

**CHAPTER 69V-40**  
**MORTGAGE BROKERAGE**

- 69V-40.001 Definitions (Repealed)
- 69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure
- 69V-40.002 Adoption of Forms
- 69V-40.003 Electronic Filing of Forms and Fees
- 69V-40.008 Fees and Commissions
- 69V-40.011 Misleading Practice; Penalty
- 69V-40.0113 Demonstrating Character, General Fitness, and Financial Responsibility
- 69V-40.015 Payment of Guaranty Fund Claims (Repealed)
- 69V-40.020 Changes of Address (Repealed)
- 69V-40.021 Fictitious Name Registration (Repealed)
- 69V-40.022 Quarterly Report Filing Requirements (Repealed)
- 69V-40.025 Mortgage Broker Examination (Repealed)
- 69V-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education (Repealed)
- 69V-40.027 Mortgage Broker Pre-licensing Education Requirement (Repealed)
- 69V-40.0271 Professional Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives (Repealed)
- 69V-40.028 Permit for Mortgage Business School (Repealed)
- 69V-40.0281 Mortgage Business Schools Prohibited Practices and Advertising/Publicity (Repealed)
- 69V-40.029 Mortgage Business School Permit Renewal (Repealed) (Repealed)
- 69V-40.030 Accreditation Process for a Mortgage Business School (Repealed)
- 69V-40.031 Application Procedure for Mortgage Broker License (Repealed)
- 69V-40.0311 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure (Repealed)
- 69V-40.0312 Application Procedure for Loan Originator License
- 69V-40.0313 Loan Originator License Renewal
- 69V-40.0321 Application Procedure for a Mortgage Broker License
- 69V-40.0322 Mortgage Broker License Renewal
- 69V-40.033 Disciplinary Guidelines for Mortgage Business Schools (Repealed)
- 69V-40.0331 Declaration of Intent to Engage Solely in Loan Processing
- 69V-40.036 Application Procedure for a Mortgage Broker Branch Office License
- 69V-40.043 Mortgage Broker License Renewal and Reactivation (Repealed)
- 69V-40.051 Application Procedure for Mortgage Brokerage Business License (Repealed)
- 69V-40.0511 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure (Repealed)
- 69V-40.053 Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation (Repealed)
- 69V-40.058 Application Procedure for Mortgage Brokerage Business Branch Office License (Repealed)
- 69V-40.060 Fees Earned Upon Obtaining a Bona Fide Commitment (Repealed)
- 69V-40.0611 Application Procedure for a Mortgage Lender License
- 69V-40.0612 Mortgage Lender License Renewal
- 69V-40.066 Application Procedure for a Mortgage Lender Branch Office License
- 69V-40.088 Referrals (Repealed)
- 69V-40.099 Amendments, Change of Name, Change of Entity and Change in Control or Ownership
- 69V-40.100 Application Procedure for Transfer in Ownership or Control of Saving Clause Mortgage Lender (Repealed)
- 69V-40.105 Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender (Repealed)
- 69V-40.111 Disciplinary Guidelines
- 69V-40.150 Out of State Examination Costs
- 69V-40.155 Lock-in Statement
- 69V-40.156 Third-party Fee Accounts
- 69V-40.160 Principal Brokers (Repealed)
- 69V-40.165 Branch Brokers (Repealed)
- 69V-40.170 Books and Records
- 69V-40.175 Mortgage Brokerage Files

69V-40.177	Mortgage Brokerage and Lending Transaction Journal
69V-40.200	Application Procedure for Mortgage Lender License (Repealed)
69V-40.201	Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure (Repealed)
69V-40.205	Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation (Repealed)
69V-40.220	Application Procedure for Correspondent Mortgage Lender License (Repealed)
69V-40.225	Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation (Repealed)
69V-40.240	Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License (Repealed)
69V-40.242	Principal Representative (Repealed)
69V-40.245	Independent Contractors
69V-40.250	Documentation of Net Worth and Surety Bond (Repealed)
69V-40.260	Mortgage Lender Files
69V-40.265	Mortgage Brokerage and Lending Transaction Journal
69V-40.270	Financial Guaranty in Lieu of Uniform Single Audit
69V-40.285	Noninstitutional Investor Funds Account
69V-40.290	Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender (Repealed)

#### **69V-40.001 Definitions.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.00115(2)(e), (f), 494.0043 FS. History—Revised 9-23-65, Renumbered from 3-3.01 to 3D-40.01 on 9-8-75, Formerly 3D-40.01, Amended 12-7-89, 6-23-91, 8-24-92, 2-11-93, 11-17-93, 4-14-94, 9-7-94, 5-14-95, 7-25-96, 12-12-99, 12-8-02, Formerly 3D-40.001, Amended 3-23-08, Repealed 10-1-10.*

#### **69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure.**

(1) General Procedure Regarding Law Enforcement Records. For the purposes of this rule each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant shall be referred to collectively as “relevant persons.” If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule. As part of the application review process, the Office is required to consider a relevant person’s law enforcement record when deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender. When conducting this review, the Office reviews the relevant person’s Form MU1, MU2 or MU4 responses and criminal history information derived from the fingerprint check. In the event of a question regarding the relevant person’s criminal history, the Office will request additional information from the relevant person to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined to be relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. The requested documents must be legible. Documentation that is typically requested includes:

- (a) A copy of the police arrest affidavit, arrest report or similar document.
- (b) A certified copy of the charges.
- (c) A certified copy of the plea, judgment, and sentence where applicable.
- (d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.
- (e) A certified copy of an order of termination of probation or supervised release, if applicable. If the requested documentation cannot be obtained, the relevant person shall submit evidence of that fact in order for the application to be deemed complete. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

#### (2) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C and D as listed in subsections (13), (14), (15) and (16) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names and descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(3) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applications with a relevant person whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant is not eligible for licensure.

(b) Class B Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(d) Class D Crime. The applicant will not be granted a license until 5 years have passed since the trigger date.

(4) Applicants With Multiple Crimes.

(a) The Office requires that applications with a relevant person whose law enforcement record includes multiple class "B", "C", or "D" crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the disqualifying period for the most serious class "B", "C", or "D" crime, and the combined total disqualifying period then runs from the trigger date of the most recent class "B", "C", or "D" crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For the purposes of this rule, two (2) or more offenses are considered a single crime if they are based on the same act or transaction or on two (2) or more connected acts or transactions.

(5) Mitigating Factors.

(a) The disqualifying period for a Class "B" crime shall be shortened upon proof of one or more of the following factors. When more than one factor is present the applicant is entitled to add together all of the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the relevant person would pose no significant threat to public welfare if the applicant is licensed as a loan originator, mortgage broker, or mortgage lender.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the relevant person was under age 21 when the crime was committed and there is only one crime in the relevant person's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the relevant person was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(6) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of plea, e.g., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the relevant person was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witness or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) Subjective Factors. The Office finds that subjective factors involving state of mind have no mitigating weight.

(7) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of licensure.

(8) Pre-Trial Intervention. If at the time of application a relevant person is participating in a pre-trial intervention program based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S., the Office will deny the application for license. The Office considers participation in a pre-trial intervention program to be a pending criminal prosecution under Chapter 494, F.S., and finds it necessary to the public welfare to wait until final disposition of all charges of criminal conduct that would authorize denial of a license under Chapter 494, F.S., before an application for licensure may be considered.

(9) Effect of Sealing or Expunging of Criminal Record.

(a) A relevant person is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after an application has been filed, but before a licensing decision is made by the Office. In such situation the Office policy is as follows:

1. If the relevant person properly disclosed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Chapter 494, F.S.

(10) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(11) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while a relevant person is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant when a relevant person has been released from imprisonment, based upon a charge of criminal conduct that

would authorize denial of licensure under Chapter 494, F.S., until the later of the period otherwise set out in the rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare. For the purposes of this section, the term "imprisonment" shall include confinement in a state or federal prison or county jail for a period of more than one year.

(b) Community Supervision. The Office shall not grant licensure when a relevant person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission or a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S.

(12) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(13) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand Theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money Laundering.

(14) Class "B" Crimes include the following list of felonies, or similar felonies, and the Office finds that such crimes constitute crimes of moral turpitude.

(a) Murder in all degrees.

(b) Arson.

(c) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(d) Aggravated Assault (e.g., as with a deadly weapon).

(e) Aggravated Battery (e.g., as with a deadly weapon).

(f) Rape.

(g) Sexually molesting any minor.

(h) Sexual battery.

- (i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.
- (j) Kidnapping.
- (k) Video Voyeurism.
- (15) Class “C” Crimes include all felonies not Class “A” or Class “B” Crimes.
- (16) Class “D” Crimes includes any misdemeanor that involves fraud, dishonesty, or any other act of moral turpitude.
- (17) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:
  - (a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;
  - (b) The degree of penalty associated with the same or similar crimes in the United States; and
  - (c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.
- (18) For purposes of this rule, “certified” means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer’s office and the issuer’s seal, if any.
- (19) Uniform Mortgage Lender/Mortgage Broker Form, MU1; Uniform Mortgage Biographical Statement & Consent Form, MU2; and Uniform Individual Mortgage License/Registration & Consent Form, MU4, are incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2)(c), 494.00312(2)(h), 494.00313(1)(e), 494.00321(2)(f), 494.00322(1)(e), 494.00611(2)(h), 494.00612(1)(f) FS. Law Implemented 494.0011(2)(c), 494.00312, 494.00313, 494.00321, 494.00322, 494.00611, 494.00612 FS. History—New 10-1-10.*

#### **69V-40.002 Adoption of Forms.**

- (1) The forms referred to in this section below are incorporated by reference and readopted by this rule for the purposes of Rules 69V-40.001-.285, F.A.C.:
  - (a) Registry Forms:
    1. Uniform Mortgage Lender/Mortgage Broker Form, MU1, dated January 25, 2010.
    2. Uniform Mortgage Biographical Statement & Consent Form, MU2, dated January 25, 2010.
    3. Uniform Mortgage Branch Office Form, MU3, dated January 2, 2008.
    4. Uniform Individual Mortgage License/Registration & Consent Form, MU4, dated January 25, 2010.
  - (b) Florida Forms:
    1. Mortgage Brokerage Deposit Account Form, Form OFR-494-09, effective March 23, 2008;
    2. Mortgage Brokerage Transaction and Lending Journal, Form OFR-494-10, effective March 23, 2008;
    3. Calculation of Aggregate Value of Mortgage Loans Serviced, Form OFR-494-11, effective March 23, 2008;
    4. Noninstitutional Investor’s Funds Account Form, Form OFR-494-12, effective March 23, 2008.
    5. Declaration of Intent to Engage Solely in Loan Processing, Form OFR-494-13, effective October 1, 2010.
- (2) All forms adopted by this rule are available on the Office’s website at [www.flofr.com](http://www.flofr.com) and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

*Rulemaking Authority 494.0011(2), 494.0016(4), 494.00312(2), 494.00313(1), 494.00321(1), 494.00322(1), 494.00331(2), 494.0036(2), 494.00611(2), 494.00612(1), 494.0066(2) FS. Law Implemented 494.0016, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.00611, 494.00612, 494.0066 FS. History—New 3-23-08, Amended 12-25-08, 10-1-10.*

#### **69V-40.003 Electronic Filing of Forms and Fees.**

- (1) All forms adopted under paragraph 69V-40.002(1)(a), F.A.C., must be electronically filed through the Registry.
- (2) Unless otherwise specifically instructed in this Rule Chapter all fees required in conjunction with an initial application, amendment, and license renewal must be filed electronically through the Registry.
- (3) Annual Financial Audit Reports required in Section 494.0063, F.S., must be filed electronically through the Registry.

*Rulemaking Authority 494.0011(2), 494.00611(2)(f), 494.0063 FS. Law Implemented 494.0011, 494.00611(2)(f), 494.0063 FS. History—New 10-21-08, Amended 10-1-10.*

**69V-40.008 Fees and Commissions.**

(1) A mortgage broker shall state in each contract for services the total fee to be received. The total fee shall not exceed the maximum as prescribed in Section 494.0042(2), F.S.

(2)(a) In determining the total loan origination fee, all compensation for the following services, by whatever name called, shall be included:

1. Arranging for a conditional mortgage loan commitment between a borrower and a lender;
2. Taking an application, assembling information and preparing all paperwork and documentation necessary for a conditional mortgage loan commitment;
3. Reviewing, analyzing, and evaluating a borrower's financial statements, income, and credit history; and
4. Incidental services utilized in arranging for and procuring a conditional loan commitment, such as, courier services, express mailings, and long distance telephone charges, except as provided in subparagraph (3)(a)12., below.
5. Premiums and other charges for insurance written in connection with a loan, except as provided in subparagraph (3)(a)5. below.

(b) The total loan origination fee shall include all compensation for the services described in paragraph (2)(a), whether or not the compensation is to be received by the licensee, a co-broker, an affiliate, or an independent third party.

(c) A good faith estimate does not supplant or substitute for the agreement required by Section 494.0038(1), F.S.

(3)(a) In addition to stating the total loan origination fee, the licensee shall provide a good faith estimate of costs for services or products that may be incurred or expended on behalf of the borrower in arranging for the loan. Services or products for which costs shall be estimated, but which are not required to be included in the loan origination fee include the following:

1. Appraisal fee charged to obtain a statement of property value for the lender prior to closing. This subparagraph shall not be construed to prevent a licensee or lender from setting reasonable criteria for the selection of an appraiser;
2. Inspection fees required by the lender, its agents, or a governmental body or agency or quasi-governmental body or agency for the security property;
3. Loan assumption fee and a transfer fee charged to enable the buyer to assume existing loans;
4. Pest inspection fee charged to cover inspections for termites or other pest infestations;
5. Charges for title insurance as defined in Section 624.608, F.S., abstract of title, title search fee, and fees for an attorney's title opinion. A licensee may not receive or accept any monetary consideration or inducement in connection with the issuance of a title insurance policy in a transaction in which he was involved;
6. Survey or topography fees charged to determine the exact location of any structures and the lot line, as well as easements and rights of way;
7. Mortgage guaranty insurance as defined in Section 635.011, F.S.;
8. Credit report fee;
9. Photograph fees for photographs of the property offered as security, if required by the lender in writing and acceptable photographs of the property have not been otherwise provided to the lender;
10. Flood hazard determination fee charged by an entity to assist lenders in determining whether the security property is in a flood hazard area;
11. Real estate tax service fee charged by an entity engaged in the business of assisting lenders or their agents in assuring that real property taxes are paid on the security property;
12. Incidental fees, such as, courier services and express mailings if pre-authorized in writing by the borrower;
13. Settlement or closing fee charged by a settlement agent for distributing the proceeds of the mortgage loan;
14. Attorney's fees;
15. Charges imposed by federal, state, county or municipal governments or government agencies or quasi-governmental agencies including, but not necessarily limited to, the cost of recording the mortgage, cost of documentary stamps, and intangible taxes for the mortgage;
16. Environmental audit costs required by the lender, or by local ordinances or state or federal law; and
17. Costs incurred in curing title defects affecting the security property.

(b) The costs enumerated in paragraph (3)(a) may be charged and collected provided they are itemized and supported by an actual expenditure.

(4)(a) Premiums or other charges for life, credit life, accident, health, or loss-of-income insurance written in connection with a

loan are not included in determining the loan origination fee if:

1. The licensee or registrant discloses to the borrower in writing that such insurance is not required to be purchased through the licensee; and

2. The licensee discloses to the borrower in writing the premiums for the initial term.

(b) Premiums or other charges for insurance that is written in connection with a mortgage loan and protects against loss or damage to property or liability arising out of the ownership or use of property are not included in determining the loan origination fee if the borrower may choose the insurance agent and the insurance provider.

(5) The loan origination fee does not include prepaid finance charges of the lender under the Federal Truth in Lending Act, as amended, and Federal Reserve Board Regulation Z that are disclosed on a Truth in Lending Disclosure form provided to the borrower.

(6) The maximum fees or commissions as provided in Section 494.0042(2), F.S., must be based on the net proceeds of the loan.

(7) In determining the maximum fees or commissions on the gross proceeds of a loan, the following method may be used: On loans in excess of \$1,000 and not over \$5,650, add \$1,500 to the gross proceeds of the loan and divide that sum by 11; and, on loans of \$5,760 and over, divide the gross proceeds by 11 and add \$227.27. On loans that are over \$5,650 but less than \$5,750, the maximum fee is the amount in excess of \$5,000.

(8) No person shall charge or exact, directly or indirectly, from the mortgagor or lender a fee or commission in excess of the maximum fees or commissions as set forth herein. All fees paid to or on behalf of the licensee including, but not limited to, bonus plans, advertisement allowances, incentive plans, kick-backs, premiums or discounts whether paid directly or indirectly or to an affiliate firm in which the licensee has an ownership interest, must be included in determining the maximum loan origination fees.

(9) All loan origination fees to other mortgage brokers disbursed from the loan proceeds shown on the closing statement shall reflect the name of each mortgage broker or co-brokering mortgage broker paid.

*Rulemaking Authority 494.0016(4), 494.0038(2)(b) FS. Law Implemented 494.0038, 494.0042 FS. History—Revised 9-23-65, Amended 9-1-67, 5-8-68, Renumbered from 3-3.08 to 3D-40.08 on 9-8-75, Amended 9-29-75, 4-27-77, Joint Administrative Procedures Committee Objection Filed—See FAW Vol. 2, No. 19, May 7, 1976, Joint Administrative Procedures Committee Objection Withdrawn—See FAW Vol. 3, No. 30, July 29, 1977, Amended 7-6-78, 2-5-80, 8-17-83, Formerly 3D-40.08, Amended 1-5-87, 5-24-89, 8-24-92, Formerly 3D-40.008, Amended 3-23-08, 10-1-10.*

#### **69V-40.011 Misleading Practice; Penalty.**

The taking and recording of a mortgage is tantamount to a commitment, and when funds are not available for immediate disbursement to the mortgagor, such procedure will be considered a misleading and deceptive practice, and to warrant suspension or revocation of the license of the licensee or registrant who does so, unless, prior to such recording, the licensee or registrant informs the mortgagor in writing of a definite date by which payment will be made, and secures the mortgagor's written permission for the delay thus entailed.

*Rulemaking Authority 494.0011(2) FS. Law Implemented 120.695, 494.0041 FS. History—Revised 9-23-65, Renumbered from 3-3.11 to 3D-40.11 on 9-8-75, Formerly 3D-40.11, Amended 1-5-87, 7-25-96, Formerly 3D-40.011.*

#### **69V-40.0113 Demonstrating Character, General Fitness, and Financial Responsibility.**

(1) Definitions. As used in this rule, the term:

(a) "Adverse credit history information" means the following:

1. Personal bankruptcy within the previous year.
2. Bankruptcy within the previous year of any organization based on events that occurred while the relevant person was a control person.
3. Outstanding tax lien or other governmental lien.
4. Outstanding judgment based upon grounds of fraud, embezzlement, misrepresentation, or deceit.
5. Open collection account or charged-off account that remains unpaid, except accounts related solely to unpaid medical expenses.
6. Foreclosure on personally owned property within the last 5 years.

(b) "Charged-off" means an account that has been identified by the creditor as an uncollectable debt.

(c) "Relevant person" means each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant. If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule.

(2) Adverse Credit History Information. If a relevant person's credit report or responses to the license application contains adverse credit history information, the Office will notify the applicant in writing of the specific items constituting adverse credit history information. The notification will also inform the applicant of the:

(a) Opportunity to explain the circumstances surrounding the specific items and provide any other relevant information that the applicant wishes the Office to consider surrounding the specific items;

(b) Documents that the Office requires in order to complete its review of the specific items. The requested documents provided by the applicant must be legible. Documents that are typically requested by the Office include, but are not limited to:

1. Copies of satisfaction of judgment.
2. Copies of satisfaction of outstanding tax liens or other governmental liens.
3. Copies of court documents that reflect the substance of the matter and how the matter was resolved or adjudicated.
4. Copies of account statements or letters from the creditors explaining the current status of accounts. For security purposes, the relevant person may redact all but the last four (4) digits of the account number prior to submitting the document to the Office.
5. Copies of tax returns, pay stubs, or other documentation of income.

If the documents requested above cannot be obtained, the relevant person shall submit evidence of that fact in order for the license application to be deemed complete. Evidence that documents cannot be obtained shall consist of a written statement from the agency's or creditor's records custodian that is written on the agency's or creditor's letterhead; indicates that the agency or the creditor does not have any record of such matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and provide a statement as to why the record cannot be produced; and is signed by the agency's or creditor's records custodian.

(3) Procedure for Reviewing Adverse Credit History Information.

(a) When deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender, the Office must make a determination regarding whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In making this determination, the Office will consider the following information:

1. The relevant person's entire credit history as reflected in the credit report.
2. The information provided by the relevant person under subsection (2).
3. The responses contained in the license application.
4. The previous licensing history with the Office including whether the relevant person was named in any regulatory action by the Office.
5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.
6. The time and context of the information available and any pattern of behavior the information may demonstrate.

(b) Based on the totality of the circumstances as developed under paragraph (a), the Office will make a determination as to whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In considering the totality of the circumstances, the fact that an applicant has been a debtor in a bankruptcy or been the control person of a bankrupt organization shall not be the sole basis of the Office's determination to deny the issuance of a license.

*Rulemaking Authority 494.0011(2)(b) FS. Law Implemented 494.00312, 494.00313, 494.00321, 494.00322, 494.00611, 494.00612 FS. History--New 10-1-10.*

#### **69V-40.015 Payment of Guaranty Fund Claims.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0017 FS. History--New 6-23-91, Amended 11-17-93, 7-25-96, Formerly 3D-40.015, Repealed 3-23-08.*

#### **69V-40.020 Changes of Address.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0031, 494.0032, 494.0033, 494.0034, 494.0036, 494.0039, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067 FS. History--New 10-1-91, Amended 8-24-93, 7-25-96, 12-12-99, Formerly 3D-40.020, Repealed 3-23-*

08.

**69V-40.021 Fictitious Name Registration.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0029(2)(e), 494.0041(2)(q), 494.0072(2)(q) FS. History–New 8-7-97, Formerly 3D-40.021, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.022 Quarterly Report Filing Requirements.**

*Rulemaking Authority 494.0011(2), 494.004(7), 494.0067(9) FS. Law Implemented 494.0011(2), 494.004(7), 494.0067(9) FS. History–New 11-7-00, Formerly 3D-40.022, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.025 Mortgage Broker Examination.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0033(2)(b) FS. History–New 10-1-91, Amended 6-8-92, Formerly 3D-40.025, Amended 3-23-08, 10-21-08, 3-4-09, Repealed 10-1-10.*

**69V-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education.**

*Rulemaking Authority 494.0011(2), 494.0033(3) FS. Law Implemented 494.0033 FS. History–New 7-2-92, Amended 5-19-96, 12-9-01, Formerly 3D-40.026, Repealed 10-1-10.*

**69V-40.027 Mortgage Broker Pre-licensing Education Requirement.**

*Rulemaking Authority 494.0011(2), 494.0016 FS. Law Implemented 494.0016, 494.00295, 494.0033 FS. History–New 7-5-92, Amended 11-5-95, 11-24-97, 8-22-99, 12-9-01, Formerly 3D-40.027, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.0271 Professional Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives.**

*Rulemaking Authority 494.0011(2), 494.00295(4) FS. Law Implemented 494.0016, 494.0029, 494.00295, 494.0034, 494.0064, 494.0067 FS. History–New 12-9-01, Formerly 3D-40.0271, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.028 Permit for Mortgage Business School.**

*Rulemaking Authority 494.0011(2), 494.0029(1), (3) FS. Law Implemented 120.60(1), 494.0029 FS. History–New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.028, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.0281 Mortgage Business Schools Prohibited Practices and Advertising/Publicity.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0025, 494.0029, 494.00295 FS. History–New 8-14-97, Amended 12-9-01, Formerly 3D-40.0281, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.029 Mortgage Business School Permit Renewal.**

*Rulemaking Authority 494.0011(2), 494.0029(1), (3) FS. Law Implemented 494.0029 FS. History–New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.029, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.030 Accreditation Process for a Mortgage Business School.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0029 FS. History–New 11-5-95, Amended 8-22-99, 12-9-01, Formerly 3D-40.030, Repealed 10-1-10.*

**69V-40.031 Application Procedure for Mortgage Broker License.**

*Rulemaking Authority 215.405, 494.0011(2) FS. Law Implemented 120.60(1), 494.0033 FS. History–New 10-30-86, Amended 1-30-89, 5-23-89,*

11-28-89, 10-1-91, 6-8-92, 6-3-93, 6-6-93, 4-25-94, 5-14-95, 9-3-95, 11-24-97, 8-22-99, 12-12-99, 12-11-03, Formerly 3D-40.031, Amended 5-24-05, 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.

#### **69V-40.0311 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure.**

*Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0033, 494.0041 FS. History—New 12-2-08, Repealed 10-1-10.*

#### **69V-40.0312 Application Procedure for Loan Originator License.**

(1) Each individual desiring to obtain licensure as a loan originator shall apply to the Office of Financial Regulation by submitting the following:

- (a) A completed Uniform Individual Mortgage License/Registration & Consent Form, MU4, filed through the Registry;
- (b) The statutory nonrefundable application fee of \$195 filed through the Registry;
- (c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$20, if required by Section 494.00172, F.S., filed through the Registry;
- (d) Evidence that the applicant has been awarded a high school diploma or the equivalent;
- (e) Confirmation from the Registry that the applicant has satisfied the requirement to complete a 20-hour pre-license class approved by the Registry.

(f) Confirmation from the Registry that the applicant has satisfied the requirement to pass a test developed by the Registry and administered by a provider approved by the Registry. For the purposes of this rule, a test developed by the Registry and administered by a provider approved by the Registry includes both a national component and a state component.

(g) Submit fingerprints to the Registry for submission to the Federal Bureau of Investigation for a federal criminal background check;

(h) Submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website(<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement for a state criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(i) Authorize the Registry to obtain and make available to the Office an independent credit report on the applicant.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each loan originator application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within 120 days from the date of the request. Failure by the applicant to respond within 120 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(3) Amendments to Pending Applications. If the information contained in Form MU4 or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on Form MU4 shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a loan originator license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(6) Uniform Individual Mortgage License/Registration & Consent Form, MU4, is incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.00312(2) FS. Law Implemented 494.0011(2), 494.00312 FS. History—New 10-1-10.*

#### **69V-40.0313 Loan Originator License Renewal.**

(1) In order to renew an active loan originator license a licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

- (a) A completed renewal submission as required by the Registry submitted through the Registry.
- (b) Submit a total payment of \$195.25 paid through the Registry which includes the following:
  - 1. \$150 nonrefundable renewal fee;

2. \$20 nonrefundable mortgage broker guaranty fund fee, if required by Section 494.00172, F.S., and
3. \$25.25 to cover further costs of criminal background check.

(c) Authorize the Registry to obtain and make available to the Office an independent credit report on the licensee.

(2) Request for Additional Information. The Office shall review each loan originator renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond within 30 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial of the renewal request for failure to provide the requested information.

(3) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00312, F.S., and Rules 69V-40.00112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the loan originator license which shall be valid until December 31 of the year following the expiration date of the loan originator license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.00313(2), F.S.

*Rulemaking Authority 494.0011(2), 494.00313 FS. Law Implemented 494.0011(2), 494.00313 FS. History—New 10-1-10.*

#### **69V-40.0321 Application Procedure for a Mortgage Broker license.**

(1) Each person desiring to obtain licensure as a mortgage broker shall apply to the Office of Financial Regulation by submitting the following:

- (a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;
- (b) The statutory nonrefundable application fee of \$425 filed through the Registry;
- (c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100, if required by Section 494.00172, F.S., filed through the Registry;
- (d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;
- (e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;
- (f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(2) For the purposes of this rule, the requirements in paragraphs (1)(e) and (f) above are not required if the control person is currently licensed as a loan originator.

(3) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage broker application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(4) Amendments to Pending Applications. If the information contained in the Form MU1 or any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on the Form MU1 or question 8 on the Uniform Mortgage Biographical Statement & Consent Form, MU2, shall be considered a material change to the application and grounds for denial of the application.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(6) Upon approval of an application, a mortgage broker license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(7) Uniform Mortgage Lender/Mortgage Broker Form, MU1, and Uniform Mortgage Biographical Statement & Consent Form, MU2, are incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.00321(1) FS. Law Implemented 494.0011(2), 494.00321 FS. History–New 10-1-10.*

#### **69V-40.0322 Mortgage Broker License Renewal.**

(1) In order to renew an active loan originator license a mortgage broker licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

(a) A completed renewal submission as required by the Registry submitted through the Registry.

(b) Submit a payment of \$475 through the Registry for the following:

1. \$375 nonrefundable renewal fee; and

2. \$100 nonrefundable mortgage broker guaranty fund fee,

(c) Submit \$25.25 to the Office for each control person listed on the licensee's Form MU1 to cover the further costs of criminal background check.

(d) Authorize the Registry to obtain and make available to the Office an independent credit report on each control person listed on the licensee's Form MU1.

(e) Submit a nonrefundable renewal fee of \$225 for each branch office license through the Registry at the time of renewing the mortgage broker license.

(2) For the purposes of this rule, the requirements in paragraphs (1)(c) and (d) above are not required if the control person is currently licensed as a loan originator and has filed through the Registry a renewal submission of the loan originator license.

(3) Request for additional information. The Office shall review each mortgage broker renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond within 30 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00321, F.S., and Rules 69V-40.00112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0322(2), F.S.

(5) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.00322 FS. Law Implemented 494.0011(2), 494.00322 FS. History–New 10-1-10.*

#### **69V-40.033 Disciplinary Guidelines for Mortgage Business Schools.**

*Rulemaking Authority 494.0011(2), 494.0029 FS. Law Implemented 494.0029, 494.0041 FS. History–New 11-5-95, Amended 12-9-01, Formerly 3D-40.033, Repealed 10-1-10.*

#### **69V-40.0331 Declaration of Intent to Engage Solely in Loan Processing.**

(1) A person who seeks to act solely as a loan processor shall:

(a) Be licensed as a loan originator under Chapter 494, F.S., and must at all times thereafter remain licensed; and

(b) Submit a completed Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) to the Office.

(2) Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) is incorporated by reference in Rule 69V-40.002, F.A.C.

(3) A person who currently has on file with the Office a Declaration of Intent to Engage Solely in Loan Processing may withdraw the declaration by filing Form OFR-494-13 (Declaration of Intent to Engage Solely in Loan Processing) indicating on the form the person's intent to withdraw the declaration.

*Rulemaking Authority 494.00331 FS. Law Implemented 494.00331 FS. History–New 10-1-10.*

#### **69V-40.036 Application Procedure for a Mortgage Broker Branch Office License.**

(1) Each mortgage broker desiring to obtain a mortgage broker branch office license shall apply to the Office of Financial Regulation by submitting the following:

- (a) A completed Uniform Mortgage Branch Office Form, MU3, filed through the registry;
- (b) The statutory nonrefundable application fee of \$225 filed through the registry;

(2) Request for additional information. The Office shall review each mortgage broker branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

- (3) Uniform Mortgage Branch Office Form, MU3 is incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.0036(2) FS. Law Implemented 494.0011(2), 494.0036 FS. History—New 10-1-10.*

#### **69V-40.043 Mortgage Broker License Renewal and Reactivation.**

*Rulemaking Authority 494.0011(2), 494.0034(2) FS. Law Implemented 494.001(3), 494.00295, 494.00331(1), 494.0034 FS. History—New 11-2-86, Amended 6-23-91, 11-12-91, 9-3-95, 12-12-99, 2-5-01, 12-9-01, Formerly 3D-40.043, Amended 3-23-08, Repealed 10-1-10.*

#### **69V-40.051 Application Procedure for Mortgage Brokerage Business License.**

*Rulemaking Authority 215.405, 494.0011(2), 494.0031(2) FS. Law Implemented 494.0031, 494.0035, 494.004(6), 943.053 FS. History—New 10-30-86, Amended 1-30-89, 11-28-89, 10-1-91, 6-6-93, 5-14-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-11-03, Formerly 3D-40.051, Amended 3-23-08, 12-25-08, Repealed 10-1-10.*

#### **69V-40.0511 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure.**

*Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0031, 494.0041 FS. History—New 12-2-08, Repealed 10-1-10.*

#### **69V-40.053 Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation.**

*Rulemaking Authority 494.0011(2), 494.0032(2), 494.0036(2) FS. Law Implemented 494.001(7), 494.0011(2), 494.0031(1), 494.0032, 494.0036 FS. History—New 11-2-86, Amended 2-8-90, 10-1-91, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.053, Amended 3-23-08, Repealed 10-1-10.*

#### **69V-40.058 Application Procedure for Mortgage Brokerage Business Branch Office License.**

*Rulemaking Authority 494.0011(2), 494.0036(2) FS. Law Implemented 494.0036 FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 8-22-99, 12-12-99, Formerly 3D-40.058, Amended 3-23-08, Repealed 10-1-10.*

#### **69V-40.060 Fees Earned Upon Obtaining a Bona Fide Commitment.**

*Rulemaking Authority 494.0011(2), 494.00421(7) FS. Law Implemented 120.695, 494.0031, 494.00421, 494.0073 FS. History—New 7-25-96, Formerly 3D-40.060, Repealed 10-1-10.*

#### **69V-40.0611 Application Procedure for a Mortgage Lender License.**

- (1) Each person desiring to obtain licensure as a mortgage lender shall apply to the Office by submitting the following:
- (a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;
  - (b) The statutory nonrefundable application fee of \$500 filed through the Registry;
  - (c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100, if required by Section 494.00172, F.S., filed through the Registry;
  - (d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;
  - (e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal

criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(g) Submit a copy of the applicant's financial audit report in compliance with Section 494.00611(2)(f), F.S.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage lender application and inform the application of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.

(3) Amendments to Pending Applications. If the information contained in Form MU1—or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on the Form MU1 or question 8 on Uniform Mortgage Biographical Statement & Consent Form, MU2, shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a mortgage lender license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.

(6) Uniform Mortgage Lender/Mortgage Broker Form, MU1, and Uniform Mortgage Biographical Statement & Consent Form, MU2, are incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011, 494.00611(2) FS. Law Implemented 494.0011(2), 494.00611 FS. History—New 10-1-10.*

#### **69V-40.0612 Mortgage Lender License Renewal.**

(1) In order to renew an active mortgage lender license a mortgage lender licensee must submit the following to the Office no later than December 31 of each calendar year in which the licensee wishes to renew the license:

(a) A completed renewal submission as required by the Registry submitted through the Registry.

(b) Submit a payment of \$575 through the Registry for the following:

1. \$475 nonrefundable renewal fee; and

2. \$100 nonrefundable mortgage broker guaranty fund fee, if required by Section 494.00172, F.S.

(c) Submit \$25.25 to the Office for each control person listed on the licensee's Form MU1 to cover the further costs of a criminal background check.

(d) Authorize the Registry to obtain and make available to the Office an independent credit report on each control person listed on the licensee's Form MU1.

(e) Submit a nonrefundable renewal fee of \$225 for each branch office license through the Registry at the time of renewing the mortgage lender license.

(2) For the purposes of this rule, the requirements in paragraphs (1)(c) and (d) above are not required if the control person is currently licensed as a loan originator and has filed through the Registry a renewal submission of the loan originator license.

(3) Request for additional information. The Office shall review each mortgage lender renewal request and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 30 days from the date of the request. Failure by the licensee to respond 30 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00611, F.S., and Rules 69V-40.00112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0612(2), F.S.

(5) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.00612 FS. Law Implemented 494.0011(2), 494.00612 FS. History–New 10-1-10.*

**69V-40.066 Application Procedure for a Mortgage Lender Branch Office License.**

(1) Each mortgage lender desiring to obtain a mortgage lender branch office license shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Uniform Mortgage Branch Office Form, MU3, filed through the Registry;

(b) The statutory nonrefundable application fee of \$225 filed through the Registry;

(2) Request for additional information. The Office shall review each mortgage lender branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

(3) Uniform Mortgage Branch Office Form, MU3, is incorporated by reference in Rule 69V-40.002, F.A.C.

*Rulemaking Authority 494.0011(2), 494.0066 FS. Law Implemented 494.0011(2), 494.0066 FS. History–New 10-1-10.*

**69V-40.088 Referrals.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.001(2), 494.0038, 494.0041(2)(b) FS. History–New 1-10-93, Formerly 3D-40.088, Repealed 10-1-10.*

**69V-40.099 Amendments, Change of Name, Change of Entity and Change in Control or Ownership.**

(1) Each person licensed as a loan originator, mortgage broker, or mortgage lender which proposes to change its name, form of business organization, or any other information contained in any initial application form or any amendment thereto, must file an amendment through the Registry pursuant to Sections 494.004 and 494.0067, F.S., not later than 30 days after the effective date of the change.

(2) Each licensed mortgage broker or mortgage lender which proposes to change any of the control persons listed on the initial application or amendment thereto must file an amendment through the Registry not later than 30 days prior to the effective date of the change or within 2 business days after the date the licensee first received notice of the change. In the event an amendment filed pursuant to this rule results in the addition of a new control person not previously disclosed on the license such person is subject to the fingerprinting and credit report requirements required in Sections 494.00321 and 494.00611, F.S., unless the new control person is currently licensed as a loan originator at the time the amendment is filed through the Registry.

Amendments required to be filed pursuant to this rule must be accomplished by filing an amendment through the Registry and on same uniform forms required for initial licensure. Only those amendments filed through the Registry will be considered compliant with this rule. Upon filing an amendment pursuant to this rule the Office shall evaluate the licensee to determine if it continues to meet the minimum standards for licensure. The Office may take administrative action in accordance with Section 494.00255, F.S., if the Office determines the licensee no longer meets the minimum standards for licensure.

*Rulemaking Authority 494.0011(2), 494.004(1), 494.0067 FS. Law Implemented 494.0011(2), 494.00312, 494.00313, 494.00321, 494.00322, 494.0036, 494.00611, 494.00612, 494.0066, 494.0067 FS. History–New 1-10-93, Amended 5-14-95, 9-3-95, 12-12-99, 11-1-00, Formerly 3D-40.099, Amended 3-23-08, 10-1-10.*

**69V-40.100 Application Procedure for Transfer in Ownership or Control of Saving Clause Mortgage Lender.**

*Rulemaking Authority 494.0011(2), 494.0065(3) FS. Law Implemented 120.60, 494.001(30), 494.0061(1), (3), (8), 494.0065, 494.0067(3), (4) FS. History–New 8-24-93, Amended 9-3-95, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.100, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.*

**69V-40.105 Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0065, 494.0066 FS. History–New 8-24-93, Amended 9-3-95, 8-22-99, 12-12-99, Formerly 3D-40.105, Amended 3-23-08, Repealed 10-1-10.*

**69V-40.111 Disciplinary Guidelines.**

(1) Pursuant to Sections 494.0041 and 494.0072, F.S., listed below is a range of disciplinary guidelines from which disciplinary penalties will be imposed upon any person guilty of violating Chapter 494, F.S. The disciplinary guidelines are based upon a single-act violation of each provision listed. Multiple acts of the violated provisions or a combination of violations may result in a higher penalty than that for a single, isolated violation. For purposes of this rule, the order of penalties, ranging from lowest to highest is: notice of noncompliance, reprimand, fine, probation, suspension, and revocation. Nothing in this rule shall preclude any discipline imposed upon a person pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Office of Financial Regulation from issuing a letter of guidance when appropriate.

(2) As provided in Sections 494.0041 and 494.0072, F.S., the Office of Financial Regulation may, in addition to other disciplinary penalties, place a licensee, registrant, or applicant on probation. The placement of the licensee, registrant, or applicant on probation shall be for such a period of time and subject to such conditions as the Office of Financial Regulation may specify.

(3) The maximum penalties are a fine of up to \$5,000.00 and/or as listed below for each count or separate offense:

(a) 494.0016(1)	Revocation
(b) 494.0016(2)	Probation
(c) 494.0016(3)	Revocation
(d) 494.0016(4)	Revocation
(e) 494.0023(1)(a)-(c)	Probation
(f) 494.0024	Revocation
(g) 494.0025(1)	Revocation
(h) 494.0025(2)	Revocation
(i) 494.0025(3)	Revocation
(j) 494.0025(4)(a)-(c)	Revocation
(k) 494.0025(5)	Revocation
(l) 494.0025(6)	Revocation
(m) 494.0025(7)	Revocation
(n) 494.0025(8)	Revocation
(o) 494.0025(9)	Revocation
(p) 494.0025(10)	Revocation
(q) 494.0025(11)	Revocation
(r) 494.0025(12)	Revocation
(s) 494.0026(1)	Revocation
(t) 494.0026(2)	Revocation
(u) 494.0026(3)	Revocation
(v) 494.0026(4)	Revocation
(w) 494.0028(2)	Probation
(x) 494.0028(3)	Probation
(y) 494.0033(1)	Revocation
(z) 494.00331	Probation
(aa) 494.0035(1)	Probation
(bb) 494.0035(2)	Probation
(cc) 494.0036(1)	Probation
(dd) 494.0037(1)	Revocation
(ee) 494.0037(2)	Probation
(ff) 494.0037(3)	Revocation
(gg) 494.0038(1)(a)-(b)	Probation
(hh) 494.0038(2)(a)-(c)	Probation
(ii) 494.0038(3)(a)-(c)	Probation
(jj) 494.0038(4)	Revocation
(kk) 494.0038(5)	Revocation

(ll) 494.0038(6)	Revocation
(mm) 494.0039(1)(a)	Revocation
(nn) 494.0039(1)(b)	Probation
(oo) 494.0039(2)	Probation
(pp) 494.0039(3)	Reprimand
(qq) 494.004(1)	Revocation
(rr) 494.004(2)	Probation
(ss) 494.004(3)	Probation
(tt) 494.004(4)	Revocation
(uu) 494.0041(2)(a)-(q)	Revocation
(vv) 494.0042(2)	Revocation
(ww) 494.0042(3)	Revocation
(xx) 494.00421	Revocation
(yy) 494.0043(1)(a)-(d)	Revocation
(zz) 494.0043(2)	Revocation
(aaa) 494.0043(3)	Revocation
(bbb) 494.0043(4)	Revocation
(ccc) 494.0061(1)(c)	Revocation
(ddd) 494.0062(1)(c)	Revocation
(eee) 494.0063	Revocation
(fff) 494.0065(2)	Revocation
(ggg) 494.0067(1)	Probation
(hhh) 494.0067(2)	Probation
(iii) 494.0067(3)	Revocation
(jjj) 494.0067(4)	Probation
(kkk) 494.0067(5)	Revocation
(lll) 494.0067(6)	Probation
(mmm) 494.0067(7)	Reprimand
(nnn) 494.0067(8)	Probation
(ooo) 494.0067(9)	Probation
(ppp) 494.0068(1)(a)-(d)	Probation
(qqq) 494.0068(2)	Probation
(rrr) 494.0068(3)	Revocation
(sss) 494.0068(4)	Probation
(ttt) 494.0069(1)	Probation
(uuu) 494.0069(2)	Revocation
(vvv) 494.0069(3)	Revocation
(www) 494.0069(4)(a)-(c)	Revocation
(xxx) 494.007(1)	Probation
(yyy) 494.007(2)	Revocation
(zzz) 494.0071	Revocation
(aaaa) 494.0072(2)(a)-(q)	Revocation
(bbbb) 494.00721(1)	Revocation
(cccc) 494.00721(2)	Suspension
(dddd) 494.00721(3)	Revocation
(eeee) 494.0075(1)(a)-(d)	Revocation
(ffff) 494.0075(2)	Revocation
(gggg) 494.0075(3)	Revocation
(hhhh) 494.0075(4)	Probation

(iiii) 494.0075(5)	Revocation
(jjjj) 494.0076(1)(a)-(c)	Revocation
(kkkk) 494.008(1)	Revocation
(llll) 494.008(2)	Revocation
(mmmm) 494.008(3)	Revocation
(nnnn) 494.008(4)	Revocation
(oooo) 494.008(5)	Revocation
(pppp) 494.008(6)	Revocation
(qqqq) 494.008(7)	Revocation

(4)(a) In the presence of aggravating or mitigating circumstances which are supported by clear and convincing evidence, the Office of Financial Regulation shall be entitled to deviate from the above guidelines in imposing discipline upon any person.

(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:

1. The severity of the violation.
2. The degree of harm to the consumer or public.
3. The number of times the violations previously have been committed by the person.
4. The disciplinary history of the person.
5. The status of the person at the time the violation was committed.

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0024, 494.0025, 494.0026, 494.0028, 494.00331, 494.0033, 494.0035, 494.0036, 494.0037, 494.0038, 494.0039, 494.004, 494.0041, 494.0042, 494.0043, 494.0061, 494.0062, 494.0065, 494.0067, 494.0068, 494.0069, 494.007, 494.0071, 494.0072, 494.00721, 494.0074, 494.0075, 494.0076, 494.008 FS. History—New 3-20-91, Amended 7-25-96, Formerly 3D-40.111.*

#### **69V-40.150 Out of State Examination Costs.**

For examinations conducted out of state, the licensee shall pay the travel expense and per diem subsistence allowance provided for state employees in Section 112.062, F.S.

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0012(3) FS. History—New 10-1-91, Amended 8-24-92, 12-9-01, Formerly 3D-40.150.*

#### **69V-40.155 Lock-in Statement.**

A lock-in agreement which includes applicable information as required by Sections 494.0069(1)(a)-(e), F.S., and the following statement meets the requirement of Section 494.0069(1)(f), F.S.

(1) Florida law requires that the lender shall make a good faith effort to process the mortgage loan application and stand ready to fulfill the terms of its lock-in agreement before the expiration date of the lock-in agreement or any extension thereof.

(2) Any lock-in agreement received by the lender by mail or through a mortgage broker must be signed by the 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 lender shall promptly refund any lock-in fee paid.

(3) If the loan does not close before the expiration date of the lock-in agreement through no substantial fault of the borrower, the borrower may withdraw the application, whereupon the lender shall promptly refund to the borrower any lock-in fee paid by the borrower.

*Rulemaking Authority 494.0069(6) FS. Law Implemented 494.0069(1)(f) FS. History—New 12-3-91, Formerly 3D-40.155, Amended 10-1-10.*

#### **69V-40.156 Third-party Fee Accounts.**

All third-party fees and refundable application fees received by a mortgage broker shall be recorded on Form OFR-494-09, Mortgage Brokerage Deposit Account Form, or on a format which is substantially similar to Form OFR-494-09. Failure to maintain a record of account activity in a current manner is a violation of this rule. Form OFR-494-09 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

*Rulemaking Authority 494.0016(4) FS. Law Implemented 120.695, 494.00255(1)(a), 494.0038, 494.0068 FS. History—New 12-3-91, Amended 7-25-96, 12-12-99, Formerly 3D-40.156, Amended 3-23-08, 10-1-10.*

### **69V-40.160 Principal Brokers.**

*Rulemaking Authority 494.0011(2), 494.0035 FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035, 494.0041(1)(e) FS. History—New 10-7-91, Amended 7-25-96, 12-12-99, 12-9-01, Formerly 3D-40.160, Amended 3-23-08, Repealed 10-1-10.*

### **69V-40.165 Branch Brokers.**

*Rulemaking Authority 494.0011(2), 494.0035(2) FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035(2), 494.0041(1)(e) FS. History—New 10-7-91, Amended 7-25-96, 12-12-99, 12-9-01, Formerly 3D-40.165, Amended 3-23-08, Repealed 10-1-10.*

### **69V-40.170 Books and Records.**

(1) Books, accounts, and records that are required to be maintained at the principal place of business shall be made available to the Office of Financial Regulation for review, upon the Office of Financial Regulation's request.

(2)(a) A licensee may maintain required books, accounts, and records at a location other than the principal place of business. Each licensed mortgage broker or mortgage lender which proposes to change the location of books, accounts, and records must file an amendment to Form MU1 through the Registry not later than 30 days prior to the effective date of the change.

(b) The books, accounts, and records must be stored in a building of stationary construction wherein the books, accounts, and records will be kept in a secured location under conditions, which will not lead to the damage or destruction of the records.

(3) If the Office of Financial Regulation is notified by a licensee that it will maintain the books, accounts, and records at a location other than the principal place of business, such books, accounts, and records shall be made available to the Office of Financial Regulation for review within 3 business days from the date of a written request by the Office of Financial Regulation and at a reasonable and convenient location in this State designated by the Office of Financial Regulation.

(4) All books, accounts, and records must be maintained for 3 years from the date of "original entry". For the purpose of this rule, "original entry" means the date the documentation was originated by the licensee or received by the licensee.

(5) The penalty for maintaining books, accounts, and records at a location other than the principal place of business, without written notification to the Office of Financial Regulation, shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a \$500 fine.

(6) Uniform Mortgage Lender/Mortgage Broker Form, MU1, is incorporated by reference in Rule 69V-40.002, F.A.C

*Rulemaking Authority 494.0011(2), 494.0016(4) FS. Law Implemented 120.595, 494.0016, 494.00255 FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, 1-16-03, Formerly 3D-40.170, Amended 3-23-08, 10-1-10.*

### **69V-40.175 Mortgage Brokerage Files.**

(1) Each mortgage broker shall maintain a file for each mortgage broker transaction. The files shall be maintained in a central location and in an alphabetical or numerical sequence.

(2) Each file shall contain at least the following:

(a) Mortgage broker agreement pursuant to Section 494.0038, F.S.;

(b) Copy of signed closing statement or documentation of denial or cancellation of the mortgage loan application; and

(c) A copy of the good faith estimate of costs pursuant to Section 494.0038(3)(c), F.S.

(3) Supporting documentation shall be maintained for all expenses or fees paid by the licensee on behalf of the client indicating the amount and the date paid. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage broker issues to the client a written commitment for the loan on behalf of the lender then the following must be maintained in the file:

(a) A copy of the written commitment issued by the mortgage broker; and

(b) A copy of the written commitment provided by the lender.

(5) If the mortgage broker issues to the client a written lock-in for the loan on behalf of the lender then the following must be maintained in the file:

(a) A copy of the written lock-in issued by the mortgage broker; and

(b) A copy of the written lock-in provided by the lender.

- (6) If the mortgage broker receives a mortgage loan application, then the mortgage broker shall maintain a copy in the file.
- (7) If the loan is funded by a noninstitutional investor then the file must also include the following:
- (a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgment by the noninstitutional investor of receipt of the appraisal or opinion of value, or
2. A copy of a waiver of the appraisal dated and executed by the noninstitutional investor.
- (b)1. A receipt acknowledging that the noninstitutional investor has been furnished with title insurance or a legal opinion of title, or
2. A written waiver thereof.
- (c) On a junior mortgage, documentation that the noninstitutional lender has been furnished with a statement showing the balance owed and status of the liens that will be superior to the lien being funded by the noninstitutional investor.
- (d) A signed and dated acknowledgment by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment.
- (e) If applicable, documentation that said licensee has disclosed that it is acting (directly or indirectly) as a borrower or principal in that transaction.
- (8) In addition to the foregoing specific documentation, all documentation originated, received, or related to the mortgage loan from the application through the final disposition must be maintained for three (3) years from the date of the original entry. "Original entry" means the date the documentation was originated by the mortgage broker or received by the mortgage broker. For each broker transaction, files and documentation shall be maintained and remain complete for three (3) years from the date of "original entry" of the last document in the file.
- (9)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:
1. If the licensee has numerous instances of incomplete files and missing documentation, the fine shall be \$300. For the purpose of this rule, "numerous" shall mean at least three (3), and a percentage equal or greater to 20% of the files examined.
2. If the licensee fails to maintain files and documentation such that an audit trail of all mortgage transactions is provided, the penalty shall be a fine of \$1,000 and a six-month suspension of the licensee.
- (b)1. The failure to provide a good faith estimate of costs shall be a fine of \$250 per file.
2. Providing a commitment to a client without first obtaining a written commitment by the lender shall be a fine of \$250 per file.
3. Providing a lock-in for a loan without first obtaining a written lock-in by the lender shall be a fine of \$250 per file.
4. The total fine under paragraph (9)(b) shall not exceed \$2,500.00 per administrative complaint in addition to other penalties.
- (c)1. The penalty for failure to provide a disclosure required in subsection (7) above shall be a fine of \$250 per file.
2. The penalty for gross negligence in maintaining documentation required in subsection (7) shall be revocation.
3. The penalty for failure to provide a noninstitutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.
- (10) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (7) and subparagraph (9)(a)2. above shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.

*Rulemaking Authority 494.0016(4) FS. Law Implemented 494.0016, 494.00255, 494.0038, 494.0043 FS. History--New 2-16-92, Amended 7-25-96, 8-7-97, 1-16-03, Formerly 3D-40.175, Amended 10-1-10.*

#### **69V-40.177 Mortgage Brokerage and Lending Transaction Journal.**

- (1) Each mortgage brokerage business and lender acting in the capacity of a mortgage brokerage business shall maintain a journal of mortgage brokerage transactions, which shall include, at least, the following information:
- (a) Name of applicant;
- (b) Date applicant applied for the mortgage loan;
- (c) Disposition of the mortgage loan application. The Mortgage Brokerage and Lending Transaction Journal shall indicate the result of the brokerage transaction. The disposition of the case shall be categorized as one of the following: loan funded, loan denied, application withdrawn, or other (with explanation);
- (d) Name of lender, if applicable.
- (2) The journal shall be maintained in a format which is substantially similar to Form OFR-494-10, Mortgage Brokerage and

Lending Transaction Journal.

(3) The Mortgage Brokerage and Lending Transaction Journal shall be maintained in the principal office or in each branch office where mortgage brokerage transactions are originated. The Mortgage Brokerage and Lending Transaction Journal shall be kept current. The failure to initiate an entry to the Mortgage Brokerage and Lending Transaction Journal within seven (7) business days from the date the brokerage transaction is entered into, shall be deemed to be a failure to keep the Mortgage Brokerage and Lending Transaction Journal current.

(4) The penalty for failure to maintain the Mortgage Brokerage and Lending Transaction Journal or to keep the same current (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be the issuance of a “notice of noncompliance” for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. The penalty for any intentional violation of this rule shall be a fine of \$500 and suspension of the license.

(5) Form OFR-494-10 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

*Rulemaking Authority 494.0011(2), 494.0016(4) FS. Law Implemented 120.695, 494.0016, 494.0041 FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.177, Amended 3-23-08.*

#### **69V-40.200 Application Procedure for Mortgage Lender License.**

*Rulemaking Authority 215.405, 494.0011(2), 494.0061(3) FS. Law Implemented 494.0061, 494.0067(4) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.200, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.*

#### **69V-40.201 Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure.**

*Rulemaking Authority 494.0011 FS. Law Implemented 112.011, 494.0061, 494.0062, 494.0072 FS. History—New 12-2-08, Repealed 10-1-10.*

#### **69V-40.205 Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation.**

*Rulemaking Authority 494.0011(2), 494.0064(2), 494.0065(3) FS. Law Implemented 494.001(4), 494.0011(2), 494.0061(1), 494.0064, 494.0065 FS. History—New 10-1-91, Amended 9-3-95, 8-5-96, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.205, Amended 11-9-04, 3-23-08, Repealed 10-1-10.*

#### **69V-40.220 Application Procedure for Correspondent Mortgage Lender License.**

*Rulemaking Authority 215.405, 494.0011(2), 494.0062(3), (8), (11), (13) FS. Law Implemented 494.0062, 494.0067(4) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, 12-9-01, 12-8-02, 12-11-03, Formerly 3D-40.220, Amended 3-23-08, 12-25-08, 3-4-09, Repealed 10-1-10.*

#### **69V-40.225 Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation.**

*Rulemaking Authority 494.0011(2), 494.0064(2) FS. Law Implemented 494.001(7), 494.0011(2), 494.0062(1), 494.0064 FS. History—New 10-1-91, Amended 9-3-95, 7-25-96, 12-12-99, 11-1-00, 2-5-01, Formerly 3D-40.225, Amended 11-9-04, 3-23-08, Repealed 10-1-10.*

#### **69V-40.240 Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0066 FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 8-22-99, 12-12-99, Formerly 3D-40.240, Amended 3-23-08, Repealed 10-1-10.*

#### **69V-40.242 Principal Representative.**

*Rulemaking Authority 494.0011(2), 494.0016(4), 494.0061(1), (3), (8), 494.0062(3), (11) FS. Law Implemented 120.60, 120.695, 494.001(31), 494.0016(1), 494.0061, 494.0062, 494.0067, 494.0072 FS. History—New 1-27-02, Amended 12-8-02, Formerly 3D-40.242, Amended 3-23-08, 3-4-09, Repealed 10-1-10.*

### **69V-40.245 Independent Contractors.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 120.695, 494.001, 494.0025, 494.0041 FS. History—New 7-25-96, Amended 12-12-99, Formerly 3D-40.24508, Repealed 10-1-10.*

### **69V-40.250 Documentation of Net Worth and Surety Bond.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 120.695, 494.0061(1)(c),(d), 494.0062(1)(c), 494.0063, 494.0065 FS. History—New 10-1-91, Amended 8-24-92, 7-25-96, Formerly 3D-40.250, Repealed 10-1-10.*

### **69V-40.260 Mortgage Lender Files.**

(1) Each mortgage lender shall maintain a file for each mortgage loan application received. The files shall be maintained in a central location and in an alphabetical or numerical sequence.

(2) Each file shall contain the following:

(a) A copy of the good faith estimate.

(b) The original mortgage loan application, or copy thereof, containing the disclosures set forth in subsection 494.0068(1), F.S.

(c) Copy of the closing statement as required by subsection 494.0016(3), F.S., or documentation demonstrating that the mortgage loan application was cancelled or denied.

(d) Copy of any written lock-in agreement, if issued, containing the requirements set forth in Section 494.0069, F.S.

(e) Copy of any written commitment, if issued, containing the disclosures set forth in Section 494.007, F.S.

(f) Copy of written disclosures of any conflict of interest as required by Section 494.0023, F.S.

(3) Each mortgage lender shall maintain supporting documentation of all expenses or fees paid by the mortgage lender. The supporting documentation shall indicate the name and address of the person paid, the amount and date of the payment, and a description of the products or services purchased. Invoices from third parties involving multiple loans, maintained in a central file, need not be copied and placed in each individual loan file. A cancelled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage lender sells a mortgage loan to a noninstitutional investor then each file must contain the following:

(a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgement of receipt of same by the noninstitutional investor; or

2. A copy of a waiver of the appraisal or opinion of value dated and executed by the noninstitutional investor.

(b)1. A receipt acknowledging that the noninstitutional investor has been furnished with mortgagee's title insurance, or a legal opinion of title by an attorney licensed in Florida, pursuant to subsection 494.0075(1)(b), F.S.; or

2. A written waiver thereof with the wording required by subsection 494.0075(1)(b)3., F.S.

(c) On a junior mortgage, a copy of the statement furnished to the noninstitutional investor showing the balance owed and the status of the liens that will be superior to the liens being recorded in the favor of the noninstitutional investor in this loan transaction.

(d) A copy of the written disclosure to the noninstitutional investor if the mortgage lender is directly or indirectly acting as a borrower or principal in the transaction.

(e) A signed and dated acknowledgement by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment, or a signed acknowledgement by the licensee attesting that the aforementioned documentation was delivered to the noninstitutional investor. However, the mortgage lender may hold such documents in its possession for the use and benefit of the noninstitutional investor if:

1. The noninstitutional investor shall request same in writing; and

2. Said written request acknowledges the right of the noninstitutional investor to the possession of the original documents at any time; and

3. Said written request confirms the right of the noninstitutional investor to at any time terminate the agreement with the mortgage lender and request that the mortgage lender deliver all such documents to the noninstitutional investor forthwith.

The written request, which includes subparagraphs 1. through 3. above, may be maintained in one location separate from the mortgage loan file.

(f) A copy of the original note evidencing proper endorsement of the note by the lender to the noninstitutional investor.

(g) A copy of the written servicing agreement if the loan is to be serviced by the mortgage lender.

(5) If the mortgage lender acts as a mortgage broker it must comply with the file requirement set forth in Rule 69V-40.175,

F.A.C.

(6) A mortgage lender which services a mortgage loan for a noninstitutional investor shall enter into a written servicing agreement with the noninstitutional investor prior to servicing the mortgage loan. The mortgage lender may enter into a master servicing agreement with the noninstitutional investor, and such master agreement may be maintained in one central location. A master servicing agreement is not required to be copied and placed in each individual loan file.

(7) All documentation originated or received by a mortgage lender must be maintained for three years from the date of original entry. "Original entry" means the date the documentation was originated or received by the licensee. For each lending transaction, files and documentation shall be maintained and remain complete for three years from the original entry date of the last document.

(8)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:

1. If the mortgage lender has numerous instances of incomplete files and missing documentation the fine shall be \$300 for a first offense. For the purpose of this rule "numerous" shall mean at least three incomplete files and a percentage equal or greater than 20% of the files examined.

2. If the mortgage lender fails to maintain an audit trail of all mortgage transactions, the penalty shall be a fine of \$1,000 and a six month suspension of the license of the mortgage lender.

(b) The penalty for failure to provide or maintain a copy of the good faith estimate of costs shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.

(c)1. The penalty for failure to provide a noninstitutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.

2. The penalty for gross negligence in maintaining documentation required in subsection (4) shall be revocation of the license.

(d) Repeat violations of the requirements of this rule shall subject the licensee to the maximum penalties under Section 494.00255(2), F.S.

(9) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (4) and subparagraph (8)(a)2. above, shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.

*Rulemaking Authority 494.0016(4) FS. Law Implemented 120.695, 494.0016, 494.00255, 494.0023, 494.0067(8), 494.0068, 494.0069, 494.007, 494.0075 FS. History—New 1-10-93, Amended 7-25-96, 8-7-97, Formerly 3D-40.260, Amended 10-1-10.*

#### **69V-40.265 Mortgage Brokerage and Lending Transaction Journal.**

(1) Each mortgage lender shall maintain a Mortgage Brokerage and Lending Transaction Journal, which shall include, at least, the following information:

(a) Name of applicant;

(b) Date applicant applied for the mortgage loan;

(c) Disposition of the mortgage loan application. The journal shall indicate the result of the lending transaction. The disposition of the transaction shall be categorized as one of the following: loan funded, loan denied, or application withdrawn.

(d) Name of lender, if applicable.

(2) The journal shall be maintained on Form OFR-494-10, Mortgage Brokerage and Lending Transaction Journal, or a form substantially similar.

(3) In lieu of maintaining Form OFR-494-10, each mortgage lender may maintain the Home Mortgage Disclosure Act loan/application register, Form FR HMDA-LAR, found at 12 C.F.R., part 203, Appendix A (2010) if all lending transactions are recorded on this form. The form is hereby incorporated by reference and may be accessed through the Government Printing Office website <http://www.gpoaccess.gov/cfr/>.

(4) The Mortgage Brokerage and Lending Transaction Journal shall be maintained in the principal office or in each branch office where mortgage lender transactions are originated. The Mortgage Brokerage and Lending Journal shall be kept current. The failure to initiate an entry to the Mortgage Brokerage and Lending Transaction Journal within 7 business days from the date the transaction was entered into, shall be deemed to be a failure to keep the Mortgage Brokerage and Lending Transaction Journal current.

(5) The penalty for failure to maintain the Mortgage Brokerage and Lending Transaction Journal or to keep the same current (incidental or isolated clerical errors or omissions shall not be considered a violation) shall be the issuance of a "notice of

noncompliance” for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. The penalty for intentional or continued violations of this rule shall be a fine of \$500 and suspension of the license.

(6) Form OFR-494-10 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

*Rulemaking Authority 494.0016(4) FS. Law Implemented 120.695, 494.0016, 494.00255 FS. History—New 1-10-93, Amended 7-25-96, 12-12-99, Formerly 3D-40.265, Amended 3-23-08, 10-1-10.*

#### **69V-40.270 Financial Guaranty in Lieu of Uniform Single Audit.**

(1) A mortgage lender which services an aggregate value of less than \$7.5 million dollars in outstanding mortgage loans and elects to provide a fidelity bond, financial guaranty bond, fidelity insurance, or other financial guaranty providing protection against theft, loss or other illegal diversion of funds in lieu of the single line audit required shall have such financial guaranty in full force and effect by the lender’s first fiscal year end. The financial guaranty shall designate the Office of Financial Regulation as the recipient of the amount of the financial guaranty.

(2) A mortgage lender electing to provide a financial guaranty in lieu of the single line audit shall document (monthly) the aggregate value of mortgage loans serviced on Form OFR-494-11, Calculation of Aggregate Value of Mortgage Loans Serviced. The lender shall maintain work-papers substantiating the aggregate value documented.

(3) The minimum amount of the financial guaranty for each fiscal year shall be determined by calculating the amount of payments (including payoffs) received monthly by the servicer for the previous twelve (12) month period, then averaging the three (3) highest months. A lender electing to provide a financial guaranty in lieu of the single line audit shall document (monthly) the amount serviced on Form OFR-494-11.

(4)(a) The penalty for failure to maintain adequate documentation as required in subsections (2) and (3), shall be a \$1,000 fine and a two (2) year probation with the condition that a single line audit be initiated within thirty (30) days.

(b) A lender that has elected to provide a financial guaranty in lieu of the single line audit and increases the aggregate value of mortgages serviced above the \$7,500,000 threshold shall immediately notify the Office of Financial Regulation and initiate a single line audit within sixty (60) days.

(c) A mortgage lender licensee which services loans without a single line audit or sufficient financial guaranty shall be fined \$1,000 and the license shall be revoked.

(5) For purposes of Section 120.695, F.S., a violation of the above rule shall not be considered a minor violation.

(6) Form OFR-494-11 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

*Rulemaking Authority 494.0011(2), 494.0076(2)(b) FS. Law Implemented 120.695, 494.0072, 494.0076 FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.270, Amended 3-23-08.*

#### **69V-40.285 Noninstitutional Investor Funds Account.**

All money received by a mortgage lender from a noninstitutional investor for disbursement at a mortgage loan closing shall be recorded and updated on Form OFR-494-12 or on a format which is substantially similar to Form OFR-494-12. Form OFR-494-12 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

*Rulemaking Authority 494.00611(4) FS. Law Implemented 494.00255(1)(a) FS. History—New 8-24-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.285, Amended 3-23-08, 10-1-10.*

#### **69V-40.290 Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender.**

*Rulemaking Authority 494.0011(2) FS. Law Implemented 494.001, 494.006(1) FS. History—New 1-10-93, Amended 12-12-99, Formerly 3D-40.290, Repealed 10-1-10.*