribed by commission rule, which includes documentation of the individual's acceptance of such

responsibility. If the designation is inaccurate, the branch office shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity.

History.— ss. 22, 50, ch. 91-245; s. 4, ch. 91-429; s. 5, ch. 2001-228; s. 531, ch. 2003-261; s. 32, ch. 2009-241; s. 6, ch. 2011-71.

494.0036 Mortgage broker branch office license.—

(1) Each branch office of a mortgage broker must be licensed under this section.

(2) The office shall issue a mortgage broker branch office license to a mortgage broker licensee after the office determines that the licensee has submitted a completed application for a branch office in a form prescribed by commission rule and payment of an initial nonrefundable branch office license fee of \$225 per branch office. Application fees may not be prorated for partial years of licensure. The branch office license shall be issued in the name of the mortgage broker that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, and the required fees.

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

History.— ss. 23, 50, ch. 91-245; s. 4, ch. 91-429; s. 13, ch. 99-213; s. 532, ch. 2003-261; s. 10, ch. 2006-213; s. 33, ch. 2009-241.

494.0038 Loan origination and mortgage broker fees and disclosures.—

(1) A loan origination fee may not be paid except pursuant to a written mortgage broker agreement between the mortgage broker and the borrower which is signed and dated by the principal loan originator or branch manager, and the borrower. The unique registry identifier of each loan originator responsible for providing loan originator services must be printed on the mortgage broker agreement.

(a) The written mortgage broker agreement must describe the services to be provided by the mortgage broker and specify the amount and terms of the loan origination fee that the mortgage broker is to receive.

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

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

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

(b) The agreement must be executed within 3 business days after a mortgage loan application is accepted if the borrower is present when the mortgage loan application is accepted. If the borrower is not present, the licensee shall forward the agreement to the borrower within 3 business days after the licensee's acceptance of the application and the licensee bears the burden of proving that the borrower received and approved the agreement.

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

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

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

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

(a) That the mortgage broker may not make mortgage loans or commitments. The mortgage broker may make a commitment and may furnish a lock-in of the rate and program on behalf of the lender if the mortgage broker has obtained a written commitment or lock-in for the loan from the lender on behalf of the borrower for the loan. The commitment must be in the same form and substance as issued by the lender.

(b) That the mortgage broker cannot guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(c) A good faith estimate that discloses settlement charges and loan terms.

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

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

(4) The disclosures required by this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing. The mortgage broker shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss.

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

(5) If the mortgage broker agreement includes a nonrefundable application fee, the following requirements are applicable:

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

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

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

(6) A mortgage broker may not accept any fee in connection with a mortgage loan other than an application fee, credit report fee, property appraisal fee, or other third-party fee before obtaining a written commitment from a qualified lender.

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

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

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

History.—ss. 25, 50, ch. 91-245; s. 4, ch. 91-429; s. 14, ch. 99-213; s. 41, ch. 2000-154; s. 533, ch. 2003-261; s. 6, ch. 2007-182; s. 34, ch. 2009-241; s. 3, ch. 2010-67; s. 7, ch. 2011-71.

494.0039 Principal place of business requirements.— Each mortgage broker licensee shall maintain and transact business from a principal place of business.

History.—ss. 26, 50, ch. 91-245; s. 4, ch. 91-429; s. 545, ch. 97-103; s. 15, ch. 99-213; s. 11, ch. 2006-213; s. 35, ch. 2009-241.

494.004 Requirements of licensees.—

(1) Each licensee under this part shall report to the office:

(a) In writing, any conviction of, or plea of nolo contendere to, regardless of adjudication, any felony or any crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the licensee or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.

(b) In a form prescribed by rule of the commission, any conviction of, or plea of nolo contendere to, regardless of adjudication, any felony committed by the licensee or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.

(c) Any action in bankruptcy, voluntary or involuntary, within 30 days after the action is instituted.

(d) On a form prescribed by rule of the commission, any change to the information contained in any initial application form or any amendment to the application within 30 days after the change is effective.

(e) Any change in the principal loan originator, any addition or subtraction of a control person, or any change in the form of business organization, by written amendment in the form and at the time the commission specifies by rule.

(f) Any addition of a control person who has not previously filed a Uniform Mortgage Biographical Statement & Consent Form, MU2, or has not previously complied with the fingerprinting and credit report requirements of

ss. 494.00321 and 494.00322, is subject to the provisions of these sections. If, after the addition of a control person, the office finds that the licensee does not continue to meet licensure requirements, the office may bring an administrative action in accordance with s. 494.00255 to enforce the provisions of this chapter.

(2) In every mortgage loan transaction, each licensee under this part must notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the mortgage lender but at least 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement is an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

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

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

History.—ss. 27, 50, ch. 91-245; s. 4, ch. 91-429; ss. 16, 17, ch. 99-213; s. 534, ch. 2003-261; s. 12, ch. 2006-213; s. 7, ch. 2007-182; s. 36, ch. 2009-241.

494.0042 Loan origination fees.—

(1) A loan origination fee earned by a licensee, pursuant to this part, is not considered interest or a finance charge under chapter 687.

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

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

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

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

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

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

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

History.—ss. 29, 50, ch. 91-245; s. 4, ch. 91-429; s. 12, ch. 95-313; s. 38, ch. 2009-241.

494.00421 Fees earned upon obtaining a bona fide commitment.—

Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage broker which contracts to receive a loan origination fee from a borrower upon obtaining a bona fide commitment shall accurately disclose in the mortgage broker agreement:

(1) The gross loan amount.

- (2) In the case of a fixed-rate mortgage, the note rate.
- (3) In the case of an adjustable rate mortgage:
 - (a) The initial note rate.
 - (b) The length of time for which the initial note rate is effective.
 - (c) The frequency of changes.
 - (d) The limitation upon such changes including adjustment to adjustment cap and life cap.
 - (e) Whether the loan has any potential for negative amortization.
 - (f) Identification of the margin-interest rate differential.
 - (g) Identification of a nationally recognized index which index must be free from control of the mortgage broker or mortgage lender.
- (4) The estimated net proceeds to be paid directly to the borrower.

“Estimated net proceeds” means the cash to be received by the borrower after payment of any fees, charges, debts, liens, or encumbrances to perfect the lien of the new mortgage and establish the agreed-upon priority of the new mortgage.
- (5) The lien priority of the new proposed mortgage.
- (6) The number of calendar days, which are mutually agreed upon, within which the mortgage broker shall obtain a bona fide mortgage commitment.
- (7)(a) The following statement, in at least 12-point boldface type immediately above the signature lines for the borrowers:

“You are entering into a contract with a mortgage broker to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage broker obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the loan origination fees even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the loan origination fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Office of Financial Regulation, Tallahassee, Florida, regarding any complaints that the

borrower may have against the loan originator. The telephone number of the office is: (insert telephone number)."

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

(8) Any other disclosure required pursuant to s. 494.0038.

History.—s. 13, ch. 95-313; s. 23, ch. 99-155; s. 536, ch. 2003-261; s. 39, ch. 2009-241; s. 8, ch. 2011-71.

494.0043 Requirements for brokering loans to noninstitutional investors.

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

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

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

1. If a title insurance policy is issued, it must insure the noninstitutional investor against the unmarketability of the mortgagee's interest in such title. It must also specify any superior liens that exist against the property. If an opinion of title is issued by an attorney, the opinion must include a statement as to the marketability of the title to the property described in the mortgage and specify the priority of the mortgage being closed.

2. If the title insurance policy or opinion of title is not available at the time of purchase, the licensee shall provide a binder of the title insurance or conditional opinion of title. This binder or opinion must include any conditions or requirements that need to be corrected before the issuance of the final title policy or opinion of title. The binder or opinion must also include information concerning the requirements specified in subparagraph 1. Any

conditions must be eliminated or waived in writing by the investor before delivery to the noninstitutional investor. The policy or opinion, or a copy thereof, shall be delivered to the investor within a reasonable period of time, not exceeding 6 months, after closing.

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

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

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

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

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

(4) Any money from a noninstitutional investor for disbursement at a mortgage loan closing must be deposited with and disbursed by an attorney duly licensed in this state or by a title company duly licensed in this state. A person acting as a loan originator may not have control of any money from a noninstitutional investor. This subsection does not prohibit a licensee under this part from receiving a loan origination fee upon the closing of the mortgage loan funded by the noninstitutional investor.

History.— ss. 30, 50, ch. 91-245; s. 4, ch. 91-429; s. 40, ch. 2009-241.

PART III
MORTGAGE LENDERS

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494.00611 Mortgage lender license. —

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

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

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

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

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

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

1. The fingerprints may be submitted to the registry, the office, or a vendor acting on behalf of the registry or the office.
2. The office may contract with a third-party vendor to provide live-scan fingerprinting in lieu of a paper fingerprint card.
3. A state criminal history background check must be conducted through the Department of Law Enforcement, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.
4. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the department to participate in the system and inform the department of any person whose fingerprints are no longer required to be retained.
5. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.
6. The office is responsible for reviewing the results of the state and federal criminal history checks and determining whether the applicant meets licensure requirements.
 - (e) Indicate whether the applicant will be seeking a servicing endorsement on the application form.
 - (f) Submit a copy of the applicant's financial audit report for the most recent fiscal year, pursuant to United States generally accepted accounting principles. If the applicant is a wholly owned subsidiary of another corporation, the financial audit report for the parent corporation satisfies this requirement. The commission may establish by rule the form and procedures for filing the financial audit report, including the requirement to file the report with the registry when technology is available. The financial audit report must document that the applicant has a bona fide and verifiable net worth, of at least \$63,000 if the applicant is not seeking a servicing endorsement, or at least \$250,000 if the applicant is seeking a servicing endorsement, which must be continuously maintained as a condition of licensure. However, if the

applicant held an active license issued before October 1, 2010, pursuant to former s. 494.0065, and the applicant is seeking a servicing endorsement, the minimum net worth requirement:

1. Until September 30, 2011, is \$63,000.
2. Between October 1, 2011, and September 30, 2012, is \$125,000.
3. On or after October 1, 2012, is \$250,000.

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

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

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

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

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

(a) Has committed any violation specified in ss. 494.001-494.0077, or is the subject of a pending felony criminal prosecution or a prosecution or an

administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.

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

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

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

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

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

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

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

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

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

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

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

History.—s. 43, ch. 2009-241; s. 110, ch. 2010-5.

494.00612 Mortgage lender license renewal.—

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

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

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

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

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

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

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

(2) The office may not renew a mortgage lender license unless the mortgage lender continues to meet the minimum requirements for initial licensure pursuant to s. 494.00611 and adopted rule.

History.— s. 44, ch. 2009-241; s. 9, ch. 2011-71.

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

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

History.— ss. 34, 50, ch. 91-245; s. 4, ch. 91-429; s. 46, ch. 2009-241.

494.0066 Branch offices.—

(1) Each branch office of a mortgage lender must be licensed under this section.

(2) The office shall issue a branch office license to a mortgage lender after the office determines that the mortgage lender has submitted a completed branch office application form as prescribed by rule by the commission and an initial nonrefundable branch office license fee of \$225 per branch office. Application fees may not be prorated for partial years of licensure. The branch office application must include the name and license number of the mortgage lender under this part, the name of the branch manager in charge of the branch office, and the address of the branch office. The branch office license shall be issued in the name of the mortgage lender and must be renewed in conjunction with the license renewal. An application is considered received for purposes of s. 120.60 upon receipt of a completed branch office renewal form, as prescribed by commission rule, and the required fees.

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

History.— ss. 37, 50, ch. 91-245; s. 4, ch. 91-429; s. 22, ch. 99-213; s. 541, ch. 2003-261; s. 19, ch. 2006-213; s. 49, ch. 2009-241; s. 111, ch. 2010-5.

494.00665 Principal loan originator and branch manager for mortgage lender.—

(1) Each mortgage lender business must be operated by a principal loan originator who shall have full charge, control, and supervision of the

mortgage lender business. The principal loan originator must be licensed as a loan originator pursuant to s. 494.00312. Each mortgage lender must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the business shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage lender business, or any other person in a similar capacity during that time.

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

History.—s. 50, ch. 2009-241.

494.0067 Requirements of mortgage lenders.—

(1) A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business. Each principal place of business and each branch office shall be operated under the full charge, control, and supervision of the licensee pursuant to this part.

(2) A license issued under this part is not transferable or assignable.

(3) A mortgage lender shall report, on a form prescribed by rule of the commission, any change in the information contained in any initial application form, or any amendment thereto, within 30 days after the change is effective.

(4) A mortgage lender shall report any changes in the principal loan originator, any addition or subtraction of a control person, or any change in

the form of business organization by written amendment in such form and at such time that the commission specifies by rule. Any addition of a control person who has not previously filed a Uniform Mortgage Biographical Statement & Consent Form, MU2, or has not previously complied with the fingerprinting and credit report requirements of s. 494.00611 is subject to the provisions of this section. If, after the addition of a control person, the office determines that the licensee does not continue to meet licensure requirements, the office may bring administrative action in accordance with s. 494.00255 to enforce this section.

(5) Each mortgage lender shall report in a form prescribed by rule of the commission any indictment, information, charge, conviction, or plea of guilty or nolo contendere, regardless of adjudication, to any felony or any crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the licensee or any principal officer, director, or ultimate equitable owner of 10 percent or more of the licensed corporation, within 30 business days after the indictment, information, charge, conviction, or final administrative action.

(6) Each mortgage lender shall report any action in bankruptcy, voluntary or involuntary, to the office, within 30 business days after the action is instituted.

(7) Each mortgage lender shall designate a registered agent in this state for service of process.

(8) Each mortgage lender shall provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan. The good faith estimate of costs must be mailed or delivered to the applicant within 3 business days after the licensee receives a written loan application from the applicant. The estimate of costs may be provided to the applicant by a person other than the licensee making the loan. The good faith estimate must identify the recipient of all payments charged to the borrower and, except for all fees to be received by the mortgage broker and the mortgage lender, may be disclosed in generic terms, such as, but not limited to, paid to appraiser, officials, title company, or any other third-party

service provider. The licensee bears the burden of proving such disclosures were provided to the borrower. The commission may adopt rules that set forth the disclosure requirements of this section.

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

(10) In every mortgage loan transaction, each mortgage lender shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but at least 3 business days before signing the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

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

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

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

History.— ss. 38, 50, ch. 91-245; s. 4, ch. 91-429; ss. 23, 24, ch. 99-213; s. 9, ch. 2001-228; s. 542, ch. 2003-261; s. 20, ch. 2006-213; s. 10, ch. 2007-182; s. 51, ch. 2009-241; s. 4, ch. 2010-67; s. 10, ch. 2011-71.

494.0068 Loan application process.—

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

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

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

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

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

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

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

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

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

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

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

History.— ss. 39, 50, ch. 91-245; s. 4, ch. 91-429; s. 52, ch. 2009-241.

494.0069 Lock-in agreement.—

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

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

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

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

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

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

(f) A statement advising of the provisions of this part regarding lock-in agreements.

(2) The mortgage lender shall make a good faith effort to process the mortgage loan application and stand ready to fulfill the terms of its

commitment before the expiration date of the lock-in agreement or any extension thereof.

(3) Any lock-in agreement received by a mortgage lender by mail or through a mortgage broker must be signed by the mortgage lender in order to become effective. The borrower may rescind any lock-in agreement until a written confirmation of the agreement has been signed by the lender and mailed to the borrower or to the mortgage broker pursuant to its contractual relationship with the borrower. If a borrower elects to so rescind, the mortgage lender shall promptly refund any lock-in fee paid.

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

(a) A mortgage lender that does not comply with this subsection may issue mortgage rate lock-in agreements only if, prior to the issuance, the mortgage lender:

1. Has received a written rate lock-in agreement from a mortgage lender that complies with this subsection; or
2. Has received a written rate lock-in agreement from an institutional investor or an agency of the Federal Government or the state or local government that will be funding, making, or purchasing the mortgage loan.

(b) All rate lock-in fees collected by a mortgage lender who is not in compliance must be deposited into an escrow account in a federally insured financial institution, and such fees may not be removed from such escrow account until:

1. The mortgage loan closes and is funded;
2. The applicant cancels the loan application or the loan application is rejected; or
3. The mortgage lender is required to forward a portion of the lock-in fee to another mortgage lender, institutional investor, or agency that will be

funding, making, or purchasing the loan. The mortgage lender may remove only the amount of the lock-in fee actually paid to another mortgage lender, institutional investor, or agency.

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

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

History.—ss. 40, 50, ch. 91-245; s. 4, ch. 91-429; s. 18, ch. 95-313; s. 543, ch. 2003-261; s. 53, ch. 2009-241.

494.007 Commitment process.—

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

- (a) The expiration date of the commitment;
- (b) The mortgage amount, meaning the face amount of credit provided to the borrower or in the borrower’s behalf;
- (c) If the interest rate or other terms are subject to change before expiration of the commitment:
 - 1. The basis, index, or method, if any, which will be used to determine the rate at closing. Such basis, index, or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or
 - 2. The following statement, in at least 10-point bold type: “The interest rate will be the rate established by the lender in its discretion as its prevailing rate . . . days before closing.”;
- (d) The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee is refundable; and
- (e) The time, if any, within which the commitment must be accepted by the borrower.

(2) The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. If any

information necessary for an accurate disclosure required by subsection (1) is unknown to the mortgage lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.

(3) A commitment fee is refundable if:

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

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

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

History.— ss. 41, 50, ch. 91-245; s. 4, ch. 91-429; s. 54, ch. 2009-241.

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

History.— ss. 42, 50, ch. 91-245; s. 4, ch. 91-429; s. 19, ch. 95-313; s. 55, ch. 2009-241.

494.00721 Net worth.—

(1) The net worth requirements in s. 494.00611 shall be continually maintained as a condition of licensure.

(2) If a mortgage lender fails to satisfy the net worth requirements, the mortgage lender shall immediately cease taking any new mortgage loan applications. Thereafter, the mortgage lender shall have up to 60 days within which to satisfy the net worth requirements. If the licensee makes the office aware, prior to an examination, that the licensee no longer meets the net worth requirements, the mortgage lender shall have 120 days within which to satisfy the net worth requirements. A mortgage lender may not resume acting as a mortgage lender without written authorization from the office, which

authorization shall be granted if the mortgage lender provides the office with documentation which satisfies the requirements of s. 494.00611, whichever is applicable.

(3) If the mortgage lender does not satisfy the net worth requirements within 120 days, the license of the mortgage lender shall be deemed to be relinquished and canceled and all servicing contracts shall be disposed of in a timely manner by the mortgage lender.

History.—s. 20, ch. 95-313; s. 545, ch. 2003-261; s. 22, ch. 2006-213; s. 57, ch. 2009-241.

494.0073 Mortgage lender when acting as a mortgage broker.— The provisions of this part do not prohibit a mortgage lender from acting as a mortgage broker. However, in mortgage transactions in which a mortgage lender acts as a mortgage broker, the provisions of ss. 494.0038, 494.004(2), 494.0042, and 494.0043(1), (2), and (3) apply.

History.—ss. 44, 50, ch. 91-245; s. 4, ch. 91-429; s. 26, ch. 99-213; s. 12, ch. 2007-182; s. 58, ch. 2009-241.

494.0074 Lender fees and charges.—

(1) In a mortgage financing transaction, fees designated as loan origination fees, up to 4 percent of the face amount of the loan or line of credit, are not considered interest or finance charge under chapter 687.

(2) In a mortgage finance transaction, fees designated as loan origination fees, up to 10 percent of the face amount of the loan or line of credit, are not considered interest or finance charges under chapter 687 if such licensee sells or assigns the loan to another person within 90 days after the date the loan was funded.

History.—ss. 46, 50, ch. 91-245; s. 4, ch. 91-429.

494.0075 Requirements for selling loans to noninstitutional investors.—

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

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

value of the property as it exists on the date of the opinion. If any relationship exists between the lender and the appraiser, that relationship must be disclosed.

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

1. If a title insurance policy is issued, it must insure the noninstitutional investor against the unmarketability of the mortgagee's interest in such title. It must also specify any superior liens that exist against the property. If an opinion of title is issued by an attorney, the opinion must include a statement as to the marketability of the title to the property described in the mortgage and specify the priority of the mortgage being purchased.

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

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

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

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

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

(3) Each mortgage and assignment shall be recorded as soon as practical, but within 30 business days after the date of purchase.

(4) If the loan is to be serviced by a licensee under this part for a noninstitutional investor, there shall be a written servicing agreement.

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

History.—ss. 47, 50, ch. 91-245; s. 4, ch. 91-429; s. 59, ch. 2009-241.

494.0076 Servicing audits.—

(1)(a) Each licensee under this part who services mortgage loans shall:

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

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

(b) For fiscal years ending after January 1, 1992, such records and receipts shall be audited annually pursuant to the Uniform Single Audit Program for Mortgage Bankers as approved by the Mortgage Bankers Association of America with the cooperation of the American Institute of Certified Public Accountants.

(c) The audited statement shall be maintained at the licensee's place of business.

(2)(a) In lieu of the audit referred to in subsection (1), a person who services an aggregate value of less than \$7.5 million in outstanding mortgage loans, excluding mortgage loans serviced under contract as an agent for federal, state, or municipal agencies, may obtain a fidelity bond, financial

guaranty bond, fidelity insurance, or other financial guaranty providing protection against theft, loss, or other illegal diversion of funds for any amounts normally held by such person.

(b) The commission may adopt rules to ensure that investors are adequately protected under this subsection.

History.— ss. 48, 50, ch. 91-245; s. 4, ch. 91-429; s. 546, ch. 2003-261; s. 60, ch. 2009-241.

494.0077 Other products and services.— This part does not prohibit a mortgage lender from offering, for a fee or commission, products and services in addition to those offered in conjunction with making a mortgage loan.

History.— ss. 49, 50, ch. 91-245; s. 4, ch. 91-429; s. 61, ch. 2009-241.

PART IV

FLORIDA FAIR LENDING ACT

494.0078 Short title; purposes.

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494.00791 Prohibited acts.

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494.00796 Enforcement.

494.00797 General rule.

494.0078 Short title; purposes.—

(1) This act shall be known as the “Florida Fair Lending Act.”

(2)(a) The Legislature finds that abusive mortgage lending has become a problem in this state even though most high-cost home loans do not involve abusive mortgage practices. One of the most common forms of abusive lending is the making of loans that are equity-based rather than income-based. The financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans. As long as there is sufficient equity in the home, an abusive

creditor benefits even if the borrower is unable to make the payments and is forced to refinance. The financing of high points and fees causes the loss of equity in each refinancing and often leads to foreclosure.

(b) Abusive lending has threatened the viability of many communities and caused decreases in home ownership. While the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loan. The Legislature finds that as competition and self-regulation have not eliminated the abusive terms from home-secured loans, the consumer protection provisions of this act are necessary to encourage fair lending.

History.—s. 1, ch. 2002-57.

494.0079 Definitions.— As used in this act:

(1) “Affiliate” means any company that controls, is controlled by, or is in common control with another company, as set forth in 12 U.S.C. ss. 1841 et seq. and the regulations adopted thereunder.

(2) “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of 15 U.S.C. s. 1606 and the regulations adopted thereunder by the Federal Reserve Board.

(3) “Borrower” means any natural person obligated to repay a loan, including, but not limited to, a coborrower, cosignor, or guarantor.

(4) “Bridge loan” means a loan with a maturity of less than 18 months that only requires the payment of interest until such time as the entire unpaid balance is due and payable.

(5) “Commission” means the Financial Services Commission.

(6) “Office” means the Office of Financial Regulation of the commission.

(7) “High-cost home loan” means a home loan as defined in 15 U.S.C. s. 1602(aa) and regulations adopted thereunder.

(8) “Lender” means any person who makes a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan, but shall not include any entity

chartered by the United States Congress when engaging in secondary market mortgage transactions as an assignee or otherwise.

History.—s. 2, ch. 2002-57; s. 547, ch. 2003-261.

494.00791 Prohibited acts.—

(1) PREPAYMENT PENALTIES.—

(a) A high-cost home loan may not contain terms that require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

(b) Notwithstanding paragraph (a), a lender making a high-cost home loan may include in the loan contract a prepayment fee or penalty, for up to the first 36 months after the date of consummation of the loan, if:

1. The borrower has also been offered a choice of another product without a prepayment penalty.

2. The borrower has been given, at least 3 business days prior to the loan consummation, a written disclosure of the terms of the prepayment fee or penalty by the lender, including the benefit the borrower will receive for accepting the prepayment fee or penalty through either a reduced interest rate on the loan or reduced points or fees.

(2) DEFAULT INTEREST RATE.—A high-cost home loan may not provide for a higher interest rate after default on the loan. However, this prohibition does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in interest rate is not triggered by a default or the acceleration of the interest rate.

(3) BALLOON PAYMENTS.—A high-cost home loan having a term of less than 10 years may not contain terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. However, this prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the loan is a bridge loan.

(4) NEGATIVE AMORTIZATION.—A high-cost home loan may not contain terms under which the outstanding principal balance will increase at

any time over the course of the loan because the regular periodic payments do not cover the full amount of the interest due.

(5) PREPAID PAYMENTS.— A high-cost home loan may not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT ABILITY OF THE BORROWER.— A lender making a high-cost home loan shall not engage in any pattern or practice of extending high-cost home loans to borrowers based upon the borrowers' collateral without regard to the borrowers' ability to repay the loan, including the borrowers' current and expected income, current obligations, and employment.

(7) PAYMENTS TO A HOME CONTRACTOR.— A lender shall not make any payments to a contractor under a home improvement contract from amounts of a high-cost home loan other than:

(a) In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or

(b) At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the date of payment.

(8) DUE-ON-DEMAND CLAUSE.— A high-cost home loan may not contain a provision that permits the lender, in its sole discretion, to call or accelerate the indebtedness. This provision does not prohibit acceleration of the loan due to the borrower's failure to abide by the terms of the loan, or due to fraud or material misrepresentation by the consumer in connection with the loan.

(9) REFINANCING WITHIN AN 18-MONTH PERIOD.—

(a) A lender, its affiliate, or an assignee shall not refinance any high-cost home loan to the same borrower within the first 18 months of the loan when the refinancing does not have a reasonable benefit to the borrower considering all of the circumstances, including, but not limited to, the terms of

both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

(b) A lender or assignee shall not engage in acts or practices to evade this requirement, including a pattern or practice of arranging for the refinancing of the lender's or assignee's own loans by affiliated or unaffiliated lenders or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee.

(10) OPEN-ENDED LOANS.— A lender shall not make any loan as an open-ended loan in order to evade the provisions of this act unless such open-ended loans meet the definition in 12 C.F.R. s. 226.2(a)(20).

(11) RECOMMENDATION OF DEFAULT.— A lender shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of such existing loan or debt.

(12) PROHIBITED DOOR-TO-DOOR LOANS.— A high-cost home loan may not be made as a direct result of a potential or future lender or its representative offering or selling a high-cost home loan at the residence of a potential borrower without a prearranged appointment with the potential borrower or the expressed invitation of the potential borrower. This subsection does not apply to mail solicitations that may be received by the potential borrower.

(13) LATE PAYMENT FEES.— A lender may not charge a late payment fee for a high-cost home loan except as provided in this subsection:

(a) A late payment fee may not be in excess of 5 percent of the amount of the payment past due.

(b) A late payment fee may only be assessed for a payment past due for 15 days or more.

(c) A late payment fee may not be charged more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been imposed once with respect to a particular late payment,

no such fee shall be imposed with respect to any future payment which would have been timely and sufficient, but for the previous default.

(14) **MODIFICATION OR DEFERRAL FEES.**— A lender may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan on a minimum of one modification, renewal, extension, or deferral per each 12 months of the length of the loan.

History.— s. 3, ch. 2002-57.

494.00792 Required disclosures for high-cost home loans.—

(1) In addition to other disclosures required by law and in conspicuous type:

(a) *Notice to borrower.*— A lender making a high-cost home loan shall provide a notice to a borrower in substantially the following form:

If you obtain this high-cost home loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your employment history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could also vary based upon which lender or broker you select. As a borrower, you should shop around and compare loan rates and fees.

You should also consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rates, fees, and provisions of this mortgage loan before you proceed. You should contact the United States Department of Housing and Urban Development for a list of credit counselors available in your area.

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

Borrowing for the purpose of debt consolidation can be an appropriate financial management tool. However, if you continue to incur significant new credit card charges or other debts after this high-cost home loan is closed and

then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Remember that property taxes and homeowners' insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Also, your payments on existing debts contribute to your credit rating. You should not accept any advice to ignore your regular payments to your existing creditors.

(b) *Annual percentage rate.*— A lender making a high-cost home loan shall disclose:

1. In the case of a fixed mortgage, the annual percentage rate and the amount of the regular monthly payment.

2. In the case of any other credit transaction, the annual percentage rate, the amount of the regular monthly payment and the amount of any balloon payment permitted under this section, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment based upon the maximum interest rate allowed pursuant to law.

(c) *Notice to purchasers and assignees.*— All high-cost home loans shall contain the following notice:

Notice: This is a mortgage subject to the provisions of the Florida Fair Lending Act. Purchasers and assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage which the borrower could assert against the creditor.

(2) **TIMING OF DISCLOSURE.**—

- (a) The disclosure required by this subsection shall be given not less than 3 business days prior to the consummation of the high-cost home loan.

- (b) New disclosures are required when, after disclosure is made, the lender making the high-cost home loan changes the terms of the extension of credit, including if such changes make the original disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(c) A lender may provide new disclosures pursuant to paragraph (b) by telephone, if:

1. The change is initiated by the borrower.
2. At the consummation of the high-cost home loan:
 - a. The lender provides the disclosures in writing to the borrower.
 - b. The lender and the borrower certify in writing that the new disclosures were provided by telephone no later than 3 days prior to the consummation of the high-cost home loan.

(d) A creditor must disclose to any high-cost home loan borrower the rights of the borrower to rescind the high-cost home loan within 3 business days pursuant to 15 U.S.C. s. 1635(a) and shall provide appropriate forms for the borrower to exercise his or her right to rescission. The notice, forms, and provisions thereof must be in accordance with the requirements of 15 U.S.C. s. 1635(a).

History.—s. 4, ch. 2002-57.

494.00793 Liability of purchasers and assignees.— Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all claims and defenses with respect to that mortgage that the borrower could assert against the creditor of the mortgage, to the same extent and subject to the same limitations that a borrower of a high-cost home loan may assert against an assignee or purchaser pursuant to 15 U.S.C. s. 1641.

History.—s. 5, ch. 2002-57.

494.00794 Right to cure high-cost home loans.—

(1) **RIGHT TO REINSTATE.**— For a high-cost home loan, if a lender asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower, or anyone authorized to act on the borrower's behalf, shall have the right, during the 45-day period set forth in subsection (2), to cure the default and reinstate the home loan by tendering the amount or performance as specified in this section. However, once a lender has provided two such notices as required by this section, for two separate incidents, a lender is not thereafter required to provide the notice required by this section, and the borrower is not entitled by

this section to cure the default, for a third or subsequent incident for which the lender asserts that grounds exist for acceleration of the loan and repayment in full. Cure of default as provided in this section shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

(2) **GROUND FOR REINSTATEMENT.**—Before any action filed to foreclose upon the home or other action is taken to seize or transfer ownership of the home, a notice of the right to cure the default must be delivered to the borrower at the address of the property upon which any security exists for the home loan by postage prepaid certified United States mail, return receipt requested, which notice is effective upon deposit in the United States mail, and shall inform the borrower:

(a) Of the nature of default claimed on the home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 45-day period after the effective date of the notice due to the application of a daily interest rate or the addition of late payment fees, as allowed by this act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 45-day period.

(b) Of the date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home, which date shall not be less than 45 days after the date the notice is effective, and the name and address and telephone number of a person to whom the payment or tender shall be made.

(c) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership of the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home.

(d) Of the name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with the creditor's assertion that a default has occurred or

the correctness of the creditor's calculation of the amount required to cure the default.

(3) FEES.—To cure a default under this section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this act. The borrower shall not be liable for any attorney's fees or costs relating to the borrower's default that are incurred by the creditor prior to or during the 45-day period set forth in paragraph (2)(b).

History.—s. 6, ch. 2002-57.

494.00795 Powers and duties of the commission and office; investigations; examinations; injunctions; orders. —

(1)(a) The commission and office are responsible for the administration and enforcement of this act.

(b) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this act. The commission may adopt rules to allow electronic submission of any forms, documents, or fees required by this act.

(2)(a) The office may conduct an investigation of any person whenever the office has reason to believe, upon complaint or otherwise, that any violation of the act has occurred.

(b) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the office setting forth the details of the alleged violation.

(c) The office may conduct examinations of any person to determine compliance with this act.

(3)(a) The office may bring action, through its own counsel in the name and on behalf of the state, against any person who has violated or is about to violate any provision of this act, or any rule or order issued under the act, to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(b) In any injunctive proceeding, the court may, on due showing by the office, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or

other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(4) The office may issue and serve upon any person an order to cease and desist and to take corrective action whenever the office has reason to believe the person is violating, has violated, or is about to violate any provision of this act, any rule or order issued under this act, or any written agreement between the person and the office. All procedural matters relating to issuance and enforcement of cease and desist orders are governed by the Administrative Procedure Act.

(5) Whenever the office finds a person in violation of this act, it may enter an order imposing a fine in an amount not exceeding \$5,000 for each count or separate offense, provided that the aggregate fine for all violations of this act that could have been asserted at the time of the order imposing the fine shall not exceed \$500,000.

(6) Any violation of this act shall also be deemed to be a violation of this chapter, chapter 516, chapter 520, chapter 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter 665, or chapter 667. The commission may adopt rules to enforce this subsection.

History.—s. 7, ch. 2002-57; s. 548, ch. 2003-261.

494.00796 Enforcement.—

(1) Any person or the agent, officer, or other representative of any person committing a material violation of the provisions of this act shall forfeit the entire interest charged in the high-cost home loan or contracted to be charged or received, and only the principal sum of such high-cost home loan can be enforced in any court in this state, either at law or in equity.

(2) A creditor in a home loan who, when acting in good faith, fails to comply with the provisions of this act shall not be deemed to have violated this act if the creditor establishes that within 60 days after receiving any notice from the borrower of the compliance failure, which compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the borrower has been notified of the compliance failure, appropriate restitution

has been made to the borrower, and appropriate adjustments are made to the loan. Bona fide errors shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(3) The remedies provided in this section are cumulative.

History.—s. 8, ch. 2002-57.

494.00797 General rule.— All counties and municipalities of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the office, including for activities subject to this chapter, except entities licensed under s. 537.004;

(2) Are subject to the jurisdiction of the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) Originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subsection (1) or subsection (2) to assist or facilitate such transactions;

(4) Are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) Are created by the Florida Housing Finance Corporation.

Proof of noncompliance with this act can be used by a city, county, or municipality of this state to disqualify a vendor or contractor from doing business with a city, county, or municipality of this state.

History.—s. 9, ch. 2002-57; s. 549, ch. 2003-261.

PART V

LOANS UNDER FLORIDA UNIFORM
LAND SALES PRACTICES LAW

494.008 Mortgages offered by land developers; requirements; prohibitions.

494.008 Mortgages offered by land developers; requirements;

prohibitions.— No mortgage loan which has a face amount of \$35,000 or less and is secured by vacant land shall be sold to a mortgagee, except a financial institution, by any person unless all of the following requirements are met:

- (1) Each mortgage securing a note or other obligation sold or offered for sale shall be eligible for a recordation as a first mortgage.
- (2) Each mortgage negotiated pursuant to this section must include a mortgagee's title insurance policy or an opinion of title, from an attorney who is licensed to practice law in this state, on each parcel of land which is described in the mortgage. The policy or opinion shall reflect that there are no other mortgages on the property. A notice stating the priority of the mortgage shall be placed on the face of each mortgage in an amount over \$35,000 issued pursuant to this section.
- (3) Contracts to purchase a mortgage loan shall contain, immediately above the purchaser's signature line, the statement in 10-point boldfaced type: "This mortgage is secured by vacant land subject to development at a future time." This statement shall also be typed or printed in 10-point type on the face of the note and mortgage sold.
- (4) The most recent assessment for tax purposes made by the county property appraiser of each parcel of land described in the mortgage shall be furnished to each mortgagee.
- (5) The mortgage broker shall record or cause to be recorded all mortgages or other similar documents prior to delivery of the note and mortgage to the mortgagee.

(6) All funds received by the mortgage broker pursuant to this section shall promptly be deposited in the broker's trust account where they shall remain until the note and mortgage are fully executed and recorded.

(7) Willful failure to comply with any of the above provisions shall subject the person to the penalties of ¹s. 494.05.

History.—s. 3, ch. 77-397; s. 376, ch. 81-259; s. 2, ch. 81-318; ss. 10, 30, ch. 86-68; s. 50, ch. 91-245; s. 4, ch. 91-429; s. 33, ch. 2008-240.

¹**Note.**— Repealed by s. 29, ch. 86-68.

Note.— Former s. 494.041.

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