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Session Law 86-068

Florida Senate & House of Representatives

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By Senator Crawford-

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A bill to be entitled

An act relating to mortgage brokerage; amending s. 494.04, F.S.; prescribing educational requirements for licensing mortgage brokers and mortgage solicitors and for renewal of such licenses; providing for applications and examinations; creating s. 494.0405, F.S.; providing for permitting of persons, institutions, and schools offering or conducting courses in mortgage brokerage practice; providing for permitting of instructors of such courses; proscribing offenses; providing penalties; providing for issuance of certificates of proof of satisfaction of course requirements; providing an effective date.

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

Section 1. Subsections (3), (4), (5), (6), (7), (8), (9), (10), and (11) of section 494.04, Florida Statutes, are renumbered as subsections (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively, and new subsections (3) and (4) are added to said section to read:

494.04 Licensing of mortgage brokers and mortgage solicitors.--

(3) In addition to any other requirements of this chapter, the department shall require any person desiring to be licensed as a mortgage broker or mortgage solicitor to complete one or more of the educational courses or equivalent courses conducted, offered, sponsored, or approved by an

1 accredited college, university, or community college or by a
2 registered mortgage brokerage school as a requirement for
3 issuance or renewal of a license as a mortgage broker or
4 mortgage solicitor. The course or courses required for an
5 applicant to become initially licensed may not exceed a total
6 of 27 classroom hours of 50 minutes each, inclusive of
7 examination, for a mortgage solicitor or 36 classroom hours of
8 50 minutes each, inclusive of examination, for a mortgage
9 broker. The satisfactory completion of an examination
10 administered by the accredited college, university, or
11 community college or by the registered mortgage brokerage
12 school shall be the basis for determining whether the course
13 or courses were satisfactorily completed. However, notice of
14 satisfactory completion may not be issued to a student who has
15 absences in excess of 3 classroom hours. Each accredited
16 college, university, or community college or registered
17 mortgage brokerage school, as provided in this section, shall
18 make provision for those students who have absences exceeding
19 three classroom hours to satisfactorily complete such course
20 or courses. In the case of a person who, by reason of
21 hardship, cannot attend the place or places where the course
22 or courses are regularly conducted, such completion may be
23 made by correspondence or other suitable means.

24 (4) A person desiring to be licensed as a mortgage
25 broker or mortgage solicitor must apply to the department to
26 take the license examination to practice in this state. The
27 department shall examine each applicant who:

28 (a) Submits to the department the appropriate
29 application and fee.
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1 (b) Submits at the time of examination the certificate
2 specified in s. 494.0405, the examination admissions card
3 issued by the department, and proof of identification.

4 Section 2. Section 494.0405, Florida Statutes, is
5 created to read:

6 494.0405 Conducting or teaching courses in mortgage
7 brokerage practice; permits; penalties.--

8 (1) Each person, school, or institution, except an
9 approved or accredited college or university in this state,
10 that offers or conducts any course of study in mortgage
11 brokerage practice, that teaches any course designed to assist
12 applicants in the passage of an examination for initial
13 licensure or renewal of licensure as a mortgage broker or
14 mortgage solicitor, or that teaches any course designed to
15 assist applicants for licensure as mortgage brokers or
16 mortgage solicitors shall obtain a permit from the department
17 and abide by the regulations imposed upon such person, school,
18 or institution by this chapter and rules of the department
19 adopted pursuant to this chapter.

20 (2)(a) An applicant for a permit to operate a mortgage
21 brokerage school, to be a chief administrator of a mortgage
22 brokerage school, or to be an instructor in a mortgage
23 brokerage school must meet the qualifications for practice set
24 forth in this chapter and the following minimum requirements:

25 1. The school permitholder, or that individual who is
26 responsible for directing the overall operation of the
27 mortgage brokerage school, must be the holder of a license as
28 a mortgage broker or must have passed the instructor's
29 examination administered by the department and, if he actively
30 engages in teaching in the school, must also meet the
31 requirements of a school instructor.

1 2. The school chief administrative person, or that
2 individual who is responsible for the administration of the
3 overall policies and practices of the school, must also meet
4 the requirements of a school instructor if he actively engages
5 in teaching in the school.

6 3. A school instructor, or any individual who actively
7 instructs in the classroom, must, before commencing to
8 instruct, certify his competency by passing an instructor's
9 written examination administered by the department. Every
10 second year, an instructor shall recertify his competency by
11 presenting to the department evidence of his successfully
12 completing at least 15 classroom hours of instruction in
13 mortgage brokerage subjects or instructional techniques, as
14 prescribed by the department.

15 (b) The department may require an applicant to submit
16 names of persons having knowledge concerning the applicant and
17 the enterprise; may propound interrogatories to such persons
18 and to the applicant concerning the character of the
19 applicant, including the taking of fingerprints for processing
20 through the Federal Bureau of Investigation; and shall make
21 such investigation of the applicant or the school or
22 institution as it considers necessary to the granting of the
23 permit. If an objection is filed, it shall be considered in
24 the same manner as objections or administrative complaints
25 against other applicants for licensure by the department.

26 (3) A school permitholder under this section may be
27 issued additional permits if it is clearly shown that the
28 requested additional permits are necessary to the conduct of
29 the business of a mortgage brokerage school and that the
30 additional permits will not be used in a manner likely to be
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1 prejudicial to any person, including a licensee or
2 permitholder under this chapter.

3 (4) The location of classes and frequency of class
4 meetings shall be in the discretion of the school
5 permitholder, except that such courses must conform to s.
6 494.04.

7 (5)(a) It is unlawful for any person, school, or
8 institution to offer the courses described in subsection (1)
9 or to conduct classes in such courses, regardless of the
10 number of pupils and whether by correspondence or otherwise,
11 without first procuring a permit, or to guarantee that its
12 students will pass any examination given by the department, or
13 to represent that the issuance of a permit is a recommendation
14 or endorsement of the person, school, or institution to which
15 it is issued or of any course of instruction given thereunder.

16 (b) Any person who violates this subsection is guilty
17 of a misdemeanor of the second degree, punishable as provided
18 in s. 775.082 or s. 775.083.

19 (6) Each accredited college, university or community
20 college or registered mortgage brokerage school shall notify
21 the department of the name of each person who has
22 satisfactorily completed the educational requirements for
23 licensure provided for in s. 494.04. Furthermore, each such
24 educational institution shall provide to each person who
25 satisfactorily completes the educational requirements provided
26 for in s. 494.04 a certificate as proof of such satisfactory
27 completion.

28 Section 3. This act shall take effect January 1, 1987.
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SENATE SUMMARY

Provides that mortgage brokers and mortgage solicitors must satisfy certain educational requirements prescribed by the Department of Banking and Finance before being issued licenses or license renewals. Requires examinations for licensing. Establishes a permitting procedure for persons, institutions, and schools offering or conducting courses of study in mortgage brokerage practice and for instructors of such courses. Makes it a second degree misdemeanor to offer or conduct such courses without a required permit or to guarantee that students of the school will pass examinations given by the department or to represent that the issuance of a permit by the department is an endorsement of the school or course.

by the Committee on Commerce and Senator Crawford-

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

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A bill to be entitled
 An act relating to mortgage brokerage;
 prescribing educational requirements for
 licensing mortgage brokers and for renewal of
 such licenses; providing for applications and
 examinations; providing for permitting of
 persons, institutions, and schools offering or
 conducting courses in mortgage brokerage
 practice; providing for permitting of
 instructors of such courses; proscribing
 offenses; providing penalties; providing for
 issuance of certificates of proof of
 satisfaction of course requirements; providing
 exemptions; providing for future repeal and
 review; providing an effective date.

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

Section 1. (1) In addition to any other requirements of chapter 494, Florida Statutes, the Department of Banking and Finance shall require any person desiring to be licensed as a mortgage broker to complete one or more of the educational courses or equivalent courses conducted, offered, sponsored, or approved at an accredited college, university, or community college or at a registered mortgage brokerage school, as a requirement for initial licensure as a mortgage broker. The course or courses required for an applicant to become initially licensed may not exceed a total of 36 classroom hours of 50 minutes each, inclusive of examination. The satisfactory completion of an examination administered by the accredited college, university, or community college or by

1 the registered mortgage brokerage school shall be the basis
2 for determining satisfactory completion of the course.
3 However, notice of satisfactory completion shall not be issued
4 to a student who has absences in excess of 3 classroom hours.

5 (2) Schools accredited or registered, as provided in
6 this section, shall make provision for those students who have
7 absences in excess of 3 classroom hours to satisfactorily
8 complete such course or courses. In the case of a person who,
9 by reason of hardship, cannot attend the place or places where
10 the course or courses are regularly conducted, such completion
11 may be by correspondence or other suitable means.

12 (3) Any person desiring to be licensed as a mortgage
13 broker shall apply to the Department of Banking and Finance to
14 take the licensure examination to practice in this state. The
15 department shall examine each applicant who submits at the
16 time of examination the certificate specified in section 2,
17 paragraph (6) hereof, the examination admissions card issued
18 by the department, and proof of identification.

19 Section 2. (1) Each person, school, or institution,
20 except approved and accredited colleges or universities in
21 this state, which offers or conducts any course of study in
22 mortgage brokerage practice, or teaches any course designed to
23 assist an applicant in the passage of an examination for
24 initial licensure as a mortgage broker, or teaches any course
25 designed to assist applicants for licensure as mortgage
26 brokers, shall obtain a permit from the Department of Banking
27 and Finance and abide by the regulations imposed upon such
28 person, school, or institution by this act and chapter 494,
29 Florida Statutes, and rules of the department adopted pursuant
30 to this act and chapter 494, Florida Statutes.

1 (2) An applicant for a permit to operate a mortgage
2 brokerage school, to be a chief administrator of such a
3 school, or to be an instructor in such a school shall meet the
4 qualifications for practice set forth in this act and chapter
5 494, Florida Statutes, and the following minimum requirements:

6 (a) "School permitholder" means that individual who is
7 responsible for directing the overall operation of a mortgage
8 brokerage school. He must be the holder of a license as a
9 mortgage broker or must have passed the instructor's
10 examination administered by the department. He must also meet
11 the requirements of a school instructor if he is actively
12 engaged in teaching.

13 (b) "School chief administrative person" means that
14 individual who is responsible for the administration of the
15 overall policies and practices of the school. He must also
16 meet the requirements of a school instructor if he is actively
17 engaged in teaching.

18 (c) "School instructor" means that individual who
19 actively instructs in the classroom. He must, before
20 commencing to instruct, certify his competency by passing an
21 instructor's written examination administered by the
22 department. Every second year, each instructor shall
23 recertify his competency by presenting to the department
24 evidence of his successfully completing a minimum of 15
25 classroom hours of instruction in mortgage brokerage subjects
26 or instructional techniques, as prescribed by the department.
27 The department may require an applicant to submit names of
28 persons having knowledge concerning the applicant and the
29 enterprise; may propound interrogatories to such persons and
30 to the applicant concerning the character of the applicant,
31 including the taking of fingerprints for processing through

1 the Federal Bureau of Investigation; and shall make such
2 investigation of him or the school or institution as it may
3 deem necessary to the granting of the permit. If an objection
4 is filed, it shall be considered in the same manner as
5 objections or administrative complaints against other
6 applicants for licensure by the department.

7 (3) It is unlawful for any person, school, or
8 institution to offer the courses described in subsection (1)
9 or to conduct classes in such courses, regardless of the
10 number of pupils, whether by correspondence or otherwise,
11 without first procuring a permit, or to guarantee that its
12 pupils will pass any examination given by the department, or
13 to represent that the issuance of a permit is any
14 recommendation or endorsement of the person, school, or
15 institution to which it is issued or of any course of
16 instruction given thereunder.

17 (4) Any person who violates this section is guilty of
18 a misdemeanor of the second degree, punishable as provided in
19 s. 775.082 or s. 775.083, Florida Statutes.

20 (5) The location of classes and frequency of class
21 meetings shall be in the discretion of the school offering
22 mortgage brokerage courses, so long as such courses conform to
23 the requirements of section 1.

24 (6) Each accredited college, university or community
25 college, or registered mortgage brokerage school shall notify
26 the department of the name of all persons who have
27 satisfactorily completed the educational requirements for
28 licensure provided for in section 1. Furthermore, each such
29 educational institution shall provide to each person
30 satisfactorily completing the educational requirements

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1 provided for in section 1 a certificate as proof of such
2 satisfactory completion.

3 (7) A permitholder pursuant to this section may be
4 issued additional permits whenever it is clearly shown that
5 the requested additional permits are necessary to the conduct
6 of the business of a mortgage brokerage school and that the
7 additional permits will not be used in a manner likely to be
8 prejudicial to any person, including a licensee or a
9 permitholder under this act.

10 Section 3. This act does not apply to any applicant
11 for licensure who is a Federal National Mortgage Association
12 approved seller and servicer; a Federal Home Loan Mortgage
13 Corporation approved seller and servicer; a Government
14 National Mortgage Association approved mortgage-backed
15 securities issuer; a Federal Housing Administration approved
16 mortgagee; a Veteran's Administration approved lender; or any
17 successor of any of them, pursuant to any provision of the
18 acts of Congress or federal regulations.

19 Section 4. This act is repealed on October 1, 1991,
20 and shall be reviewed by the Legislature pursuant to s. 11.61,
21 Florida Statutes.

22 Section 5. This act shall take effect January 1, 1987.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1182

Deletes the educational requirements for mortgage solicitors.

Deletes the requirement for the completion of educational courses as a prerequisite to the renewal of a license.

Specifies that certain applicants for licensure would not be required to complete the educational courses.

Specifies Sunset review.

By Representative Gibbons

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A bill to be entitled
An act relating to the Mortgage Brokerage Act;
amending s. 494.02, F.S., providing
definitions; amending s. 494.03, F.S.,
providing language with respect to exemptions,
creating s. 494.035, F.S., providing for powers
and duties of the Department of Banking and
Finance; creating s. 494.037, F.S., providing
mortgage brokerage licensure requirements;
creating s. 494.038, F.S., providing for
renewal of a mortgage broker license; creating
s. 494.039, F.S., providing for registration of
mortgage brokerage businesses; providing fees;
creating s. 494.0391, F.S., providing for
registration renewal; creating s. 494.0392,
F.S., providing for branch office permits;
creating s. 494.0393, F.S., providing for
requirements for licensees and registrants;
amending s. 494.041, F.S., relating to
mortgages offered by certain land developers;
amending s. 494.042, F.S., relating to the
Mortgage Brokerage Guaranty Fund; providing
clarifying language; eliminating reference to
violations of the chapter; amending s. 494.043,
F.S., providing for conditions precedent to
recovery under the fund; providing for
intervention; amending s. 494.044, F.S.,
relating to payment from the fund; creating s.
494.052, F.S., providing for administrative
penalties and fines and license violations;
creating s. 494.055, F.S., providing grounds

1	for disciplinary action; amending s. 494.06,	1.17
2	F.S., providing requirements with respect to	
3	books, accounts, records, and the like;	1.16
4	creating s. 494.065, F.S., providing for	
5	investigation and complaints; amending s.	1.19
6	494.07, F.S., providing for the powers of the	
7	department; amending s. 494.071, F.S., relating	1.20
8	to injunction to restrain violations, amending	
9	s. 494.072, F.S., relating to cease and desist	1.22
10	orders and refund orders; amending s. 494.08,	
11	F.S., relating to requirements and	1.23
12	prohibitions; amending s. 494.081, F.S.,	
13	relating to fees or charges not deemed interest	
14	or finance charges; providing clarifying	1.24
15	language; amending s. 494.091, F.S., relating	
16	to liability in the case of an unlawful	1.25
17	transaction; amending s. 494.093, F.S.,	
18	providing for prohibited practices; amending s.	1.26
19	494.10, F.S., providing penalties; providing	
20	for persons licensed on effective date of act;	1.27
21	providing for review and repeal; repealing s.	
22	494.04, F.S., relating to the licensing of	
23	mortgage brokers and mortgage solicitors;	1.28
24	repealing s. 494.05, F.S., relating to denial,	
25	suspension, or revocation of licenses;	1.29
26	providing an effective date.	1.30
27		
28	Be It Enacted by the Legislature of the State of Florida:	1. enc
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30	Section 1. Section 494.02, Florida Statutes, is	1.31
31	amended to read:	

1	494 02 Definition of terms.--In this act unless the	1 31
2	context or subject matter otherwise requires:	1 33
3	(1) "Person" means an individual, partnership,	1 34
4	corporation, association, and any other group however	1.35
5	organized	
6	(2) "Mortgage loan" means any loan secured by a	1.36
7	mortgage on real property or any loan secured by collateral	1 37
8	which has a mortgage lien interest in real property	1.38
9	(3) "Mortgage broker" means any person not exempt	1.38
10	under s. 494.03 who for compensation or gain, or in the	1 39
11	expectation of compensation or gain, either directly or	1.40
12	indirectly makes, negotiates, acquires, sells, or arranges	1.41
13	for, or offers to make, negotiate, acquire, sell, or arrange	1.43
14	for, a mortgage loan or mortgage loan commitment. This	1.45
15	subsection shall not apply to transactions involving the sale	1.46
16	or purchase of notes or bonds secured by mortgages which are	1 47
17	subject to registration by the department.	1 48
18	(4) <u>"Mortgage brokerage business" means any person</u>	1 49
19	<u>which employs a mortgage broker or mortgage brokers, or which,</u>	1.50
20	<u>either directly or indirectly, makes, negotiates, acquires or</u>	1.51
21	<u>sells, arranges for, offers to make, negotiate, acquire, sell,</u>	
22	<u>or arrange for a mortgage loan or mortgage loan commitment for</u>	1 52
23	<u>compensation or gain, or in the expectation of compensation or</u>	
24	<u>gain. "Mortgage solicitor" means any individual not licensed</u>	1.55
25	<u>as a mortgage broker; who performs any of the functions set</u>	
26	<u>out under subsection (3) and who is employed by a mortgage</u>	1 56
27	<u>broker or whose business policies and acts are under the</u>	1.57
28	<u>direction, control, or management of a mortgage broker-</u>	1.58
29	(5) "Department" means the Department of Banking and	1.59
30	Finance.	1.60
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1	(6) "Licensee" means a <u>natural person licensed as a</u>	1.60
2	person; whether mortgage broker or mortgage solicitor; under	1.61
3	any of the provisions of this act.	
4	(7) "License" means a license issued under the	1.65
5	provisions of this act	1.66
6	<u>(8) "Registrant" means a mortgage brokerage business</u>	1:lus
7	<u>registered pursuant to this act.</u>	1.68
8	<u>(9)(8) "Principal mortgage broker" means a licensee an</u>	1.70
9	<u>individual; officer of a corporation; or member of a</u>	1.72
10	<u>partnership designated as the primary broker of a registrant</u>	1:lus
11	<u>in the application</u>	1:los
12	<u>(10)(9) "Lender" means any person who either lends or</u>	1:lus
13	<u>invests money in mortgage loans.</u>	1.77
14	<u>(11) "Ultimate equitable owner" means a natural person</u>	1:lus
15	<u>who, directly or indirectly, owns or controls an ownership</u>	1.79
16	<u>interest in a corporation, foreign corporation, alien business</u>	1.8
17	<u>organization, or any other form of business organization,</u>	
18	<u>regardless of whether such natural person owns or controls</u>	1.81
19	<u>such ownership interest through one or more natural persons or</u>	
20	<u>one or more proxies, powers of attorney, nominees,</u>	1.82
21	<u>corporations, associations, partnerships, trusts, joint stock</u>	1.83
22	<u>companies, or other entities or devices, or any combination</u>	
23	<u>thereof.</u>	
24	<u>(12) "Mortgage financing transaction" means the</u>	1:lus
25	<u>negotiation, acquisition, sale, or arrangement for, or the</u>	2.1
26	<u>offer to negotiate, acquire, sell or arrange for, a mortgage</u>	
27	<u>loan or mortgage loan commitment.</u>	2.2
28	<u>(13) "Personal residence address" means a street</u>	1:lus
29	<u>address and shall not include a post office box number.</u>	2.4
30	<u>(14) "Division" means the Division of Finance of the</u>	1:
31	<u>Department of Banking and Finance.</u>	2.6

1	<u>(15) "Designated associated broker" means the licensed</u>	1.15
2	<u>mortgage broker in charge of a branch office.</u>	2.8
3	<u>(16) "Mortgage loan commitment" means a contract for</u>	1.15
4	<u>mortgage loan financing.</u>	2.10
5	<u>(17) "Party to a mortgage financing transaction" means</u>	1.15
6	<u>a borrower or lender in a mortgage financing transaction.</u>	2.12
7	Section 2. Section 494.03, Florida Statutes, is	2.13
8	amended to read:	
9	494.03 Exempt persons.--	2.14
10	<u>(1)</u> This act does not apply to the following.	2.16
11	<u>(a)±</u> Banks, trust companies, savings and loan	1.15
12	associations, pension trusts, credit unions, insurance	2.18
13	companies, small loan companies, federally licensed small	2.19
14	business investment companies, or securities dealers	
15	registered under the provisions of s. 517.12, servicing	2.20
16	corporate clients in the normal course of business.	2.21
17	<u>(b)±</u> Any person making or acquiring a mortgage loan	2.23
18	with his own funds for his own investment without intent to	
19	resell said mortgage loan.	2.24
20	<u>(c)±</u> Any person licensed to practice law in this	2.25
21	state, not actively and principally engaged in the business of	
22	negotiating loans secured by real property, when such person	2.27
23	renders services in the course of his practice as an attorney	2.28
24	at law.	
25	<u>(2) It shall not be necessary to negate any of the</u>	1.15
26	<u>exemptions provided in this chapter in any complaint,</u>	2.30
27	<u>information, indictment, or other writ or proceedings brought</u>	
28	<u>under this chapter; and the burden of establishing the right</u>	2.31
29	<u>to any exemption shall be upon the party claiming the benefit</u>	2.32
30	<u>of such exemption.</u>	
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1	Section 3, Section 494.035, Florida Statutes, is	2 43
2	created to read.	
3	<u>494.035 Department's duties and powers.--</u>	1:1us
4	<u>(1) The department shall be responsible for the</u>	1 1us
5	<u>administration and enforcement of this chapter.</u>	2 36
6	<u>(2) The department may adopt such rules as it may deem</u>	1.1us
7	<u>necessary in the administration of this act and not</u>	2.38
8	<u>inconsistent therewith which rules shall have the force and</u>	
9	<u>effect of law.</u>	2.39
10	<u>(3) All fees, charges and fines, collected by the</u>	1.1us
11	<u>department pursuant to this chapter, shall be deposited in the</u>	2 41
12	<u>State Treasury to the credit of the Regulatory Trust Fund</u>	
13	<u>under the Division of Finance of the department.</u>	2.42
14	<u>(4) Any application fee, licensure fee, registration</u>	1:1us
15	<u>fee, inspection fee, or permit fee, mandated by this chapter</u>	2 44
16	<u>and to be collected by the department, may be reduced by rule</u>	
17	<u>whenever the expenditures of the division warrant a lower fee.</u>	2.45
18	Section 4. Section 494.037, Florida Statutes, is	2 46
19	created to read:	
20	<u>494.037 Mortgage brokerage licensure requirements.--</u>	1:1us
21	<u>(1) The department shall issue an initial license to</u>	1:1us
22	<u>any natural person who meets the following requirements:</u>	2 49
23	<u>(a) Is 18 years of age;</u>	1 1us
24	<u>(b) Has submitted a completed application and a</u>	1:1us
25	<u>nonrefundable application fee of \$150;</u>	2 52
26	<u>(c) Has passed a written test adopted by the</u>	1 1us
27	<u>department designed to determine competency in primary and</u>	2.54
28	<u>subordinate mortgage financing transactions and to test</u>	
29	<u>knowledge of this chapter and the rules promulgated thereto.</u>	2 56
30	<u>(d) Has filed a complete set of fingerprints, taken by</u>	1:1us
31	<u>an authorized law enforcement officer, for submission by the</u>	2.58

department to the Department of Law Enforcement or the Federal Bureau of Investigation for processing.

(2) Notwithstanding the provisions of subsection (1), it shall be grounds for denial of licensure if the applicant has committed any violation as set forth in s 494.055(1) or has pending any criminal prosecutions or administrative enforcement actions, in any jurisdiction, which involve fraud, dishonest dealing or any other act of moral turpitude.

(3) The department shall not grant or issue to any individual more than one mortgage broker license at any one time. A licensee shall be employed by a registrant or registrants, unless self-employed. The license shall state whether the individual licensee is self-employed or is an employee of a registered mortgage brokerage business. If the individual is an employee, his license shall state the name of the employer registrant or registrants. Not later than 10 calendar days after any termination of employment, both the registrant and the employee shall send written notice of the termination to the department. Not later than 10 calendar days after entering into an employer-employee relationship, both the registrant and the employee shall send written notice of the employment relationship to the department.

(4) The department shall endorse each change of employment on the license of the licensee. The department shall set by rule a fee not to exceed \$50 for endorsement.

(5) Each initial application for a mortgage broker license shall be in written form as prescribed by the department. The department is authorized to require each applicant to provide any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

1	<u>(6) The initial mortgage broker license shall be valid</u>	1:1us
2	<u>for the remainder of the biennium in which the license is</u>	3:1
3	<u>issued.</u>	
4	Section 5. Section 494.038, Florida Statutes, is	3:2
5	created to read:	
6	<u>494.038 Renewal of mortgage broker license --</u>	1:1us
7	<u>(1) The department shall renew a mortgage broker</u>	1:1us
8	<u>license upon receipt of the completed renewal application and</u>	3:5
9	<u>the renewal fee of \$150.</u>	
10	<u>(2) The department shall adopt rules establishing a</u>	1:1us
11	<u>procedure for the biennial renewal of mortgage broker</u>	3:7
12	<u>licenses. The department is authorized to prescribe the form</u>	3:8
13	<u>of the renewal application and may require an update of a l</u>	3:9
14	<u>information provided in the licensee's initial application for</u>	
15	<u>licensure.</u>	3:10
16	<u>(3) A license which is not renewed by the end of the</u>	1:1us
17	<u>biennium prescribed by the department shall automatically</u>	3:12
18	<u>revert to inactive status. An inactive license may be</u>	3:13
19	<u>reactivated by filing a completed reactivation application</u>	
20	<u>with the department, payment of the renewal fee, and payment</u>	3:14
21	<u>of a reactivation fee equal to the renewal fee.</u>	3:15
22	<u>(4) A license which is not renewed within 2 years of</u>	1:1us
23	<u>becoming inactive shall expire.</u>	3:17
24	Section 6. Section 494.039, Florida Statutes, is	3:18
25	created to read:	
26	<u>494.039 Registration of mortgage brokerage</u>	1:1us
27	<u>businesses.--</u>	
28	<u>(1) The department shall issue an initial registration</u>	1:1us
29	<u>to each mortgage brokerage business which meets the following</u>	3:21
30	<u>requirements:</u>	
31		

1	<u>(a) Has submitted a completed application form and a</u>	1:1us
2	<u>nonrefundable application fee of \$150.</u>	3:23
3	<u>(b) Designated a qualified principal mortgage broker,</u>	1:1us
4	<u>and submitted an affidavit signed by the designated principal</u>	3:25
5	<u>mortgage broker acknowledging acceptance of the designation</u>	
6	<u>and the responsibilities appertaining thereto.</u>	3:26
7	<u>(2) Notwithstanding the provisions of subsection (1),</u>	1:1us
8	<u>it shall be grounds for denial of registration if the</u>	3:28
9	<u>designated principal mortgage broker; any officer, director,</u>	
10	<u>partner, joint venturer, or any natural person owning a 10</u>	3:29
11	<u>percent or greater interest in the mortgage brokerage</u>	3:30
12	<u>business; or any natural person who is the ultimate equitable</u>	
13	<u>owner of a 10 percent or greater interest in the mortgage</u>	3:31
14	<u>brokerage business has committed any violation set forth in s.</u>	3:32
15	<u>494.055(1) or has pending any criminal prosecution or</u>	
16	<u>administrative enforcement actions, in any jurisdiction, which</u>	3:33
17	<u>involves fraud, dishonest dealing, or any other act of moral</u>	
18	<u>turpitude.</u>	3:34
19	<u>(3) Each initial application for registration shall be</u>	1:1us
20	<u>in written form as prescribed by the department. The</u>	3:37
21	<u>department is authorized to require each applicant to provide</u>	
22	<u>the following information;</u>	3:38
23	<u>(a) The applicant's name, the address of the</u>	1:1us
24	<u>applicant's principal place of business, and the address of</u>	3:40
25	<u>each applicant's branch offices in this state.</u>	
26	<u>(b) The applicant's form of business organization.</u>	1:1us
27	<u>1. For corporation applicants disclosure of the names</u>	1:1us
28	<u>and personal residence addresses of each current officer and</u>	3:43
29	<u>director of the applicant, each current shareholder who owns a</u>	3:44
30	<u>10 percent or greater interest in the corporation, and each</u>	
31		

1	<u>ultimate equitable owner of a 10 percent or greater interest</u>	3 45
2	<u>in the corporation.</u>	
3	2 <u>For unincorporated associations, partnerships,</u>	1 1us
4	<u>joint-stock or joint-venture applicants, disclosure of the</u>	3 47
5	<u>names and personal residence addresses of each current</u>	
6	<u>officer, director, and any natural person holding an</u>	3 48
7	<u>equivalent position, each current association member, partner,</u>	3 49
8	<u>and joint-venturer who owns a 10 percent or greater interest</u>	
9	<u>in the mortgage brokerage business; and any ultimate equitable</u>	3 50
10	<u>owner of a 10 percent or greater interest in the mortgage</u>	
11	<u>brokerage business.</u>	3 51
12	3. <u>For a sole proprietorship operating under a</u>	1:1us
13	<u>fictitious name disclosure of the name and personal residence</u>	3 53
14	<u>address of the sole proprietor.</u>	
15	(c) <u>The name and personal residence address of the</u>	1:1us
16	<u>principal mortgage broker at the applicant's principal place</u>	3 55
17	<u>of business and, if the applicant has one or more branch</u>	
18	<u>offices, the name and personal residence address of the</u>	3 56
19	<u>designated associate mortgage broker at each branch office.</u>	3 57
20	(d) <u>The name and personal residence address of each</u>	1:1us
21	<u>mortgage broker to be employed and the office address at which</u>	3 59
22	<u>each mortgage broker will be assigned.</u>	
23	(e) <u>A listing of the civil lawsuits, criminal actions,</u>	1:1us
24	<u>and administrative proceedings, which involve fraud, dishonest</u>	3 61
25	<u>dealing or other acts of moral turpitude, in which the</u>	
26	<u>applicant and any person disclosed in paragraph (b) is named</u>	3 62
27	<u>as a party, including the status or result of such lawsuit,</u>	3 63
28	<u>action, or proceeding.</u>	
29	(f) <u>Any other information reasonably necessary to</u>	1 1us
30	<u>determine eligibility for registration pursuant to this</u>	3 65
31	<u>chapter.</u>	

1	Section 7. Section 494.0331, Florida Statutes, is	3.66
2	created to read:	
3	<u>494.0331 Renewal of mortgage brokerage business</u>	1.1us
4	<u>registration.--</u>	
5	<u>(1) The department shall renew a mortgage brokerage</u>	1.1us
6	<u>registration upon receipt of a completed renewal application</u>	3.69
7	<u>and the renewal fee of \$150. Each registrant shall pay at the</u>	3.70
8	<u>time of renewal a fee of \$150 for the renewal of each branch</u>	
9	<u>office permit.</u>	3.71
10	<u>(2) The department shall adopt rules establishing a</u>	1.1us
11	<u>procedure for the biennial renewal of mortgage brokerage</u>	3.73
12	<u>business registrations. The department is authorized to</u>	3.74
13	<u>prescribe the form of the renewal application and may require</u>	
14	<u>an update of all information provided in the registrant's</u>	3.75
15	<u>initial application.</u>	
16	<u>(3) A registration which is not renewed by the end of</u>	1.1us
17	<u>the biennium prescribed by the department shall automatically</u>	3.77
18	<u>become inactive for up to 2 years. An inactive registration</u>	3.78
19	<u>may be reactivated by filing a completed reactivation</u>	
20	<u>application with the department, payment of the renewal fee,</u>	3.79
21	<u>and payment of a reactivation fee equal to the renewal fee.</u>	3.80
22	<u>(4) A registration which is not renewed within 2 years</u>	1.1us
23	<u>of becoming inactive shall expire.</u>	3.82
24	Section 8 Section 494.0332, Florida Statutes, is	3.83
25	created to read:	
26	<u>494.0332 Branch offices --</u>	1.1us
27	<u>(1) A permit is required for each branch office</u>	1.1us
28	<u>maintained by a registrant.</u>	4.2
29	<u>(2) The department shall issue a permit upon receipt</u>	1.1us
30	<u>of a completed application in a form as prescribed by the</u>	4.4
31	<u>department and an initial permit fee of \$150. The branch</u>	4.5

1 office application shall include the name and license number
 2 of the designated associate broker. Branch office permits 4.7
 3 shall be renewed in conjunction with registration renewal.
 4 Section 9. Section 494.0393, Florida Statutes, is 4.8
 5 created to read:
 6 494.0393 Requirements of licensees and registrants.-- 4.10 plus
 7 (1) The licenses of all mortgage brokers shall be 4.11 plus
 8 prominently displayed in the office where the licensee is 4.12
 9 employed.
 10 (2) Every registered mortgage brokerage business and 4.13 plus
 11 self-employed licensee shall transact business from a 4.14
 12 principal place of business in the state. The registration 4.15
 13 shall specify the address of such principal place of business 4.16
 14 and shall be conspicuously displayed thereon. Each mortgage 4.17
 15 brokerage office or branch thereof shall be operated under the 4.18
 16 full charge, control, and supervision of a designated 4.19
 17 associate mortgage broker employed at such office or branch on 4.20
 18 a regular and full-time basis to supervise and perform the 4.21
 19 rendering of mortgage brokerage services. No mortgage broker 4.22
 20 may serve as the designated associate mortgage broker for more 4.23
 21 than one office or branch thereof. The department shall be 4.24
 22 notified within 10 days of any change of address of the 4.25
 23 principal place of business, change of address of any branch 4.26
 24 office, or change of the designated associate broker. The 4.27
 25 department shall endorse the change on the permit without 4.28
 26 charge.
 27 (3) A mortgage broker license or mortgage brokerage 4.29 plus
 28 registration shall not be transferable. 4.30
 29 (4) The department is authorized to require that each 4.31 plus
 30 registrant shall report any change in the form of business 4.32
 31 organization or any change of a person named pursuant to s. 4.33

1	<u>494.039(3)(b) to the department in writing not later than 30</u>	4.28
2	<u>calendar days after said change is effective.</u>	4.29
3	<u>(5) Each licensee shall report any conviction of any</u>	1:lus
4	<u>crime or any finding of administrative violation, in any</u>	4.31
5	<u>jurisdiction, which involves fraud, dishonest dealing, or</u>	
6	<u>other act of moral turpitude, to the department in writing not</u>	4.32
7	<u>later than 30 calendar days after said conviction or</u>	4.33
8	<u>administrative action. Each registrant shall report in</u>	4.34
9	<u>writing any conviction of any crime or administrative</u>	
10	<u>violation which involves fraud, dishonest dealing, or any</u>	4.35
11	<u>other act of moral turpitude, in any jurisdiction, by the</u>	4.36
12	<u>registrant or any natural person named pursuant to s.</u>	
13	<u>494.039(3)(b) not later than 30 calendar days after said</u>	4.37
14	<u>conviction or final administrative action.</u>	
15	<u>(6) Each registrant and self-employed licensee shall</u>	1:lus
16	<u>report any action in bankruptcy, voluntary or involuntary, to</u>	4.39
17	<u>the department not later than 7 calendar days after said</u>	4.40
18	<u>action is instituted.</u>	4.41
19	Section 10 Section 494.041, Florida Statutes, is	4.42
20	amended to read	
21	494.041 Brokers and solicitors offering Mortgages	4.44
22	<u>offered</u> by land developers licensed pursuant to the Florida	4.46
23	Uniform Land Sales Practices Law; requirements;	
24	prohibitions.--No mortgage loan which has a face amount of	4.48
25	\$35,000 or less and is secured by vacant land registered under	4.49
26	the Florida Uniform Land Sales Practices Law, chapter 498,	4.50
27	shall be sold to a mortgagee, except a financial institution,	4.53
28	by <u>any person</u> a mortgage broker or solicitor unless all of the	4.55
29	following requirements are met:	
30		
31		

1	(1) Each mortgage securing a note or other obligation	4.55
2	sold or offered for sale shall be eligible for a recordation	4.56
3	as a first mortgage.	
4	(2) Each mortgage negotiated pursuant to this section	4.57
5	must include a mortgagee's title insurance policy or an	4.58
6	opinion of title, from an attorney who is licensed to practice	4.59
7	law in this state, on each parcel of land which is described	
8	in the mortgage. The policy or opinion shall reflect that	4.61
9	there are no other mortgages on the property. A notice	4.63
10	stating the priority of the mortgage shall be placed on the	4.64
11	face of each mortgage in an amount over \$35,000 issued	
12	pursuant to this section.	4.65
13	(3) Contracts to purchase a mortgage loan shall	4.65
14	contain, immediately above the purchaser's signature line, the	4.66
15	statement in 10-point boldfaced type "This mortgage is	4.67
16	secured by vacant land subject to development at a future	4.68
17	time." This statement shall also be typed or printed in 10-	4.69
18	point type on the face of the note and mortgage sold.	4.70
19	(4) The most recent assessment for tax purposes made	4.71
20	by the county property appraiser of each parcel of land	4.72
21	described in the mortgage shall be furnished to each	4.73
22	mortgagee.	
23	(5) The mortgage broker shall record or cause to be	4.74
24	recorded all mortgages or other similar documents prior to	
25	delivery of the note and mortgage to the mortgagee.	4.75
26	(6) All funds received by the mortgage broker	4.77
27	pursuant to this section shall promptly be deposited in the	
28	broker's trust account where they shall remain until the note	4.79
29	and mortgage are fully executed and recorded.	4.80
30		
31		

1	Willful failure to comply with any of the above	4 31
2	provisions shall subject the <u>person</u> licensee to the penalties	4 32
3	of s. 494.05	4 33
4	Section 11. Section 494.042, Florida Statutes, is	4 34
5	amended to read:	
6	494.042 Mortgage Brokerage Guaranty Fund --	5 2
7	(1)(a) Effective September 1, 1977, the Treasurer	5 2
8	shall establish a Mortgage Brokerage Guaranty Fund. A fee of	5 4
9	\$50 per license year shall be added to the license fee for	
10	both <u>initial new-licenses</u> and renewal of-licenses of a	1:10s
11	<u>mortgage brokerage business registration principal-mortgage</u>	5 3
12	broker, and a fee of \$10 per license year shall be added to	5 10
13	the license fee for both <u>initial new-licenses</u> and renewal of	5 11
14	<u>individual mortgage brokerage licenses by solicitors and</u>	1:10s
15	additional-brokers . This fee shall be in addition to the	5 13
16	regular license fee and shall be transferred to or deposited	
17	in the Mortgage Brokerage Guaranty Fund	5 14
18	(b) From October 1, 1985, until the balance in the	5:15
19	fund first reaches the sum of \$1.5 million, the fees provided	5:16
20	for in paragraph (a) shall apply only to initial issuance of a	
21	license <u>or registration</u> to a person who has not previously	5:17
22	been issued a license <u>or registration</u> under this chapter	5:19
23	(c) If the fund at any time exceeds \$1.5 million,	5:20
24	collection of special fees for this fund shall be discontinued	5:21
25	at the end of that <u>renewal period license-year</u> , and such	
26	special fees shall not be reimposed unless the fund is reduced	5:23
27	below \$500,000 by disbursement made in accordance with s.	
28	494.044.	
29	(2) The Mortgage Brokerage Guaranty Fund shall be	5:24
30	disbursed as provided in s. 494.044, upon approval by the	5:25
31	division of Finance of the Department of Banking and Finance,	5:26

1	to any <u>party to a mortgage financing transaction</u> person who is	1:10s
2	adjudged by a <u>Florida</u> court of competent jurisdiction to have	5:28
3	suffered monetary damages as a result of any <u>violation of this</u>	
4	<u>chapter of the following acts</u> committed by a <u>licensee or</u>	5:30
5	<u>registrant</u> mortgage broker or mortgage solicitor who was	1:10s
6	licensed under this chapter at the time the act was committed.	5:32
7	(a) -- A violation of any provision of this chapter;	5:33
8	(b) -- Making any false promises likely to influence;	5:35
9	persuade; or induce or pursuing a course of misrepresentation	5:36
10	or false promises through agents;	
11	(c) -- Misrepresentation; circumvention; or concealment	1:10s
12	by the licensee; through whatever subterfuge or device; of any	5:38
13	of the material particulars or the nature thereof; regarding a	5:39
14	transaction to which he is a party; and of injury to another	5:40
15	party thereto;	
16	(d) -- Failure to disburse funds in accordance with	5:42
17	agreements;	
18	(e) -- Failure to account or deliver to any person any	1:10s
19	personal property; such as any money; fund; deposit; check;	5:44
20	draft; mortgage; or other document or thing of value; which	5:46
21	has come into his hands and which is not his property or which	5:47
22	he is not in law or equity entitled to retain; under the	5:48
23	circumstances and at the time which has been agreed upon or is	
24	required by law or; in the absence of a fixed time; upon	5:49
25	demand of the person entitled to such accounting and delivery.	5:50
26	(f) -- Failure to place; immediately upon receipt; any	1:10s
27	money; fund; deposit; check; or draft entrusted to him by a	5:52
28	person dealing with him as a broker; in escrow with an escrow	5:53
29	agent located and doing business in this state; pursuant to a	5:54
30	written agreement; or to deposit said funds in a trust or	
31	escrow account maintained by him with a bank or savings and	5:55

1	loan-association-located-and-doing-business-in-this-state	5.57
2	wherein-said-funds-shall-be-kept-until-disbursement-thereof-is	5.58
3	properly-authorized.	
4	Section 12. Section 494.043, Florida Statutes, is	5.59
5	amended to read:	
6	494.043 Conditions <u>precedent</u> for recovery;	5.60
7	<u>intervention.--</u>	5.61
8	(1) Any person <u>who was a party to a mortgage financing</u>	5.63
9	<u>transaction</u> shall be eligible to seek recovery from the	5.65
10	Mortgage Brokerage Guaranty Fund if:	5.66
11	(a) <u>The {1}</u> --Such person has <u>recorded a received</u> final	1:108
12	judgment <u>issued by</u> in a <u>Florida</u> court of competent	1:118
13	jurisdiction in-this-state in any action wherein the cause of	5.70
14	action <u>was based on s. 494.042(2);</u>	5.71
15	(b) <u>The {2}</u> --Such person has caused to be issued a	5.72
16	writ of execution upon such judgment and the officer executing	5.73
17	the same has made a return showing that no personal or real	5.74
18	property of the judgment debtor liable to be levied upon in	
19	satisfaction of the judgment can be found or that the amount	5.75
20	realized on the sale of the judgment debtor's property	5.76
21	pursuant to such execution was insufficient to satisfy the	5.77
22	judgment;	
23	(c) <u>The {3}</u> --Such person has made all reasonable	5.78
24	searches and inquiries to ascertain whether the judgment	5.80
25	debtor possesses real or personal property or other assets	5.81
26	subject to being sold or applied in satisfaction of the	5.82
27	judgment, and by his search he has discovered no property or	
28	assets or he has discovered property and assets and has taken	5.83
29	all necessary action and proceedings for the application	5.84
30	thereof to the judgment, but the amount thereby realized was	6.1
31	insufficient to satisfy the judgment;	

1 (d) ~~The~~ ~~44~~--Such person has applied any amounts 1:lus
2 recovered from the judgment debtor, or from any other source, 6 4
3 to the damages awarded by the court;

4 (e) ~~The~~ ~~45~~--Such person, at the time the action was 6.6
5 instituted, gave notice and provided a copy of the complaint 6.7
6 thereof to the division of Finance of the department by 6 9
7 certified mail; however, the requirement of a timely giving of
8 notice may be waived by the department upon a showing of good 6.10
9 cause; and

10 (f) ~~46~~ The act for which recovery is sought occurred 6.12
11 on or after September 1, 1977. Recovery of the increased 6.14
12 benefits allowable pursuant to the amendments to s. 494.044
13 which are effective October 1, 1985, shall be based on a cause 6.16
14 of action which arose on or after that date.

15 (2) The requirements of paragraphs (1)(a), (b), (c), 1:lus
16 (d), and (e) subsections 42 and 43 are not applicable if the 6.20
17 licensee or registrant upon which the claim is sought has 1:lus
18 filed for bankruptcy or has been adjudicated bankrupt; 6.22
19 however, in such event the claimant shall file a proof of 6.24
20 claim in the bankruptcy proceedings and shall notify the 1:lus
21 department by certified mail of the claim by enclosing a copy
22 of the proof of claim and all supporting documents. 6.26

23 (3) When the department receives notice of any action, 1:lus
24 as required by paragraph (1)(e), the department may intervene, 6.27
25 enter an appearance, or take any action it deems appropriate
26 on behalf, and in the name of the defendant and take recourse 6 28
27 through any appropriate method of review on behalf, and in the 6.29
28 name of the defendant.

29 Section 13. Section 494.044, Florida Statutes, is 6.30
30 amended to read:

31 494.044 Payment from the fund.-- 6.31

1	(1) Any person who meets all of the conditions	6.32
2	prescribed in s. 494.043 may apply to the department for	6.33
3	payment to be made to such person from the Mortgage Brokerage	
4	Guaranty Fund in the amount equal to the unsatisfied portion	6.34
5	of <u>that</u> such person's judgment or judgments or \$20,000,	6.36
6	whichever is less, but only to the extent and amount reflected	6.37
7	in the judgment as being actual or compensatory damages As	6.39
8	to claims against any one <u>licensee or registrant mortgage</u>	
9	<u>broker-or-mortgage-solicitor</u> , payments shall be made to all	6.40
10	persons meeting the requirements of s. 494.043 upon the	6.42
11	expiration of 2 years from the date the first <u>complete and</u>	1:1us
12	<u>valid</u> notice is received by the department pursuant to s.	6.44
13	494:043f5 . Persons who give notice after 2 years from the	6.45
14	date the first <u>complete and valid</u> notice is received and who	6.46
15	<u>otherwise comply with the conditions precedent to recovery</u>	1:1us
16	have-not-received-payment-as-provided-above may recover <u>from</u>	6.48
17	<u>any up-to-the</u> remaining portion of <u>any-of</u> the \$100,000	6.50
18	aggregate, <u>in an amount equal to the unsatisfied portion of</u>	6.51
19	<u>that person's judgment or \$20,000 whichever is less, but only</u>	
20	<u>to the extent and amount reflected in the judgment as being</u>	6.52
21	<u>actual or compensatory damages</u> with claims being paid in the	6.53
22	order notice is received <u>until the \$100,000 aggregate has been</u>	6.54
23	<u>fully disbursed</u>	6.55
24	(2) Upon receipt by the claimant of the payment from	6.56
25	the Mortgage Brokerage Guaranty Fund; The claimant shall	6.57
26	assign <u>his any-additional</u> right, title, and interest in the	6.59
27	judgment, to the extent of <u>his recovery from the fund</u> such	1:1os
28	payment, to the department <u>and shall record, at his own</u>	
29	<u>expense, the assignment of judgment in every county where the</u>	6.61
30	<u>judgment is recorded.</u>	
31		

1	(3) Payments for claims shall be limited in the	6.62
2	aggregate to \$100,000, regardless of the number of claimants	6.63
3	involved, against any one mortgage broker <u>or registrant or</u>	
4	mortgage-solicitor . If the total claims exceed the aggregate	6.65
5	limit of \$100,000, the department shall prorate the payment	6.66
6	based on the ratio that the person's claim bears to the total	6.68
7	claims filed.	
8	(4) If at any time the money in the Mortgage-Brokerage	6.69
9	Guaranty fund is insufficient to satisfy any valid claim or	6.70
10	portion thereof, the department shall satisfy such unpaid	6.71
11	claim or portion thereof as soon as a sufficient amount of	6.72
12	money has been deposited in or transferred to the fund. When	6.73
13	there is more than one unsatisfied claim outstanding, such	
14	claims shall be paid in the order in which the claims were	6.74
15	filed with the department.	
16	(5) All payments and disbursements made from the	6.75
17	Mortgage-Brokerage-Guaranty fund shall be made by the	6.76
18	Treasurer upon a voucher signed by the Comptroller, as head of	
19	the department, or such agent as he may designate.	6.77
20	(6) The payment of any amount from the Mortgage	6.78
21	Brokerage-Guaranty fund in settlement of a claim or in	6.79
22	satisfaction of a judgment against <u>any person</u> a licensee shall	6.80
23	constitute prima facie grounds for the revocation of the	6.82
24	license <u>or registration</u> of such <u>person</u> licensee .	1:10s
25	Section 14. Section 494.052, Florida Statutes, is	6.84
26	created to read:	7.1
27	<u>494.052 Administrative penalties and fines; license</u>	1:1us
28	<u>violations.--When the department finds any person in violation</u>	7.2
29	<u>of the grounds set forth in s. 494.055(1), it may enter an</u>	7.3
30	<u>order imposing one or more of the following penalties:</u>	7.4
31	<u>(1) Revocation of a license or registration.</u>	1:1us

1	<u>(2) Suspension of a license or registration subject to</u>	11:1us
2	<u>reinstatement upon a. reasonable conditions as the department</u>	7 5
3	<u>may specify.</u>	
4	<u>(3) Placement of the licensee, registrant, or</u>	1:1us
5	<u>applicant on probation for a period of time and subject to a.</u>	7 7
6	<u>reasonable conditions as the department may specify.</u>	
7	<u>(4) Issuance of a reprimand.</u>	1:1us
8	<u>(5) Imposition of a fine not to exceed \$5,000 for each</u>	1:1us
9	<u>count or separate offense.</u>	7:10
10	<u>(6) Denial of a license or registration.</u>	1:1us
11	Section 15. Section 494 055, Florida Statutes, is	7:12
12	created to read:	7 13
13	<u>494.055 Grounds for disciplinary action.--</u>	1:1us
14	<u>(1) The following acts shall constitute grounds for</u>	7:14
15	<u>which the disciplinary actions specified in s. 494 052 may be</u>	7 15
16	<u>taken:</u>	
17	<u>(a) Being convicted or found guilty, regardless of</u>	1:1us
18	<u>adjudication, of a crime in any jurisdiction which involves</u>	7:17
19	<u>fraud, dishonest dealing, or any other act of moral turpitude;</u>	7 18
20	<u>(b) Fraud, misrepresentation, deceit, negligence, or</u>	1:1us
21	<u>incompetence in any mortgage financing transaction;</u>	7 19
22	<u>(c) A material misstatement of fact on an initial or</u>	1:1us
23	<u>renewal application;</u>	7:21
24	<u>(d) An act which has caused, or will cause, a</u>	1:1us
25	<u>disbursement to any person in any amount from the Mortgage</u>	7:23
26	<u>Brokerage Guaranty Fund, the Securities Guaranty Fund, or the</u>	
27	<u>Florida Real Estate Recovery Fund, regardless of any repayment</u>	7 24
28	<u>or restitution to the disbursed fund by the licensee or</u>	7 25
29	<u>registrant or any person acting on behalf of the licensee or</u>	
30	<u>registrant;</u>	7 26
31		

1	<u>(e) Failure to place, immediately upon receipt, any</u>	1.1us
2	<u>money, fund, deposit, check, or draft entrusted to him by a</u>	7.30
3	<u>person dealing with him as a broker, in escrow with an escrow</u>	
4	<u>agent located and doing business in this state, pursuant to a</u>	7.31
5	<u>written agreement, or to deposit said funds in a trust or</u>	7.32
6	<u>escrow account maintained by him with a bank or savings and</u>	
7	<u>loan association located and doing business in this state,</u>	7.33
8	<u>wherein said funds shall be kept until disbursement thereof is</u>	
9	<u>properly authorized.</u>	7.34
10	<u>(f) Failure to account or deliver to any person any</u>	1.1us
11	<u>personal property, such as any money, fund, deposit, check,</u>	7.36
12	<u>draft, mortgage, or other document or thing of value, which</u>	
13	<u>has come into his hands and which is not his property or which</u>	7.37
14	<u>he is not in law or equity entitled to retain, under the</u>	7.38
15	<u>circumstances and at the time which has been agreed upon or is</u>	
16	<u>required by law or, in the absence of a fixed time, upon</u>	7.40
17	<u>demand of the person entitled to such accounting and delivery.</u>	7.41
18	<u>(g) Failure to disburse funds in accordance with</u>	1.1us
19	<u>agreements.</u>	
20	<u>(h) Any breach of trust funds or escrow funds, or any</u>	1.1us
21	<u>misuse, misapplication, or misappropriation of personal</u>	7.44
22	<u>property such as money, fund, deposit, check, draft, mortgage,</u>	
23	<u>other document, or thing of value entrusted to his care to</u>	7.45
24	<u>which he had no current property right at the time of</u>	7.46
25	<u>entrustment regardless of actual injury to any person;</u>	
26	<u>(i) Having a license, registration, or the equivalent,</u>	1.1us
27	<u>to practice any profession or occupation revoked, suspended,</u>	7.48
28	<u>or otherwise acted against, including the denial of licensure</u>	
29	<u>by a licensing authority of this state or another state,</u>	7.49
30	<u>territory, or country for fraud, dishonest dealing or any</u>	7.51
31	<u>other act of moral turpitude.</u>	

1	<u>(1) Failure to comply with any department order or</u>	1.15
2	<u>rule made or issued under the provisions of this chapter,</u>	7.50
3	<u>(4) Acting as mortgage broker or mortgage brokerage</u>	1.15
4	<u>business without a current, active license or registration;</u>	7.50
5	<u>(1) Failure to timely pay any fee, charge, or fine</u>	1.15
6	<u>under this chapter,</u>	7.54
7	<u>(m) Failure to maintain, preserve, and keep available</u>	1.15
8	<u>for examination, all books, accounts, or other documents</u>	7.56
9	<u>required by the provisions of this chapter and the rules of</u>	
10	<u>the division,</u>	7.57
11	<u>(n) Refusal to permit an investigation or examination</u>	1.15
12	<u>of books and records, or refusal to comply with a department</u>	7.59
13	<u>subpoena or subpoena duces tecum, or</u>	
14	<u>(o) Failure to comply with or violation of any other</u>	1.15
15	<u>provision of this chapter,</u>	7.61
16	<u>(2) A registrant shall be subject to the disciplinary</u>	1.15
17	<u>actions specified in s. 494.052 for violations of subsection</u>	7.63
18	<u>(1) by any officer, director, shareholder, joint venturer,</u>	
19	<u>partner, ultimate equitable owner, or employee mortgage broker</u>	7.64
20	<u>of the registrant,</u>	
21	<u>(3) A principal mortgage broker shall be subject to</u>	1.15
22	<u>the disciplinary actions specified in s. 494.052 for</u>	7.66
23	<u>violations of subsection (1) by employees of the mortgage</u>	
24	<u>brokerage business. A principal mortgage broker shall be</u>	7.68
25	<u>subject to the disciplinary actions specified in s. 494.052</u>	
26	<u>for violations of subsection (1) by officers, directors,</u>	7.70
27	<u>shareholders, partners, joint venturers, owners, and ultimate</u>	7.71
28	<u>equitable owners, when the principal mortgage broker has</u>	
29	<u>knowledge of the violation and fails to inform the department</u>	7.72
30	Section 16. Section 494.06, Florida Statutes, is	7.73
31	amended to read:	

1	494 06 investigators and compliance ; Books, accounts,	7.74
2	<u>and</u> records, etc --	7.76
3	(1) Every principal <u>mortgage</u> broker shall maintain, at	7.76
4	the place of business designated <u>on</u> in the license <u>or</u>	7.77
5	<u>registration</u> certificate, <u>all</u> such books, accounts, records	7.79
6	and documents <u>as the department deems necessary</u> of the	
7	business-conducted-under-the-license-issued-for-such-place-of	7.81
8	business-as-will-enable-the-department to determine <u>compliance</u>	1:1us
9	whether-the-business-of-the-licensee-contemplated-by-this-act	7.83
10	is-being-operated-in-accordance with <u>this chapter</u> the	7.84
11	provisions-of-this-act	
12	(2) A <u>registrant</u> licensee operating <u>a branch office</u>	8.2
13	two-or-more-licensed-places-of-business in this state, may	8.3
14	maintain the general control records of all <u>its</u> such offices	
15	at any one of the offices, or at any other <u>reasonable location</u>	8.5
16	<u>in this state</u> licensed-office-maintained-by-the-licensee , upon	8.7
17	the filing of a written <u>notice</u> request with the department	
18	designating-therein-the-office-at-which-such-control-records	8.9
19	are-maintained .	
20	(3) All books, accounts, records and documents of	1:es
21	<u>registrants and</u> licensees, including <u>the</u> a closing statement	8.12
22	signed by <u>every</u> the borrower shall be preserved and <u>kept</u>	1:1us
23	available for examination by the department for <u>not less than</u>	8.14
24	<u>at least 5 years</u> from date of original entry.	8.16
25	(4) The department is authorized to prescribe the	8.16
26	minimum information to be shown in the books, accounts,	8.17
27	records and documents of licensees so that such records will	8.18
28	enable the department to determine compliance with the	8.19
29	provisions of this act.	
30	(5) The department may, at intermittent periods, make	1.es
31	such investigations-and examinations of any licensee or other	8.22

1	person as it deems necessary to determine compliance with this	8.23
2	act. For such purposes it may examine the books, accounts,	8.25
3	records and other documents or matters of any licensee or	
4	other person. It shall have the power to compel the	8.27
5	production of all relevant books, records and other documents	8.28
6	and materials relative to an examination or investigation.	8.29
7	Such investigations and examinations shall not be made more	8.30
8	often than once during a year unless the department has reason	8.31
9	to believe the licensee is not complying with the provisions	8.32
10	of this act. Examinations conducted under the provisions of	8.34
11	this act shall be confidential with the department except as	8.35
12	required in the administration, enforcement and prosecution of	8.36
13	violations under this act.	
14	(6) Any party having reason to believe that this act	1:es
15	has been violated, or that a licensee is subject to suspension	8.38
16	or revocation, may file with the department a written	8.39
17	complaint setting forth the details of such alleged violation	8.40
18	or grounds for suspension or revocation.	
19	Section 17. Section 494.065, Florida Statutes, is	8.41
20	created to read:	8.42
21	<u>494.065 Investigations, complaints.--</u>	1:lus
22	<u>(1) The department may conduct an investigation of any</u>	8.43
23	<u>person whenever there is an appearance, either upon complaint</u>	
24	<u>or otherwise, that any violation of this chapter has been</u>	8.44
25	<u>committed or is about to be committed.</u>	8.45
26	<u>(2) Any person having reason to believe that this</u>	1:lus
27	<u>chapter has been violated may file with the department a</u>	8.47
28	<u>written complaint setting forth ultimate facts which show a</u>	
29	<u>violation of this chapter.</u>	8.48
30	<u>(3) All records and information obtained pursuant to</u>	1:lus
31	<u>an investigation by the department shall be exempt from s.</u>	8.50

1	<u>119.07 until the investigation is complete. At all times a</u>	8 54
2	<u>complaint or information obtained pursuant to an investigation</u>	
3	<u>shall be exempt from s. 119.07 to the extent disclosure would:</u>	8.55
4	<u>(a) Interfere with enforcement proceedings;</u>	1:lus
5	<u>(b) Deprive a person of the right to a fair trial or</u>	8 57
6	<u>an impartial adjudication;</u>	
7	<u>(c) Tend to impair the safety or soundness of any</u>	1 lus
8	<u>financial institution;</u>	8.59
9	<u>(d) Constitute an unwarranted invasion of personal</u>	1:lus
10	<u>privacy;</u>	
11	<u>(e) Disclose the identity of a confidential source or,</u>	1 lus
12	<u>in the case of a record compiled by a criminal law enforcement</u>	8 62
13	<u>authority in the course of a criminal investigation,</u>	
14	<u>confidential information furnished only by the confidential</u>	8 63
15	<u>source;</u>	
16	<u>(f) Disclose investigative techniques or procedures,</u>	1:lus
17	<u>or</u>	
18	<u>(g) Endanger the life or physical safety of law</u>	1:lus
19	<u>enforcement or department personnel.</u>	8 66
20		
21	<u>Nothing in this section shall be construed to prohibit the</u>	1:lus
22	<u>department from providing investigatory information to any law</u>	8.68
23	<u>enforcement agency or any other regulatory agency</u>	8.69
24	<u>(4) A privilege against civil liability is hereby</u>	1:lus
25	<u>granted to any complainant or any witness with regard to</u>	8.71
26	<u>information furnished with respect to any investigation or</u>	
27	<u>proceeding pursuant to this act, unless the complainant or</u>	5 72
28	<u>witness acted in bad faith or with malice in providing such</u>	8 73
29	<u>information.</u>	
30	Section 18. Section 494.07, Florida Statutes, is	8 74
31	amended to read;	8 75

1	<u>(Substantial rewording of section. See</u>	8 76
2	<u>s. 497.07, F S., for present text.)</u>	1:lus
3	<u>494.07 Powers of department.--</u>	1:lus
4	<u>(1) The department shall have the power to issue and</u>	8.78
5	<u>to serve subpoenas and subpoenas duces tecum to compel the</u>	
6	<u>attendance of witnesses and the production of all books,</u>	8.79
7	<u>accounts, records, and other documents and materials relevant</u>	8.80
8	<u>to an examination or investigation. The department, or its</u>	8 81
9	<u>duly authorized representative, shall have power to administer</u>	
10	<u>oaths and affirmations to any person.</u>	8 82
11	<u>(2) The department may, in its discretion, seek</u>	1:lus
12	<u>subpoenas or subpoenas duces tecum from any county court judge</u>	8 84
13	<u>or clerk of the circuit or county court commanding the</u>	
14	<u>appearance of witnesses and the production of books, accounts,</u>	9.1
15	<u>records, and other documents or materials at a time and a</u>	9 2
16	<u>place to be named in the subpoenas and any authorized</u>	
17	<u>representative of the department may serve any subpoena.</u>	9.3
18	<u>(3)(a) In the event of substantial noncompliance with</u>	1.1us
19	<u>a subpoena or subpoena duces tecum issued or caused to be</u>	9.5
20	<u>issued by the department, the department may petition the</u>	
21	<u>circuit court of the county in which the person subpoenaed</u>	9.6
22	<u>resides or has its principal place of business for an order</u>	9 7
23	<u>requiring the subpoenaed person to appear and testify, and to</u>	
24	<u>produce such books, accounts, records, and other documents as</u>	9.8
25	<u>are specified in the subpoena duces tecum. The court may</u>	9.9
26	<u>grant injunctive relief restraining the person from</u>	
27	<u>advertising, promoting, soliciting, entering into, offering to</u>	9.10
28	<u>enter into, continuing, or completing any mortgage financing</u>	
29	<u>transaction or mortgage servicing transaction. The court may</u>	9.12
30	<u>grant such other relief, including, but not limited to, the</u>	
31	<u>restraint, by injunction or appointment of a receiver, of any</u>	9 13

transfer, pledge, assignment or other disposition of the
person's assets or any concealment, alteration, destruction or
other disposition of books, accounts, records, or other
documents and materials as the court deems appropriate, until
the person has fully complied with the subpoena or subpoena
duces tecum and the department has completed its investigation
or examination. In addition, the court may order the refund
of any fees collected in a mortgage financing transaction
whenever books and documents substantiating the transaction
are not produced or cannot be produced. The department is
entitled to the summary procedure provided in s. 51.011, and
the court shall advance such cause on its calendar. Attorney
fees and any other costs incurred by the department to obtain
an order granting, in whole or in part, a petition for
enforcement of a subpoena or subpoena duces tecum shall be
taxed against the subpoenaed person and failure to comply with
such order shall be a contempt of court.

(d) When it shall appear to the department that the
compliance with a subpoena or subpoena duces tecum issued or
caused to be issued by the department pursuant to this section
is essential and otherwise unavailable to an investigation or
examination, the department, in addition to the other remedies
provided for herein, may apply to the circuit court of the
county in which the subpoenaed person resides or has its
principal place of business for a writ of ne exeat. The court
shall thereupon direct the issuance of the writ against the
subpoenaed person requiring sufficient bond conditioned on
compliance with the subpoena or subpoena duces tecum. The
court shall cause to be endorsed on the writ a suitable amount
of bond or payment of which the person named in the writ shall
be freed, having a due regard to the nature of the case.

1	<u>(4) Alternatively, the department may seek a writ of</u>	1:1us
2	<u>attachment from the circuit court having jurisdiction over the</u>	9.36
3	<u>person who has refused to obey a subpoena, who has refused to</u>	
4	<u>give testimony or who has refused to produce the matters</u>	9.37
5	<u>described in the subpoena duces tecum.</u>	
6	Section 19. Section 494.071, Florida Statutes, is	9.38
7	amended to read:	
8	494.071 Injunction to restrain violations.--	9.39
9	(1)--The department may investigate when it shall	9.41
10	appear to it, either upon complaint or otherwise, that in the	9.42
11	sale, promotion, negotiation, advertisement, or hypothecation	9.43
12	of mortgage transactions within this state, including any	9.44
13	transaction consummated by parties under the provisions of s.	9.45
14	494.03, any person:	
15	(a)--Shall have employed, employs, or is about to	9.47
16	employ any device, scheme, or artifice to defraud or for	
17	obtaining money or property involving a mortgage on real	9.48
18	property by means of any false pretense, representation, or	9.49
19	promise; or	
20	(b)--Shall have made, makes, or attempts to make in	9.51
21	this state fictitious or pretended loan commitments or	
22	fraudulently accepts a deposit for a mortgage loan commitment;	9.52
23	or	
24	(c)--Shall have engaged in, engages in, or is about to	9.53
25	engage in any practice or transaction or course of business	9.54
26	relating to the purchase or negotiation of a mortgage loan-	9.55
27	1.--Which is in violation of the law; or	1:10s
28	2.--Which is fraudulent; or	1:10s
29	3.--Which has operated or which would operate as a	9.59
30	fraud on the mortgagor or mortgagee.	
31		

1	(d) -- is acting as broker or solicitor within this state	1.105
2	without being duly registered as such broker or solicitor as	9.61
3	provided in this chapter;	
4	(2) -- Whenever any such person has engaged or is engaged	9.64
5	or is about to engage in any of the practices or transactions	9.66
6	which would be fraudulent and inconsistent with the intent of	9.67
7	this chapter, or acts in violation of this chapter, or is	9.69
8	acting as a broker or solicitor without being duly registered	
9	as provided in this chapter;	9.71
10	<u>(1)</u> The department may, in addition to any other	9.73
11	remedies, by its own counsel bring action <u>through its own</u>	9.74
12	<u>counsel</u> in the name and on behalf of the state against <u>any</u>	9.76
13	<u>such person who has violated or is about to violate any</u>	9.77
14	<u>provision of this chapter or any department rule or order</u>	
15	<u>issued under and any other person concerned in or in any way</u>	9.79
16	<u>participating in or about to participate in such fraudulent</u>	9.80
17	<u>practices or acting in violation of this chapter, to enjoin</u>	9.81
18	<u>the such person from continuing in such fraudulent practices</u>	9.83
19	<u>or engaging in there in or doing any act in furtherance of the</u>	1:1us
20	<u>violation thereof or in violation of this chapter.</u>	
21	<u>(2)(3)</u> In any <u>injunctive</u> such court proceedings, the	10.3
22	<u>court</u> department may, apply for and on due showing <u>by the</u>	10.5
23	<u>department, issue</u> be entitled to have issued the court's	10.6
24	subpoena or subpoenas <u>duces tecum</u> requiring forthwith	
25	<u>attendance of any witness and forthwith</u> the production of <u>any</u>	10.8
26	<u>documents, books, accounts, and records or other documents and</u>	1:1us
27	<u>materials</u> that may appear necessary <u>to the expeditious</u>	1:1us
28	<u>resolution of the</u> for the hearing of such petition, and the	10.11
29	<u>appearance of any defendant and his employees, solicitors, or</u>	10.12
30	<u>agents to testify and give evidence concerning the acts or</u>	10.13
31	<u>conduct or things complained of in such application for</u>	

1	injunction. In such action the equity courts shall have	10.11
2	jurisdiction of the subject matter, and a judgment may be	
3	entered awarding such injunction as may be proper.	10.13
4	<u>(3)††</u> In addition to all other means provided by law	10.14
5	for the enforcement of any temporary restraining order,	10.15
6	temporary injunction, or permanent injunction issued in any	
7	such court proceedings, the court shall have the power and	10.16
8	jurisdiction, upon application of the department, to impound	10.17
9	and to appoint a receiver or administrator for the property,	
10	assets, and business of the defendant, including, but not	10.18
11	limited to, the books, records, documents, and papers	
12	appertaining thereto. Such receiver or administrator, when	10.20
13	appointed and qualified, shall have all powers and duties as	10.21
14	to custody, collection, administration, winding up, and	
15	liquidation of the property and business as shall from time to	10.22
16	time be conferred upon him by the court. In any such action	10.23
17	the court may issue an order staying all pending suits and	
18	enjoining any further suits affecting the receiver's or	10.24
19	administrator's custody or possession of the property, assets,	10.25
20	and business, or, in its discretion, may with the consent of	
21	the chief judge of the circuit require that all such suits be	10.26
22	assigned to the circuit court judge who appoints the receiver	10.27
23	or administrator.	
24	Section 20. Section 494.072, Florida Statutes, is	10.28
25	amended to read:	
26	494.072 Cease and desist orders; refund orders;	10.29
27	administrative fines.--	10.30
28	††--The department may issue and serve upon any	10.32
29	mortgage broker a compliance stating charges whenever the	10.33
30	department has reason to believe that the mortgage broker is	
31	violating or has violated any provision of this act--	10.34

1 ~~(1)~~(2) The department shall have the power to 10 39
 2 authorized to issue and serve upon any person a cease and 10 40
 3 desist order whenever there is reason to believe the person 10 41
 4 ~~against any mortgage broker who is violating, or has violated~~ 10 42
 5 or is about to violate any provision the provisions of this 10 43
 6 chapter, any department rule or order issued under this 10 44
 7 chapter, or any written agreement between the person and the
 8 department act. All procedural matters relating to issuance 10 47
 9 and enforcement of the cease and desist order shall be in 10 48
 10 accordance with the Administrative Procedure Act.

11 ~~(2)~~(3) The department shall have the power to may 10 49
 12 order the refund of any fee or commission, directly or 11:1us
 13 indirectly amounts assessed and charged on a mortgage 10 51
 14 financing loan transaction that which exceeds the maximum fees 10 53
 15 or and commissions provided in this chapter. ~~by s. 494.08(3).~~ 11:1os
 16 ~~Such order shall be issued in accordance with the procedural~~ 10 56
 17 ~~requirements of the Administrative Procedure Act; if the~~ 10 58
 18 ~~broker fails or refuses to comply with such order within 15~~ 10 59
 19 ~~days after notice of the entry thereof; such failure or~~ 10 60
 20 ~~refusal shall constitute a violation of this chapter; the~~ 10 61
 21 ~~aforsaid remedies are in addition to any other legal remedies~~ 10 62
 22 ~~provided by law in such cases.~~ 10 63

23 ~~(4)~~ ~~The department may impose an administrative fine~~ 11:1os
 24 ~~not to exceed \$7,000 against any person found to have violated~~ 10 65
 25 ~~any cease and desist order of the department; All fines~~ 10 67
 26 ~~collected under this section shall be paid to the regulatory~~ 10 68
 27 ~~trust fund under the Division of Finance of the department;~~

28 Section 21. Subsections (1), (2), (4), and (5) of 10 69
 29 section 494 08, Florida Statutes, are amended and subsection 10 70
 30 (10) is added to said section to read:

31 494.08 Requirements and prohibitions.-- 10 71

1	(1) No person shall advertise, print, display,	10.72
2	publish, distribute, telecast or broadcast, or cause or permit	10.73
3	to be advertised, printed, displayed, published, distributed,	10.74
4	televised or broadcast, in any manner, any statement or	10.75
5	representation with regard to the rates, terms or conditions	10.76
6	pertaining to the making, negotiating, or sale of loans, which	
7	is false, misleading, or deceptive. No person who is not	10.78
8	licensed <u>or registered</u> under this act nor exempt under s.	10.79
9	494.03 shall use the word mortgage or similar words in any	
10	advertising, signs, letterheads, cards, or like matter which	10.80
11	tend to represent that he arranges real estate mortgage loans.	10.81
12	No person not already registered <u>or licensed</u> under this act	11.1us
13	shall be granted a license <u>or registration</u> in a name	10.84
14	containing such words as insured, bonded, guaranteed, secured	11.1
15	and the like. No person shall advertise or offer to sell	11.3
16	insured or guaranteed mortgages unless the principal and	
17	interest of such mortgages is insured by an insurance company	11.4
18	authorized by the Department of Insurance to write such	11.5
19	insurance under the provisions of chapter 635, or unless such	11.6
20	mortgages are wholly or partially insured or guaranteed by an	11.8
21	agency of the Federal Government.	
22	(2) No person in connection with or incidental to the	11.9
23	making of any mortgage loan shall induce, require or permit	11.10
24	the mortgage deed or note to be signed by a principal to the	11.11
25	transaction if <u>the such instruments to be signed</u> contain any	11.12
26	blank spaces to be filled in after <u>the signature</u> it has been	11.13
27	signed , except blank spaces relating to recording or other	11.15
28	incidental information not then available.	
29	(4)(a) No unlicensed <u>or unregistered</u> person shall	11.16
30	charge or receive any commission, bonus or fee in connection	11.19
31	with arranging for, negotiating, selling, or purchasing a	

1	mortgage loan <u>to any person operating in Florida not licensed</u>	11.20
2	<u>or registered under the provisions of this act.</u>	11.21
3	(b) No licensed person broker or salesperson shall pay	1.10s
4	any commission, bonus or fee in connection with arranging for,	11.23
5	negotiating, selling, or purchasing a mortgage loan to any	11 24
6	person operating in Florida not licensed <u>or registered</u> under	11 25
7	the provisions of this act.	
8	(5) No person shall <u>enter into a contract for mortgage</u>	1 1us
9	<u>brokerage services except a deposit or application for a</u>	11.27
10	<u>mortgage loan</u> without delivering to the borrower a statement	11.30
11	in writing setting forth the total maximum costs to be	
12	charged, incurred, or disbursed in connection with processing	11 31
13	and closing the mortgage loan. <u>In the event the total actual</u>	1:1us
14	<u>costs, excluding the mortgage brokerage fee, exceeds the</u>	
15	<u>estimate by more than 10 percent, the broker shall be required</u>	11.35
16	<u>to obtain a written agreement from the borrower acknowledging</u>	11.36
17	<u>that, although the borrower is under no obligation to conclude</u>	
18	<u>the transaction, the borrower has elected to do so</u>	11 37
19	<u>notwithstanding the increase over estimated costs. This</u>	11 38
20	<u>subsection shall apply only to brokerage agreements on loans</u>	
21	<u>to be secured by residential properties containing four or</u>	11.39
22	<u>less units.</u>	
23	(10) <u>Each deposit agreement entered into by a licensee</u>	1.1us
24	<u>or registrant shall include a summary of the limits and</u>	11 41
25	<u>conditions of recovery from the Mortgage Brokerage Guaranty</u>	
26	<u>Fund. The department may prescribe by rule the form of each</u>	11 42
27	<u>summary.</u>	
28	Section 22. Section 494 081, Florida Statutes, is	11 43
29	amended to read:	
30	494 081 Fees and charges not deemed interest or	11.44
31	finance charge.--	

1	(1) All fees and charges authorized by this act and	11 47
2	received by a <u>person mortgage-broker-or-mortgage-secticator</u>	
3	licensed <u>or registered</u> under this act shall not be deemed as	11 49
4	interest or finance charges, but a <u>licensee or registrant</u>	11.50
5	licensed-broker lending <u>his</u> its own funds shall be subject to	11.52
6	the provisions of chapter 687. A <u>licensee or registrant</u>	11.54
7	licensed-mortgage-broker who lends the funds of an affiliate	11.57
8	lender shall not be deemed to be in violation of chapter 687	
9	unless the department determines that the purpose of such	11.58
10	action is designed to avoid the provisions of chapter 687.	11.59
11	The department shall adopt rules for this section.	11.61
12	(2) When a <u>licensee or registrant mortgage-broker</u>	11 63
13	lends his own funds and charges the fees or commissions	11.66
14	authorized by this act, those fees or commissions shall not be	11.67
15	considered interest for the purposes of chapter 687 if	11.68
16	(a) Such <u>licensee or registrant mortgage-broker</u>	11.69
17	assigns the loan to another lender within 90 days from the	11 70
18	date the loan was made; or	11 71
19	(b) The loan is for a principal amount in excess of	11.72
20	\$250,000 and such mortgage broker assigns an interest or	
21	participation exceeding 50 percent of the loan to another	11.73
22	lender within 90 days after the date the loan was made.	11.74
23	(3) Upon request, a <u>licensee or registrant</u> shall	11 75
24	furnish the department, to determine compliance with this	11 77
25	subsection, a written statement identifying the owners of, or	11 80
26	participants in, any such loan and the interest of each	
27	Section 23. Section 494.091, Florida Statutes, is	11.81
28	amended to read:	
29	494.091 Liability in case of unlawful transaction.--In	11 82
30	the event a mortgage transaction is made in violation of any	11 83
31	of the provisions of this chapter, the person making the	11.84

1	transaction and every <u>licensee</u> , director, officer, or agent	12.2
2	who has personally participated in making the transaction	
3	shall be jointly and severally liable to <u>every party to the</u>	12.3
4	<u>transaction</u> the lender in an action for damages incurred by	12 5
5	the <u>party or parties</u> lender.	
6	Section 24. Section 494.093, Florida Statutes, is	12.6
7	amended to read	
8	494.093 Prohibited practices --It is unlawful, and a	12 7
9	violation of the provisions of this chapter, for any person	12.8
10	<u>(1) To act as a mortgage broker in this state without</u>	12.9
11	<u>a mortgage broker license issued by the department.</u>	
12	<u>(2) To employ a mortgage broker or otherwise act as a</u>	1:10s
13	<u>mortgage brokerage business without a mortgage brokerage</u>	12.11
14	<u>registration issued by the department.</u>	
15	<u>(3)†</u> In any practice or transaction or course of	12.13
16	business relating to the sale, purchase, negotiation,	
17	promotion, advertisement, or hypothecation of mortgage	12.14
18	transactions, including any transaction consummated by parties	12.15
19	under the provisions of s. 494.03, directly or indirectly.	12 16
20	(a) To knowingly or willingly employ any device,	12 16
21	scheme, or artifice to defraud.	12.17
22	(b) To engage in any transaction, practice, or course	12.18
23	of business which operates as a fraud upon any person in	
24	connection with the purchase or sale of any mortgage loan.	12 19
25	<u>(c) To obtain property by fraud, willful</u>	1:10s
26	<u>misrepresentation of a future act, or false promise.</u>	12.20
27	<u>(4)†</u> In any matter within the jurisdiction of the	12.23
28	department, to knowingly and willfully falsify, conceal, or	12.24
29	cover up, by any trick, scheme, or device, a material fact, or	
30	make any false or fraudulent statement or representation, or	12.25
31		

1	make or use any false writing or document, knowing the same to	12.26
2	contain any false or fraudulent statement or entry.	12.27
3	Section 25. Section 494.10, Florida Statutes, is	12.28
4	amended to read:	
5	494.10 Penalties.--	12 29
6	(1) Whoever violates any of the provisions of <u>s.</u>	1:lus
7	<u>494.093, s. 494.08(1) or s. 494.055(1)(2) this chapter, except</u>	
8	as provided in subsection (2), is guilty of a <u>felony of the</u>	12.33
9	<u>third degree misdemeanor-of-the-second-degree</u> , punishable as	12.34
10	provided in s. 775.082 or s. 775.083 <u>or s. 775.084</u> , and each	12.36
11	violation of this chapter shall constitute a separate offense.	12.37
12	(2) <u>Any person convicted of a violation of any</u>	12.38
13	<u>provision of this chapter whereby the total value of money and</u>	12.39
14	<u>property unlawfully obtained exceeds \$50,000 and there are</u>	
15	<u>five or more victims shall be guilty of a felony of the first</u>	12.40
16	<u>degree punishable as provided in s 775.082, s. 775.083, or s.</u>	12.41
17	<u>775.084. Whoever violates any provision of s--494.093--fails</u>	1:los
18	<u>to comply with the requirements of s--494.055(f)(f)--or offers</u>	12.43
19	<u>to negotiate a mortgage loan for compensation without being</u>	12.44
20	<u>licensed as required by this chapter is guilty of a felony of</u>	12.46
21	<u>the third degree, punishable as provided in s--775.082--s--</u>	
22	<u>775.083--or s--775.084.</u>	12.47
23	Section 26. <u>Persons licensed on effective date of</u>	12.48
24	<u>act.--</u>	
25	(1) <u>A natural person licensed as of September 1, 1986,</u>	1:lus
26	<u>as a mortgage broker or mortgage solicitor pursuant to s.</u>	12.50
27	<u>494.04, Florida Statutes, 1985, shall be issued, without</u>	
28	<u>application, a mortgage broker's license as defined in this</u>	12.51
29	<u>act, and such license shall be eligible for renewal pursuant</u>	12.52
30	<u>to s. 494.038 of this act.</u>	
31		

1 (2) A mortgage brokerage business licensed as of 1 Lus
2 September 1, 1986, as a mortgage broker pursuant to s. 494.04, 12 54
3 Florida Statutes, 1985, shall be issued, without application,
4 a mortgage brokerage business registration as defined in this 12.55
5 act, and such registration shall be eligible for renewal 12.56
6 pursuant to s. 494.0391 of this act. 12.57
7 (3) A natural person entitled, as of September 1, 1:lus
8 1986, to engage in the business of mortgage broker as a 12 59
9 designee of a licensed mortgage broker business pursuant to s.
10 494.04(6), Florida Statutes, 1985, shall be issued, without 12.60
11 application, a mortgage broker's license as defined in this 12.61
12 act, and such license shall be eligible for renewal pursuant
13 to s. 494.038 of this act. 12.62
14 Section 27. Section 494.04, Florida Statutes, as 12.63
15 amended by chapters 84-216 and 85-271, Laws of Florida, and 12.64
16 section 494.05, Florida Statutes, as amended by chapter 85-
17 271, Laws of Florida, are hereby repealed. 12.65
18 Section 28. Each section within chapter 494, Florida 12.66
19 Statutes, which is added to or amended by this act is repealed 12.67
20 on October 1, 1991, and shall be reviewed by the Legislature
21 pursuant to s. 11.61, Florida Statutes. 12.68
22 Section 29. This act shall take effect September 1, 12.69
23 1986.

HOUSE SUMMARY

Substantially revises the "Mortgage Brokerage Act."
Among other provisions, the act:
1. Provides for mortgage brokerage licensure requirements.
2. Provides for the registration of mortgage brokerage businesses.
3. Requires permits for branch offices.
4. Revises procedures with respect to the Mortgage Brokerage Guaranty Fund.
5. Provides for administrative penalties and fines.
See bill for details.

CODING: Words stricken are deletions; words underlined are additions.

By Committee on Commerce and Representative Gibbons

A bill to be entitled

2 An act relating to the Mortgage Brokerage Act;
 3 amending s. 494.02, F.S., providing
 4 definitions; amending s. 494.03, F.S.,
 5 providing language with respect to exemptions;
 6 creating s. 494.035, F.S., providing for powers
 7 and duties of the Department of Banking and
 8 Finance; creating s. 494.037, F.S., providing
 9 mortgage brokerage licensure requirements;
 10 creating s. 494.038, F.S., providing for
 11 renewal of a mortgage broker license; creating
 12 s. 494.039, F.S., providing for registration of
 13 mortgage brokerage businesses; providing fees;
 14 creating s. 494.0391, F.S., providing for
 15 registration renewal; creating s. 494.0392,
 16 F.S., providing for branch office permits;
 17 creating s. 494.0393, F.S., providing for
 18 requirements for licensees and registrants;
 19 amending s. 494.041, F.S., relating to
 20 mortgages offered by certain land developers;
 21 amending s. 494.042, F.S., relating to the
 22 Mortgage Brokerage Guaranty Fund; providing
 23 clarifying language; eliminating reference to
 24 violations of the chapter; amending s. 494.043,
 25 F.S., providing for conditions precedent to
 26 recovery under the fund; amending s. 494.044,
 27 F.S., relating to payment from the fund;
 28 creating s. 494.052, F.S., providing for
 29 administrative penalties and fines and license
 30 violations; creating s. 494.055, F.S.,
 31 providing grounds for disciplinary action;

This publication was produced at an average cost of 15 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

1	amending s. 494.06, F.S., providing	
2	requirements with respect to books, accounts,	1.18
3	records, and the like; creating s. 494.065,	
4	F.S., providing for investigation and	
5	complaints; amending s. 494.07, F.S., providing	1.19
6	for the powers of the department; amending s.	1.20
7	494.071, F.S., relating to injunction to	
8	restrain violations; amending s. 494.072, F.S.,	
9	relating to cease and desist orders and refund	1.22
10	orders; amending s. 494.08, F.S., relating to	
11	requirements and prohibitions; amending s.	1.23
12	494.081, F.S., relating to fees or charges not	
13	deemed interest or finance charges; providing	1.24
14	clarifying language; amending s. 494.091, F.S.,	
15	relating to liability in the case of an	1.25
16	unlawful transaction; amending s. 494.093,	
17	F.S., providing for prohibited practices;	
18	amending s. 494.10, F.S., providing penalties;	1.26
19	providing for persons licensed on effective	
20	date of act; providing for review and repeal;	1.27
21	repealing s. 494.04, F.S., relating to the	
22	licensing of mortgage brokers and mortgage	1.28
23	solicitors; repealing s. 494.05, F.S., relating	
24	to denial, suspension, or revocation of	1.29
25	licenses; providing for the application of the	
26	act to certain judicial or administrative	1.30
27	proceedings; providing an effective date.	1.31
28		
29	Be It Enacted by the Legislature of the State of Florida:	1:en
30		
31		

1	Section 1. Section 494.02, Florida Statutes, is	1.31
2	amended to read:	
3	494.02 Definition of terms.--In this act unless the	1.32
4	context or subject matter otherwise requires:	1.34
5	(1) "Person" means an individual, partnership,	1.35
6	corporation, association, and any other group however	1.36
7	organized.	
8	(2) "Mortgage loan" means any loan secured by a	1.37
9	mortgage on real property or any loan secured by collateral	1.38
10	which has a mortgage lien interest in real property.	1.39
11	(3) "Mortgage broker" means any person not exempt	1.39
12	under s. 494.03 who for compensation or gain, or in the	1.40
13	expectation of compensation or gain, either directly or	1.41
14	indirectly makes, negotiates, acquires, sells, or arranges	1.42
15	for, or offers to make, negotiate, acquire, sell, or arrange	1.44
16	for, a mortgage loan or mortgage loan commitment. This	1.46
17	subsection shall not apply to transactions involving the sale	1.47
18	or purchase of notes or bonds secured by mortgages which are	1.48
19	subject to registration by the department.	1.49
20	(4) <u>"Mortgage brokerage business" means any person</u>	1.50
21	<u>which employs a mortgage broker or mortgage brokers, or which,</u>	1.51
22	<u>either directly or indirectly, makes, negotiates, acquires or</u>	1.52
23	<u>sells, arranges for, offers to make, negotiate, acquire, sell</u>	
24	<u>or arrange for a mortgage loan or mortgage loan commitment for</u>	1.53
25	<u>compensation or gain, or in the expectation of compensation or</u>	
26	<u>gain. "Mortgage-solicitor" means any individual not licensed</u>	1.56
27	<u>as a mortgage broker, who performs any of the functions set</u>	
28	<u>out under subsection (3) and who is employed by a mortgage</u>	1.57
29	<u>broker or whose business policies and acts are under the</u>	1.58
30	<u>direction, control, or management of a mortgage broker.</u>	1.59
31		

1	(5) "Department" means the Department of Banking and	1.60
2	Finance.	1.61
3	(6) "Licensee" means <u>a natural person licensed as a</u>	1.61
4	<u>person, whether mortgage broker or mortgage solicitor, under</u>	1:10s
5	<u>any of the provisions of this act.</u>	
6	(7) "License" means a license issued under the	1.66
7	provisions of this act.	1.67
8	(8) <u>"Registrant" means a mortgage brokerage business</u>	1:1us
9	<u>registered pursuant to this act.</u>	1.69
10	(9) (6) "Principal mortgage broker" means <u>a licensee in</u>	1.71
11	<u>charge of, and responsible for, the operation of the principal</u>	
12	<u>place of business and all designated associate brokers an</u>	1.72
13	<u>individual; officer of a corporation; or member of a</u>	1.74
14	<u>partnership designated as the primary broker in the</u>	1.75
15	<u>application.</u>	
16	(10) (9) "Lender" means any person who either lends or	1:1u
17	invests money in mortgage loans.	1.78
18	(11) <u>"Ultimate equitable owner" means a natural person</u>	1:1us
19	<u>who, directly or indirectly, owns or controls an ownership</u>	1.80
20	<u>interest in a corporation, foreign corporation, alien business</u>	1.81
21	<u>organization, or any other form of business organization,</u>	
22	<u>regardless of whether such natural person owns or controls</u>	1.82
23	<u>such ownership interest through one or more natural persons or</u>	
24	<u>one or more proxies, powers of attorney, nominees,</u>	1.83
25	<u>corporations, associations, partnerships, trusts, joint stock</u>	1.84
26	<u>companies, or other entities or devices, or any combination</u>	
27	<u>thereof.</u>	
28	(12) <u>"Mortgage financing transaction" means the</u>	1:1us
29	<u>negotiation, acquisition, sale, or arrangement for, or the</u>	2.2
30	<u>offer to negotiate, acquire, sell or arrange for, a mortgage</u>	
31	<u>loan or mortgage loan commitment.</u>	2.3

1	<u>(13) "Personal residence address" means a street</u>	1:1us
2	<u>address and shall not include a post office box number.</u>	2.5
3	<u>(14) "Division" means the Division of Finance of the</u>	1:1us
4	<u>Department of Banking and Finance.</u>	2.7
5	<u>(15) "Designated associated broker" means the licensed</u>	1:1us
6	<u>mortgage broker in charge of a branch office.</u>	2.9
7	<u>(16) "Mortgage loan commitment" means a contract for</u>	1:1us
8	<u>mortgage loan financing.</u>	2.11
9	<u>(17) "Party to a mortgage financing transaction" means</u>	1:1us
10	<u>a borrower or lender in a mortgage financing transaction.</u>	2.13
11	Section 2. Section 494.03, Florida Statutes, is	2.14
12	amended to read:	
13	494.03 Exempt persons.--	2.15
14	<u>(1) This act does not apply to the following:</u>	2.17
15	<u>(a)†† Banks, trust companies, savings and loan</u>	1:1us
16	<u>associations, pension trusts, credit unions, insurance</u>	2.19
17	<u>companies, <u>consumer finance</u> small-loan companies, federally</u>	2.21
18	<u>licensed small business investment companies, or securities</u>	
19	<u>dealers registered under the provisions of s. 517.12,</u>	2.22
20	<u>servicing corporate clients in the normal course of business.</u>	2.23
21	<u>(b)†2 Any person making or acquiring a mortgage loan</u>	2.25
22	<u>with his own funds for his own investment without intent to</u>	
23	<u>resell said mortgage loan.</u>	2.26
24	<u>(c)†3 Any person licensed to practice law in this</u>	2.28
25	<u>state, not actively and principally engaged in the business of</u>	
26	<u>negotiating loans secured by real property, when such person</u>	2.29
27	<u>renders services in the course of his practice as an attorney</u>	2.30
28	<u>at law.</u>	
29	<u>(2) It shall not be necessary to negate any of the</u>	1:1us
30	<u>exemptions provided in this chapter in any complaint,</u>	2.32
31	<u>information, indictment, or other writ or proceedings brought</u>	

1	<u>under this chapter; and the burden of establishing the right</u>	2.33
2	<u>to any exemption shall be upon the party claiming the benefit</u>	2.34
3	<u>of such exemption.</u>	
4	Section 3. Section 494.035, Florida Statutes, is	2.35
5	created to read:	
6	<u>494.035 Department's duties and covers.--</u>	1:1us
7	<u>(1) The department shall be responsible for the</u>	1:1us
8	<u>administration and enforcement of this chapter.</u>	2.38
9	<u>(2) The department may adopt such rules as it may deem</u>	1:1us
10	<u>necessary in the administration of this act and not</u>	2.40
11	<u>inconsistent therewith, which rules shall have the force and</u>	
12	<u>effect of law.</u>	2.41
13	<u>(3) All fees, charges and fines, collected by the</u>	1:1us
14	<u>department pursuant to this chapter, shall be deposited in the</u>	2.43
15	<u>State Treasury to the credit of the Regulatory Trust Fund</u>	
16	<u>under the Division of Finance of the department.</u>	2.44
17	Section 4. Section 494.037, Florida Statutes, is	2.45
18	created to read:	
19	<u>494.037 Mortgage brokerage licensure requirements.--</u>	1:1us
20	<u>(1) Each initial application for a mortgage broker</u>	1:1us
21	<u>license shall be in written form as prescribed by the</u>	2.48
22	<u>department. The department is authorized to require each</u>	2.49
23	<u>applicant to provide any information reasonably necessary to</u>	2.50
24	<u>make a determination of eligibility for licensure. The</u>	2.51
25	<u>department shall issue an initial license to any natural</u>	
26	<u>person who meets the following requirements:</u>	2.52
27	<u>(a) Is 18 years of age;</u>	1:1us
28	<u>(b) Has submitted a completed application and a</u>	1:1us
29	<u>nonrefundable application fee not to exceed \$150;</u>	2.56
30	<u>(c) Has passed a written test adopted by the</u>	1:1us
31	<u>department designed to determine competency in primary and</u>	2.58

1	<u>subordinate mortgage financing transactions and to test</u>	
2	<u>knowledge of this chapter and the rules promulgated thereto;</u>	2.60
3	<u>and</u>	
4	<u>(d) Has filed a complete set of fingerprints, taken by</u>	1:1us
5	<u>an authorized law enforcement officer, for submission by the</u>	2.62
6	<u>department to the Department of Law Enforcement or the Federal</u>	2.63
7	<u>Bureau of Investigation for processing.</u>	
8	<u>(2) Notwithstanding the provisions of subsection (1),</u>	1:1us
9	<u>it shall be grounds for denial of licensure if the applicant</u>	2.65
10	<u>has committed any violation as set forth in s. 494.055(1) or</u>	
11	<u>has pending any criminal prosecutions or administrative</u>	2.66
12	<u>enforcement actions, in any jurisdiction, which involve fraud,</u>	2.67
13	<u>dishonest dealing or any other act of moral turpitude.</u>	
14	<u>(3) The department shall not grant or issue to any</u>	1:1us
15	<u>individual more than one mortgage broker license at any one</u>	2.69
16	<u>time. A licensee shall be employed by a registrant or</u>	2.70
17	<u>registrants, unless self-employed. The license shall state</u>	2.71
18	<u>whether the individual licensee is self-employed or is an</u>	
19	<u>employee of a registered mortgage brokerage business. If the</u>	2.73
20	<u>individual is an employee, his license shall state the name of</u>	
21	<u>the employer registrant or registrants. Not later than 15</u>	2.75
22	<u>business days after any termination of employment, both the</u>	
23	<u>registrant and the employee shall send written notice of the</u>	2.76
24	<u>termination to the department. Not later than 15 business</u>	2.77
25	<u>days after entering into an employer-employee relationship,</u>	
26	<u>both the registrant and the employee shall send written notice</u>	2.78
27	<u>of the employment relationship to the department.</u>	2.79
28	<u>(4) The department shall endorse each change of</u>	1:1us
29	<u>employment on the license of the licensee. The department</u>	2.82
30	<u>shall set by rule a fee not to exceed \$50 for endorsement.</u>	
31		

1	<u>(5) The initial mortgage broker license shall be valid</u>	1:1us
2	<u>for the remainder of the biennium in which the license is</u>	2.84
3	<u>issued.</u>	
4	Section 5. Section 494.038, Florida Statutes, is	3.1
5	created to read:	
6	<u>494.038 Renewal of mortgage broker license.--</u>	1:1us
7	<u>(1) The department shall renew a mortgage broker</u>	1:1us
8	<u>license upon receipt of the completed renewal application and</u>	3.4
9	<u>the renewal fee not to exceed \$150.</u>	
10	<u>(2) The department shall adopt rules establishing a</u>	1:1us
11	<u>procedure for the biennial renewal of mortgage broker</u>	3.6
12	<u>licenses. The department is authorized to prescribe the form</u>	3.7
13	<u>of the renewal application and may require an update of</u>	3.8
14	<u>information since the licensee's last renewal.</u>	
15	<u>(3) A license which is not renewed by the end of the</u>	1:1us
16	<u>biennium prescribed by the department shall automatically</u>	3.9
17	<u>revert to inactive status. An inactive license may be</u>	3.10
18	<u>reactivated by filing a completed reactivation application</u>	
19	<u>with the department, payment of the renewal fee, and payment</u>	3.11
20	<u>of a reactivation fee equal to the renewal fee.</u>	3.12
21	<u>(4) A license which is not renewed within 2 years of</u>	1:1us
22	<u>becoming inactive shall expire.</u>	3.14
23	Section 6. Section 494.039, Florida Statutes, is	3.15
24	created to read:	
25	<u>494.039 Registration of mortgage brokerage</u>	1:1us
26	<u>businesses.--</u>	
27	<u>(1) The department shall issue an initial registration</u>	1:1us
28	<u>to each mortgage brokerage business which meets the following</u>	3.18
29	<u>requirements:</u>	
30	<u>(a) Has submitted a completed application form and a</u>	1:1us
31	<u>nonrefundable application fee not to exceed \$150.</u>	3.20

1	<u>(b) Designated a qualified principal mortgage broker,</u>	1:1us
2	<u>and submitted an affidavit signed by the designated principal</u>	3.22
3	<u>mortgage broker acknowledging acceptance of the designation</u>	
4	<u>and the responsibilities appertaining thereto.</u>	3.23
5	<u>(2) Notwithstanding the provisions of subsection (1),</u>	1:1us
6	<u>it shall be grounds for denial of registration if the</u>	3.25
7	<u>designated principal mortgage broker; any officer, director,</u>	
8	<u>partner, joint venturer, or any natural person owning a 10</u>	3.26
9	<u>percent or greater interest in the mortgage brokerage</u>	3.27
10	<u>business; or any natural person who is the ultimate equitable</u>	
11	<u>owner of a 10 percent or greater interest in the mortgage</u>	3.28
12	<u>brokerage business has committed any violation set forth in s.</u>	3.29
13	<u>494.055(1) or has pending any criminal prosecution or</u>	
14	<u>administrative enforcement actions, in any jurisdiction, which</u>	3.30
15	<u>involves fraud, dishonest dealing, or any other act of moral</u>	
16	<u>turpitude.</u>	3.31
17	<u>(3) Each initial application for registration shall be</u>	1:1us
18	<u>in written form as prescribed by the department. The</u>	3.34
19	<u>department is authorized to require each applicant to provide</u>	
20	<u>the following information:</u>	3.35
21	<u>(a) The applicant's name, the address of the</u>	1:1us
22	<u>applicant's principal place of business, and the address of</u>	3.37
23	<u>each applicant's branch offices in this state.</u>	
24	<u>(b) The applicant's form of business organization,</u>	1:1us
25	<u>1. For corporation applicants disclosure of the names</u>	1:1us
26	<u>and personal residence addresses of each current officer and</u>	3.40
27	<u>director of the applicant, each current shareholder who owns a</u>	3.41
28	<u>10 percent or greater interest in the corporation, and each</u>	
29	<u>ultimate equitable owner of a 10 percent or greater interest</u>	3.42
30	<u>in the corporation.</u>	
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1	<u>2. For unincorporated associations, partnerships,</u>	1:1us
2	<u>joint-stock or joint-venture applicants, disclosure of the</u>	3:44
3	<u>names and personal residence addresses of; each current</u>	
4	<u>officer, director, and any natural person holding an</u>	3:45
5	<u>equivalent position, each current association member, partner,</u>	3:46
6	<u>and joint-venturer who owns a 10 percent or greater interest</u>	
7	<u>in the mortgage brokerage business; and any ultimate equitable</u>	3:47
8	<u>owner of a 10 percent or greater interest in the mortgage</u>	
9	<u>brokerage business.</u>	3:48
10	<u>3. For a sole proprietorship operating under a</u>	1:1us
11	<u>fictitious name disclosure of the name and personal residence</u>	3:50
12	<u>address of the sole proprietor.</u>	
13	<u>(c) The name and personal residence address of the</u>	1:1us
14	<u>principal mortgage broker at the applicant's principal place</u>	3:52
15	<u>of business and, if the applicant has one or more branch</u>	
16	<u>offices, the name and personal residence address of the</u>	3:53
17	<u>designated associate mortgage broker at each branch office.</u>	3:54
18	<u>(d) The name and personal residence address of each</u>	1:1us
19	<u>mortgage broker to be employed and the office address at which</u>	3:56
20	<u>each mortgage broker will be assigned.</u>	
21	<u>(e) A listing of the civil lawsuits, criminal actions,</u>	1:1us
22	<u>and administrative proceedings, which allege fraud, dishonest</u>	3:58
23	<u>dealing or other acts of moral turpitude, by the applicant or</u>	3:59
24	<u>any person disclosed in paragraph (b), including the status or</u>	
25	<u>result of such lawsuit, action, or proceeding.</u>	3:60
26	<u>(f) Any other information reasonably necessary to</u>	1:1us
27	<u>determine eligibility for registration pursuant to this</u>	3:62
28	<u>chapter.</u>	
29	Section 7. Section 494.0391, Florida Statutes, is	3:63
30	created to read:	
31		

1	<u>494.0391 Renewal of mortgage brokerage business</u>	1:1us
2	<u>registration; permit renewal.--</u>	3.65
3	<u>(1) The department shall renew a mortgage brokerage</u>	1:1us
4	<u>registration upon receipt of a completed renewal application</u>	3.67
5	<u>and the renewal fee not to exceed \$150. Each registrant shall</u>	3.68
6	<u>pay at the time of renewal a fee not to exceed \$150 for the</u>	
7	<u>renewal of each branch office permit.</u>	3.70
8	<u>(2) The department shall adopt rules establishing a</u>	1:1us
9	<u>procedure for the biennial renewal of mortgage brokerage</u>	3.72
10	<u>business registrations and branch office permits. The</u>	3.73
11	<u>department is authorized to prescribe the form of the renewal</u>	
12	<u>application and may require an update of all information</u>	3.74
13	<u>provided in the registrant's initial application.</u>	
14	<u>(3) A registration which is not renewed by the end of</u>	1:1us
15	<u>the biennium prescribed by the department shall automatically</u>	3.76
16	<u>become inactive for up to 2 years. An inactive registration</u>	3.77
17	<u>may be reactivated by filing a completed reactivation</u>	
18	<u>application with the department, payment of the renewal fee,</u>	3.78
19	<u>and payment of a reactivation fee equal to the renewal fee.</u>	3.79
20	<u>(4) A registration which is not renewed within 2 years</u>	1:1us
21	<u>of becoming inactive shall expire.</u>	3.81
22	Section 8. Section 494.0392, Florida Statutes, is	3.82
23	created to read:	
24	<u>494.0392 Branch offices.--</u>	1:1us
25	<u>(1) A permit is required for each branch office</u>	1:1us
26	<u>maintained by a registrant.</u>	4.1
27	<u>(2) The department shall issue a permit upon receipt</u>	1:1us
28	<u>of a completed application in a form as prescribed by the</u>	4.3
29	<u>department and an initial permit fee not to exceed \$150. The</u>	4.4
30	<u>branch office application shall include the name and license</u>	
31	<u>number of the designated associate broker, the address of the</u>	4.5

1	<u>branch office, and the name and address of the registrant,</u>	
2	<u>Branch office permits shall be renewed in conjunction with</u>	4.6
3	<u>registration renewal. The permit shall be issued in the name</u>	4.7
4	<u>of the registrant which maintains the branch office.</u>	4.8
5	Section 9. Section 494.0393, Florida Statutes, is	4.9
6	created to read:	
7	<u>494.0393 Requirements of licensees and registrants.--</u>	1:1us
8	<u>(1) The licenses of all mortgage brokers shall be</u>	1:1us
9	<u>prominently displayed in the office where the licensee</u>	4.12
10	<u>conducts a mortgage brokerage business.</u>	
11	<u>(2) Every registered mortgage brokerage business and</u>	1:1us
12	<u>self-employed licensee shall transact business from a</u>	4.14
13	<u>principal place of business in the state. The registration</u>	4.15
14	<u>shall specify the address of such principal place of business</u>	
15	<u>and shall be conspicuously displayed therein. Each principal</u>	4.17
16	<u>place of business shall be operated under the full charge,</u>	
17	<u>control, and supervision of the principal mortgage broker and</u>	4.18
18	<u>each branch office shall be operated under the full charge,</u>	4.19
19	<u>control, and supervision of the designated associate mortgage</u>	
20	<u>broker employed at such branch office on a regular and full-</u>	4.22
21	<u>time basis. No mortgage broker may serve as the designated</u>	4.23
22	<u>associate mortgage broker for more than one branch office.</u>	4.24
23	<u>The department shall be notified within 15 business days of</u>	4.25
24	<u>any change of address of the principal place of business,</u>	4.27
25	<u>change of address of any branch office, or change of the</u>	
26	<u>principal mortgage broker or designated associate broker. The</u>	4.29
27	<u>department shall endorse the change on the registration or</u>	
28	<u>permit without charge.</u>	4.30
29	<u>(3) A mortgage broker license, mortgage brokerage</u>	1:1us
30	<u>registration or branch office permit shall not be</u>	4.32
31	<u>transferable.</u>	4.33

1	<u>(4) The department is authorized to require that each</u>	1:1us
2	<u>registrant report any change in the form of business</u>	4.35
3	<u>organization or any change of a person named pursuant to s.</u>	4.36
4	<u>494.039(3)(b) to the department in writing not later than 30</u>	
5	<u>business days after said change is effective.</u>	4.37
6	<u>(5) Each licensee shall report any conviction of any</u>	1:1us
7	<u>crime or any finding of administrative violation, in any</u>	4.39
8	<u>jurisdiction, which involves fraud, dishonest dealing, or</u>	
9	<u>other act of moral turpitude, to the department in writing not</u>	4.40
10	<u>later than 30 business days after said conviction or</u>	4.41
11	<u>administrative action. Each registrant shall report in</u>	4.42
12	<u>writing any conviction of any crime or administrative</u>	
13	<u>violation which involves fraud, dishonest dealing, or any</u>	4.43
14	<u>other act of moral turpitude, in any jurisdiction, by the</u>	4.44
15	<u>registrant or any natural person named pursuant to s.</u>	
16	<u>494.039(3)(b) not later than 30 business days after said</u>	4.45
17	<u>conviction or final administrative action.</u>	
18	<u>(6) Each registrant and self-employed licensee shall</u>	1:1us
19	<u>report any action in bankruptcy, voluntary or involuntary, to</u>	4.47
20	<u>the department not later than 7 business days after said</u>	4.48
21	<u>action is instituted.</u>	4.49
22	Section 10. Section 494.041, Florida Statutes, is	4.50
23	amended to read:	
24	494.041 Brokers-and-solicitors-offering Mortgages	4.52
25	<u>offered</u> by land developers licensed pursuant to the Florida	4.54
26	Uniform Land Sales Practices Law; requirements;	
27	prohibitions.--No mortgage loan which has a face amount of	4.56
28	\$35,000 or less and is secured by vacant land registered under	4.57
29	the Florida Uniform Land Sales Practices Law, chapter 498,	4.58
30	shall be sold to a mortgagee, except a financial institution,	4.61
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1	by <u>any person</u> a mortgage broker or solicitor unless all of the	4.63
2	following requirements are met:	
3	(1) Each mortgage securing a note or other obligation	4.64
4	sold or offered for sale shall be eligible for a recordation	4.65
5	as a first mortgage.	
6	(2) Each mortgage negotiated pursuant to this section	4.66
7	must include a mortgagee's title insurance policy or an	4.67
8	opinion of title, from an attorney who is licensed to practice	4.68
9	law in this state, on each parcel of land which is described	
10	in the mortgage. The policy or opinion shall reflect that	4.70
11	there are no other mortgages on the property. A notice	4.72
12	stating the priority of the mortgage shall be placed on the	4.73
13	face of each mortgage in an amount over \$35,000 issued	
14	pursuant to this section.	4.74
15	(3) Contracts to purchase a mortgage loan shall	4.74
16	contain, immediately above the purchaser's signature line, the	4.75
17	statement in 10-point boldfaced type: "This mortgage is	4.76
18	secured by vacant land subject to development at a future	4.77
19	time." This statement shall also be typed or printed in 10-	4.78
20	point type on the face of the note and mortgage sold.	4.79
21	(4) The most recent assessment for tax purposes made	4.80
22	by the county property appraiser of each parcel of land	4.81
23	described in the mortgage shall be furnished to each	4.82
24	mortgagee.	
25	(5) The mortgage broker shall record or cause to be	4.83
26	recorded all mortgages or other similar documents prior to	
27	delivery of the note and mortgage to the mortgagee.	4.84
28	(6) All funds received by the mortgage broker	5.2
29	pursuant to this section shall promptly be deposited in the	
30	broker's trust account where they shall remain until the note	5.4
31	and mortgage are fully executed and recorded.	5.5

1	(7) Willful failure to comply with any of the above	5.6
2	provisions shall subject the <u>person</u> licensee to the penalties	5.7
3	of s. 494.05.	5.8
4	Section 11. Section 494.042, Florida Statutes, is	5.9
5	amended to read:	
6	494.042 Mortgage Brokerage Guaranty Fund.--	5.11
7	(1)(a) Effective September 1, 1977, the Treasurer	5.11
8	shall establish a Mortgage Brokerage Guaranty Fund. A fee of	5.13
9	\$50 per-license-year shall be added to the license fee for	
10	both <u>application</u> new-licenses and renewal of-licenses of a	1:10s
11	<u>mortgage brokerage business registration principal-mortgage</u>	5.18
12	broker, and a fee of \$10 per-license-year shall be added to	5.20
13	the license fee for both <u>application</u> new-licenses and renewal	5.21
14	of <u>mortgage broker</u> licenses by solicitors and additional	1:10s
15	brokers. This fee shall be in addition to the regular	5.23
16	<u>application or renewal</u> license fee and shall be transferred to	1:10s
17	or deposited in the Mortgage Brokerage Guaranty Fund.	5.25
18	(b) From October 1, 1985, until the balance in the	5.26
19	fund first reaches the sum of \$1.5 million, the fees provided	5.27
20	for in paragraph (a) shall apply only to <u>an applicant</u> and	5.28
21	issuance of a license to a person who has not previously been	5.29
22	issued a license <u>or registration</u> under this chapter.	5.31
23	(c) If the fund at any time exceeds \$1.5 million,	5.32
24	collection of special fees for this fund shall be discontinued	5.33
25	at the end of that license year , and such special fees shall	5.34
26	not be reimposed unless the fund is reduced below \$500,000 by	5.35
27	disbursement made in accordance with s. 494.044.	
28	(2) The Mortgage Brokerage Guaranty Fund shall be	5.36
29	disbursed as provided in s. 494.044, upon approval by the	5.37
30	division of Finance of the Department of Banking and Finance ,	5.38
31	to any <u>party to a mortgage financing transaction</u> person who is	1:10s

1	adjudged by a <u>Florida</u> court of competent jurisdiction to have	5.40
2	suffered monetary damages as a result of any <u>violation of this</u>	
3	<u>chapter of the following acts</u> committed by a <u>licenses or</u>	5.42
4	<u>registrant</u> , mortgage-broker-or-mortgage-solicitor-who-was	1:10s
5	licensed-under-this-chapter-at-the-time-the-act-was-committed:	5.44
6	(a)--A-violation-of-any-provision-of-this-chapter;	5.45
7	(b)--Making-any-false-promises-likely-to-influence;	5.47
8	persuade,-or-induce-or-pursuing-a-course-of-misrepresentation	5.48
9	or-false-promises-through-agents:	
10	(c)--Misrepresentation,-circumvention,-or-concealment	1:10s
11	by-the-licensee,-through-whatever-subterfuge-or-device,-of-any	5.50
12	of-the-material-particulars-or-the-nature-thereof,-regarding-a	5.51
13	transaction-to-which-he-is-a-party,-and-of-injury-to-another	5.52
14	party-thereto:	
15	(d)--Failure-to-disburse-funds-in-accordance-with	5.54
16	agreements:	
17	e)--Failure-to-account-or-deliver-to-any-person-any	1:10s
18	personal-property,-such-as-any-money,-fund,-deposit,-check,	5.56
19	draft,-mortgage,-or-other-document-or-thing-of-value,-which	5.58
20	has-come-into-his-hands-and-which-is-not-his-property-or-which	5.59
21	he-is-not-in-law-or-equity-entitled-to-retain,-under-the	5.60
22	circumstances-and-at-the-time-which-has-been-agreed-upon-or-is	
23	required-by-law-or,-in-the-absence-of-a-fixed-time,-upon	5.61
24	demand-of-the-person-entitled-to-such-accounting-and-delivery:	5.62
25	(f)--Failure-to-place,-immediately-upon-receipt,-any	1:10s
26	money,-fund,-deposit,-check,-or-draft-entrusted-to-him-by-a	5.64
27	person-dealing-with-him-as-a-broker,-in-escrow-with-an-escrow	5.65
28	agent-located-and-doing-business-in-this-state,-pursuant-to-a	5.66
29	written-agreement,-or-to-deposit-said-funds-in-a-trust-or	
30	escrow-account-maintained-by-him-with-a-bank-or-savings-and	5.67
31	loan-association-located-and-doing-business-in-this-state;	5.68

1	wherein said funds shall be kept until disbursement thereof is	5.69
2	properly authorized.	
3	Section 12. Section 494.043, Florida Statutes, is	5.70
4	amended to read:	
5	494.043 Conditions <u>precedent</u> for recovery;	5.71
6	<u>intervention.</u> --	5.72
7	(1) Any person <u>who was a party to a mortgage financing</u>	5.74
8	<u>transaction</u> shall be eligible to seek recovery from the	5.76
9	Mortgage Brokerage Guaranty Fund if:	5.77
10	(a) The {1} --Such person has <u>recorded a received</u> final	1:10s
11	judgment <u>issued by</u> in a <u>Florida</u> court of competent	1:10s
12	jurisdiction in this state in any action wherein the cause of	5.81
13	action was based on s. 494.042(2);	5.82
14	(b) The {2} --Such person has caused to be issued a	5.83
15	writ of execution upon such judgment and the officer executing	5.84
16	the same has made a return showing that no personal or real	6.1
17	property of the judgment debtor liable to be levied upon in	
18	satisfaction of the judgment can be found or that the amount	6.2
19	realized on the sale of the judgment debtor's property	6.3
20	pursuant to such execution was insufficient to satisfy the	6.4
21	judgment;	
22	(c) The {3} --Such person has made all reasonable	6.5
23	searches and inquiries to ascertain whether the judgment	6.7
24	debtor possesses real or personal property or other assets	6.8
25	subject to being sold or applied in satisfaction of the	6.9
26	judgment, and by his search he has discovered no property or	
27	assets or he has discovered property and assets and has taken	6.10
28	all necessary action and proceedings for the application	6.11
29	thereof to the judgment, but the amount thereby realized was	6.12
30	insufficient to satisfy the judgment;	
31		

1	<u>(d)</u> The (4) --Such person has applied any amounts	1:1us
2	recovered from the judgment debtor, or from any other source,	6.15
3	to the damages awarded by the court;	
4	<u>(e)</u> The (5) --Such person, at the time the action was	6.17
5	instituted, gave notice <u>and provided a copy of the complaint</u>	6.18
6	thereof to the division of Finance of the department by	6.20
7	certified mail; however, the requirement of a timely giving of	
8	notice may be waived by the department upon a showing of good	6.21
9	cause; and	
10	<u>(f)</u> (6) The act for which recovery is sought occurred	6.23
11	on or after September 1, 1977. Recovery of the increased	6.25
12	benefits allowable pursuant to the amendments to s. 494.044	
13	which are effective October 1, 1985, shall be based on a cause	6.27
14	of action which arose on or after that date.	
15	<u>(2)</u> The requirements of <u>paragraphs (1)(a), (b), (c),</u>	1:1us
16	<u>(d), and (e)</u> subsections (2) and (3) are not applicable if the	6.31
17	licensee <u>or registrant</u> upon which the claim is sought has	1:1us
18	filed for bankruptcy or has been adjudicated bankrupt;	6.33
19	however, in such event the claimant shall file a <u>proof of</u>	6.35
20	claim in the bankruptcy proceedings <u>and shall notify the</u>	1:1us
21	<u>department by certified mail of the claim by enclosing a copy</u>	
22	<u>of the proof of claim and all supporting documents.</u>	6.37
23	Section 13. Section 494.044, Florida Statutes, is	6.37
24	amended to read:	
25	494.044 Payment from the fund.--	6.38
26	(1) Any person who meets all of the conditions	6.39
27	prescribed in s. 494 .043 may apply to the department for	6.40
28	payment to be made to such person from the Mortgage Brokerage	
29	Guaranty Fund in the amount equal to the unsatisfied portion	6.41
30	of <u>that</u> such person's judgment or judgments or \$20,000,	6.43
31	whichever is less, but only to the extent and amount reflected	6.44

1	in the judgment as being actual or compensatory damages. As	6.46
2	to claims against any one <u>licensee or registrant</u> mortgage	
3	broker-or-mortgage-solicitor, payments shall be made to all	6.47
4	persons meeting the requirements of s. 494.043 upon the	6.49
5	expiration of 2 years from the date the first <u>complete and</u>	1:lus
6	<u>valid</u> notice is received by the department pursuant-to-sr	6.51
7	494.043(5). Persons who give notice after 2 years from the	6.52
8	date the first <u>complete and valid</u> notice is received and who	6.53
9	<u>otherwise comply with the conditions precedent to recovery</u>	1:lus
10	<u>have-not-received-payment-as-provided-above</u> may recover <u>from</u>	6.55
11	<u>any up-to-the</u> remaining portion of any-of the \$100,000	6.57
12	aggregate, <u>in an amount equal to the unsatisfied portion of</u>	6.58
13	<u>that person's judgment or \$20,000 whichever is less, but only</u>	
14	<u>to the extent and amount reflected in the judgment as being</u>	6.59
15	<u>actual or compensatory damages</u> with claims being paid in the	6.60
16	order notice is received <u>until the \$100,000 aggregate has been</u>	6.61
17	<u>fully disbursed.</u>	6.62
18	(2) <u>Upon-receipt-by-the-claimant-of-the-payment-from</u>	6.63
19	<u>the-Mortgage-Brokerage-Guaranty-Fund,</u> The claimant shall	6.64
20	assign <u>his</u> any-additional right, title, and interest in the	6.66
21	judgment, to the extent of <u>his recovery from the fund</u> such	1:los
22	payment, to the department <u>and shall record, at his own</u>	
23	<u>expense, the assignment of judgment in every county where the</u>	6.68
24	<u>judgment is recorded.</u>	
25	(3) Payments for claims shall be limited in the	6.69
26	aggregate to \$100,000, regardless of the number of claimants	6.70
27	involved, against any one mortgage broker or <u>registrant</u> or	
28	<u>mortgage-solicitor.</u> If the total claims exceed the aggregate	6.72
29	limit of \$100,000, the department shall prorate the payment	6.73
30	based on the ratio that the person's claim bears to the total	6.75
31	claims filed.	

1	(4) If at any time the money in the Mortgage-Brokerage	6.76
2	Guaranty fund is insufficient to satisfy any valid claim or	6.77
3	portion thereof, the department shall satisfy such unpaid	6.78
4	claim or portion thereof as soon as a sufficient amount of	6.79
5	money has been deposited in or transferred to the fund. When	6.80
6	there is more than one unsatisfied claim outstanding, such	
7	claims shall be paid in the order in which the claims were	6.81
8	filed with the department.	
9	(5) All payments and disbursements made from the	6.82
10	Mortgage-Brokerage-Guaranty fund shall be made by the	6.83
11	Treasurer upon a voucher signed by the Comptroller, as head of	
12	the department, or such agent as he may designate.	6.84
13	(6) The payment of any amount from the Mortgage	7.1
14	Brokerage-Guaranty fund in settlement of a claim or in	7.2
15	satisfaction of a judgment against <u>a licensee or registrant a</u>	7.3
16	licensee shall constitute prima facie grounds for the	7.5
17	revocation of the license <u>or registration</u> of such licensee .	7.6
18	Section 14. Section 494.052, Florida Statutes, is	7.7
19	created to read:	7.8
20	<u>494.052 Administrative penalties and fines; license</u>	1:1us
21	<u>violations.--When the department finds any person in violation</u>	7.9
22	<u>of the grounds set forth in s. 494.055(1), it may enter an</u>	7.10
23	<u>order imposing one or more of the following penalties:</u>	7.11
24	<u>(1) Revocation of a license or registration.</u>	1:1us
25	<u>(2) Suspension of a license or registration subject to</u>	1:1us
26	<u>reinstatement upon all reasonable conditions as the department</u>	7.14
27	<u>may specify.</u>	
28	<u>(3) Placement of the licensee, registrant, or</u>	1:1us
29	<u>applicant on probation for a period of time and subject to all</u>	7.16
30	<u>reasonable conditions as the department may specify.</u>	
31	<u>(4) Issuance of a reprimand.</u>	1:1us

1	<u>(5) Imposition of a fine not to exceed \$5,000 for each</u>	1:1us
2	<u>count of separate offense.</u>	7.19
3	<u>(6) Denial of a license or registration.</u>	1:1us
4	Section 15. Section 494.055, Florida Statutes, is	7.21
5	created to read:	7.22
6	<u>494.055 Grounds for disciplinary action.--</u>	1:1us
7	<u>(1) The following acts shall constitute grounds for</u>	7.23
8	<u>which the disciplinary actions specified in s. 494.052 may be</u>	7.24
9	<u>taken:</u>	
10	<u>(a) Being convicted or found guilty, regardless of</u>	1:1us
11	<u>adjudication, of a crime in any jurisdiction which involves</u>	7.26
12	<u>fraud, dishonest dealing, or any other act of moral turpitude;</u>	7.27
13	<u>(b) Fraud, misrepresentation, deceit, negligence, or</u>	1:1us
14	<u>incompetence in any mortgage financing transaction;</u>	7.28
15	<u>(c) A material misstatement of fact on an initial or</u>	1:1us
16	<u>renewal application;</u>	7.30
17	<u>(d) An act which has caused, or will cause, a</u>	1:1us
18	<u>disbursement to any person in any amount from the Mortgage</u>	7.32
19	<u>Brokerage Guaranty Fund, the Securities Guaranty Fund, or the</u>	
20	<u>Florida Real Estate Recovery Fund, regardless of any repayment</u>	7.33
21	<u>or restitution to the disbursed fund by the licensee or</u>	7.34
22	<u>registrant or any person acting on behalf of the licensee or</u>	
23	<u>registrant;</u>	7.35
24	<u>(e) Failure to place, immediately upon receipt, any</u>	1:1us
25	<u>money, fund, deposit, check, or draft entrusted to him by a</u>	7.37
26	<u>person dealing with him as a broker, in escrow with an escrow</u>	
27	<u>agent located and doing business in this state, pursuant to a</u>	7.38
28	<u>written agreement, or to deposit said funds in a trust or</u>	7.39
29	<u>escrow account maintained by him with a bank or savings and</u>	
30	<u>loan association located and doing business in this state.</u>	7.40
31		

1	<u>wherein said funds shall be kept until disbursement thereof is</u>	
2	<u>properly authorized:</u>	7.41
3	<u>(f) Failure to account or deliver to any person any</u>	1:1us
4	<u>personal property, such as any money, fund, deposit, check,</u>	7.43
5	<u>draft, mortgage, or other document or thing of value, which</u>	
6	<u>has come into his hands and which is not his property or which</u>	7.44
7	<u>he is not in law or equity entitled to retain, under the</u>	7.45
8	<u>circumstances and at the time which has been agreed upon or is</u>	
9	<u>required by law or, in the absence of a fixed time, upon</u>	7.47
10	<u>demand of the person entitled to such accounting and delivery:</u>	7.48
11	<u>(g) Failure to disburse funds in accordance with</u>	1:1us
12	<u>agreements:</u>	
13	<u>(h) Any breach of trust funds or escrow funds, or any</u>	1:1us
14	<u>misuse, misapplication, or misappropriation of personal</u>	7.51
15	<u>property such as money, fund, deposit, check, draft, mortgage,</u>	
16	<u>other document, or thing of value entrusted to his care to</u>	7.52
17	<u>which he had no current property right at the time of</u>	7.53
18	<u>entrustment regardless of actual injury to any person:</u>	
19	<u>(i) Having a license, registration, or the equivalent,</u>	1:1us
20	<u>to practice any profession or occupation revoked, suspended,</u>	7.55
21	<u>or otherwise acted against, including the denial of licensure</u>	
22	<u>by a licensing authority of this state or another state,</u>	7.56
23	<u>territory, or country for fraud, dishonest dealing or any</u>	7.58
24	<u>other act of moral turpitude:</u>	
25	<u>(j) Failure to issue a satisfaction of mortgage when</u>	1:1us
26	<u>the mortgage has been executed and proceeds were not disbursed</u>	7.60
27	<u>to the benefit of the mortgagor and when the mortgagor has</u>	
28	<u>fully paid the mortgage broker's costs and commission:</u>	7.61
29	<u>(k) Failure to comply with any department order or</u>	1:1us
30	<u>rule made or issued under the provisions of this chapter:</u>	7.63
31		

1	<u>(l) Acting as mortgage broker or mortgage brokerage</u>	1:1us
2	<u>business without a current, active license or registration;</u>	7.65
3	<u>(m) Failure to timely pay any fee, charge, or fine</u>	1:1us
4	<u>under this chapter;</u>	7.67
5	<u>(n) Failure to maintain, preserve, and keep available</u>	1:1us
6	<u>for examination, all books, accounts, or other documents</u>	7.69
7	<u>required by the provisions of this chapter and the rules of</u>	
8	<u>the division;</u>	7.70
9	<u>(o) Refusal to permit an investigation or examination</u>	1:1us
10	<u>of books and records, or refusal to comply with a department</u>	7.72
11	<u>subpoena or subpoena duces tecum;</u>	
12	<u>(p) Consistently underestimating the maximum closing</u>	1:1us
13	<u>costs; or</u>	
14	<u>(q) Failure to comply with or violation of any other</u>	7.74
15	<u>provision of this chapter.</u>	7.75
16	<u>(2) A registrant shall be subject to the disciplinary</u>	1:1us
17	<u>actions specified in s. 494.052 for violations of subsection</u>	7.77
18	<u>(1) by any officer, director, shareholder, joint venturer,</u>	
19	<u>partner, ultimate equitable owner, or employee mortgage broker</u>	7.78
20	<u>of the registrant.</u>	
21	<u>(3) A principal mortgage broker shall be subject to</u>	1:1us
22	<u>the disciplinary actions specified in s. 494.052 for</u>	7.80
23	<u>violations of subsection (1) by employees in the course of</u>	
24	<u>employment with the mortgage brokerage business. The</u>	7.83
25	<u>principal mortgage broker shall only be subject to suspension</u>	
26	<u>or revocation for employee actions if there is a pattern of</u>	8.1
27	<u>repeated violations by employees or the principal mortgage</u>	
28	<u>broker has knowledge of the violations.</u>	8.2
29	Section 16. Section 494.06, Florida Statutes, is	8.3
30	amended to read:	
31		

1	494.06 investigations-and-complaints; Books, accounts,	8.3
2	<u>and</u> records, etc.--	8.5
3	(1) Every principal <u>mortgage</u> broker shall maintain, at	8.5
4	the <u>principal</u> place of business designated <u>on</u> in the license	1:1us
5	<u>or registration</u> certificate, <u>all</u> such books, accounts, records	8.9
6	and documents <u>as the department deems necessary</u> of the	
7	business-conducted-under-the-license-issued-for-such-place-of	8.11
8	business-as-will-enable-the-department to determine <u>compliance</u>	1:1us
9	whether-the-business-of-the-licensee-contemplated-by-this-act	8.13
10	is-being-operated-in-accordance with <u>this chapter</u> the	8.14
11	provisions-of-this-act.	
12	(2) A <u>registrant</u> licensee operating <u>a branch office</u>	8.16
13	two-or-more-licensed-places-of-business in this state, may	8.17
14	maintain the general control records of all <u>its</u> such offices	
15	at any one of the offices, or at any other <u>reasonable location</u>	8.19
16	<u>in this state which location shall not be considered a branch</u>	8.20
17	<u>office of the registrant</u> licensed-office-maintained-by-the	8.21
18	licensee, upon the filing of a written <u>notice</u> request with the	8.22
19	department designating-therein-the-office-at-which-such	8.24
20	control-records-are-maintained.	
21	(3) All books, accounts, records and documents of	1:es
22	<u>registrants and</u> licensees, including <u>the</u> a closing statement	8.27
23	signed by <u>every</u> the borrower shall be preserved and <u>kept</u>	1:1us
24	available for examination by the department for <u>not less than</u>	8.29
25	<u>at-least 5 years</u> from date of original entry.	8.31
26	(4) The department is authorized to prescribe the	8.31
27	minimum information to be shown in the books, accounts,	8.32
28	records and documents of licensees so that such records will	8.33
29	enable the department to determine compliance with the	8.34
30	provisions of this act.	
31		

1	(5) The department may, at intermittent periods, make	1:es
2	such investigations and examinations of any licensee or other	8.37
3	person as it deems necessary to determine compliance with this	8.38
4	act. For such purposes, it may examine the books, accounts,	8.40
5	records and other documents or matters of any licensee or	
6	other person; it shall have the power to compel the	8.42
7	production of all relevant books, records and other documents	8.43
8	and materials relative to an examination or investigation.	8.44
9	Such investigations and examinations shall not be made more	8.45
10	often than once during a year unless the department has reason	8.46
11	to believe the licensee is not complying with the provisions	8.47
12	of this act. Examinations conducted under the provisions of	8.49
13	this act shall be confidential with the department except as	8.50
14	required in the administration, enforcement and prosecution of	8.51
15	violations under this act.	
16	(6) Any party having reason to believe that this act	1:es
17	has been violated, or that a license is subject to suspension	8.53
18	or revocation, may file with the department a written	8.54
19	complaint setting forth the details of such alleged violation	8.55
20	or grounds for suspension or revocation.	
21	Section 17. Section 494.065, Florida Statutes, is	8.56
22	created to read:	8.57
23	<u>494.065 Investigations; complaints.--</u>	1:lus
24	<u>(1) The department may conduct an investigation of any</u>	8.58
25	<u>person whenever there is an appearance, either upon complaint</u>	
26	<u>or otherwise, that any violation of this chapter has been</u>	8.59
27	<u>committed or is about to be committed.</u>	8.60
28	<u>(2) Any person having reason to believe that this</u>	1:lus
29	<u>chapter has been violated may file with the department a</u>	8.62
30	<u>written complaint setting forth ultimate facts which show a</u>	
31	<u>violation of this chapter.</u>	8.63

1	<u>(3) All records and information obtained pursuant to</u>	1:1us
2	<u>an investigation by the department shall be exempt from s.</u>	8.65
3	<u>119.07 until the investigation is complete. At all times a</u>	8.66
4	<u>complaint or information obtained pursuant to an investigation</u>	
5	<u>shall be exempt from s. 119.07 to the extent disclosure would:</u>	8.67
6	<u>(a) Interfere with enforcement proceedings;</u>	1:1us
7	<u>(b) Deprive a person of the right to a fair trial or</u>	8.69
8	<u>an impartial adjudication;</u>	
9	<u>(c) Tend to impair the safety or soundness of any</u>	1:1us
10	<u>financial institution;</u>	8.71
11	<u>(d) Constitute an unwarranted invasion of personal</u>	1:1us
12	<u>privacy;</u>	
13	<u>(e) disclose the identity of a confidential source or,</u>	1:1us
14	<u>in the case of a record compiled by a criminal law enforcement</u>	8.74
15	<u>authority in the course of a criminal investigation,</u>	
16	<u>confidential information furnished only by the confidential</u>	8.75
17	<u>source;</u>	
18	<u>(f) Disclose investigative techniques or procedures;</u>	1:1us
19	<u>or</u>	
20	<u>(g) Endanger the life or physical safety of law</u>	1:1us
21	<u>enforcement or department personnel.</u>	8.78
22		
23	<u>Nothing in this section shall be construed to prohibit the</u>	1:1us
24	<u>department from providing investigatory information to any law</u>	8.80
25	<u>enforcement agency or any other regulatory agency.</u>	8.81
26	<u>(4) A privilege against civil liability is hereby</u>	1:1us
27	<u>granted to any complainant or any witness with regard to</u>	8.83
28	<u>information furnished with respect to any investigation or</u>	
29	<u>proceeding pursuant to this act, unless the complainant or</u>	8.84
30	<u>witness acted in bad faith or with malice in providing such</u>	9.1
31	<u>information.</u>	

1	Section 18. Section 494.07, Florida Statutes, is	9.2
2	amended to read:	9.3
3	<u>(Substantial rewording of section. See</u>	9.4
4	<u>s. 497.07, F.S., for present text.)</u>	1:1us
5	<u>494.07 Powers of department.--</u>	1:1us
6	<u>(1) The department shall have the power to issue and</u>	9.6
7	<u>to serve subpoenas and subpoenas duces tecum to compel the</u>	9.7
8	<u>attendance of witnesses and the production of all books,</u>	9.7
9	<u>accounts, records, and other documents and materials relevant</u>	9.8
10	<u>to an examination or investigation. The department, or its</u>	9.9
11	<u>duly authorized representative, shall have power to administer</u>	9.9
12	<u>oaths and affirmations to any person.</u>	9.10
13	<u>(2) The department may, in its discretion, seek</u>	1:1us
14	<u>subpoenas or subpoenas duces tecum from any county court judge</u>	9.12
15	<u>or clerk of the circuit or county court commanding the</u>	9.12
16	<u>appearance of witnesses and the production of books, accounts,</u>	9.13
17	<u>records, and other documents or materials at a time and a</u>	9.14
18	<u>place to be named in the subpoenas, and any authorized</u>	9.14
19	<u>representative of the department may serve any subpoena.</u>	9.15
20	<u>(3)(a) In the event of substantial noncompliance with</u>	1:1us
21	<u>a subpoena or subpoena duces tecum issued or caused to be</u>	9.17
22	<u>issued by the department, the department may petition the</u>	9.17
23	<u>circuit court of the county in which the person subpoenaed</u>	9.18
24	<u>resides or has its principal place of business for an order</u>	9.19
25	<u>requiring the subpoenaed person to appear and testify and to</u>	9.19
26	<u>produce such books, accounts, records, and other documents as</u>	9.20
27	<u>are specified in the subpoena duces tecum. The court may</u>	9.20
28	<u>grant injunctive relief restraining the person from</u>	9.21
29	<u>advertising, promoting, soliciting, entering into, offering to</u>	9.22
30	<u>enter into, continuing, or completing any mortgage financing</u>	9.22
31	<u>transaction or mortgage servicing transaction. The court may</u>	9.24

1 grant such other relief, including, but not limited to, the
 2 restraint, by injunction or appointment of a receiver, of any 9.25
 3 transfer, pledge, assignment or other disposition of the
 4 person's assets or any concealment, alteration, destruction or 9.26
 5 other disposition of books, accounts, records, or other 9.27
 6 documents and materials as the court deems appropriate, until
 7 the person has fully complied with the subpoena or subpoena 9.28
 8 duces tecum and the department has completed its investigation 9.29
 9 or examination. In addition, the court may order the refund 9.30
 10 of any fees collected in a mortgage financing transaction 9.31
 11 whenever books and documents substantiating the transaction
 12 are not produced or cannot be produced. The department is 9.33
 13 entitled to the summary procedure provided in s. 51.011, and
 14 the court shall advance such cause on its calendar. Attorney 9.35
 15 fees and any other costs incurred by the department to obtain
 16 an order granting, in whole or in part, a petition for 9.36
 17 enforcement of a subpoena or subpoena duces tecum shall be
 18 taxed against the subpoenaed person and failure to comply with 9.37
 19 such order shall be a contempt of court.
 20 (b) When it shall appear to the department that the 1:1us
 21 compliance with a subpoena or subpoena duces tecum issued or 9.39
 22 caused to be issued by the department pursuant to this section
 23 is essential and otherwise unavailable to an investigation or 9.40
 24 examination, the department, in addition to the other remedies 9.41
 25 provided for herein, may apply to the circuit court of the
 26 county in which the subpoenaed person resides or has its 9.42
 27 principal place of business for a writ of ne exeat. The court 9.43
 28 shall thereupon direct the issuance of the writ against the
 29 subpoenaed person requiring sufficient bond conditioned on 9.44
 30 compliance with the subpoena or subpoena duces tecum. The 9.45
 31 court shall cause to be endorsed on the writ a suitable amount

1	<u>of bond or payment of which the person named in the writ shall</u>	9.46
2	<u>be freed, having a due regard to the nature of the case.</u>	
3	<u>(4) Alternatively, the department may seek a writ of</u>	1:105
4	<u>attachment from the circuit court having jurisdiction over the</u>	9.48
5	<u>person who has refused to obey a subpoena, who has refused to</u>	
6	<u>give testimony or who has refused to produce the matters</u>	9.49
7	<u>described in the subpoena duces tecum.</u>	
8	Section 19. Section 494.071, Florida Statutes, is	9.50
9	amended to read:	
10	494.071 Injunction to restrain violations.--	9.51
11	(1) The department may investigate when it shall	9.53
12	appear to it, either upon complaint or otherwise, that in the	9.54
13	sale, promotion, negotiation, advertisement, or hypothecation	9.55
14	of mortgage transactions within this state, including any	9.56
15	transaction consummated by parties under the provisions of s.	9.57
16	494.03, any person:	
17	(a) Shall have employed, employs, or is about to	9.59
18	employ any device, scheme, or artifice to defraud or for	
19	obtaining money or property involving a mortgage on real	9.60
20	property by means of any false pretense, representation, or	9.61
21	promise; or	
22	(b) Shall have made, makes, or attempts to make in	9.63
23	this state fictitious or pretended loan commitments or	
24	fraudulently accepts a deposit for a mortgage loan commitment,	9.64
25	or	
26	(c) Shall have engaged in, engages in, or is about to	9.65
27	engage in any practice or transaction or course of business	9.66
28	relating to the purchase or negotiation of a mortgage loan:	9.67
29	1. Which is in violation of the law; or	1:105
30	2. Which is fraudulent; or	1:105
31		

1	3>--Which has operated or which would operate as a	9.71
2	fraud on the mortgagor or mortgagee:	
3	(d)--is acting as broker or solicitor within this state	1:10s
4	without being duly registered as such broker or solicitor as	9.73
5	provided in this chapter:	
6	(2)--Whenever any such person has engaged or is engaged	9.76
7	or is about to engage in any of the practices or transactions	9.78
8	which would be fraudulent and inconsistent with the intent of	9.79
9	this chapter, or acts in violation of this chapter, or is	9.81
10	acting as a broker or solicitor without being duly registered	
11	as provided in this chapter:	9.83
12	(1) The department may, in addition to any other	10.1
13	remedies, by its own counsel bring action <u>through its own</u>	10.2
14	<u>counsel</u> in the name and on behalf of the state against <u>any</u>	10.4
15	such person <u>who has violated or is about to violate any</u>	10.5
16	<u>provision of this chapter or any department rule or order</u>	
17	<u>issued under</u> and any other person concerned in or in any way	10.7
18	participating in or about to participate in such fraudulent	10.8
19	practices or acting in violation of this chapter, to enjoin	10.9
20	<u>the</u> such person from continuing <u>in</u> such fraudulent practices	10.11
21	or engaging <u>in</u> therein or doing any act in furtherance of <u>the</u>	1:1us
22	<u>violation</u> thereof or in violation of this chapter.	
23	(2)(3) In any <u>injunctive</u> such court proceedings, the	10.15
24	<u>court</u> department may, <u>apply for and</u> on due showing <u>by the</u>	10.17
25	<u>department, issue</u> <u>be entitled to have issued the court's</u>	10.18
26	subpoena or subpoena <u>duces tecum</u> requiring forthwith	
27	<u>attendance of any witness and forthwith</u> the production of <u>any</u>	10.20
28	documents, books, <u>accounts</u> , and records or other documents and	1:1us
29	<u>materials</u> that may appear necessary <u>to the expeditious</u>	1:1us
30	<u>resolution of the</u> for the hearing of such petition, and the	10.23
31	appearance of any defendant and his employees, solicitors, or	10.24

1	agents-to-testify-and-give-evidence-concerning-the-acts-or	10.25
2	conduct-or-things-complained-of-in-such application for	
3	injunction. in-such-action-the-equity-courts-shall-have	10.27
4	jurisdiction-of-the-subject-matter,-and-a-judgment-may-be	
5	entered-averding-such-injuncton-as-may-be-proper;	10.29
6	<u>(3)(4)</u> In addition to all other means provided by law	10.30
7	for the enforcement of any temporary restraining order,	10.31
8	temporary injunction, or permanent injunction issued in any	
9	such court proceedings, the court shall have the power and	10.32
10	jurisdiction, upon application of the department, to impound	10.33
11	and to appoint a receiver or administrator for the property,	
12	assets, and business of the defendant, including, but not	10.34
13	limited to, the books, records, documents, and papers	
14	appertaining thereto. Such receiver or administrator, when	10.36
15	appointed and qualified, shall have all powers and duties as	10.37
16	to custody, collection, administration, winding up, and	
17	liquidation of the property and business as shall from time to	10.38
18	time be conferred upon him by the court. In any such action	10.39
19	the court may issue an order staying all pending suits and	
20	enjoining any further suits affecting the receiver's or	10.40
21	administrator's custody or possession of the property, assets,	10.41
22	and business, or, in its discretion, may with the consent of	
23	the chief judge of the circuit require that all such suits be	10.42
24	assigned to the circuit court judge who appoints the receiver	10.43
25	or administrator.	
26	Section 20. Section 494.072, Florida Statutes, is	10.44
27	amended to read:	
28	494.072 Cease and desist orders; refund orders;	10.45
29	administrative-fines.--	10.46
30	(1)--The-department-may-issue-and-serve-upon-any	10.48
31	mortgage-broker-a-complaint-stating-charges-whenever-the	10.49

1	department-has-reason-to-believe-that-the-mortgage-broker-is	
2	violating-or-has-violated-any-provision-of-this-act:	10.50
3	(1)(2) The department <u>shall have the power to</u>	10.51
4	authorized to issue <u>and serve upon any person</u> a cease and	10.52
5	desist order <u>whenever there is reason to believe the person</u>	10.53
6	<u>against any mortgage broker who is violating, or has violated</u>	10.54
7	<u>or is about to violate any provision</u> the provisions of this	10.55
8	<u>chapter, any department rule or order issued under this</u>	10.56
9	<u>chapter, or any written agreement between the person and the</u>	
10	<u>department</u> act. All procedural matters relating to issuance	10.59
11	and enforcement of the cease and desist order shall be in	10.60
12	accordance with the Administrative Procedure Act.	
13	(2)(3) The department <u>shall have the power to may</u>	10.61
14	order the refund of any <u>fee or commission, directly or</u>	10.62
15	<u>indirectly</u> amounts assessed and charged on a mortgage	10.63
16	<u>financing</u> loan transaction <u>that</u> which exceeds the maximum fees	10.65
17	<u>or and commissions provided in this chapter, by 87-494-06(3):</u>	10.68
18	Such order shall be issued in accordance with the procedural	10.68
19	requirements of the Administrative Procedure Act:--if the	10.70
20	broker fails or refuses to comply with such order within 15	10.71
21	days after notice of the entry thereof, such failure or	10.72
22	refusal shall constitute a violation of this chapter:--The	10.73
23	aforsaid remedies are in addition to any other legal remedies	10.74
24	provided by law in such cases:	10.75
25	(4)--The department may impose an administrative fine	10.76
26	not to exceed \$1,000 against any person found to have violated	10.77
27	any cease and desist order of the department:--All fines	10.79
28	collected under this section shall be paid to the regulatory	10.80
29	trust fund under the Division of Finance of the department:	
30		
31		

1	Section 21. Subsections (1), (2), (4), and (5) of	10.81
2	section 494.08, Florida Statutes, are amended and subsection	10.82
3	(10) is added to said section to read:	
4	494.08 Requirements and prohibitions.--	10.83
5	(1) No person shall advertise, print, display,	10.84
6	publish, distribute, telecast or broadcast, or cause or permit	11.1
7	to be advertised, printed, displayed, published, distributed,	11.2
8	televised or broadcast, in any manner, any statement or	11.3
9	representation with regard to the rates, terms or conditions	11.4
10	pertaining to the making, negotiating, or sale of loans, which	
11	is false, misleading, or deceptive. No person who is not	11.6
12	licensed <u>or registered</u> under this act nor exempt under s.	11.7
13	494.03 shall use the word mortgage or similar words in any	
14	advertising, signs, letterheads, cards, or like matter which	11.8
15	tend to represent that he arranges real estate mortgage loans.	11.9
16	No person not already registered <u>or licensed</u> under this act	11.10
17	shall be granted a license <u>or registration</u> in a name	11.12
18	containing such words as insured, bonded, guaranteed, secured	11.13
19	and the like. No person shall advertise or offer to sell	11.15
20	insured or guaranteed mortgages unless the principal and	
21	interest of such mortgages is insured by an insurance company	11.16
22	authorized by the Department of Insurance to write such	11.17
23	insurance under the provisions of chapter 635, or unless such	11.18
24	mortgages are wholly or partially insured or guaranteed by an	11.20
25	agency of the Federal Government.	
26	(2) No person in connection with or incidental to the	11.21
27	making of any mortgage loan shall induce, require or permit	11.22
28	the mortgage deed or note to be signed by a principal to the	11.23
29	transaction if <u>the</u> such instruments <u>to be signed</u> contain any	11.24
30	blank spaces to be filled in after <u>the signature</u> it has been	11.25
31		

1	signed, except blank spaces relating to recording or other	11.27
2	incidental information not then available.	
3	(4)(a) No unlicensed <u>or unregistered</u> person shall	11.28
4	charge or receive any commission, bonus or fee in connection	11.31
5	with arranging for, negotiating, selling, or purchasing a	
6	mortgage loan <u>to any person operating in Florida not licensed</u>	11.32
7	<u>or registered under the provisions of this act.</u>	11.33
8	(b) No licensed <u>person broker-or-settler</u> shall pay	11.34
9	any commission, bonus or fee in connection with arranging for,	11.35
10	negotiating, selling, or purchasing a mortgage loan to any	11.36
11	person operating in Florida not licensed <u>or registered</u> under	11.37
12	the provisions of this act.	
13	(5) No person shall <u>enter into a contract for mortgage</u>	11.38
14	<u>brokerage services accept-a-deposit-or-application-for-a</u>	11.39
15	<u>mortgage-loan</u> without delivering to the borrower a statement	11.42
16	in writing setting forth the total maximum costs to be	
17	charged, incurred, or disbursed in connection with processing	11.43
18	and closing the mortgage loan. <u>The contract for mortgage</u>	11.44
19	<u>brokerage services shall indicate the financing terms,</u>	
20	<u>interest rate, and loan origination fees which are acceptable</u>	11.47
21	<u>to the borrower. The maximum estimated costs may be expressed</u>	11.48
22	<u>as a range of possible costs. In the event the total actual</u>	11.49
23	<u>costs, excluding the mortgage brokerage fee, loan origination</u>	
24	<u>fee and prepaid items, including taxes, hazard insurance,</u>	11.50
25	<u>prepaid interest, and mortgage insurance exceed the estimate</u>	11.52
26	<u>by more than 10 percent or \$100, whichever is greater, the</u>	
27	<u>broker shall be required to obtain a written agreement from</u>	11.53
28	<u>the borrower acknowledging that, although the borrower is</u>	11.54
29	<u>under no obligation to conclude the transaction, the borrower</u>	11.55
30	<u>has elected to do so notwithstanding the increase over</u>	
31	<u>estimated costs. This subsection shall apply only to</u>	11.56

1	<u>brokerage agreements on loans to be secured by residential</u>	
2	<u>properties containing four or less units.</u>	11.57
3	<u>(10) Each deposit agreement entered into by a licensee</u>	11.58
4	<u>or registrant shall include a summary of the limits and</u>	11.59
5	<u>conditions of recovery from the Mortgage Brokerage Guaranty</u>	
6	<u>Fund. The department may prescribe by rule the form of each</u>	11.60
7	<u>summary.</u>	
8	Section 22. Section 494.081, Florida Statutes, is	11.61
9	amended to read:	
10	494.081 Fees and charges not deemed interest or	11.62
11	finance charge.--	
12	(1) All fees and charges authorized by this act and	11.65
13	received by a <u>person</u> mortgage-broker-or-mortgage-solicitor	
14	licensed or <u>registered</u> under this act shall not be deemed as	11.67
15	interest or finance charges, but a <u>licensee or registrant</u>	11.68
16	<u>licensed-broker</u> lending <u>his</u> its own funds shall be subject to	11.70
17	the provisions of chapter 687. A <u>licensee or registrant</u>	11.72
18	<u>licensed-mortgage-broker</u> who lends the funds of an affiliate	11.75
19	lender shall not be deemed to be in violation of chapter 687	
20	unless the department determines that the purpose of such	11.76
21	action is designed to avoid the provisions of chapter 687.	11.77
22	The department shall adopt rules for this section.	11.79
23	(2) When a <u>licensee or registrant</u> mortgage-broker	11.81
24	lends his own funds and charges the fees or commissions	11.84
25	authorized by this act, those fees or commissions shall not be	12.1
26	considered interest for the purposes of chapter 687 if:	12.2
27	(a) Such <u>licensee or registrant</u> mortgage-broker	12.3
28	assigns the loan to another lender within 90 days from the	12.4
29	date the loan was made; or	12.5
30	(b) The loan is for a principal amount in excess of	12.6
31	\$250,000 and such <u>licensee or registrant</u> mortgage-broker	12.7

1	assigns an interest or participation exceeding 50 percent of	12.8
2	the loan to another lender within '90 days after the date the	
3	loan was made.	12.9
4	(3) Upon request, a licensee <u>or registrant</u> shall	1:1us
5	furnish the department, to determine compliance with this	12.12
6	subsection, a written statement identifying the owners of, or	12.15
7	participants in, any such loan and the interest of each.	
8	Section 23. Section 494.091, Florida Statutes, is	12.16
9	amended to read:	
10	494.091 Liability in case of unlawful transaction.--In	12.17
11	the event a mortgage transaction is made in violation of any	12.18
12	of the provisions of this chapter, the person making the	12.19
13	transaction and every <u>licensee</u> , director, officer, or agent of	12.21
14	<u>a registrant</u> who has personally participated in making the	
15	transaction shall be jointly and severally liable to <u>every</u>	12.23
16	<u>party to the transaction</u> the lender in an action for damages	12.24
17	incurred by the <u>party or parties</u> lender.	12.25
18	Section 24. Section 494.093, Florida Statutes, is	12.26
19	amended to read:	
20	494.093 Prohibited practices.--It is unlawful, and a	12.27
21	violation of the provisions of this chapter, for any person:	12.28
22	<u>(1) To act as a mortgage broker in this state without</u>	12.29
23	<u>a mortgage broker license issued by the department.</u>	
24	<u>(2) To employ a mortgage broker or otherwise act as a</u>	1:1us
25	<u>mortgage brokerage business without a mortgage brokerage</u>	12.31
26	<u>registration issued by the department.</u>	
27	<u>(3)†</u> In any practice or transaction or course of	12.33
28	business relating to the sale, purchase, negotiation,	
29	promotion, advertisement, or hypothecation of mortgage	12.34
30	transactions, including any transaction consummated by parties	12.35
31	under the provisions of s. 494.03, directly or indirectly:	12.36

1	(a) To knowingly or willingly employ any device,	12.36
2	scheme, or artifice to defraud.	12.37
3	(b) To engage in any transaction, practice, or course	12.38
4	of business which operates as a fraud upon any person in	
5	connection with the purchase or sale of any mortgage loan.	12.39
6	<u>(c) To obtain property by fraud, willful</u>	1:1us
7	<u>misrepresentation of a future act, or false promise.</u>	12.40
8	<u>(4)(2)</u> In any matter within the jurisdiction of the	12.43
9	department, to knowingly and willfully falsify, conceal, or	12.44
10	cover up, by any trick, scheme, or device, a material fact, or	
11	make any false or fraudulent statement or representation, or	12.45
12	make or use any false writing or document, knowing the same to	12.46
13	contain any false or fraudulent statement or entry.	12.47
14	Section 25. Section 494.10, Florida Statutes, is	12.48
15	amended to read:	
16	494.10 Penalties.--	12.49
17	(1) Whoever violates any of the provisions of <u>s.</u>	1:1us
18	<u>494.093, s. 494.08(1) or s. 494.055(1)(e), (f), (g) and (m)</u>	
19	<u>this chapter, except as provided in subsection (2), is guilty</u>	12.54
20	<u>of a felony of the third degree misdemeanor-of-the-second</u>	12.55
21	<u>degree, punishable as provided in s. 775.082 or s. 775.083 or</u>	12.56
22	<u>s. 775.084, and each violation of this chapter shall</u>	12.57
23	constitute a separate offense.	12.58
24	(2) <u>Any person convicted of a violation of any</u>	12.59
25	<u>provision of this chapter whereby the total value of money and</u>	12.60
26	<u>property unlawfully obtained exceeds \$50,000 and there are</u>	
27	<u>five or more victims shall be guilty of a felony of the first</u>	12.61
28	<u>degree punishable as provided in s. 775.082, s. 775.083, or s.</u>	12.62
29	<u>775.084. Whoever violates any provision of s. 494.093, fails</u>	1:1us
30	<u>to comply with the requirements of s. 494.05(1)(f); or offers</u>	12.64
31	<u>to negotiate a mortgage loan for compensation without being</u>	12.65

1	licensed as required by this chapter is guilty of a felony of	12.67
2	the third degree, punishable as provided in s. 775.862, s.	
3	775.863, or s. 775.884.	12.68
4	Section 26. <u>Persons licensed on effective date of</u>	12.69
5	<u>act.--</u>	
6	<u>(1) A natural person licensed as of September 1, 1986,</u>	1:1us
7	<u>as a mortgage broker or mortgage solicitor pursuant to s.</u>	12.71
8	<u>494.04, Florida Statutes, 1985, shall be issued, without</u>	
9	<u>application, a mortgage broker's license as defined in this</u>	12.72
10	<u>act, and such license shall be eligible for renewal pursuant</u>	12.73
11	<u>to s. 494.038 of this act.</u>	
12	<u>(2) A mortgage brokerage business licensed as of</u>	1:1us
13	<u>September 1, 1986, as a mortgage broker pursuant to s. 494.04,</u>	12.75
14	<u>Florida Statutes, 1985, shall be issued, without application,</u>	
15	<u>a mortgage brokerage business registration as defined in this</u>	12.76
16	<u>act, and such registration shall be eligible for renewal</u>	12.77
17	<u>pursuant to s. 494.0391 of this act.</u>	12.78
18	<u>(3) A natural person entitled, as of September 1,</u>	1:1us
19	<u>1986, to engage in the business of mortgage broker as a</u>	12.80
20	<u>designee of a licensed mortgage broker business pursuant to s.</u>	
21	<u>494.04(6), Florida Statutes, 1985, shall be issued, without</u>	12.81
22	<u>application, a mortgage broker's license as defined in this</u>	12.82
23	<u>act, and such license shall be eligible for renewal pursuant</u>	
24	<u>to s. 494.038 of this act.</u>	12.83
25	Section 27. <u>No judicial or administrative proceeding</u>	12.84
26	<u>pending on September 1, 1986, shall be abated as a result of</u>	13.1
27	<u>any amendment, repeal, or addition to chapter 494, Florida</u>	
28	<u>Statutes, by this act.</u>	13.2
29	Section 28. <u>Section 494.04, Florida Statutes, as</u>	13.2
30	<u>amended by chapters 84-216 and 85-271, Laws of Florida, and</u>	13.3
31		

1	<u>section 494.05, Florida Statutes, as amended by chapter 85-</u>	
2	<u>271, Laws of Florida, are hereby repealed.</u>	13.4
3	Section 29. <u>Each section within chapter 494, Florida</u>	13.5
4	<u>Statutes, which is added to or amended by this act is repealed</u>	13.6
5	<u>on October 1, 1991, and shall be reviewed by the Legislature</u>	
6	<u>pursuant to s. 11.61, Florida Statutes.</u>	13.7
7	Section 30. This act shall take effect September 1,	13.8
8	1986.	
9	*****	
10	HOUSE SUMMARY	
11	Substantially revises the "Mortgage Brokerage Act."	
12	Among other provisions, the act:	
13	1. Provides for mortgage brokerage licensure	
14	requirements.	
15	2. Provides for the registration of mortgage brokerage	
16	businesses.	
17	3. Requires permits for branch offices.	
18	4. Revises procedures with respect to the Mortgage	
19	Brokerage Guaranty Fund.	
20	5. Provides for administrative penalties and fines.	
21	See bill for details.	
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By Senator Hair

This publication was produced at average cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to the Mortgage Brokerage Act;
amending s. 494.02, F.S.; providing
definitions; amending s. 494.03, F.S.;
providing exemptions; creating s. 494.035,
F.S.; providing powers and duties of the
Department of Banking and Finance; creating s.
494.037, F.S.; providing mortgage brokerage
licensure requirements; creating s. 494.038,
F.S.; providing for renewal of a mortgage
broker license; creating s. 494.039, F.S.;
providing for registration of mortgage
brokerage businesses; providing fees; creating
s. 494.0391, F.S.; providing for registration
renewal; creating s. 494.0392, F.S.; providing
for branch office permits; creating s.
494.0393, F.S.; providing requirements for
licensees and registrants; amending s. 494.041,
F.S.; expanding scope of provisions relating to
mortgages offered by certain land developers;
amending s. 494.042, F.S.; providing clarifying
language relating to the Mortgage Brokerage
Guaranty Fund; eliminating reference to
violations of the chapter; amending s. 494.043,
F.S.; providing conditions precedent to
recovery under the fund; providing for
intervention; amending s. 494.044, F.S.,
limiting certain payments from the fund;
creating s. 494.052, F.S.; providing for
administrative penalties and fines; specifying
violations; creating s. 494.055, F.S.;

1 providing grounds for disciplinary action;
 2 amending s. 494.06, F.S.; providing
 3 requirements with respect to books, accounts,
 4 and records; creating s. 494.065, F.S.;
 5 providing for investigation and complaints;
 6 providing for confidentiality; providing
 7 immunity from civil liability; amending s.
 8 494.07, F.S.; providing powers of the
 9 department; providing for subpoenas; providing
 10 for attorney's fees; amending s. 494.071, F.S.;
 11 authorizing injunctions to restrain violations;
 12 amending s. 494.072, F.S.; providing for cease
 13 and desist orders and refund orders; amending
 14 s. 494.08, F.S.; revising requirements and
 15 prohibitions; amending s. 494.081, F.S.;
 16 providing that certain fees or charges are not
 17 deemed interest or finance charges; amending s.
 18 494.091, F.S.; specifying liability in the case
 19 of an unlawful transaction; amending s.
 20 494.093, F.S.; specifying prohibited practices;
 21 amending s. 494.10, F.S.; providing penalties;
 22 providing for licensure of persons licensed on
 23 effective date of act; repealing s. 494.04,
 24 F.S., relating to the licensing of mortgage
 25 brokers and mortgage solicitors; repealing s.
 26 494.05, F.S., relating to denial, suspension,
 27 or revocation of licenses; providing a savings
 28 clause; providing an effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:
 31

1 Section 1. Section 494.02, Florida Statutes, is
2 amended to read:

3 494.02 Definition of terms.--~~As used~~ in this act
4 ~~unless the context or subject matter otherwise requires:~~

5 (1) "Person" means an individual, partnership,
6 corporation, association, and any other group however
7 organized.

8 (2) "Mortgage loan" means any loan secured by a
9 mortgage on real property or any loan secured by collateral
10 which has a mortgage lien interest in real property.

11 (3) "Mortgage broker" means any person not exempt
12 under s. 494.03 who for compensation or gain, or in the
13 expectation of compensation or gain, either directly or
14 indirectly makes, negotiates, acquires, sells, or arranges
15 for, or offers to make, negotiate, acquire, sell, or arrange
16 for, a mortgage loan or mortgage loan commitment. This
17 subsection shall not apply to transactions involving the sale
18 or purchase of notes or bonds secured by mortgages which are
19 subject to registration by the department.

20 (4) "Mortgage brokerage business" means any person
21 which employs a mortgage broker or mortgage brokers, or which,
22 either directly or indirectly, makes, negotiates, acquires or
23 sells, arranges for, or offers to make, negotiate, acquire,
24 sell or arrange for a mortgage loan or mortgage loan
25 commitment for compensation or gain, or in the expectation of

26 compensation or gain. "Mortgage solicitor" means any
27 individual not licensed as a mortgage broker, who performs any
28 of the functions set out under subsection (3) and who is
29 employed by a mortgage broker or whose business practices and
30 acts are under the direction, control, or management of a
31 mortgage broker.

1 (5) "Department" means the Department of Banking and
2 Finance.

3 (6) "Licensee" means a natural person licensed as a
4 person, whether mortgage broker or mortgage solicitor, under
5 any of the provisions of this act.

6 (7) "License" means a license issued under the
7 provisions of this act.

8 (8) "Registrant" means a mortgage brokerage business
9 registered pursuant to this act.

10 (9)~~(8)~~ "Principal mortgage broker" means a licensee an
11 individual, officer of a corporation, or member of a
12 partnership designated as the person in charge of and
13 responsible for the operation of the principal place of
14 business and all designated associate brokers primary broker
15 in the application.

16 (10)~~(9)~~ "Lender" means any person who either lends or
17 invests money in mortgage loans.

18 (11) "Ultimate equitable owner" means a natural person
19 who, directly or indirectly, owns or controls an ownership
20 interest in a corporation, foreign corporation, alien business
21 organization, or any other form of business organization,
22 regardless of whether such natural person owns or controls
23 such ownership interest through one or more natural persons or
24 one or more proxies, powers of attorney, nominees,
25 corporations, associations, partnerships, trusts, joint stock
26 companies, or other entities or devices, or any combination
27 thereof.

28 (12) "Mortgage financing transaction" means the
29 negotiation, acquisition, sale, or arrangement for, or the
30 offer to negotiate, acquire, sell or arrange for, a mortgage
31 loan or mortgage loan commitment.

1 (13) "Personal residence address" means a street
2 address, and does not include a post office box number.

3 (14) "Division" means the Division of Finance of the
4 Department of Banking and Finance.

5 (15) "Designated associated broker" means the licensed
6 mortgage broker in charge of a branch office.

7 (16) "Mortgage loan commitment" means a contract for
8 mortgage loan financing.

9 (17) "Party to a mortgage financing transaction" means
10 a borrower or lender in a mortgage financing transaction.

11 Section 2. Section 494.03, Florida Statutes, is
12 amended to read:

13 494.03 Exempt persons.--

14 (1) This act does not apply to the following:

15 (a)(1) Banks, trust companies, savings and loan
16 associations, pension trusts, credit unions, insurance
17 companies, consumer finance companies ~~small-loan-companies,~~
18 federally licensed small business investment companies, or
19 securities dealers registered under the provisions of s.
20 517.12, servicing corporate clients in the normal course of
21 business.

22 (b)(2) Any person making or acquiring a mortgage loan
23 with his own funds for his own investment without intent to
24 resell said mortgage loan.

25 (c)(3) Any person licensed to practice law in this
26 state, not actively and principally engaged in the business of
27 negotiating loans secured by real property, when such person
28 renders services in the course of his practice as an attorney
29 at law.

30 (2) It shall not be necessary to negate any of the
31 exemptions provided in this chapter in any complaint.

1 information, indictment, or other writ or proceedings brought
2 under this chapter; and the burden of establishing the right
3 to any exemption shall be upon the party claiming the benefit
4 of such exemption.

5 Section 3. Section 494.035, Florida Statutes, is
6 created to read:

7 494.035 Department's duties and powers.--

8 (1) The department shall be responsible for the
9 administration and enforcement of this chapter.

10 (2) The department may adopt such rules as it may deem
11 necessary in the administration of this act and not
12 inconsistent therewith, which rules shall have the force and
13 effect of law.

14 (3) All fees, charges, and fines collected by the
15 department pursuant to this chapter shall be deposited in the
16 State Treasury to the credit of the Regulatory Trust Fund
17 under the division.

18 Section 4. Section 494.037, Florida Statutes, is
19 created to read:

20 494.037 Mortgage brokerage licensure requirements.--

21 (1) Each initial application for a mortgage broker
22 license shall be in written form as prescribed by the
23 department. The department may require each applicant to
24 provide any information reasonably necessary to make a
25 determination of eligibility for licensure pursuant to this
26 chapter. The department shall issue an initial license to any
27 natural person who meets the following requirements:

28 (a) Is 18 years of age;

29 (b) Has submitted a completed application and a
30 nonrefundable application fee not to exceed \$150;

1 (c) Has passed a written test adopted by the
2 department designed to determine competency in primary and
3 subordinate mortgage financing transactions and to test
4 knowledge of this chapter and the rules promulgated thereto.

5 (d) Has filed a complete set of fingerprints, taken by
6 an authorized law enforcement officer, for submission by the
7 department to the Department of Law Enforcement or the Federal
8 Bureau of Investigation for processing.

9 (2) Notwithstanding the provisions of subsection (1),
10 it shall be grounds for denial of licensure if the applicant
11 has committed any violation as set forth in s. 494.055(1) or
12 has pending any criminal prosecutions or administrative
13 enforcement actions, in any jurisdiction, which involve fraud,
14 dishonest dealing or any other act of moral turpitude.

15 (3) The department shall not grant or issue to any
16 individual more than one mortgage broker license at any one
17 time. A licensee shall be employed by a registrant or
18 registrants, unless self-employed. The license shall state
19 whether the individual licensee is self-employed or is an
20 employee of a registered mortgage brokerage business. If the
21 individual is an employee, his license shall state the name of
22 the employer registrant or registrants. Not later than 15
23 business days after any termination of employment, both the
24 registrant and the employee shall send written notice of the
25 termination to the department. Not later than 15 business
26 days after entering into an employer-employee relationship,
27 both the registrant and the employee shall send written notice
28 of the employment relationship to the department.

29 (4) The department shall endorse each change of
30 employment or the license of the licensee. The department
31 shall set by rule a fee not to exceed \$50 for endorsement.

1 (5) The initial mortgage broker license shall be valid
2 for the remainder of the biennium in which the license is
3 issued.

4 Section 5. Section 494.038, Florida Statutes, is
5 created to read:

6 494.038 Renewal of mortgage broker license.--

7 (1) The department shall renew a mortgage broker
8 license upon receipt of the completed renewal application and
9 the renewal fee not to exceed \$150.

10 (2) The department shall adopt rules establishing a
11 procedure for the biennial renewal of mortgage broker
12 licenses. The department may prescribe the form of the
13 renewal application and may require an update of all
14 information provided in the licensee's initial application for
15 licensure.

16 (3) A license which is not renewed by the end of the
17 biennium prescribed by the department shall automatically
18 revert to inactive status. An inactive license may be
19 reactivated by filing a completed reactivation application
20 with the department, payment of the renewal fee, and payment
21 of a reactivation fee equal to the renewal fee.

22 (4) A license which is not renewed within 2 years
23 after becoming inactive shall expire.

24 Section 6. Section 494.039, Florida Statutes, is
25 created to read:

26 494.039 Registration of mortgage brokerage
27 businesses.--

28 (1) The department shall issue an initial registration
29 to each mortgage brokerage business which meets the following
30 requirements:

31

1 (a) Has submitted a completed application form and a
2 nonrefundable application fee not to exceed \$150.

3 (b) Designated a qualified principal mortgage broker,
4 and submitted an affidavit signed by the designated principal
5 mortgage broker acknowledging acceptance of the designation
6 and the responsibilities appertaining thereto.

7 (2) Notwithstanding the provisions of subsection (1),
8 it shall be grounds for denial of registration if the
9 designated principal mortgage broker; any officer, director,
10 partner, joint venturer, or any natural person owning a 10
11 percent or greater interest in the mortgage brokerage
12 business; or any natural person who is the ultimate equitable
13 owner of a 10 percent or greater interest in the mortgage
14 brokerage business has committed any violation set forth in s.
15 494.055(1) or has pending any criminal prosecution or
16 administrative enforcement actions, in any jurisdiction, which
17 involves fraud, dishonest dealing, or any other act of moral
18 turpitude.

19 (3) Each initial application for registration shall be
20 in written form as prescribed by the department. The
21 department may require each applicant to provide the following
22 information:

23 (a) The applicant's name, the address of the
24 applicant's principal place of business, and the address of
25 each applicant's branch offices in this state

26 (b) The applicant's form of business organization.

27 1. For corporation applicants, disclosure of the names
28 and personal residence addresses of each current officer and
29 director of the applicant, each current shareholder who owns a
30 10 percent or greater interest in the corporation, and each
31

1 ultimate equitable owner of a 10 percent or greater interest
2 in the corporation.

3 2. For unincorporated associations, partnerships, or
4 joint-stock or joint-venture applicants, disclosure of the
5 names and personal residence addresses of: each current
6 officer, director, and any natural person holding an
7 equivalent position, each current association member, partner,
8 and joint-venturer who owns a 10 percent or greater interest
9 in the mortgage brokerage business; and any ultimate equitable
10 owner of a 10 percent or greater interest in the mortgage
11 brokerage business.

12 3. For a sole proprietorship operating under a
13 fictitious name, disclosure of the name and personal residence
14 address of the sole proprietor.

15 (c) The name and personal residence address of the
16 principal mortgage broker at the applicant's principal place
17 of business and, if the applicant has one or more branch
18 offices, the name and personal residence address of the
19 designated associate mortgage broker at each branch office.

20 (d) The name and personal residence address of each
21 mortgage broker to be employed and the office address at which
22 each mortgage broker will be assigned.

23 (e) A listing of the civil lawsuits, criminal actions,
24 and administrative proceedings, which allege fraud, dishonest
25 dealing, or other acts of moral turpitude, on the part of the
26 applicant or any person disclosed in paragraph (b), including
27 the status or result of such lawsuit, action, or proceeding.

28 (f) Any other information reasonably necessary to
29 determine eligibility for registration pursuant to this
30 chapter.
31

1 Section 7. Section 494.0391, Florida Statutes, is
2 created to read:

3 494.0391 Renewal of mortgage brokerage business
4 registration; permit renewal.--

5 (1) The department shall renew a mortgage brokerage
6 registration upon receipt of a completed renewal application
7 and the renewal fee not to exceed \$150. Each registrant shall
8 pay at the time of renewal a fee not to exceed \$150 for the
9 renewal of each branch office permit.

10 (2) The department shall adopt rules establishing a
11 procedure for the biennial renewal of mortgage brokerage
12 business registrations and branch office permits. The
13 department may prescribe the form of the renewal application
14 and may require an update of all information provided in the
15 registrant's initial application

16 (3) A registration which is not renewed by the end of
17 the biennium prescribed by the department shall automatically
18 become inactive for up to 2 years. An inactive registration
19 may be reactivated by filing a completed reactivation
20 application with the department, payment of the renewal fee,
21 and payment of a reactivation fee equal to the renewal fee.

22 (4) A registration which is not renewed within 2 years
23 after becoming inactive shall expire.

24 Section 8. Section 494.0392, Florida Statutes, is
25 created to read:

26 494.0392 Branch offices.--

27 (1) A permit is required for each branch office
28 maintained by a registrant.

29 (2) The department shall issue a permit upon receipt
30 of a completed application in a form as prescribed by the
31 department and an initial permit fee not to exceed \$150. The

1 branch office application shall include the name and license
2 number of the designated associate broker, the address of the
3 branch office, and the name and address of the registrant.
4 Branch office permits shall be renewed in conjunction with
5 registration renewal. The permit shall be issued in the name
6 of the registrant which maintains the branch office.

7 Section 9. Section 494.0393, Florida Statutes, is
8 created to read:

9 494.0393 Requirements of licensees and registrants.--

10 (1) The licenses of all mortgage brokers shall be
11 prominently displayed in the office where the licensee
12 conducts a mortgage brokerage business.

13 (2) Every registered mortgage brokerage business and
14 self-employed licensee shall transact business from a
15 principal place of business in the state. The registration
16 shall specify the address of such principal place of business
17 and shall be conspicuously displayed therein. Each principal
18 place of business shall be operated under the full charge,
19 control, and supervision of a principal mortgage broker, and
20 each branch office shall be operated under the full charge,
21 control, and supervision of a designated associate mortgage
22 broker, employed at such branch office on a regular and full-
23 time basis. No mortgage broker may serve as the designated
24 associate mortgage broker for more than one branch office.
25 The department shall be notified within 15 business days of
26 any change of address of the principal place of business,
27 change of address of any branch office, or change of the
28 principal mortgage broker or designated associate broker. The
29 department shall endorse the change on the registration or
30 permit without charge.

31

1 (3) A mortgage broker license or mortgage brokerage
2 registration or branch office permit shall not be
3 transferable.

4 (4) The department may require that each registrant
5 report any change in the form of business organization or any
6 change of a person named pursuant to s. 494.039(3)(b) to the
7 department in writing not later than 30 business days after
8 said change is effective.

9 (5) Each licensee shall report any conviction of any
10 crime or any finding of administrative violation, in any
11 jurisdiction, which involves fraud, dishonest dealing, or
12 other act of moral turpitude, to the department in writing not
13 later than 30 business days after said conviction or
14 administrative action. Each registrant shall report in
15 writing any conviction of any crime or administrative
16 violation which involves fraud, dishonest dealing, or any
17 other act of moral turpitude, in any jurisdiction, by the
18 registrant or any natural person named pursuant to s.
19 494.039(3)(b) not later than 30 business days after said
20 conviction or final administrative action.

21 (6) Each registrant and self-employed licensee shall
22 report any action in bankruptcy, voluntary or involuntary, to
23 the department not later than 7 business days after said
24 action is instituted.

25 Section 10. Section 494.041, Florida Statutes, is
26 amended to read:

27 494.041 ~~Brokers-and-solicitors-offering~~ Mortgages
28 offered by land developers licensed pursuant to the Florida
29 Uniform Land Sales Practices Law; requirements;
30 prohibitions.--No mortgage loan which has a face amount of
31 \$35,000 or less and is secured by vacant land registered under

1 the Florida Uniform Land Sales Practices Law, chapter 498,
2 shall be sold to a mortgagee, except a financial institution,
3 by any person ~~a mortgage broker or solicitor~~ unless all of the
4 following requirements are met:

5 (1) Each mortgage securing a note or other obligation
6 sold or offered for sale shall be eligible for a recordation
7 as a first mortgage.

8 (2) Each mortgage negotiated pursuant to this section
9 must include a mortgagee's title insurance policy or an
10 opinion of title, from an attorney who is licensed to practice
11 law in this state, on each parcel of land which is described
12 in the mortgage. The policy or opinion shall reflect that
13 there are no other mortgages on the property. A notice
14 stating the priority of the mortgage shall be placed on the
15 face of each mortgage in an amount over \$35,000 issued
16 pursuant to this section.

17 (3) Contracts to purchase a mortgage loan shall
18 contain, immediately above the purchaser's signature line, the
19 statement in 10-point boldfaced type: "This mortgage is
20 secured by vacant land subject to development at a future
21 time." This statement shall also be typed or printed in 10-
22 point type on the face of the note and mortgage sold.

23 (4) The most recent assessment for tax purposes made
24 by the county property appraiser of each parcel of land
25 described in the mortgage shall be furnished to each
26 mortgagee.

27 (5) The mortgage broker shall record or cause to be
28 recorded all mortgages or other similar documents prior to
29 delivery of the note and mortgage to the mortgagee.

30 (6) All funds received by the mortgage broker
31 pursuant to this section shall promptly be deposited in the

1 broker's trust account where they shall remain until the note
2 and mortgage are fully executed and recorded.

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

6 Section 11. Section 494.042, Florida Statutes, is
7 amended to read:

8 494.042 Mortgage Brokerage Guaranty Fund.--

9 (1)(a) Effective September 1, 1977, the Treasurer
10 shall establish a Mortgage Brokerage Guaranty Fund. A fee of
11 \$50 ~~per-license-year~~ shall be added to the license fee for
12 both application for new-licenses and renewal of-licenses of a
13 mortgage brokerage business registration principal-mortgage
14 broker, and a fee of \$10 ~~per-license-year~~ shall be added to
15 the license fee for both application for new-licenses and
16 renewal of mortgage brokerage licenses by-solicitors-and
17 additional-brokers. This fee shall be in addition to the
18 regular application or renewal license fee and shall be
19 transferred to or deposited in the Mortgage Brokerage Guaranty
20 Fund.

21 (b) From October 1, 1985, until the balance in the
22 fund first reaches the sum of \$1.5 million, the fees provided
23 for in paragraph (a) shall apply only to an applicant ~~with~~
24 ~~issuance-of-a-license-to-a-person~~ who has not previously been
25 issued a license or registration under this chapter.

26 (c) If the fund at any time exceeds \$1.5 million,
27 collection of special fees for this fund shall be discontinued
28 ~~at-the-end-of-that-license-year~~, and such special fees shall
29 not be reimposed unless the fund is reduced below \$500,000 by
30 disbursement made in accordance with s. 494.044.

1 (2) The Mortgage Brokerage Guaranty Fund shall be
 2 disbursed as provided in s. 494.044, upon approval by the
 3 ~~division of Finance of the Department of Banking and Finance,~~
 4 to any party to a mortgage financing transaction person who is
 5 adjudged by a Florida court of competent jurisdiction to have
 6 suffered monetary damages as a result of any violation of this
 7 chapter of the following acts committed by a licensee or
 8 registrant, mortgage broker or mortgage solicitor who was

9 ~~licensed under this chapter at the time the act was committed:~~

10 (a) ~~--A violation of any provision of this chapter;~~

11 (b) ~~--Making any false promises likely to influence,~~
 12 ~~persuade, or induce or pursuing a course of misrepresentation~~
 13 ~~or false promises through agents;~~

14 (c) ~~--Misrepresentation, circumvention, or concealment~~
 15 ~~by the licensee, through whatever subterfuge or device, of any~~
 16 ~~of the material particulars or the nature thereof, regarding a~~
 17 ~~transaction to which he is a party, and of injury to another~~
 18 ~~party thereto;~~

19 (d) ~~--Failure to disburse funds in accordance with~~
 20 ~~agreements;~~

21 (e) ~~--Failure to account or deliver to any person any~~
 22 ~~personal property, such as any money, fund, deposit, check,~~
 23 ~~draft, mortgage, or other document or thing of value, which~~
 24 ~~has come into his hands and which is not his property or which~~
 25 ~~he is not in law or equity entitled to retain, under the~~
 26 ~~circumstances and at the time which has been agreed upon or is~~
 27 ~~required by law or, in the absence of a fixed time, upon~~
 28 ~~demand of the person entitled to such accounting and delivery;~~

29 (f) ~~--Failure to place, immediately upon receipt, any~~
 30 ~~money, fund, deposit, check, or draft entrusted to him by a~~
 31 ~~person dealing with him as a broker, in escrow with an escrow~~

1 agent located and doing business in this state, pursuant to a
 2 written agreement, or to deposit said funds in a trust or
 3 escrow account maintained by him with a bank or savings and
 4 loan association located and doing business in this state,
 5 wherein said funds shall be kept until disbursement thereof is
 6 properly authorized;

7 Section 12 Section 494.043, Florida Statutes, is
 8 amended to read:

9 494.043 Conditions precedent for recovery;
 10 intervention.--

11 (1) Any person who was a party to a mortgage financing
 12 transaction shall be eligible to seek recovery from the
 13 Mortgage Brokerage Guaranty Fund if:

14 (a) The (1)--Such person has recorded a received final
 15 judgment issued by in a Florida court of competent
 16 jurisdiction ~~in this state~~ in any action wherein the cause of
 17 action was based on s. 494.042(2);

18 (b) The (2)--Such person has caused to be issued a
 19 writ of execution upon such judgment and the officer executing
 20 the same has made a return showing that no personal or real
 21 property of the judgment debtor liable to be levied upon in
 22 satisfaction of the judgment can be found or that the amount
 23 realized on the sale of the judgment debtor's property
 24 pursuant to such execution was insufficient to satisfy the
 25 judgment;

26 (c) The (3)--Such person has made all reasonable
 27 searches and inquiries to ascertain whether the judgment
 28 debtor possesses real or personal property or other assets
 29 subject to being sold or applied in satisfaction of the
 30 judgment, and by his search he has discovered no property or
 31 assets or he has discovered property and assets and has taken

1 all necessary action and proceedings for the application
 2 thereof to the judgment, but the amount thereby realized was
 3 insufficient to satisfy the judgment;

4 (d) The ~~(4)~~--Such person has applied any amounts
 5 recovered from the judgment debtor, or from any other source,
 6 to the damages awarded by the court;

7 (e) The ~~(5)~~--Such person, at the time the action was
 8 instituted, gave notice and provided a copy of the complaint
 9 thereof to the division ~~of Finance of the department~~ by
 10 certified mail; however, the requirement of a timely giving of
 11 notice may be waived by the department upon a showing of good
 12 cause; and

13 (f)~~(6)~~ The act for which recovery is sought occurred
 14 on or after September 1, 1977. Recovery of the increased
 15 benefits allowable pursuant to the amendments to s. 494.044
 16 which are effective October 1, 1985, shall be based on a cause
 17 of action which arose on or after that date.

18 (2) The requirements of paragraphs (1)(a), (b), (c),
 19 (d), and (e) subsections~~(2) and (3)~~ are not applicable if the
 20 licensee or registrant upon which the claim is sought has
 21 filed for bankruptcy or has been adjudicated bankrupt;
 22 however, in such event the claimant shall file a proof of
 23 claim in the bankruptcy proceedings and shall notify the
 24 department by certified mail of the claim by enclosing a copy
 25 of the proof of claim and all supporting documents.

26 (3) When the department receives notice of any action,
 27 as required by paragraph (1)(e), the department may intervene,
 28 enter an appearance, or take any action it deems appropriate
 29 on behalf, and in the name of the defendant and take recourse
 30 through any appropriate method of review on behalf, and in the
 31 name of the defendant.

Section 13. Section 494.044, Florida Statutes, is amended to read:

494.044 Payment from the fund.--

(1) Any person who meets all of the conditions prescribed in s. 494.043 may apply to the department for payment to be made to such person from the Mortgage Brokerage Guaranty Fund in the amount equal to the unsatisfied portion of that such person's judgment or judgments or \$20,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. As to claims against any one licensee or registrant mortgage broker-or-mortgage-solicitor, payments shall be made to all persons meeting the requirements of s. 494.043 upon the expiration of 2 years from the date the first complete and valid notice is received by the department pursuant to s. 494.043(5). Persons who give notice after 2 years from the date the first complete and valid notice is received and who otherwise comply with the conditions precedent to recovery have-not-received-payment-as-provided-above may recover from any up-to-the remaining portion of any-of the \$100,000 aggregate, in an amount equal to the unsatisfied portion of that person's judgment or \$20,000 whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages with claims being paid in the order notice is received until the \$100,000 aggregate has been fully disbursed.

(2) ~~Upon receipt by the claimant of the payment from the Mortgage Brokerage Guaranty Fund;~~ The claimant shall assign his ~~any additional~~ right, title, and interest in the judgment, to the extent of his recovery from the fund such payment, to the department and shall record, at his own

1 expense, the assignment of judgment in every county where the
2 judgment is recorded.

3 (3) Payments for claims shall be limited in the
4 aggregate to \$100,000, regardless of the number of claimants
5 involved, against any one mortgage broker or registrant or
6 ~~mortgage-solicitor~~. If the total claims exceed the aggregate
7 limit of \$100,000, the department shall prorate the payment
8 based on the ratio that the person's claim bears to the total
9 claims filed.

10 (4) If at any time the money in the ~~Mortgage-Brokerage~~
11 ~~Guaranty~~ fund is insufficient to satisfy any valid claim or
12 portion thereof, the department shall satisfy such unpaid
13 claim or portion thereof as soon as a sufficient amount of
14 money has been deposited in or transferred to the fund. When
15 there is more than one unsatisfied claim outstanding, such
16 claims shall be paid in the order in which the claims were
17 filed with the department.

18 (5) All payments and disbursements made from the
19 ~~Mortgage-Brokerage-Guaranty~~ fund shall be made by the
20 Treasurer upon a voucher signed by the Comptroller, as head of
21 the department, or such agent as he may designate.

22 (6) The payment of any amount from the ~~Mortgage~~
23 ~~Brokerage-Guaranty~~ fund in settlement of a claim or in
24 satisfaction of a judgment against a licensee or a registrant
25 shall constitute prima facie grounds for the revocation of the
26 license or registration of such licensee.

27 Section 14. Section 494.052, Florida Statutes, is
28 created to read:

29 494.052 Administrative penalties and fines; license
30 violations.--When the department finds that the grounds set
31

1 forth in s. 494.055(1) apply to a person, it may enter an
2 order imposing one or more of the following penalties:

3 (1) Revocation of a license or registration.

4 (2) Suspension of a license or registration subject to
5 reinstatement upon all reasonable conditions as the department
6 may specify.

7 (3) Placement of the licensee, registrant, or
8 applicant on probation for a period of time and subject to all
9 reasonable conditions as the department may specify.

10 (4) Issuance of a reprimand.

11 (5) Imposition of a fine not to exceed \$5,000 for each
12 count or separate offense.

13 (6) Denial of a license or registration.

14 Section 15. Section 494.055, Florida Statutes, is
15 created to read:

16 494.055 Grounds for disciplinary action.--

17 (1) The following acts shall constitute grounds for
18 which the disciplinary actions specified in s. 494.052 may be
19 taken:

20 (a) Being convicted or found guilty, regardless of
21 adjudication, of a crime in any jurisdiction which involves
22 fraud, dishonest dealing, or any other act of moral turpitude;

23 (b) Fraud, misrepresentation, deceit, negligence, or
24 incompetence in any mortgage financing transaction;

25 (c) A material misstatement of fact on an initial or
26 renewal application;

27 (d) An act which has caused, or will cause, a
28 disbursement to any person in any amount from the Mortgage
29 Brokerage Guaranty Fund, the Securities Guaranty Fund, or the
30 Florida Real Estate Recovery Fund, regardless of any repayment
31 or restitution to the disbursed fund by the licensee or

1 registrant or any person acting on behalf of the licensee or
2 registrant;

3 (e) Failure to place, immediately upon receipt, any
4 money, fund, deposit, check, or draft entrusted to him by a
5 person dealing with him as a broker, in escrow with an escrow
6 agent located and doing business in this state, pursuant to a
7 written agreement, or to deposit such funds in a trust or
8 escrow account maintained by him with a bank or savings and
9 loan association located and doing business in this state,
10 wherein such funds shall be kept until disbursement thereof is
11 properly authorized.

12 (f) Failure to account or deliver to any person any
13 personal property, such as any money, fund, deposit, check,
14 draft, mortgage, or other document or thing of value, which
15 has come into his hands and which is not his property or which
16 he is not in law or equity entitled to retain, under the
17 circumstances and at the time which has been agreed upon or is
18 required by law or, in the absence of a fixed time, upon
19 demand of the person entitled to such accounting and delivery.

20 (g) Failure to disburse funds in accordance with
21 agreements.

22 (h) Any breach of trust funds or escrow funds, or any
23 misuse, misapplication, or misappropriation of personal
24 property such as money, fund, deposit, check, draft, mortgage,
25 or other document or thing of value entrusted to his care to
26 which he had no current property right at the time of
27 entrustment regardless of actual injury to any person;

28 (i) Having a license, registration, or the equivalent,
29 to practice any profession or occupation revoked, suspended,
30 or otherwise acted against, including the denial of licensure
31 by a licensing authority of this state or another state,

1 territory, or country for fraud, dishonest dealing, or any
2 other act of moral turpitude.

3 (j) Failure to comply with any department order or
4 rule made or issued under the provisions of this chapter;

5 (k) Acting as mortgage broker or mortgage brokerage
6 business without a current, active license or registration;

7 (l) Failure to timely pay any fee, charge, or fine
8 under this chapter;

9 (m) Failure to maintain, preserve, and keep available
10 for examination, all books, accounts, or other documents
11 required by this chapter or the rules of the division;

12 (n) Refusal to permit an investigation or examination
13 of books and records, or refusal to comply with a department
14 subpoena or subpoena duces tecum;

15 (o) Consistently underestimating the maximum closing
16 costs; or

17 (p) Failure to comply with or violation of any other
18 provision of this chapter.

19 (2) A registrant shall be subject to the disciplinary
20 actions specified in s. 494.052 for violations of subsection
21 (1) by any officer, director, shareholder, joint venturer,
22 partner, ultimate equitable owner, or employee mortgage broker
23 of the registrant.

24 (3) A principal mortgage broker shall be subject to
25 the disciplinary actions specified in s. 494.052 for
26 violations of subsection (1) by employees of the mortgage
27 brokerage business. A principal mortgage broker shall be
28 subject to the disciplinary actions specified in s. 494.052
29 for violations of subsection (1) by officers, directors,
30 shareholders, partners, joint venturers, owners, or ultimate
31

1 equitable owners, when the principal mortgage broker has
2 knowledge of the violation and fails to inform the department.

3 Section 16. Section 494.06, Florida Statutes, is
4 amended to read:

5 494.06 ~~investigations and complaints~~; Books, accounts,
6 and records; etc.--

7 (1) Every principal mortgage broker shall maintain, at
8 the principal place of business designated on ~~in~~ the license
9 or registration certificate, all such books, accounts,
10 records, and documents as the department deems necessary of
11 ~~the business conducted under the license issued for such place~~
12 ~~of business as will enable the department to determine~~
13 compliance whether the business of the licensee contemplated
14 by this act is being operated in accordance with this chapter
15 the provisions of this act.

16 (2) A registrant licensee operating a branch office
17 ~~two or more licensed places of business~~ in this state, may
18 maintain the general control records of all its such offices
19 at any one of the offices, or at any other reasonable location
20 in this state, which location shall not be considered a branch
21 of the registrant licensed office maintained by the licensee,
22 upon the filing of a written notice request with the
23 department ~~designating therein the office at which such~~
24 ~~control records are maintained.~~

25 (3) All books, accounts, records, and documents of
26 registrants and licensees, including the a closing statement
27 signed by every the borrower shall be preserved and kept
28 available for examination by the department for not less than
29 at least 5 years from date of original entry.

30 (4) The department is authorized to prescribe the
31 minimum information to be shown in the books, accounts,

1 records, and documents of licensees so that such records will
2 enable the department to determine compliance with the
3 provisions of this act.

4 (5) The department may, at intermittent periods, make
5 such ~~investigations and~~ examinations of any licensee or other
6 person ~~as it deems necessary to determine compliance with this~~
7 ~~act. For such purposes, it may examine the books, accounts,~~
8 ~~records and other documents or matters of any licensee or~~
9 ~~other person. It shall have the power to compel the~~
10 ~~production of all relevant books, records and other documents~~
11 ~~and materials relative to an examination or investigation.~~
12 ~~Such investigations and examinations shall not be made more~~
13 ~~often than once during a year unless the department has reason~~
14 ~~to believe the licensee is not complying with the provisions~~
15 ~~of this act.~~ Examinations conducted under the provisions of
16 this act shall be confidential with the department except as
17 required in the administration, enforcement and prosecution of
18 violations under this act.

19 ~~(6) Any party having reason to believe that this act~~
20 ~~has been violated, or that a license is subject to suspension~~
21 ~~or revocation, may file with the department a written~~
22 ~~complaint setting forth the details of such alleged violation~~
23 ~~or grounds for suspension or revocation.~~

24 Section 17. Section 494.065, Florida Statutes, is
25 created to read:

26 494.065 Investigations; complaints.--

27 (1) The department may conduct an investigation of any
28 person whenever there is an appearance, either upon complaint
29 or otherwise, that any violation of this chapter has been
30 committed or is about to be committed.

1 (2) Any person having reason to believe that this
2 chapter has been violated may file with the department a
3 written complaint setting forth ultimate facts which show a
4 violation of this chapter.

5 (3) All records and information obtained pursuant to
6 an investigation by the department are exempt from s. 119.07
7 until the investigation is complete. At all times, a
8 complaint and any information obtained pursuant to an
9 investigation are exempt from s. 119.07 to the extent
10 disclosure would:

11 (a) Interfere with enforcement proceedings;

12 (b) Deprive a person of the right to a fair trial or
13 an impartial adjudication;

14 (c) Tend to impair the safety or soundness of any
15 financial institution;

16 (d) Constitute an unwarranted invasion of personal
17 privacy;

18 (e) Disclose the identity of a confidential source or,
19 in the case of a record compiled by a criminal law enforcement
20 authority in the course of a criminal investigation, disclose
21 confidential information furnished only by the confidential
22 source;

23 (f) Disclose investigative techniques or procedures;

24 or

25 (g) Endanger the life or physical safety of law
26 enforcement or department personnel.

27
28 Nothing in this section shall be construed to prohibit the
29 department from providing investigatory information to any law
30 enforcement agency or any other regulatory agency.

1 (4) A privilege against civil liability is hereby
 2 granted to any complainant or any witness with regard to
 3 information furnished with respect to any investigation or
 4 proceeding pursuant to this act, unless the complainant or
 5 witness acted in bad faith or with malice in providing such
 6 information.

7 Section 18. Section 494.07, Florida Statutes, is
 8 amended to read:

9 (Substantial rewording of section. See
 10 s. 497.07, F.S., for present text.)

11 494.07 Powers of department.--

12 (1) The department shall have the power to issue and
 13 to serve subpoenas and subpoenas duces tecum to compel the
 14 attendance of witnesses and the production of all books,
 15 accounts, records, and other documents and materials relevant
 16 to an examination or investigation. The department, or its
 17 duly authorized representative, shall have power to administer
 18 oaths and affirmations to any person.

19 (2) The department may, in its discretion, seek
 20 subpoenas or subpoenas duces tecum from any county court judge
 21 or clerk of the circuit or county court commanding the
 22 appearance of witnesses and the production of books, accounts,
 23 records, and other documents or materials at a time and a
 24 place to be named in the subpoenas, and any authorized
 25 representative of the department may serve any subpoena.

26 (3)(a) In the event of substantial noncompliance with
 27 a subpoena or subpoena duces tecum issued or caused to be
 28 issued by the department, the department may petition the
 29 circuit court of the county in which the person subpoenaed
 30 resides or has its principal place of business for an order
 31 requiring the subpoenaed person to appear and testify and to

1 produce such books, accounts, records, and other documents as
2 are specified in the subpoena duces tecum. The court may
3 grant injunctive relief restraining the person from
4 advertising, promoting, soliciting, entering into, offering to
5 enter into, continuing, or completing any mortgage financing
6 transaction or mortgage servicing transaction. The court may
7 grant such other relief, including, but not limited to, the
8 restraint, by injunction or appointment of a receiver, of any
9 transfer, pledge, assignment, or other disposition of the
10 person's assets or any concealment, alteration, destruction or
11 other disposition of books, accounts, records, or other
12 documents and materials as the court deems appropriate, until
13 the person has fully complied with the subpoena or subpoena
14 duces tecum and the department has completed its investigation
15 or examination. In addition, the court may order the refund
16 of any fees collected in a mortgage financing transaction
17 whenever books and documents substantiating the transaction
18 are not produced or cannot be produced. The department is
19 entitled to the summary procedure provided in s. 51.011, and
20 the court shall advance such cause on its calendar. Attorney
21 fees and any other costs incurred by the department to obtain
22 an order granting, in whole or in part, a petition for
23 enforcement of a subpoena or subpoena duces tecum shall be
24 taxed against the subpoenaed person and failure to comply with
25 such order shall be a contempt of court.

26 (b) When it appears to the department that the
27 compliance with a subpoena or subpoena duces tecum issued or
28 caused to be issued by the department pursuant to this section
29 is essential and otherwise unavailable to an investigation or
30 examination, the department, in addition to the other remedies
31 provided for herein, may apply to the circuit court of the

1 county in which the subpoenaed person resides or has its
 2 principal place of business for a writ of ne exeat. The court
 3 shall thereupon direct the issuance of the writ against the
 4 subpoenaed person requiring sufficient bond conditioned on
 5 compliance with the subpoena or subpoena duces tecum. The
 6 court shall cause to be endorsed on the writ a suitable amount
 7 of bond or payment of which the person named in the writ shall
 8 be freed, having a due regard to the nature of the case.

9 (4) Alternatively, the department may seek a writ of
 10 attachment from the circuit court having jurisdiction over the
 11 person who has refused to obey a subpoena, who has refused to
 12 give testimony or who has refused to produce the matters
 13 described in the subpoena duces tecum.

14 Section 19. Section 494.071, Florida Statutes, is
 15 amended to read:

16 494.071 Injunction to restrain violations.--

17 ~~(i)--The department may investigate when it shall~~
 18 ~~appear to it, either upon complaint or otherwise, that in the~~
 19 ~~sale, promotion, negotiation, advertisement, or hypothecation~~
 20 ~~of mortgage transactions within this state, including any~~
 21 ~~transaction consummated by parties under the provisions of s.~~
 22 ~~494.03, any person:~~

23 ~~(a)--Shall have employed, employs, or is about to~~
 24 ~~employ any device, scheme, or artifice to defraud or for~~
 25 ~~obtaining money or property involving a mortgage on real~~
 26 ~~property by means of any false pretense, representation, or~~
 27 ~~promise; or~~

28 ~~(b)--Shall have made, makes, or attempts to make in~~
 29 ~~this state fictitious or pretended loan commitments or~~
 30 ~~fraudulently accepts a deposit for a mortgage loan commitment;~~
 31 ~~or~~

1 ~~(c) -- Shall have engaged in, engages in, or is about to~~
 2 ~~engage in any practice or transaction or course of business~~
 3 ~~relating to the purchase or negotiation of a mortgage loan:~~

4 ~~1. -- Which is in violation of the law; or~~

5 ~~2. -- Which is fraudulent; or~~

6 ~~3. -- Which has operated or which would operate as a~~
 7 ~~fraud on the mortgagor or mortgagee.~~

8 ~~(d) -- Is acting as broker or solicitor within this state~~
 9 ~~without being duly registered as such broker or solicitor as~~
 10 ~~provided in this chapter.~~

11 ~~(2) -- Whenever any such person has engaged or is engaged~~
 12 ~~or is about to engage in any of the practices or transactions~~
 13 ~~which would be fraudulent and inconsistent with the intent of~~
 14 ~~this chapter, or acts in violation of this chapter, or is~~
 15 ~~acting as a broker or solicitor without being duly registered~~
 16 ~~as provided in this chapter,~~

17 ~~(1)~~ The department may, ~~in addition to any other~~
 18 ~~remedies, by its own counsel~~ bring action through its own
 19 counsel in the name and on behalf of the state against any
 20 such person who has violated or is about to violate any
 21 provision of this chapter or any department rule or order
 22 issued under and any other person concerned in or in any way
 23 participating in or about to participate in such fraudulent
 24 practices or acting in violation of this chapter, to enjoin
 25 the such person from continuing in such fraudulent practices
 26 or engaging in therein or doing any act in furtherance of the
 27 violation thereof or in violation of this chapter.

28 ~~(2)(3)~~ In any injunctive such court proceedings, the
 29 court department may, apply for and on due showing by the
 30 department, issue ~~be entitled to have issued the court's~~
 31 subpoena or subpoenas duces tecum requiring forthwith

1 attendance of any witness and forthwith the production of any
 2 documents, books, accounts, and records or other documents and
 3 materials that may appear necessary to the expeditious
 4 resolution of the for-the-hearing-of-such-petition, and the
 5 appearance of any defendant and his employees, solicitors, or
 6 agents to testify and give evidence concerning the acts or
 7 conduct or things complained of in such application for
 8 injunction. In such action the equity courts shall have
 9 jurisdiction of the subject matter, and a judgment may be
 10 entered awarding such injunction as may be proper:

11 (3)(4) In addition to all other means provided by law
 12 for the enforcement of any temporary restraining order,
 13 temporary injunction, or permanent injunction issued in any
 14 such court proceedings, the court shall have the power and
 15 jurisdiction, upon application of the department, to impound
 16 and to appoint a receiver or administrator for the property,
 17 assets, and business of the defendant, including, but not
 18 limited to, the books, records, documents, and papers
 19 appertaining thereto. Such receiver or administrator, when
 20 appointed and qualified, shall have all powers and duties as
 21 to custody, collection, administration, winding up, and
 22 liquidation of the property and business as shall from time to
 23 time be conferred upon him by the court. In any such action
 24 the court may issue an order staying all pending suits and
 25 enjoining any further suits affecting the receiver's or
 26 administrator's custody or possession of the property, assets,
 27 and business, or, in its discretion, may with the consent of
 28 the chief judge of the circuit require that all such suits be
 29 assigned to the circuit court judge who appoints the receiver
 30 or administrator.

1 Section 20. Section 494.072, Florida Statutes, is
2 amended to read:

3 494.072 Cease and desist orders; refund orders;
4 administrative fines.--

5 ~~(1)~~--The department may issue and serve upon any
6 mortgage broker a complaint stating charges whenever the
7 department has reason to believe that the mortgage broker is
8 violating or has violated any provision of this act;

9 (1)(2) The department shall have the power to
10 authorized to issue and serve upon any person a cease and
11 desist order whenever there is reason to believe the person
12 against any mortgage broker who is violating, or has violated
13 or is about to violate any provision the provisions of this
14 chapter, any departmental rule or order issued under this
15 chapter, or any written agreement between the person and the
16 department act. All procedural matters relating to issuance
17 and enforcement of the cease and desist order shall be in
18 accordance with the Administrative Procedure Act.

19 (2)(3) The department shall have the power to may
20 order the refund of any fee or commission, directly or
21 indirectly amounts assessed and charged on a mortgage
22 financing loan transaction that which exceeds the maximum fees
23 or and commissions provided in this chapter. ~~by s. 494.08(3).~~
24 ~~Such order shall be issued in accordance with the procedural~~
25 ~~requirements of the Administrative Procedure Act;--if the~~
26 ~~broker fails or refuses to comply with such order within 15~~
27 ~~days after notice of the entry thereof;--such failure or~~
28 ~~refusal shall constitute a violation of this chapter;--The~~
29 ~~aforsaid remedies are in addition to any other legal remedies~~
30 ~~provided by law in such cases;~~

1 ~~44--The department may impose an administrative fine~~
 2 ~~not to exceed \$17000 against any person found to have violated~~
 3 ~~any cease and desist order of the department.--All fines~~
 4 ~~collected under this section shall be paid to the regulatory~~
 5 ~~trust fund under the Division of Finance of the department.~~

6 Section 21. Subsections (1), (2), and (4) of section
 7 494.08, Florida Statutes, are amended and subsection (10) is
 8 added to said section to read:

9 494.08 Requirements and prohibitions.--

10 (1) No person shall advertise, print, display,
 11 publish, distribute, telecast or broadcast, or cause or permit
 12 to be advertised, printed, displayed, published, distributed,
 13 televised or broadcast, in any manner, any statement or
 14 representation with regard to the rates, terms or conditions
 15 pertaining to the making, negotiating, or sale of loans, which
 16 is false, misleading, or deceptive. No person who is not
 17 licensed or registered under this act nor exempt under s.
 18 494.03 shall use the word mortgage or similar words in any
 19 advertising, signs, letterheads, cards, or like matter which
 20 tend to represent that he arranges real estate mortgage loans.
 21 No person not already registered or licensed under this act
 22 shall be granted a license or registration in a name
 23 containing such words as insured, bonded, guaranteed, secured
 24 and the like. No person shall advertise or offer to sell
 25 insured or guaranteed mortgages unless the principal and
 26 interest of such mortgages is insured by an insurance company
 27 authorized by the Department of Insurance to write such
 28 insurance under the provisions of chapter 635, or unless such
 29 mortgages are wholly or partially insured or guaranteed by an
 30 agency of the Federal Government.

1 (2) No person in connection with or incidental to the
2 making of any mortgage loan shall induce, require or permit
3 the mortgage deed or note to be signed by a principal to the
4 transaction if the such instruments to be signed contain any
5 blank spaces to be filled in after the signature ~~it has been~~
6 ~~signed~~, except blank spaces relating to recording or other
7 incidental information not then available.

8 (4)(a) No unlicensed or unregistered person shall
9 charge or receive any commission, bonus or fee in connection
10 with arranging for, negotiating, selling, or purchasing a
11 mortgage loan to any person operating in Florida not licensed
12 or registered under the provisions of this act.

13 (b) No licensed person broker-or-soicetor shall pay
14 any commission, bonus or fee in connection with arranging for,
15 negotiating, selling, or purchasing a mortgage loan to any
16 person operating in Florida not licensed or registered under
17 the provisions of this act.

18 (10) Each deposit agreement entered into by a licensee
19 or registrant shall include a summary of the limits and
20 conditions of recovery from the Mortgage Brokerage Guaranty
21 Fund. The department may prescribe by rule the form of each
22 summary.

23 Section 22. Section 494.081, Florida Statutes, is
24 amended to read:

25 494.081 Fees and charges not deemed interest or
26 finance charge.--

27 (1) All fees and charges authorized by this act and
28 received by a person mortgage-broker-or-mortgage-soicetor
29 licensed or registered under this act shall not be deemed as
30 interest or finance charges, but a licensee or registrant
31 ~~licensed-broker~~ lending his ~~its~~ own funds shall be subject to

1 the provisions of chapter 687. A licensee or registrant
2 ~~licensed-mortgage-broker~~ who lends the funds of an affiliate
3 lender shall not be deemed to be in violation of chapter 687
4 unless the department determines that the purpose of such
5 action is designed to avoid the provisions of chapter 687.
6 The department shall adopt rules for this section.

7 (2) When a licensee or registrant mortgage-broker
8 lends his own funds and charges the fees or commissions
9 authorized by this act, those fees or commissions shall not be
10 considered interest for the purposes of chapter 687 if:

11 (a) Such licensee or registrant mortgage-broker
12 assigns the loan to another lender within 90 days from the
13 date the loan was made; or

14 (b) The loan is for a principal amount in excess of
15 \$250,000 and such licensee or registrant mortgage-broker
16 assigns an interest or participation exceeding 50 percent of
17 the loan to another lender within 90 days after the date the
18 loan was made.

19 (3) Upon request, a licensee or registrant shall
20 furnish the department, to determine compliance with this
21 subsection, a written statement identifying the owners of, or
22 participants in, any such loan and the interest of each.

23 Section 23. Section 494.091, Florida Statutes, is
24 amended to read:

25 494.091 Liability in case of unlawful transaction.--In
26 the event a mortgage transaction is made in violation of any
27 of the provisions of this chapter, the person making the
28 transaction and every licensee, director, officer, or agent of
29 a registrant who has personally participated in making the
30 transaction shall be jointly and severally liable to every
31

1 party to the transaction ~~the lender~~ in an action for damages
2 incurred by the party or parties lender.

3 Section 24. Section 494.093, Florida Statutes, is
4 amended to read:

5 494.093 Prohibited practices.--It is unlawful, and a
6 violation of the provisions of this chapter, for any person:

7 (1) To act as a mortgage broker in this state without
8 a mortgage broker license issued by the department.

9 (2) To employ a mortgage broker or otherwise act as a
10 mortgage brokerage business without a mortgage brokerage
11 registration issued by the department.

12 (3)(1) In any practice or transaction or course of
13 business relating to the sale, purchase, negotiation,
14 promotion, advertisement, or hypothecation of mortgage
15 transactions, including any transaction consummated by parties
16 under the provisions of s. 494.03, directly or indirectly:

17 (a) To knowingly or willingly employ any device,
18 scheme, or artifice to defraud.

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

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

24 (4)(2) In any matter within the jurisdiction of the
25 department, to knowingly and willfully falsify, conceal, or
26 cover up, by any trick, scheme, or device, a material fact, or
27 make any false or fraudulent statement or representation, or
28 make or use any false writing or document, knowing the same to
29 contain any false or fraudulent statement or entry.

30 Section 25. Section 494.10, Florida Statutes, is
31 amended to read:

494.10 Penalties.--

(1) Whoever violates any of the provisions of s. 494.093, s. 494.08(1) or s. 494.055(1)(2) this chapter, except as provided in subsection (2), is guilty of a felony of the third degree misdemeanor of the second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084, and each violation of ~~this chapter~~ shall constitute a separate offense.

(2) Any person convicted of a violation of any provision of this chapter whereby the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims shall be guilty of a felony of the first degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Whoever violates any provision of s. 494.093, fails to comply with the requirements of s. 494.055(1)(f), or offers to negotiate a mortgage loan for compensation without being licensed as required by this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

Section 26. Persons licensed on effective date of act.--

(1) A natural person licensed as of September 1, 1986, as a mortgage broker or mortgage solicitor pursuant to s. 494.04, Florida Statutes, 1985, shall be issued, without application, a mortgage broker's license as defined in this act, and such license shall be eligible for renewal.

(2) A mortgage brokerage business licensed as of September 1, 1986, as a mortgage broker pursuant to s. 494.04, Florida Statutes, 1985, shall be issued, without application, a mortgage brokerage business registration as defined in this act, and such registration shall be eligible for renewal.

1 (3) A natural person entitled, as of September 1,
2 1986, to engage in the business of mortgage broker as a
3 designee of a licensed mortgage broker business pursuant to s.
4 494.04(6), Florida Statutes, 1985, shall be issued, without
5 application, a mortgage broker's license as defined in this
6 act, and such license shall be eligible for renewal.

7 Section 27. No judicial or administrative proceeding
8 pending on September 1, 1986 shall be abated as a result of
9 any amendment, repeal, or addition to chapter 494, Florida
10 Statutes, by this act.

11 Section 28. Section 494.04, Florida Statutes, as
12 amended by chapter 85-271, Laws of Florida, and section
13 494.05, Florida Statutes, as amended by chapter 85-271, Laws
14 of Florida, are hereby repealed.

15 Section 29. This act shall take effect September 1,
16 1986.

17
18
19 *****

20 LEGISLATIVE SUMMARY

21 Substantially revises the "Mortgage Brokerage Act."
22 Among other provisions, the act:

- 23 1. Provides for mortgage brokerage licensure requirements.
 - 24 2. Provides for the registration of mortgage brokerage businesses.
 - 25 3. Requires permits for branch offices.
 - 26 4. Revises procedures with respect to the Mortgage Brokerage Guaranty Fund.
 - 27 5. Provides for administrative penalties and fines.
- 28 See bill for details.
- 29
- 30
- 31

By the Committee on Commerce and Senator Hair-

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to the Mortgage Brokerage Act;
amending s. 494.02, F.S.; providing
definitions; amending s. 494.03, F.S.;
providing exemptions; creating s. 494.035,
F.S.; providing powers and duties of the
Department of Banking and Finance; creating s.
494.037, F.S.; providing mortgage brokerage
licensure requirements; creating s. 494.038,
F.S.; providing for renewal of a mortgage
broker license; creating s. 494.039, F.S.;
providing for registration of mortgage
brokerage businesses; providing fees; creating
s. 494.0391, F.S.; providing for registration
renewal; creating s. 494.0392, F.S.; providing
for branch office permits; creating s.
494.0393, F.S.; providing requirements for
licensees and registrants; amending s. 494.041,
F.S.; expanding scope of provisions relating to
mortgages offered by certain land developers;
amending s. 494.042, F.S.; providing clarifying
language relating to the Mortgage Brokerage
Guaranty Fund; eliminating reference to
violations of the chapter; amending s. 494.043,
F.S.; providing conditions precedent to
recovery under the fund; amending s. 494.044,
F.S., limiting certain payments from the fund;
creating s. 494.052, F.S.; providing for
administrative penalties and fines; specifying
violations; creating s. 494.055, F.S.;
providing grounds for disciplinary action;

1 amending s. 494.06, F.S.; providing
2 requirements with respect to books, accounts,
3 and records; creating s. 494.065, F.S.;
4 providing for investigation and complaints;
5 providing for confidentiality; providing
6 immunity from civil liability; amending s.
7 494.07, F.S.; providing powers of the
8 department; providing for subpoenas; providing
9 for attorney's fees; amending s. 494.071, F.S.;
10 authorizing injunctions to restrain violations;
11 amending s. 494.072, F.S.; providing for cease
12 and desist orders and refund orders; amending
13 s. 494.08, F.S.; revising requirements and
14 prohibitions; amending s. 494.081, F.S.;
15 providing that certain fees or charges are not
16 deemed interest or finance charges; amending s.
17 494.091, F.S.; specifying liability in the case
18 of an unlawful transaction; amending s.
19 494.093, F.S.; specifying prohibited practices;
20 amending s. 494.10, F.S.; providing penalties;
21 providing for licensure of persons licensed on
22 effective date of act; repealing s. 494.04,
23 F.S., relating to the licensing of mortgage
24 brokers and mortgage solicitors; repealing s.
25 494.05, F.S., relating to denial, suspension,
26 or revocation of licenses; providing a savings
27 clause; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Section 494.02, Florida Statutes, is
2 amended to read:

3 494.02 Definition of terms.--~~As used~~ in this act
4 ~~unless the context or subject matter otherwise requires:~~

5 (1) "Person" means an individual, partnership,
6 corporation, association, and any other group however
7 organized.

8 (2) "Mortgage loan" means any loan secured by a
9 mortgage on real property or any loan secured by collateral
10 which has a mortgage lien interest in real property.

11 (3) "Mortgage broker" means any person not exempt
12 under s. 494.03 who for compensation or gain, or in the
13 expectation of compensation or gain, either directly or
14 indirectly makes, negotiates, acquires, sells, or arranges
15 for, or offers to make, negotiate, acquire, sell, or arrange
16 for, a mortgage loan or mortgage loan commitment. This
17 subsection shall not apply to transactions involving the sale
18 or purchase of notes or bonds secured by mortgages which are
19 subject to registration by the department.

20 (4) "Mortgage brokerage business" means any person
21 which employs a mortgage broker or mortgage brokers, or which,
22 either directly or indirectly, makes, negotiates, acquires or
23 sells, arranges for, or offers to make, negotiate, acquire,
24 sell or arrange for a mortgage loan or mortgage loan
25 commitment for compensation or gain, or in the expectation of
26 compensation or gain. ~~"Mortgage solicitor" means any~~
27 ~~individual not licensed as a mortgage broker, who performs any~~
28 ~~of the functions set out under subsection (3) and who is~~
29 ~~employed by a mortgage broker or whose business policies and~~
30 ~~acts are under the direction, control, or management of a~~
31 ~~mortgage broker.~~

1 (5) "Department" means the Department of Banking and
2 Finance.

3 (6) "Licensee" means a natural person licensed as a
4 ~~person, whether mortgage broker or mortgage solicitor, under~~
5 ~~any of the provisions of this act.~~

6 (7) "License" means a license issued under the
7 provisions of this act.

8 (8) "Registrant" means a mortgage brokerage business
9 registered pursuant to this act.

10 (9)(8) "Principal mortgage broker" means a licensee an
11 ~~individual, officer of a corporation, or member of a~~
12 ~~partnership designated as the person in charge of and~~
13 ~~responsible for the operation of the principal place of~~
14 ~~business and all designated associate brokers primary broker~~
15 ~~in the application.~~

16 (10)(9) "Lender" means any person who either lends or
17 invests money in mortgage loans.

18 (11) "Ultimate equitable owner" means a natural person
19 who, directly or indirectly, owns or controls an ownership
20 interest in a corporation, foreign corporation, alien business
21 organization, or any other form of business organization,
22 regardless of whether such natural person owns or controls
23 such ownership interest through one or more natural persons or
24 one or more proxies, powers of attorney, nominees,
25 corporations, associations, partnerships, trusts, joint stock
26 companies, or other entities or devices, or any combination
27 thereof.

28 (12) "Mortgage financing transaction" means the
29 negotiation, acquisition, sale, or arrangement for, or the
30 offer to negotiate, acquire, sell or arrange for, a mortgage
31 loan or mortgage loan commitment.

1 (13) "Personal residence address" means a street
 2 address, and does not include a post office box number.

3 (14) "Division" means the Division of Finance of the
 4 Department of Banking and Finance.

5 (15) "Designated associated broker" means the licensed
 6 mortgage broker in charge of a branch office.

7 (16) "Mortgage loan commitment" means a contract for
 8 mortgage loan financing.

9 (17) "Party to a mortgage financing transaction" means
 10 a borrower or lender in a mortgage financing transaction.

11 Section 2. Section 494.03, Florida Statutes, is
 12 amended to read:

13 494.03 Exempt persons.--

14 (1) This act does not apply to the following:

15 (a)~~(1)~~ Banks, trust companies, savings and loan
 16 associations, pension trusts, credit unions, insurance
 17 companies, consumer finance companies ~~small-loan-companies~~,
 18 federally licensed small business investment companies, or
 19 securities dealers registered under the provisions of s.
 20 517.12, servicing corporate clients in the normal course of
 21 business.

22 (b)~~(2)~~ Any person making or acquiring a mortgage loan
 23 with his own funds for his own investment without intent to
 24 resell said mortgage loan.

25 (c)~~(3)~~ Any person licensed to practice law in this
 26 state, not actively and principally engaged in the business of
 27 negotiating loans secured by real property, when such person
 28 renders services in the course of his practice as an attorney
 29 at law.

30 (2) It shall not be necessary to negate any of the
 31 exemptions provided in this chapter in any complaint.

1 information, indictment, or other writ or proceedings brought
2 under this chapter; and the burden of establishing the right
3 to any exemption shall be upon the party claiming the benefit
4 of such exemption.

5 Section 3. Section 494.035, Florida Statutes, is
6 created to read:

7 494.035 Department's duties and powers --

8 (1) The department shall be responsible for the
9 administration and enforcement of this chapter.

10 (2) The department may adopt such rules as it may deem
11 necessary in the administration of this act and not
12 inconsistent therewith, which rules shall have the force and
13 effect of law.

14 (3) All fees, charges, and fines collected by the
15 department pursuant to this chapter shall be deposited in the
16 State Treasury to the credit of the Regulatory Trust Fund
17 under the division.

18 Section 4. Section 494.037, Florida Statutes, is
19 created to read:

20 494.037 Mortgage brokerage licensure requirements.--

21 (1) Each initial application for a mortgage broker
22 license shall be in written form as prescribed by the
23 department. The department may require each applicant to
24 provide any information reasonably necessary to make a
25 determination of eligibility for licensure pursuant to this
26 chapter. The department shall issue an initial license to any
27 natural person who meets the following requirements:

- 28 (a) Is 18 years of age;
29 (b) Has submitted a completed application and a
30 nonrefundable application fee not to exceed \$150;

1 (c) Has passed a written test adopted by the
2 department designed to determine competency in primary and
3 subordinate mortgage financing transactions and to test
4 knowledge of this chapter and the rules promulgated thereto.

5 (d) Has filed a complete set of fingerprints, taken by
6 an authorized law enforcement officer, for submission by the
7 department to the Department of Law Enforcement or the Federal
8 Bureau of Investigation for processing.

9 (2) Notwithstanding the provisions of subsection (1),
10 it shall be grounds for denial of licensure if the applicant
11 has committed any violation as set forth in s. 494.055(1) or
12 has pending any criminal prosecutions or administrative
13 enforcement actions, in any jurisdiction, which involve fraud,
14 dishonest dealing or any other act of moral turpitude.

15 (3) The department shall not grant or issue to any
16 individual more than one mortgage broker license at any one
17 time. A licensee shall be employed by a registrant or
18 registrants, unless self-employed. The license shall state
19 whether the individual licensee is self-employed or is an
20 employee of a registered mortgage brokerage business. If the
21 individual is an employee, his license shall state the name of
22 the employer registrant or registrants. Not later than 15
23 business days after any termination of employment, both the
24 registrant and the employee shall send written notice of the
25 termination to the department. Not later than 15 business
26 days after entering into an employer-employee relationship,
27 both the registrant and the employee shall send written notice
28 of the employment relationship to the department.

29 (4) The department shall endorse each change of
30 employment on the license of the licensee. The department
31 shall set by rule a fee not to exceed \$50 for endorsement.

1 (5) The initial mortgage broker license shall be valid
2 for the remainder of the biennium in which the license is
3 issued.

4 Section 5. Section 494.038, Florida Statutes, is
5 created to read:

6 494.038 Renewal of mortgage broker license.--

7 (1) The department shall renew a mortgage broker
8 license upon receipt of the completed renewal application and
9 the renewal fee not to exceed \$150.

10 (2) The department shall adopt rules establishing a
11 procedure for the biennial renewal of mortgage broker
12 licenses. The department may prescribe the form of the
13 renewal application and may require an update of all
14 information provided in the licensee's initial application for
15 licensure.

16 (3) A license which is not renewed by the end of the
17 biennium prescribed by the department shall automatically
18 revert to inactive status. An inactive license may be
19 reactivated by filing a completed reactivation application
20 with the department, payment of the renewal fee, and payment
21 of a reactivation fee equal to the renewal fee.

22 (4) A license which is not renewed within 2 years
23 after becoming inactive shall expire.

24 Section 6. Section 494.039, Florida Statutes, is
25 created to read:

26 494.039 Registration of mortgage brokerage
27 businesses.--

28 (1) The department shall issue an initial registration
29 to each mortgage brokerage business which meets the following
30 requirements:

1 (a) Has submitted a completed application form and a
2 nonrefundable application fee not to exceed \$150.

3 (b) Designated a qualified principal mortgage broker,
4 and submitted an affidavit signed by the designated principal
5 mortgage broker acknowledging acceptance of the designation
6 and the responsibilities appertaining thereto.

7 (2) Notwithstanding the provisions of subsection (1),
8 it shall be grounds for denial of registration if the
9 designated principal mortgage broker; any officer, director,
10 partner, joint venturer, or any natural person owning a 10
11 percent or greater interest in the mortgage brokerage
12 business; or any natural person who is the ultimate equitable
13 owner of a 10 percent or greater interest in the mortgage
14 brokerage business has committed any violation set forth in s.
15 494.055(1) or has pending any criminal prosecution or
16 administrative enforcement actions, in any jurisdiction, which
17 involves fraud, dishonest dealing, or any other act of moral
18 turpitude.

19 (3) Each initial application for registration shall be
20 in written form as prescribed by the department. The
21 department may require each applicant to provide the following
22 information:

23 (a) The applicant's name, the address of the
24 applicant's principal place of business, and the address of
25 each applicant's branch offices in this state.

26 (b) The applicant's form of business organization.

27 1. For corporation applicants, disclosure of the names
28 and personal residence addresses of each current officer and
29 director of the applicant, each current shareholder who owns a
30 10 percent or greater interest in the corporation, and each
31

1 ultimate equitable owner of a 10 percent or greater interest
2 in the corporation.

3 2. For unincorporated associations, partnerships, or
4 joint-stock or joint-venture applicants, disclosure of the
5 names and personal residence addresses of: each current
6 officer, director, and any natural person holding an
7 equivalent position, each current association member, partner,
8 and joint-venturer who owns a 10 percent or greater interest
9 in the mortgage brokerage business; and any ultimate equitable
10 owner of a 10 percent or greater interest in the mortgage
11 brokerage business.

12 3. For a sole proprietorship operating under a
13 fictitious name, disclosure of the name and personal residence
14 address of the sole proprietor.

15 (c) The name and personal residence address of the
16 principal mortgage broker at the applicant's principal place
17 of business and, if the applicant has one or more branch
18 offices, the name and personal residence address of the
19 designated associate mortgage broker at each branch office.

20 (d) The name and personal residence address of each
21 mortgage broker to be employed and the office address at which
22 each mortgage broker will be assigned.

23 (e) A listing of the civil lawsuits, criminal actions,
24 and administrative proceedings, which allege fraud, dishonest
25 dealing, or other acts of moral turpitude, on the part of the
26 applicant or any person disclosed in paragraph (b), including
27 the status or result of such lawsuit, action, or proceeding.

28 (f) Any other information reasonably necessary to
29 determine eligibility for registration pursuant to this
30 chapter.

31

1 Section 7. Section 494.0391, Florida Statutes, is
2 created to read:

3 494.0391 Renewal of mortgage brokerage business
4 registration; permit renewal.--

5 (1) The department shall renew a mortgage brokerage
6 registration upon receipt of a completed renewal application
7 and the renewal fee not to exceed \$150. Each registrant shall
8 pay at the time of renewal a fee not to exceed \$150 for the
9 renewal of each branch office permit.

10 (2) The department shall adopt rules establishing a
11 procedure for the biennial renewal of mortgage brokerage
12 business registrations and branch office permits. The
13 department may prescribe the form of the renewal application
14 and may require an update of all information provided in the
15 registrant's initial application.

16 (3) A registration which is not renewed by the end of
17 the biennium prescribed by the department shall automatically
18 become inactive for up to 2 years. An inactive registration
19 may be reactivated by filing a completed reactivation
20 application with the department, payment of the renewal fee,
21 and payment of a reactivation fee equal to the renewal fee.

22 (4) A registration which is not renewed within 2 years
23 after becoming inactive shall expire.

24 Section 8 Section 494.0392, Florida Statutes, is
25 created to read:

26 494.0392 Branch offices.--

27 (1) A permit is required for each branch office
28 maintained by a registrant.

29 (2) The department shall issue a permit upon receipt
30 of a completed application in a form as prescribed by the
31 department and an initial permit fee not to exceed \$150. The

1 | branch office application shall include the name and license
2 | number of the designated associate broker, the address of the
3 | branch office, and the name and address of the registrant.

4 | Branch office permits shall be renewed in conjunction with
5 | registration renewal. The permit shall be issued in the name
6 | of the registrant which maintains the branch office.

7 | Section 9. Section 494.0393, Florida Statutes, is
8 | created to read:

9 | 494.0393 Requirements of licensees and registrants.--

10 | (1) The licenses of all mortgage brokers shall be
11 | prominently displayed in the office where the licensee
12 | conducts a mortgage brokerage business.

13 | (2) Every registered mortgage brokerage business and
14 | self-employed licensee shall transact business from a
15 | principal place of business in the state. The registration
16 | shall specify the address of such principal place of business
17 | and shall be conspicuously displayed therein. Each principal
18 | place of business shall be operated under the full charge,
19 | control, and supervision of a principal mortgage broker, and
20 | each branch office shall be operated under the full charge,
21 | control, and supervision of a designated associate mortgage
22 | broker, employed at such branch office on a regular and full-
23 | time basis. No mortgage broker may serve as the designated
24 | associate mortgage broker for more than one branch office.
25 | The department shall be notified within 15 business days of
26 | any change of address of the principal place of business,
27 | change of address of any branch office, or change of the
28 | principal mortgage broker or designated associate broker. The
29 | department shall endorse the change on the registration or
30 | permit without charge.

1 (3) A mortgage broker license or mortgage brokerage
2 registration or branch office permit shall not be
3 transferable.

4 (4) The department may require that each registrant
5 report any change in the form of business organization or any
6 change of a person named pursuant to s. 494.039(3)(b) to the
7 department in writing not later than 30 business days after
8 said change is effective.

9 (5) Each licensee shall report any conviction of any
10 crime or any finding of administrative violation, in any
11 jurisdiction, which involves fraud, dishonest dealing, or
12 other act of moral turpitude, to the department in writing not
13 later than 30 business days after said conviction or
14 administrative action. Each registrant shall report in
15 writing any conviction of any crime or administrative
16 violation which involves fraud, dishonest dealing, or any
17 other act of moral turpitude, in any jurisdiction, by the
18 registrant or any natural person named pursuant to s.
19 494.039(3)(b) not later than 30 business days after said
20 conviction or final administrative action.

21 (6) Each registrant and self-employed licensee shall
22 report any action in bankruptcy, voluntary or involuntary, to
23 the department not later than 7 business days after said
24 action is instituted.

25 Section 10. Section 494.041, Florida Statutes, is
26 amended to read:

27 494.041 ~~Brokers-and-solicitors-offering~~ Mortgages
28 offered by land developers licensed pursuant to the Florida
29 Uniform Land Sales Practices Law; requirements;
30 prohibitions.--No mortgage loan which has a face amount of
31 \$35,000 or less and is secured by vacant land registered under

1 the Florida Uniform Land Sales Practices Law, chapter 498,
2 shall be sold to a mortgagee, except a financial institution,
3 by any person ~~a mortgage-broker-or-sei:eter~~ unless all of the
4 following requirements are met:

5 (1) Each mortgage securing a note or other obligation
6 sold or offered for sale shall be eligible for a recordation
7 as a first mortgage.

8 (2) Each mortgage negotiated pursuant to this section
9 must include a mortgagee's title insurance policy or an
10 opinion of title, from an attorney who is licensed to practice
11 law in this state, on each parcel of land which is described
12 in the mortgage. The policy or opinion shall reflect that
13 there are no other mortgages on the property. A notice
14 stating the priority of the mortgage shall be placed on the
15 face of each mortgage in an amount over \$35,000 issued
16 pursuant to this section.

17 (3) Contracts to purchase a mortgage loan shall
18 contain, immediately above the purchaser's signature line, the
19 statement in 10-point boldfaced type: "This mortgage is
20 secured by vacant land subject to development at a future
21 time." This statement shall also be typed or printed in 10-
22 point type on the face of the note and mortgage sold.

23 (4) The most recent assessment for tax purposes made
24 by the county property appraiser of each parcel of land
25 described in the mortgage shall be furnished to each
26 mortgagee.

27 (5) The mortgage broker shall record or cause to be
28 recorded all mortgages or other similar documents prior to
29 delivery of the note and mortgage to the mortgagee.

30 (6) All funds received by the mortgage broker
31 pursuant to this section shall promptly be deposited in the

1 broker's trust account where they shall remain until the note
2 and mortgage are fully executed and recorded.

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

6 Section 11. Section 494.042, Florida Statutes, is
7 amended to read:

8 494.042 Mortgage Brokerage Guaranty Fund.--

9 (1)(a) Effective September 1, 1977, the Treasurer
10 shall establish a Mortgage Brokerage Guaranty Fund. A fee of
11 \$50 ~~per-license-year~~ shall be added to the ~~license~~ fee for
12 both application for new-licenses and ~~renewal of-licenses~~ of a
13 mortgage brokerage business registration ~~principal-mortgage~~
14 ~~broker~~, and a fee of \$10 ~~per-license-year~~ shall be added to
15 the ~~license~~ fee for both application for new-licenses and
16 ~~renewal of~~ mortgage brokerage ~~licenses by solicitors and~~
17 ~~additional-brokers~~. This fee shall be in addition to the
18 regular application or renewal ~~license~~ fee and shall be
19 transferred to or deposited in the Mortgage Brokerage Guaranty
20 Fund.

21 (b) From October 1, 1985, until the balance in the
22 fund first reaches the sum of \$1.5 million, the fees provided
23 for in paragraph (a) shall apply only to an applicant ~~initial~~
24 ~~issuance-of-a-license-to-a-person~~ who has not previously been
25 issued a license or registration under this chapter.

26 (c) If the fund at any time exceeds \$1.5 million,
27 collection of special fees for this fund shall be discontinued
28 ~~at-the-end-of-that-license-year~~, and such special fees shall
29 not be reimposed unless the fund is reduced below \$500,000 by
30 disbursement made in accordance with s. 494.044.

31

1 (2) The Mortgage Brokerage Guaranty Fund shall be
 2 disbursed as provided in s. 494.044, upon approval by the
 3 ~~division of Finance of the Department of Banking and Finance,~~
 4 to any party to a mortgage financing transaction person who is
 5 adjudged by a Florida court of competent jurisdiction to have
 6 suffered monetary damages as a result of any violation of this
 7 chapter of the following acts committed by a licensee or
 8 registrant, mortgage broker or mortgage solicitor who was
 9 licensed under this chapter at the time the act was committed:

10 (a) ~~A violation of any provision of this chapter.~~

11 (b) ~~Making any false promises likely to influence,~~
 12 ~~persuade, or induce or pursuing a course of misrepresentation~~
 13 ~~or false promises through agents.~~

14 (c) ~~Misrepresentation, circumvention, or concealment~~
 15 ~~by the licensee, through whatever subterfuge or device, of any~~
 16 ~~of the material particulars or the nature thereof, regarding a~~
 17 ~~transaction to which he is a party, and of injury to another~~
 18 ~~party thereto.~~

19 (d) ~~Failure to disburse funds in accordance with~~
 20 ~~agreements.~~

21 (e) ~~Failure to account or deliver to any person any~~
 22 ~~personal property, such as any money, fund, deposit, check,~~
 23 ~~draft, mortgage, or other document or thing of value, which~~
 24 ~~has come into his hands and which is not his property or which~~
 25 ~~he is not in law or equity entitled to retain, under the~~
 26 ~~circumstances and at the time which has been agreed upon or is~~
 27 ~~required by law or, in the absence of a fixed time, upon~~
 28 ~~demand of the person entitled to such accounting and delivery.~~

29 (f) ~~Failure to place, immediately upon receipt, any~~
 30 ~~money, fund, deposit, check, or draft entrusted to him by a~~
 31 ~~person dealing with him as a broker, in escrow with an escrow~~

1 ~~agent located and doing business in this state; pursuant to a~~
2 ~~written agreement; or to deposit said funds in a trust or~~
3 ~~escrow account maintained by him with a bank or savings and~~
4 ~~loan association located and doing business in this state;~~
5 ~~wherein said funds shall be kept until disbursement thereof is~~
6 ~~properly authorized;~~

7 Section 12. Section 494.043, Florida Statutes, is
8 amended to read:

9 494.043 Conditions precedent for recovery;

10 Intervention.--

11 (1) Any person who was a party to a mortgage financing
12 transaction shall be eligible to seek recovery from the
13 Mortgage Brokerage Guaranty Fund if:

14 (a) The {1}--Such person has recorded a received final
15 judgment issued by in a Florida court of competent
16 jurisdiction ~~in this state~~ in any action wherein the cause of
17 action was based on s. 494.042(2);

18 (b) The {2}--Such person has caused to be issued a
19 writ of execution upon such judgment and the officer executing
20 the same has made a return showing that no personal or real
21 property of the judgment debtor liable to be levied upon in
22 satisfaction of the judgment can be found or that the amount
23 realized on the sale of the judgment debtor's property
24 pursuant to such execution was insufficient to satisfy the
25 judgment;

26 (c) The {3}--Such person has made all reasonable
27 searches and inquiries to ascertain whether the judgment
28 debtor possesses real or personal property or other assets
29 subject to being sold or applied in satisfaction of the
30 judgment, and by his search he has discovered no property or
31 assets or he has discovered property and assets and has taken

1 all necessary action and proceedings for the application
2 thereof to the judgment, but the amount thereby realized was
3 insufficient to satisfy the judgment;

4 (d) The {4}--Such person has applied any amounts
5 recovered from the judgment debtor, or from any other source,
6 to the damages awarded by the court;

7 (e) The {5}--Such person, at the time the action was
8 instituted, gave notice and provided a copy of the complaint
9 thereof to the division of Finance of the department by
10 certified mail; however, the requirement of a timely giving of
11 notice may be waived by the department upon a showing of good
12 cause; and

13 (f){6} The act for which recovery is sought occurred
14 on or after September 1, 1977. Recovery of the increased
15 benefits allowable pursuant to the amendments to s. 494.044
16 which are effective October 1, 1985, shall be based on a cause
17 of action which arose on or after that date.

18 (2) The requirements of paragraphs (1)(a), (b), (c),
19 (d), and (e) subsections {2} and {3} are not applicable if the
20 licensee or registrant upon which the claim is sought has
21 filed for bankruptcy or has been adjudicated bankrupt;
22 however, in such event the claimant shall file a proof of
23 claim in the bankruptcy proceedings and shall notify the
24 department by certified mail of the claim by enclosing a copy
25 of the proof of claim and all supporting documents.

26 Section 13. Section 494.044, Florida Statutes, is
27 amended to read:

28 494.044 Payment from the fund.--

29 (1) Any person who meets all of the conditions
30 prescribed in s. 494.043 may apply to the department for
31 payment to be made to such person from the Mortgage Brokerage

1 Guaranty Fund in the amount equal to the unsatisfied portion
 2 of that such person's judgment or judgments or \$20,000,
 3 whichever is less, but only to the extent and amount reflected
 4 in the judgment as being actual or compensatory damages. As
 5 to claims against any one licensee or registrant mortgage
 6 broker-or-mortgage-solicitor, payments shall be made to all
 7 persons meeting the requirements of s. 494.043 upon the
 8 expiration of 2 years from the date the first complete and
 9 valid notice is received by the department pursuant to s-
 10 494-043(5). Persons who give notice after 2 years from the
 11 date the first complete and valid notice is received and who
 12 otherwise comply with the conditions precedent to recovery
 13 have-not-received-payment-as-provided-above may recover from
 14 any up-to-the remaining portion of any-of the \$100,000
 15 aggregate, in an amount equal to the unsatisfied portion of
 16 that person's judgment or \$20,000 whichever is less, but only
 17 to the extent and amount reflected in the judgment as being
 18 actual or compensatory damages with claims being paid in the
 19 order notice is received until the \$100,000 aggregate has been
 20 fully disbursed.

21 (2) Upon receipt by the claimant of the payment from
 22 the Mortgage Brokerage Guaranty Fund, The claimant shall
 23 assign his any-additional right, title, and interest in the
 24 judgment, to the extent of his recovery from the fund such
 25 payment, to the department and shall record, at his own
 26 expense, the assignment of judgment in every county where the
 27 judgment is recorded.

28 (3) Payments for claims shall be limited in the
 29 aggregate to \$100,000, regardless of the number of claimants
 30 involved, against any one mortgage broker or registrant or
 31 mortgage-solicitor. If the total claims exceed the aggregate

1 limit of \$100,000, the department shall prorate the payment
2 based on the ratio that the person's claim bears to the total
3 claims filed.

4 (4) If at any time the money in the Mortgage-Brokerage
5 Guaranty fund is insufficient to satisfy any valid claim or
6 portion thereof, the department shall satisfy such unpaid
7 claim or portion thereof as soon as a sufficient amount of
8 money has been deposited in or transferred to the fund. When
9 there is more than one unsatisfied claim outstanding, such
10 claims shall be paid in the order in which the claims were
11 filed with the department.

12 (5) All payments and disbursements made from the
13 Mortgage-Brokerage-Guaranty fund shall be made by the
14 Treasurer upon a voucher signed by the Comptroller, as head of
15 the department, or such agent as he may designate.

16 (6) The payment of any amount from the Mortgage
17 Brokerage-Guaranty fund in settlement of a claim or in
18 satisfaction of a judgment against a licensee or a registrant
19 shall constitute prima facie grounds for the revocation of the
20 license or registration of such licensee.

21 Section 14. Section 494.052, Florida Statutes, is
22 created to read:

23 494.052 Administrative penalties and fines; license
24 violations.--When the department finds that the grounds set
25 forth in s. 494.055(1) apply to a person, it may enter an
26 order imposing one or more of the following penalties:

27 (1) Revocation of a license or registration.

28 (2) Suspension of a license or registration subject to
29 reinstatement upon all reasonable conditions as the department
30 may specify.

1 (3) Placement of the licensee, registrant, or
2 applicant on probation for a period of time and subject to all
3 reasonable conditions as the department may specify.

4 (4) Issuance of a reprimand.

5 (5) Imposition of a fine not to exceed \$5,000 for each
6 count or separate offense.

7 (6) Denial of a license or registration.

8 Section 15. Section 494.055, Florida Statutes, is
9 created to read:

10 494.055 Grounds for disciplinary action. --

11 (1) The following acts shall constitute grounds for
12 which the disciplinary actions specified in s. 494.052 may be
13 taken:

14 (a) Being convicted or found guilty, regardless of
15 adjudication, of a crime in any jurisdiction which involves
16 fraud, dishonest dealing, or any other act of moral turpitude;

17 (b) Fraud, misrepresentation, deceit, negligence, or
18 incompetence in any mortgage financing transaction;

19 (c) A material misstatement of fact on an initial or
20 renewal application;

21 (d) An act which has caused, or will cause, a
22 disbursement to any person in any amount from the Mortgage
23 Brokerage Guaranty Fund, the Securities Guaranty Fund, or the
24 Florida Real Estate Recovery Fund, regardless of any repayment
25 or restitution to the disbursed fund by the licensee or
26 registrant or any person acting on behalf of the licensee or
27 registrant;

28 (e) Failure to place, immediately upon receipt, any
29 money, fund, deposit, check, or draft entrusted to him by a
30 person dealing with him as a broker, in escrow with an escrow
31 agent located and doing business in this state, pursuant to a

1 written agreement, or to deposit such funds in a trust or
2 escrow account maintained by him with a bank or savings and
3 loan association located and doing business in this state,
4 wherein such funds shall be kept until disbursement thereof is
5 properly authorized.

6 (f) Failure to account or deliver to any person any
7 personal property, such as any money, fund, deposit, check,
8 draft, mortgage, or other document or thing of value, which
9 has come into his hands and which is not his property or which
10 he is not in law or equity entitled to retain, under the
11 circumstances and at the time which has been agreed upon or is
12 required by law or, in the absence of a fixed time, upon
13 demand of the person entitled to such accounting and delivery.

14 (g) Failure to disburse funds in accordance with
15 agreements.

16 (h) Any breach of trust funds or escrow funds, or any
17 misuse, misapplication, or misappropriation of personal
18 property such as money, fund, deposit, check, draft, mortgage,
19 or other document or thing of value entrusted to his care to
20 which he had no current property right at the time of
21 entrustment regardless of actual injury to any person;

22 (i) Having a license, registration, or the equivalent,
23 to practice any profession or occupation revoked, suspended,
24 or otherwise acted against, including the denial of licensure
25 by a licensing authority of this state or another state,
26 territory, or country for fraud, dishonest dealing, or any
27 other act of moral turpitude.

28 (j) Failure to issue a satisfaction of mortgage when
29 the mortgage has been executed and proceeds were not disbursed
30 to the benefit of the mortgagor and when the mortgagor has
31 fully paid the mortgage broker's costs and commission.

- 1 (k) Failure to comply with any department order or
2 rule made or issued under the provisions of this chapter;
- 3 (l) Acting as mortgage broker or mortgage brokerage
4 business without a current, active license or registration;
- 5 (m) Failure to timely pay any fee, charge, or fine
6 under this chapter;
- 7 (n) Failure to maintain, preserve, and keep available
8 for examination, all books, accounts, or other documents
9 required by this chapter or the rules of the division;
- 10 (o) Refusal to permit an investigation or examination
11 of books and records, or refusal to comply with a department
12 subpoena or subpoena duces tecum;
- 13 (p) Consistently underestimating the maximum closing
14 costs; or
- 15 (q) Failure to comply with or violation of any other
16 provision of this chapter.
- 17 (2) A registrant shall be subject to the disciplinary
18 actions specified in s. 494.052 for violations of subsection
19 (1) by any officer, director, shareholder, joint venturer,
20 partner, ultimate equitable owner, or employee mortgage broker
21 of the registrant.
- 22 (3) A principal mortgage broker shall be subject to
23 the disciplinary actions specified in s. 494.052 for
24 violations of subsection (1) by employees in the course of
25 employment with the mortgage brokerage business. The
26 principal mortgage broker shall only be subject to suspension
27 or revocation for employee actions if there is a pattern of
28 repeated violations by employees or the principal mortgage
29 broker has knowledge of the violations. A principal mortgage
30 broker shall be subject to the disciplinary actions specified
31 in s. 494.052 for violations of subsection (1) by officers,

1 directors, shareholders, partners, joint venturers, owners, or
2 ultimate equitable owners, when the principal mortgage broker
3 has knowledge of the violation and fails to inform the
4 department.

5 Section 16. Section 494.06, Florida Statutes, is
6 amended to read:

7 494.06 ~~Investigations and complaints;~~ Books, accounts,
8 and records, etc.--

9 (1) Every principal mortgage broker shall maintain, at
10 the principal place of business designated on in the license
11 or registration certificate, all such books, accounts,
12 records, and documents as the department deems necessary of
13 ~~the business conducted under the license issued for such place~~
14 ~~of business as will enable the department to determine~~
15 compliance whether the business of the licensee contemplated
16 ~~by this act is being operated in accordance with this chapter~~
17 ~~the provisions of this act.~~

18 (2) A registrant licensee operating a branch office
19 ~~two or more licensed places of business~~ in this state, may
20 maintain the general control records of all its such offices
21 at any one of the offices, or at any other reasonable location
22 in this state, which location shall not be considered a branch
23 ~~of the registrant licensed office maintained by the licensee,~~
24 upon the filing of a written notice request with the
25 department ~~designating therein the office at which such~~
26 ~~control records are maintained.~~

27 (3) All books, accounts, records, and documents of
28 registrants and licensees, including the a closing statement
29 signed by every the borrower shall be preserved and kept
30 available for examination by the department for not less than
31 at least 5 years from date of original entry.

1 (4) The department is authorized to prescribe the
2 minimum information to be shown in the books, accounts,
3 records, and documents of licensees so that such records will
4 enable the department to determine compliance with the
5 provisions of this act.

6 (5) The department may, at intermittent periods, make
7 such ~~investigations and~~ examinations of any licensee or other
8 person ~~as it deems necessary to determine compliance with this~~
9 ~~act. For such purposes, it may examine the books, accounts,~~
10 ~~records and other documents or matters of any licensee or~~
11 ~~other person. It shall have the power to compel the~~
12 ~~production of all relevant books, records and other documents~~
13 ~~and materials relative to an examination or investigation.~~
14 ~~Such investigations and examinations shall not be made more~~
15 ~~often than once during a year unless the department has reason~~
16 ~~to believe the licensee is not complying with the provisions~~
17 ~~of this act.~~ Examinations conducted under the provisions of
18 this act shall be confidential with the department except as
19 required in the administration, enforcement and prosecution of
20 violations under this act.

21 ~~(6) Any party having reason to believe that this act~~
22 ~~has been violated, or that a license is subject to suspension~~
23 ~~or revocation, may file with the department a written~~
24 ~~complaint setting forth the details of such alleged violation~~
25 ~~or grounds for suspension or revocation.~~

26 Section 17. Section 494.065, Florida Statutes, is
27 created to read:

28 494.065 Investigations; complaints.--

29 (1) The department may conduct an investigation of any
30 person whenever there is an appearance, either upon complaint
31

1 | or otherwise, that any violation of this chapter has been
2 | committed or is about to be committed.

3 | (2) Any person having reason to believe that this
4 | chapter has been violated may file with the department a
5 | written complaint setting forth ultimate facts which show a
6 | violation of this chapter.

7 | (3) All records and information obtained pursuant to
8 | an investigation by the department are exempt from s. 119.07
9 | until the investigation is complete. At all times, a
10 | complaint and any information obtained pursuant to an
11 | investigation are exempt from s. 119.07 to the extent
12 | disclosure would:

13 | (a) Interfere with enforcement proceedings;

14 | (b) Deprive a person of the right to a fair trial or
15 | an impartial adjudication;

16 | (c) Tend to impair the safety or soundness of any
17 | financial institution;

18 | (d) Constitute an unwarranted invasion of personal
19 | privacy;

20 | (e) Disclose the identity of a confidential source or,
21 | in the case of a record compiled by a criminal law enforcement
22 | authority in the course of a criminal investigation, disclose
23 | confidential information furnished only by the confidential
24 | source;

25 | (f) Disclose investigative techniques or procedures;
26 | or

27 | (g) Endanger the life or physical safety of law
28 | enforcement or department personnel.

1 Nothing in this section shall be construed to prohibit the
2 department from providing investigatory information to any law
3 enforcement agency or any other regulatory agency.

4 (4) A privilege against civil liability is hereby
5 granted to any complainant or any witness with regard to
6 information furnished with respect to any investigation or
7 proceeding pursuant to this act, unless the complainant or
8 witness acted in bad faith or with malice in providing such
9 information.

10 Section 18. Section 494.07, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section. See
13 s. 497.07, F.S., for present text.)

14 494.07 Powers of department.--

15 (1) The department shall have the power to issue and
16 to serve subpoenas and subpoenas duces tecum to compel the
17 attendance of witnesses and the production of all books,
18 accounts, records, and other documents and materials relevant
19 to an examination or investigation. The department, or its
20 duly authorized representative, shall have power to administer
21 oaths and affirmations to any person.

22 (2) The department may, in its discretion, seek
23 subpoenas or subpoenas duces tecum from any county court judge
24 or clerk of the circuit or county court commanding the
25 appearance of witnesses and the production of books, accounts,
26 records, and other documents or materials at a time and a
27 place to be named in the subpoenas, and any authorized
28 representative of the department may serve any subpoena.

29 (3)(a) In the event of substantial noncompliance with
30 a subpoena or subpoena duces tecum issued or caused to be
31 issued by the department, the department may petition the

1 circuit court of the county in which the person subpoenaed
2 resides or has its principal place of business for an order
3 requiring the subpoenaed person to appear and testify and to
4 produce such books, accounts, records, and other documents as
5 are specified in the subpoena duces tecum. The court may
6 grant injunctive relief restraining the person from
7 advertising, promoting, soliciting, entering into, offering to
8 enter into, continuing, or completing any mortgage financing
9 transaction or mortgage servicing transaction. The court may
10 grant such other relief, including, but not limited to, the
11 restraint, by injunction or appointment of a receiver, of any
12 transfer, pledge, assignment, or other disposition of the
13 person's assets or any concealment, alteration, destruction or
14 other disposition of books, accounts, records, or other
15 documents and materials as the court deems appropriate, until
16 the person has fully complied with the subpoena or subpoena
17 duces tecum and the department has completed its investigation
18 or examination. In addition, the court may order the refund
19 of any fees collected in a mortgage financing transaction
20 whenever books and documents substantiating the transaction
21 are not produced or cannot be produced. The department is
22 entitled to the summary procedure provided in s. 51.011, and
23 the court shall advance such cause on its calendar. Attorney
24 fees and any other costs incurred by the department to obtain
25 an order granting, in whole or in part, a petition for
26 enforcement of a subpoena or subpoena duces tecum shall be
27 taxed against the subpoenaed person and failure to comply with
28 such order shall be a contempt of court.

29 (b) When it appears to the department that the
30 compliance with a subpoena or subpoena duces tecum issued or
31 caused to be issued by the department pursuant to this section

1 is essential and otherwise unavailable to an investigation or
 2 examination, the department, in addition to the other remedies
 3 provided for herein, may apply to the circuit court of the
 4 county in which the subpoenaed person resides or has its
 5 principal place of business for a writ of ne exeat. The court
 6 shall thereupon direct the issuance of the writ against the
 7 subpoenaed person requiring sufficient bond conditioned on
 8 compliance with the subpoena or subpoena duces tecum. The
 9 court shall cause to be endorsed on the writ a suitable amount
 10 of bond or payment of which the person named in the writ shall
 11 be freed, having a due regard to the nature of the case.

12 (4) Alternatively, the department may seek a writ of
 13 attachment from the circuit court having jurisdiction over the
 14 person who has refused to obey a subpoena, who has refused to
 15 give testimony or who has refused to produce the matters
 16 described in the subpoena duces tecum.

17 Section 19. Section 494.071, Florida Statutes, is
 18 amended to read:

19 494.071 Injunction to restrain violations.--

20 ~~{i}--The department may investigate when it shall~~
 21 ~~appear to it, either upon complaint or otherwise, that in the~~
 22 ~~sale, promotion, negotiation, advertisement, or hypothecation~~
 23 ~~of mortgage transactions within this state, including any~~
 24 ~~transaction consummated by parties under the provisions of s.~~
 25 ~~494.03, any person:~~

26 ~~{a}--Shall have employed, employs, or is about to~~
 27 ~~employ any device, scheme, or artifice to defraud or for~~
 28 ~~obtaining money or property involving a mortgage on real~~
 29 ~~property by means of any false pretense, representation, or~~
 30 ~~promise; or~~

31

1 (b)--~~Shall have made, makes, or attempts to make in~~
 2 ~~this state fictitious or pretended loan commitments or~~
 3 ~~fraudulently accepts a deposit for a mortgage loan commitment;~~
 4 or

5 (c)--~~Shall have engaged in, engages in, or is about to~~
 6 ~~engage in any practice or transaction or course of business~~
 7 ~~relating to the purchase or negotiation of a mortgage loan:~~

8 1. ~~Which is in violation of the law; or~~

9 2. ~~Which is fraudulent; or~~

10 3. ~~Which has operated or which would operate as a~~
 11 ~~fraud on the mortgagor or mortgagee.~~

12 (d)--~~is acting as broker or solicitor within this state~~
 13 ~~without being duly registered as such broker or solicitor as~~
 14 ~~provided in this chapter;~~

15 (2)--~~Whenever any such person has engaged or is engaged~~
 16 ~~or is about to engage in any of the practices or transactions~~
 17 ~~which would be fraudulent and inconsistent with the intent of~~
 18 ~~this chapter, or acts in violation of this chapter, or is~~
 19 ~~acting as a broker or solicitor without being duly registered~~
 20 ~~as provided in this chapter;~~

21 (1) The department may, in addition to any other
 22 remedies, by its own counsel bring action through its own
 23 counsel in the name and on behalf of the state against any
 24 such person who has violated or is about to violate any
 25 provision of this chapter or any department rule or order
 26 issued under and any other person concerned in or in any way
 27 participating in or about to participate in such fraudulent
 28 practices or acting in violation of this chapter, to enjoin
 29 the such person from continuing in such fraudulent practices
 30 or engaging in therein or doing any act in furtherance of the
 31 violation thereof or in violation of this chapter.

1 (2)(3) In any injunctive such-court proceedings, the
 2 court department may, apply for and on due showing by the
 3 department, issue ~~be entitled to have issued the court's~~
 4 subpoena or subpoenas duces tecum requiring forthwith
 5 attendance of any witness and forthwith the production of any
 6 documents, books, accounts, and records or other documents and
 7 materials that may appear necessary to the expeditious
 8 resolution of the ~~for the hearing of such petition, and the~~
 9 ~~appearance of any defendant and his employees, solicitors, or~~
 10 ~~agents to testify and give evidence concerning the acts or~~
 11 ~~conduct or things complained of in such application for~~
 12 ~~injunction. In such action the equity courts shall have~~
 13 ~~jurisdiction of the subject matter, and a judgment may be~~
 14 ~~entered awarding such injunction as may be proper.~~

15 (3)(4) In addition to all other means provided by law
 16 for the enforcement of any temporary restraining order,
 17 temporary injunction, or permanent injunction issued in any
 18 such court proceedings, the court shall have the power and
 19 jurisdiction, upon application of the department, to impound
 20 and to appoint a receiver or administrator for the property,
 21 assets, and business of the defendant, including, but not
 22 limited to, the books, records, documents, and papers
 23 appertaining thereto. Such receiver or administrator, when
 24 appointed and qualified, shall have all powers and duties as
 25 to custody, collection, administration, winding up, and
 26 liquidation of the property and business as shall from time to
 27 time be conferred upon him by the court. In any such action
 28 the court may issue an order staying all pending suits and
 29 enjoining any further suits affecting the receiver's or
 30 administrator's custody or possession of the property, assets,
 31 and business, or, in its discretion, may with the consent of

1 the chief judge of the circuit require that all such suits be
 2 assigned to the circuit court judge who appoints the receiver
 3 or administrator.

4 Section 20. Section 494.072, Florida Statutes, is
 5 amended to read:

6 494.072 Cease and desist orders; refund orders;
 7 ~~administrative fines.--~~

8 ~~{1}--The department may issue and serve upon any~~
 9 ~~mortgage broker a complaint stating charges whenever the~~
 10 ~~department has reason to believe that the mortgage broker is~~
 11 ~~violating or has violated any provision of this act;~~

12 {1}{2} The department shall have the power is
 13 authorized to issue and serve upon any person a cease and
 14 desist order whenever there is reason to believe the person
 15 against any mortgage broker who is violating, or has violated
 16 or is about to violate any provision the provisions of this
 17 chapter, any departmental rule or order issued under this
 18 chapter, or any written agreement between the person and the
 19 department act. All procedural matters relating to issuance
 20 and enforcement of the cease and desist order shall be in
 21 accordance with the Administrative Procedure Act.

22 {2}{3} The department shall have the power to may
 23 order the refund of any fee or commission, directly or
 24 indirectly amounts assessed and charged on a mortgage
 25 financing loan transaction that which exceeds the maximum fees
 26 or and commissions provided in this chapter. by s. 494.06{3}.
 27 ~~Such order shall be issued in accordance with the procedural~~
 28 ~~requirements of the Administrative Procedure Act. If the~~
 29 ~~broker fails or refuses to comply with such order within 15~~
 30 ~~days after notice of the entry thereof, such failure or~~
 31 ~~refusal shall constitute a violation of this chapter. The~~

1 aforesaid remedies are in addition to any other legal remedies
2 provided by law in such cases.

3 ~~{4}--The department may impose an administrative fine~~
4 ~~not to exceed \$1,000 against any person found to have violated~~
5 ~~any cease and desist order of the department.--All fines~~
6 ~~collected under this section shall be paid to the regulatory~~
7 ~~trust fund under the Division of Finance of the department.~~

8 Section 21 Subsections (1), (2), (4), and (5) of
9 section 494.08, Florida Statutes, are amended and subsection
10 (10) is added to said section to read:

11 494.08 Requirements and prohibitions.--

12 (1) No person shall advertise, print, display,
13 publish, distribute, telecast or broadcast, or cause or permit
14 to be advertised, printed, displayed, published, distributed,
15 televised or broadcast, in any manner, any statement or
16 representation with regard to the rates, terms or conditions
17 pertaining to the making, negotiating, or sale of loans, which
18 is false, misleading, or deceptive. No person who is not
19 licensed or registered under this act nor exempt under s.
20 494.03 shall use the word mortgage or similar words in any
21 advertising, signs, letterheads, cards, or like matter which
22 tend to represent that he arranges real estate mortgage loans.
23 No person not already registered or licensed under this act
24 shall be granted a license or registration in a name
25 containing such words as insured, bonded, guaranteed, secured
26 and the like. No person shall advertise or offer to sell
27 insured or guaranteed mortgages unless the principal and
28 interest of such mortgages is insured by an insurance company
29 authorized by the Department of Insurance to write such
30 insurance under the provisions of chapter 635, or unless such
31

1 mortgages are wholly or partially insured or guaranteed by an
2 agency of the Federal Government.

3 (2) No person in connection with or incidental to the
4 making of any mortgage loan shall induce, require or permit
5 the mortgage deed or note to be signed by a principal to the
6 transaction if the such instruments to be signed contain any
7 blank spaces to be filled in after the signature ~~it has been~~
8 signed, except blank spaces relating to recording or other
9 incidental information not then available.

10 (4)(a) No unlicensed or unregistered person shall
11 charge or receive any commission, bonus or fee in connection
12 with arranging for, negotiating, selling, or purchasing a
13 mortgage loan to any person operating in Florida not licensed
14 or registered under the provisions of this act.

15 (b) No licensed person broker-or-solicitor shall pay
16 any commission, bonus or fee in connection with arranging for,
17 negotiating, selling, or purchasing a mortgage loan to any
18 person operating in Florida not licensed or registered under
19 the provisions of this act.

20 (5) No person shall enter into a contract for mortgage
21 brokerage services ~~accept-a-deposit-or-application-for-a~~
22 ~~mortgage-loan~~ without delivering to the borrower a statement
23 in writing setting forth the total maximum costs to be
24 charged, incurred, or disbursed in connection with processing
25 and closing the mortgage loan. The contract for mortgage
26 brokerage services shall indicate the financing terms,
27 interest rate, and loan origination fees which are acceptable
28 to the borrower. The maximum estimated costs may be expressed
29 as a range of possible costs. If the total actual costs,
30 excluding the mortgage brokerage fee, loan origination fee and
31 prepaid items, including taxes, hazard insurance, prepaid

1 interest, and mortgage insurance, exceed the estimate by more
2 than 10 percent or \$100, whichever is greater, the broker must
3 obtain a written agreement from the borrower acknowledging
4 that, although the borrower is under no obligation to conclude
5 the transaction, the borrower has elected to do so
6 notwithstanding the increase over estimated costs. This
7 subsection applies only to brokerage agreements on loans to be
8 secured by residential properties containing four or fewer
9 units.

10 (10) Each deposit agreement entered into by a licensee
11 or registrant shall include a summary of the limits and
12 conditions of recovery from the Mortgage Brokerage Guaranty
13 Fund. The department may prescribe by rule the form of each
14 summary.

15 Section 22. Section 494.081, Florida Statutes, is
16 amended to read:

17 494.081 Fees and charges not deemed interest or
18 finance charge.--

19 (1) All fees and charges authorized by this act and
20 received by a person mortgage-broker-or-mortgage-solicitor
21 licensed or registered under this act shall not be deemed as
22 interest or finance charges, but a licensee or registrant
23 ~~licensed-broker~~ lending his ~~its~~ own funds shall be subject to
24 the provisions of chapter 687. A licensee or registrant
25 ~~licensed-mortgage-broker~~ who lends the funds of an affiliate
26 lender shall not be deemed to be in violation of chapter 687
27 unless the department determines that the purpose of such
28 action is designed to avoid the provisions of chapter 687.
29 The department shall adopt rules for this section.

30 (2) When a licensee or registrant mortgage-broker
31 lends his own funds and charges the fees or commissions

1 authorized by this act, those fees or commissions shall not be
2 considered interest for the purposes of chapter 687 if:

3 (a) Such licensee or registrant mortgage-broker
4 assigns the loan to another lender within 90 days from the
5 date the loan was made; or

6 (b) The loan is for a principal amount in excess of
7 \$250,000 and such licensee or registrant mortgage-broker
8 assigns an interest or participation exceeding 50 percent of
9 the loan to another lender within 90 days after the date the
10 loan was made.

11 (3) Upon request, a licensee or registrant shall
12 furnish the department, to determine compliance with this
13 subsection, a written statement identifying the owners of, or
14 participants in, any such loan and the interest of each.

15 Section 23. Section 494.091, Florida Statutes, is
16 amended to read:

17 494.091 Liability in case of unlawful transaction.--In
18 the event a mortgage transaction is made in violation of any
19 of the provisions of this chapter, the person making the
20 transaction and every licensee, director, officer, or agent of
21 a registrant who has personally participated in making the
22 transaction shall be jointly and severally liable to every
23 party to the transaction the-lender in an action for damages
24 incurred by the party or parties lender.

25 Section 24. Section 494.093, Florida Statutes, is
26 amended to read:

27 494.093 Prohibited practices.--It is unlawful, and a
28 violation of the provisions of this chapter, for any person:

29 (1) To act as a mortgage broker in this state without
30 a mortgage broker license issued by the department.
31

1 (2) To employ a mortgage broker or otherwise act as a
 2 mortgage brokerage business without a mortgage brokerage
 3 registration issued by the department.

4 ~~(3)(1)~~ In any practice or transaction or course of
 5 business relating to the sale, purchase, negotiation,
 6 promotion, advertisement, or hypothecation of mortgage
 7 transactions, including any transaction consummated by parties
 8 under the provisions of s. 494.03, directly or indirectly:

9 (a) To knowingly or willingly employ any device,
 10 scheme, or artifice to defraud.

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

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

16 ~~(4)(2)~~ In any matter within the jurisdiction of the
 17 department, to knowingly and willfully falsify, conceal, or
 18 cover up, by any trick, scheme, or device, a material fact, or
 19 make any false or fraudulent statement or representation, or
 20 make or use any false writing or document, knowing the same to
 21 contain any false or fraudulent statement or entry.

22 Section 25. Section 494.10, Florida Statutes, is
 23 amended to read:

24 494.10 Penalties.--

25 (1) Whoever violates any of the provisions of s.
 26 494.093, s. 494.08(1) or s. 494.055(1)(e), (f), (g), and (m)
 27 this chapter, except as provided in subsection (2), is guilty
 28 of a felony of the third degree misdemeanor-of-the-second
 29 degree, punishable as provided in s. 775.082, or s. 775.083,
 30 or s. 775.084, and each violation of ~~this chapter~~ shall
 31 constitute a separate offense

1 (2) Any person convicted of a violation of any
 2 provision of this chapter whereby the total value of money and
 3 property unlawfully obtained exceeds \$50,000 and there are
 4 five or more victims shall be guilty of a felony of the first
 5 degree punishable as provided in s. 775.082, s. 775.083, or s.
 6 775.084. Whoever violates any provision of s. 494.093, fails
 7 to comply with the requirements of s. 494.05(1)(f), or offers
 8 to negotiate a mortgage loan for compensation without being
 9 licensed as required by this chapter is guilty of a felony of
 10 the third degree, punishable as provided in s. 775.082, s.
 11 775.083, or s. 775.084.

12 Section 26. Persons licensed on effective date of
 13 act.--

14 (1) A natural person licensed as of September 1, 1986,
 15 as a mortgage broker or mortgage solicitor pursuant to s.
 16 494.04, Florida Statutes, 1985, shall be issued, without
 17 application, a mortgage broker's license as defined in this
 18 act, and such license shall be eligible for renewal.

19 (2) A mortgage brokerage business licensed as of
 20 September 1, 1986, as a mortgage broker pursuant to s. 494.04,
 21 Florida Statutes, 1985, shall be issued, without application,
 22 a mortgage brokerage business registration as defined in this
 23 act, and such registration shall be eligible for renewal.

24 (3) A natural person entitled, as of September 1,
 25 1986, to engage in the business of mortgage broker as a
 26 designee of a licensed mortgage broker business pursuant to s.
 27 494.04(6), Florida Statutes, 1985, shall be issued, without
 28 application, a mortgage broker's license as defined in this
 29 act, and such license shall be eligible for renewal.

30 Section 27. No judicial or administrative proceeding
 31 pending on September 1, 1986 shall be abated as a result of

1 any amendment, repeal, or addition to chapter 494, Florida
2 Statutes, by this act.

3 Section 28. Section 494.04, Florida Statutes, as
4 amended by chapter 85-271, Laws of Florida, and section
5 494.05, Florida Statutes, as amended by chapter 85-271, Laws
6 of Florida, are hereby repealed.

7 Section 29. This act shall take effect September 1,
8 1986.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 609

Authorizes the suspension of a broker's license for failure to
issue a satisfaction of the mortgage under specified
circumstances.

Specifies that the broker only has to provide an estimate of the
costs associated with the processing of a mortgage loan rather
than specify the maximum costs which may be incurred. Excludes
the mortgage brokerage fee, loan origination fee, and prepaid
items from the estimate.

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1986	Session Law No. 86-68	LOF Cite	#pp
Prime Bill# HB 837	Sponsor	Comp./Sim. Bills SB 609, SB 1182	
JLMC Hist. Leq. Cites	Senate pp.#s 113	House pp.#s 317	#pp
Committee of Ref.	Senate Comm. House Comm. on (Finance)	Previous versions?	

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
H	Comm. on	1986	Meeting files	19/1628	1/2
"	"	"	Bill files: HB 837	19/1632	✓
S	Comm. on	1986	Meeting files	18/1576	
"	"	"	Bill files: SB 609	18/1578	✓

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp
ST. 23		May 20, 1986					

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Livingston</u>	Fort	1. <u>COM</u>	_____
2. _____	_____	2. <u>AP</u>	_____
3. _____	_____	3. _____	_____

SUBJECT:

Mortgage Brokerage Act

BILL NO. AND SPONSOR:

SB 609 by
Senator Hair

I. SUMMARY:

A. Present Situation:

Currently ch. 494, F.S., provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance under the Mortgage Brokerage Act.

"Mortgage broker" is defined as any person who makes negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. "Mortgage solicitor" is defined as any individual who is not licensed as a mortgage broker, who performs the functions of a mortgage broker and who is employed by a mortgage broker or is under the direction, control or management of a mortgage broker.

Section 494.03, F.S., exempts various entities from the provisions of the chapter. These exemptions include individuals who lend their own funds without intent to resell the mortgage and attorneys rendering service in the course of their law practice as well as various entities including banks, savings and loan associations, credit unions, insurance companies and certain registered securities dealers.

B. Effect of Proposed Changes:

The bill amends various provisions of the Mortgage Brokerage Act. The provisions of the bill are designed primarily to address anti-fraud and the enforcement authority of the Division of Finance. The major provisions and sections of the bill are highlighted as follows in a modified section by section format.

The bill deletes the definition of mortgage solicitor and additional provisions would, eliminate the solicitor classification from chapter 494. The bill would define the term "mortgage brokerage business" in a manner designed to create a separation between an individual who is licensed and a business that is licensed under the act.

The bill amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

It amends the definition of a "principal mortgage broker." A licensee designated as the primary broker of a registrant would be a principal mortgage broker.

18 1578

The term "ultimate equitable owner " is defined as a natural person who has any type of ownership interest in a business licensed under this act is considered to be such an owner and may be liable for the conduct of the business.

The term "designated associated broker" is defined to mean the licensed mortgage broker in charge of a branch office.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria.

-In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

-This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. No later than 10 calendar days after any termination of employment, both the registrant and the employee must send written notice of such change.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license. -The department must renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. The department is authorized to adopt rules establishing a biennial renewal of mortgage broker licenses.

-If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active would expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

-A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

-The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

-A completed application with a nonrefundable fee of \$150 must be submitted to the department. Further, each branch office must pay a fee of \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

-This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration automatically becomes inactive for up to 2 years. The same procedure for reactivating a license would apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S.

Section 9 creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days the said action is instituted.

Section 11 of the bill conforms the language relating to the the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders.

Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the

department by certified mail. The department is given the authority to intervene, enter an appearance, or take any action it deems appropriate on behalf of and in the name of the defendant. This authority is granted in order that the department may protect the fund to the greatest extent possible.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifies the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; and, failure to comply with or violation of any other provision of this chapter.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide conforming language regarding the proposed licensing structure.

-The bill would require that a deposit agreement entered into by a licensee or registrant contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violation. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to first degree felony. If the value of money or property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

-The bill specifies that licensees as of the effective date would be grandfathered.

Section 27 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These

sections are repealed due to the revision of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the bill. which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 29 provides that this act shall take effect September 1, 1986, designed to comply with the time schedule for current license renewals.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the revision of the licensing procedure. The impact is not expected to be significant.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions. However, the proposed legislation is designed to simplify the current licensing procedure, and thereby produce an administrative benefit to the department.

III. COMMENTS.

IV. AMENDMENTS:

None

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	<u>Livingston</u>	<u>Fort</u>	1. <u>COM</u>	<u>Fav/CS</u>
2.	_____	_____	2. <u>AP</u>	_____
3.	_____	_____	3. _____	_____

SUBJECT:

Mortgage Brokerage Act

BILL NO. AND SPONSOR:

CS/SB 609 by Commerce and
Senator Hair

I. SUMMARY:

A. Present Situation:

Currently ch. 494, F.S., provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance under the Mortgage Brokerage Act.

"Mortgage broker" is defined as any person who makes negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. "Mortgage solicitor" is defined as any individual who is not licensed as a mortgage broker, who performs the functions of a mortgage broker and who is employed by a mortgage broker or is under the direction, control or management of a mortgage broker.

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Section 494.03, F.S., exempts various entities from the provisions of the chapter. These exemptions include individuals who lend their own funds without intent to resell the mortgage and attorneys rendering service in the course of their law practice as well as various entities including banks, savings and loan associations, credit unions, insurance companies and certain registered securities dealers.

B. Effect of Proposed Changes.

The bill amends various provisions of the Mortgage Brokerage Act. The provisions of the bill are designed primarily to address anti-fraud and the enforcement authority of the Division of Finance. The major provisions and sections of the bill are highlighted as follows in a modified section by section format.

The bill deletes the definition of mortgage solicitor and additional provisions would, eliminate the solicitor classification from chapter 494. The bill would define the term "mortgage brokerage business" in a manner designed to create a separation between an individual who is licensed and a business that is licensed under the act.

The bill amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

It amends the definition of a "principal mortgage broker." A licensee designated as the primary broker of a registrant would be a principal mortgage broker.

The term "ultimate equitable owner" is defined as a natural person who has any type of ownership interest in a business licensed under this act is considered to be such an owner and may be liable for the conduct of the business.

The term "designated associated broker" is defined to mean the licensed mortgage broker in charge of a branch office.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria.

-In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

-This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. No later than 10 calendar days after any termination of employment, both the registrant and the employee must send written notice of such change.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license. -The department must renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. The department is authorized to adopt rules establishing a biennial renewal of mortgage broker licenses.

-If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active would expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

-A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

-The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

-A completed application with a nonrefundable fee of \$150 must be submitted to the department. Further, each branch office must pay a fee of \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

-This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration automatically becomes inactive for up to 2 years. The same procedure for reactivating a license would apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S.

Section 9 creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days the said action is instituted.

Section 11 of the bill conforms the language relating to the the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders.

Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of

claim in the bankruptcy proceedings and shall notify the department by certified mail.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifies the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; and, failure to comply with or violation of any other provision of this chapter.

Section 17 creates s. 494.065, F.S., and precribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide conforming language regarding the proposed licensing structure.

- The bill specifies that the broker only has to provide an estimate of the costs associated with the processing of a mortgage loan rather than specifying the maximum costs which may be incurred. It excludes the mortgage brokerage fee, loan origination fee and prepaid items from the estimate.

-The bill would require that a deposit agreement entered into by a licensee or registrant contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to first degree felony. If the value of money or property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

-The bill specifies that licensees as of the effective date would be grandfathered.

Section 27 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revision of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the bill. which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 29 provides that this act shall take effect September 1, 1986, designed to comply with the time schedule for current license renewals.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the revision of the licensing procedure. The impact is not expected to be significant.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions. However, the proposed legislation is designed to simplify the current licensing procedure, and thereby produce an administrative benefit to the department.

III. COMMENTS:

IV. AMENDMENTS:

None

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Livingston</u>	Fort <u>PH</u>	1. <u>COM</u>	<u>Fav/CS</u>
2. _____	_____	2. <u>AP</u>	<u>Withdrawn</u>
3. _____	_____	3. _____	_____

SUBJECT: Mortgage Brokerage Act

BILL NO. AND SPONSOR: CS/HB 837 by Commerce (CS/SB 609 by Commerce and Senator Hair) Chapter 86-68, Laws of Florida

I. SUMMARY:

A. Present Situation:

Currently ch. 494, F.S., provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance under the Mortgage Brokerage Act.

"Mortgage broker" is defined as any person who makes negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. "Mortgage solicitor" is defined as any individual who is not licensed as a mortgage broker, who performs the functions of a mortgage broker and who is employed by a mortgage broker or is under the direction, control or management of a mortgage broker.

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Section 494.03, F.S., exempts various entities from the provisions of the chapter. These exemptions include individuals who lend their own funds without intent to resell the mortgage and attorneys rendering service in the course of their law practice as well as various entities including banks, savings and loan associations, credit unions, insurance companies and certain registered securities dealers.

B. Effect of Proposed Changes:

The bill amends various provisions of the Mortgage Brokerage Act. The provisions of the bill are designed primarily to address anti-fraud and the enforcement authority of the Division of Finance. The major provisions and sections of the bill are highlighted as follows in a modified section by section format.

The bill deletes the definition of mortgage solicitor and additional provisions would, eliminate the solicitor classification from chapter 494. The bill would define the term "mortgage brokerage business" in a manner designed to create a separation between an individual who is licensed and a business that is required to be registered under the act.

The bill amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

It amends the definition of a "principal mortgage broker." A licensee designated as the primary broker of a registrant would be a principal mortgage broker.

The term "ultimate equitable owner" is defined as a natural person who has any type of ownership interest in a business licensed under this act is considered to be such an owner and may be liable for the conduct of the business.

The term "designated associated broker" is defined to mean the licensed mortgage broker in charge of a branch office.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria.

-In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

-This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. No later than 10 calendar days after any termination of employment, both the registrant and the employee must send written notice of such change.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license. -The department must renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. The department is authorized to adopt rules establishing a biennial renewal of mortgage broker licenses.

-If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active would expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

-A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

-The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

-A completed application with a nonrefundable fee of \$150 must be submitted to the department. Further, each branch office must pay a fee of \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

-This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration automatically becomes inactive for up to 2 years. The same procedure for reactivating a license would apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S.

Section 9 creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days the said action is instituted.

Section 11 of the bill conforms the language relating to the the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders.

Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the

time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifies the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; and, failure to comply with or violation of any other provision of this chapter.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide conforming language regarding the proposed licensing structure.

- The bill specifies that the broker only has to provide an estimate of the costs associated with the processing of a mortgage loan rather than specifying the maximum costs which may be incurred. It excludes the mortgage brokerage fee, loan origination fee and prepaid items from the estimate.

-The bill would require that a deposit agreement entered into by a licensee or registrant contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund.

Section 23 creates s. 494.082, F.S., to exempt a federally approved mortgage seller, servicer, issuer or lender (mortgage bankers) from specified provisions of chapter 494, F.S., relating to designating a principal mortgage broker, placing funds in escrow, consistently underestimating maximum closing costs, liability of a principal mortgage broker for violations by an employee, providing cost estimates and disclosing certain information relating to the Mortgage Brokerage Guaranty Fund.

Section 26 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to first degree felony. If the value of money or property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

-The bill specifies that licensees as of the effective date would be grandfathered.

Section 29 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revision of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the bill.

Section 31 provides that this act shall take effect September 1, 1986, designed to comply with the time schedule for current license renewals.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the revision of the licensing procedure. The impact is not expected to be significant.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions. However, the proposed legislation is designed to simplify the current licensing procedure, and thereby produce an administrative benefit to the department.

III. COMMENTS:

IV. AMENDMENTS:

None

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 609

Authorizes the suspension of a broker's license for failure to issue a satisfaction of the mortgage under specified circumstances.

Specifies that the broker only has to provide an estimate of the costs associated with the processing of a mortgage loan rather than specify the maximum costs which may be incurred. Excludes the mortgage brokerage fee, loan origination fee, and prepaid items from the estimate.

Committee on Commerce


Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

BILL ACTION REPORT

(XX-85: File with Secretary of Senate)

BILL NO. SB 609

COMMITTEE ON Commerce

DATE April 17, 1986

DATE REPORTED April 18, 1986

TIME 9:30 a.m. - 12 noon

FINAL ACTION:

PLACE Room "A"

Favorably with amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

Favorably with Committee Substitute

Unfavorably

Appropriations

OTHER: Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	Motion for CS Hair									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
		Barron	W									
x		Deratany	I									
x		Fox	T									
x		Girardeau	H									
x		Gordon	O									
		Lanley	U									
		Marqolis	T									
x		McPherson										
x		Meek	O									
x		Scott	B									
x		Thomas	J									
x		VICE CHAIRMAN Grant	E									
x		CHAIRMAN Hair	C									
			T									
			I									
			O									
			N									
10	0	TOTAL	x									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (x)

STORAGE NAME: sa-hp837

Date: April 10, 1986

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

17

1632

BILL #: HB 837

RELATING TO: Mortgage Brokerage Licensing

SPONSOR: Representative Gibbons

EFFECTIVE DATE: September 1, 1986

COMPANION BILL: SB 609

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

House Bill 837 substantially revises the Mortgage Brokerage Act, Chapter 494, F.S., to provide for the restructuring of the licensing procedure. Additionally, the bill revises the process relating to the Mortgage Brokerage Guaranty Fund. The proposed legislation increases the powers and duties of the Department of Banking and Finance (department) and provides for administrative penalties and fines and license violations.

A. Current Law & Present Situation:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance.

The definition section of Chapter 494, F.S., provides that the term "mortgage broker" refers to any person who makes, negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. A mortgage solicitor is any individual who is not licensed as a mortgage broker, but who performs the function of such a broker and who is employed by a mortgage broker or is under the direction of a mortgage broker.

Exempt from the statutory provisions of Chapter 494, F.S., are lending institutions, individuals who lend their own funds without intent to resell the mortgage, and attorneys rendering service in the course of their law practice.

The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged to have suffered monetary damages as the result of certain specified acts committed by a mortgage broker or solicitor. The Fund, established within s. 494.043, F.S., provides for the payment of a guaranty fee which is in addition to the license fee. A principal mortgage broker must annually pay a \$50 fee for both a new license and the renewal of a license. A mortgage solicitor and other brokers must pay a \$10 fee per license year for the granting of a new license and the renewal of a license.

However, from October 1, 1985, until the balance in the fund first reaches \$1.5 million, the fees shall apply only to initial issuance of a license to a person who has not previously been licensed.

The conditions for recovery under the Guaranty Fund are set forth in s. 494.044, F.S., of the Mortgage Brokerage Act. Benefits payable from the Guaranty Fund for individual claims are limited to \$20,000. However, claims in the aggregate against any one mortgage broker or mortgage solicitor are limited to \$100,000 with payment made in the order notice is received.

A license granted under the Mortgage Brokerage Act can be suspended, denied, or revoked as provided in s. 494.05, F.S. The Act sets forth specific conditions under which such action may occur.

Section 494.06, F.S., describes the requirements relating to the maintaining of books, accounts and records by the principal broker. The authority of the department to prescribe the minimum information to be shown in such documents and the authority to examine such documents is addressed in this section.

The power of the department relating to the issuance of subpoenas, to petition the court for a subpoena duces tecum, and to promulgate rules is discussed in s. 494.07, F.S.

The restraining of a violation by the obtaining of an injunction is addressed in s. 494.071, F.S., of the Act. Whenever any person engages in any practices or transactions which would be fraudulent and inconsistent with the intent of this chapter or violates this chapter, the department may bring an action to enjoin such activity. In addition, the department's authority to investigate questionable activity is provided for in this section.

When any provision of this Act has been violated, the department has authority under s. 494.072, F.S., to issue cease and desist orders. Administrative fines may also be imposed for violating the order.

Penalties for noncompliance with this Act are set forth in s. 494.10, F.S.

B. Effect of Proposed Changes:

Section 1 of this bill amends the definition section of the act in the following manner:

-eliminates the definition of "mortgage solicitor." Currently, the qualifications to become a broker and solicitor are the same, therefore, a justification for differentiating between individual brokers and solicitors does not exist.

-defines the term "mortgage brokerage business" in a manner consistent with the definition of a mortgage broker. It allows the act to differentiate between an individual who is licensed and a business that is licensed under the act.

-amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

-amends the definition of a "principal mortgage broker." A licensee designated as the primary broker of a registrant is a principal mortgage broker.

-defines the term "ultimate equitable owner." A natural person who has any type of ownership interest in a business licensed under this act is termed as such an owner and may be liable for the conduct of the business.

-defines the term "designated associated broker" to mean the licensed mortgage broker in charge of a branch office.

-creates additional definitions which will have the effect of clarifying the intent of the act.

Section 2 of the bill amends s. 494.03, F.S., to provide that it is not necessary to negate any of the exemptions provided in this chapter in any proceedings brought under the act. The party claiming the exemption must establish the right to the exemption.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section. The department is delegated authority to lower any fee mandated by this chapter and collected

by the department. However, a rule must be promulgated to that effect.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria.

-In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

-This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. The license shall state the place of employment. No later than 10 calendar days after any termination of employment, both the registrant and the employee shall send written notice of such change.

-The department shall endorse any change of employment and shall set, by rule, a fee not to exceed \$50 for endorsement.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license.

-The department shall renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. This section authorizes the department to adopt rules establishing a biennial renewal of mortgage broker licenses.

-If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active shall expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

-A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

-The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

-This section also authorizes the department to request specific information regarding the business ownership and formation. Additionally, any information which the department believes is reasonably necessary to determine eligibility may be requested.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

-A completed application with a nonrefundable fee of \$150 must be submitted to the department. Further, each branch office must pay a fee of \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

-This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration shall automatically become inactive for up to 2 years. The same procedure for reactivating a license will apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S.

Section 9 of this legislation creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or

involuntary, to the department not later than 7 calendar days after said action is instituted.

Section 10 of the bill amends s. 494.041, F.S., to conform the language to the change in the licensing structure. The term "mortgage solicitor" is deleted, and the provision is conformed to the procedure proposed by this bill.

Section 11 of the bill conforms the language within the provisions prescribing the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders. Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail. The department is given the authority to intervene, enter an appearance, or take any action it deems appropriate on behalf of and in the name of the defendant. This authority is granted in order that the department may protect the fund to the greatest extent possible.

Section 13 further amends provisions governing the Guaranty fund to conform the section to the proposed changes in the licensing structure. It also adds clarification to existing law regarding recovery for claimants giving notice after 2 years from the first completed and valid notice. Such claimants may only recover from the remaining portion of the \$100,000 aggregate in an amount equal to the unsatisfied portion of that person's judgment or \$20,000, whichever is less.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance with this chapter. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifically delineates the activity which may result in disciplinary action

being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; and, failure to comply with or violation of any other provision of this chapter.

Section 16 amends s. 494.06, F.S., to incorporate needed technical changes in order that the language may be conformed to the proposed licensing process.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation or proceeding pursuant to this act.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 19 amends s. 494.071, F.S., and removes a major portion of the law to other sections in the proposed bill. The remaining changes in this section are merely technical and provide clarity as to the intent of the provisions.

Section 20 amends the provisions relating to the issuing of cease and desist orders and refund orders. Primarily, the changes in this section are technical and allow the provisions to conform to the proposed licensing structure. The deleted language has been transferred to another section of the bill.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide for needed conforming language regarding the proposed licensing structure.

-Additionally, this section contains a new provision which would allow for some flexibility in the total cost associated with processing and closing the mortgage loan. Current law requires that the total maximum cost be provided to the borrower. This amendment would permit the broker to provide an estimate of the total costs. However, the actual cost must be within 10 percent

of the estimate in order for the borrower to be obligated to the contract. Where the actual cost exceeds the estimate by more than 10 percent, the broker is required to obtain a written agreement from the borrower acknowledging the consent to continue with the obligation. This applies only to brokerage agreements on loans to be secured by residential properties containing four or less units. Larger contracts would be governed only by the contracts and would be subject to contractual remedies.

-Each deposit agreement entered into by a licensee or registrant shall contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund. This amendment was recommended by the Auditor General.

Section 22 of the proposed legislation amends s. 494.081, F.S., to incorporate needed language to further the change in the licensing structure as set forth by this bill.

Section 23 amends the provision which discusses liability where an unlawful mortgage transaction occurs, s. 494.091, F.S. The change expands the scope of this section to both borrowers and the lender. Current law only speaks to the liability to the lender.

Section 24 addresses the section entitled prohibited practices, s. 494.093, F.S. The language is transferred from s. 494.04, F.S., and provides that a mortgage broker must obtain a license and a mortgage brokerage business must be issued a registration by the department.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violation. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to first degree felony. If the value of money or property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

Section 26 allows licensees as of the effective date to be grandfathered.

Section 27 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revision of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the bill.

Section 28 requires that each section within Chapter 494, F.S., which is amended or added to by this act is repealed on

October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 29 provides that this act shall take effect September 1, 1986.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the simplification and clarification of the licensing procedure. Any additional impact of the proposed legislation is negligible.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions (not provide any other significant fiscal impact.) However, the proposed legislation will have the effect of simplifying the current licensing procedure for mortgage brokers, and thereby produce an administrative benefit to the department.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

None

VI. PREPARED BY:

Beryl D Roberts

VII. STAFF DIRECTOR:

Wyatt J. Martin

STORAGE NAME: sa-pcs/hb837

Date: April 11, 1986

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

17 16 22

BILL #: PCS/HB 837

RELATING TO: Mortgage Brokerage Licensing

SPONSOR(S): Commerce & Gibbons

EFFECTIVE DATE: September 1, 1986

COMPANION BILL(S): SB 609

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

The Proposed Committee Substitute substantially revises the Mortgage Brokerage Act, Chapter 494, F.S., to provide for the restructuring of the licensing procedure. Additionally, the bill revises the process relating to the Mortgage Brokerage Guaranty Fund. The proposed legislation increases the powers and duties of the Department of Banking and Finance (department) and provides for administrative penalties and fines and license violations.

A. Current Law & Present Situation:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance.

The definition section of Chapter 494, F.S., provides that the term "mortgage broker" refers to any person who makes, negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. A mortgage solicitor is any individual who is not licensed as a mortgage broker, but who performs the function of such a broker and who is employed by a mortgage broker or is under the direction of a mortgage broker.

Exempt from the statutory provisions of Chapter 494, F.S., are lending institutions, individuals who lend their own funds without intent to resell the mortgage, and attorneys rendering service in the course of their law practice.

The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged to have suffered monetary damages as the result of certain specified acts committed by a mortgage broker or solicitor. The Fund, established within s. 494.043, F.S., provides for the payment of a guaranty fee which is in addition to the license fee. A principal mortgage broker must annually pay a \$50 fee for both a new license and the renewal of a license. A mortgage solicitor and other brokers must pay a \$10 fee per license year for the granting of a new license and the renewal of a license.

However, from October 1, 1985, until the balance in the fund first reaches \$1.5 million, the fees shall apply only to initial issuance of a license to a person who has not previously been licensed.

The conditions for recovery under the Guaranty Fund are set forth in s. 494.044, F.S., of the Mortgage Brokerage Act. Benefits payable from the Guaranty Fund for individual claims are limited to \$20,000. However, claims in the aggregate against any one mortgage broker or mortgage solicitor are limited to \$100,000 with payment made in the order notice is received.

A license granted under the Mortgage Brokerage Act can be suspended, denied, or revoked as provided in s. 494.05, F.S. The Act sets forth specific conditions under which such action may occur.

Section 494.06, F.S., describes the requirements relating to the maintaining of books, accounts and records by the principal broker. The authority of the department to prescribe the minimum information to be shown in such documents and the authority to examine such documents is addressed in this section.

The power of the department relating to the issuance of subpoenas, to petition the court for a subpoena duces tecum, and to promulgate rules is discussed in s. 494.07, F.S.

The restraining of a violation by the obtaining of an injunction is addressed in s. 494.071, F.S., of the Act. Whenever any person engages in any practices or transactions which would be fraudulent and inconsistent with the intent of this chapter or violates this chapter, the department may bring an action to enjoin such activity. In addition, the department's authority to investigate questionable activity is provided for in this section.

When any provision of this Act has been violated, the department has authority under s. 494.072, F.S., to issue cease and desist orders. Administrative fines may also be imposed for violating the order.

Penalties for noncompliance with this Act are set forth in s. 494.10, F.S.

B. Effect of Proposed Changes:

Section 1 of this bill amends the definition section of the act in the following manner:

- eliminates the definition of "mortgage solicitor." Currently, the qualifications to become a broker and solicitor are the same, therefore, a justification for differentiating between individual brokers and solicitors does not exist.

- defines the term "mortgage brokerage business" in a manner consistent with the definition of a mortgage broker. It allows the act to differentiate between an individual who is licensed and a business that is licensed under the act.

- amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

- amends the definition of a "principal mortgage broker." A licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers constitutes a principal mortgage broker.

- defines the term "ultimate equitable owner." A natural person who has any type of ownership interest in a business licensed under this act is termed as such an owner and may be liable for the conduct of the business.

- defines the term "designated associated broker" to mean the licensed mortgage broker in charge of a branch office.

- creates additional definitions which will have the effect of clarifying the intent of the act.

Section 2 of the Proposed Committee Substitute amends s. 494.03, F.S., to provide that it is not necessary to negate any of the exemptions provided in this chapter in any proceedings brought under the act. The party claiming the exemption must establish the right to the exemption. The act does not apply to banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, consumer finance companies, federally licensed small business investment companies, or certain securities dealers.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this

section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria. It provides that each initial application for a mortgage broker license shall be in written form as prescribed by the department. Any information reasonably necessary to make a determination of eligibility for licensure may be requested by the department.

- In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

- This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. The license shall state the place of employment. No later than 15 business days after any termination of employment, both the registrant and the employee shall send written notice of such change.

- The department shall endorse any change of employment and shall set, by rule, a fee not to exceed \$50 for endorsement.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license.

- The department shall renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. This section authorizes the department to adopt rules establishing a biennial renewal of mortgage broker licenses.

- If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active shall expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

- A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

- The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

- This section also authorizes the department to request specific information regarding the business ownership and formation. Additionally, any information which the department believes is reasonably necessary to determine eligibility may be requested.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

- A completed application with a nonrefundable fee not to exceed \$150 must be submitted to the department. Further, each branch office must pay a fee not to exceed \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

- This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration shall automatically become inactive for up to 2 years. The same procedure for reactivating a license will apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S. The permit shall be issued only upon receipt of a

completed application and a nonrefundable fee not to exceed \$150.00. However, the branch office permit shall include specific information regarding the branch office and the registrant. The permit shall be issued in the name of the registrant which maintains the branch office.

Section 9 of this legislation creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days after said action is instituted.

Section 10 of the Proposed Committee Substitute amends s. 494.041, F.S., to conform the language to the change in the licensing structure. The term "mortgage solicitor" is deleted, and the provision is conformed to the procedure proposed by this bill.

Section 11 of the bill conforms the language within the provisions prescribing the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders. Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail. The department is given the authority to intervene, enter an appearance, or take any action it deems appropriate on behalf of and in the name of the defendant. This authority is granted in order that the department may protect the fund to the greatest extent possible.

Section 13 further amends provisions governing the Guaranty fund to conform the section to the proposed changes in the licensing structure. It also adds clarification to existing law regarding recovery for claimants giving notice after 2 years from the first completed and valid notice. Such claimants may only recover from the remaining portion of the \$100,000 aggregate in

an amount equal to the unsatisfied portion of that person's judgment or \$20,000, whichever is less.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance with this chapter. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifically delineates the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; consistently underestimating the maximum closing costs; and, failure to comply with or violation of any other provision of this chapter.

Section 16 amends s. 494.06, F.S., to incorporate needed technical changes in order that the language may be conformed to the proposed licensing process.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation or proceeding pursuant to this act.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 19 amends s. 494.071, F.S., and removes a major portion of the law to other sections in the proposed bill. The remaining changes in this section are merely technical and provide clarity as to the intent of the provisions.

Section 20 amends the provisions relating to the issuing of cease and desist orders and refund orders. Primarily, the

changes in this section are technical and allow the provisions to conform to the proposed licensing structure. The deleted language has been transferred to another section of the bill.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide for needed conforming language regarding the proposed licensing structure.

Additionally, this section contains a new provision which would allow for some flexibility in the total cost associated with processing and closing the mortgage loan. Current law requires that the total maximum cost be provided to the borrower. This amendment would permit the broker to provide an estimate of the total costs. The maximum estimated costs may be expressed as a range of possible costs. However, the costs excludes the mortgage brokerage fee, loan origination fee and prepaid items.

The actual cost must be within 10 percent or \$100.00 of the estimate, whichever is greater, in order for the borrower to be obligated to the contract. Where the actual cost exceeds the estimate by more than 10 percent, the broker is required to obtain a written agreement from the borrower acknowledging the consent to continue with the obligation. This applies only to brokerage agreements on loans to be secured by residential properties containing four or less units. Larger contracts would be governed only by the contracts and would be subject to contractual remedies.

Each deposit agreement entered into by a licensee or registrant shall contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund. This amendment was recommended by the Auditor General.

Section 22 of the proposed legislation amends s. 494.081, F.S., to incorporate needed language to further the change in the licensing structure as set forth by this bill.

Section 23 amends the provision which discusses liability where an unlawful mortgage transaction occurs, s. 494.091, F.S. The change expands the scope of this section to both borrowers and the lender. Current law only speaks to the liability to the lender.

Section 24 addresses the section entitled prohibited practices, s. 494.093, F.S. The language is transferred from s. 494.04, F.S., and provides that a mortgage broker must obtain a license and a mortgage brokerage business must be issued a registration by the department.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a

misdeemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to a first degree felony. If the value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

Section 26 allows licensees as of the effective date to be grandfathered.

Section 27 of the proposed committee substitute creates new language providing that no judicial or administrative proceeding pending on September 1, 1986, shall be abated as a result of any amendment, repeal, or addition to chapter 494, F.S., by this act.

Section 28 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revisions of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the Proposed Committee Substitute.

Section 29 requires that each section within Chapter 494, F.S., which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 30 provides that this act shall take effect September 1, 1986.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the simplification and clarification of the licensing procedure. Any additional impact of the proposed legislation is negligible.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions (not provide any other significant fiscal impact.) However, the proposed legislation will have the effect of simplifying the current licensing procedure for mortgage brokers, and thereby produce an administrative benefit to the department.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

Statement of Substantial Changes

In the Proposed Committee Substitute, the term "principal mortgage broker" means a licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers. Here the principal mortgage broker is not designated as the primary broker. However, the Proposed Committee Substitute does explicitly state that the principal mortgage broker has a certain degree of responsibility for the activity that occurs in the business. All other terms in the definitional section remain as in the original bill.

Section 2 of the Proposed Committee Substitute specifically -- incorporates consumer finance companies as being exempt from the provisions of this act. The original bill utilized the term "small loan companies."

Under s. 494.035, F.S., Department duties and powers, the Proposed Committee Substitute deletes subsection (4) which granted the department authority to lower specific fees. House Bill 837 permitted the lowering of fees provided it was done by rule.

The language in section 4 of the Proposed Committee Substitute provides that the time period for reporting a change in employment to the department is no later than 15 business days after such a change. The original bill only allowed 10 calendar days.

Additionally, this bill adds language stating that the initial mortgage brokerage license shall be valid for the remainder of the biennium in which the license is issued. This language was not contained in the original bill.

The renewal of the mortgage brokerage business registration has been amended by the Proposed Committee Substitute to allow the language to apply to branch office permits. Only registrants were addressed in the original bill.

Several additions to the section discussing branch office permits were incorporated in the Proposed Committee Substitute to require more information concerning the business. House Bill 837 requested minimal information.

Changes in sections 9 and 11 of the Proposed Committee Substitute add clarity to the language of the original bill.

Throughout the bill there are several places where calendar days has been amended to business days. This provides a longer time period in which to respond with the appropriate behavior.

The Proposed Committee Substitute provides that consistently underestimating the maximum closing costs is a ground for disciplinary action. This was not included in House Bill 837.

In the Proposed Committee Substitute, the language relating to the estimating of costs by the broker is specified in greater detail. Additionally, it allows the maximum estimated costs to be expressed as a range of costs. It also explicitly excludes certain costs from being incorporated in the total actual cost when it is compared to the estimate. The actual cost cannot be more than 10 percent or \$100, whichever is greater, above the estimate if the obligation of the borrower is to remain on the mortgage loan.

A new section is created in the Proposed Committee Substitute which provides that no judicial or administrative proceeding pending on September 1, 1986, shall be abated as a result of any amendment, repeal, or addition to chapter 494, F.S., by this act.

Several of the fees in the Proposed Committee Substitute are stated in terms of amounts which cannot be exceeded, maximum costs, while the original bill states the fees with exactness.

V. AMENDMENTS:

VI. PREPARED BY:

Beryl D Roberts

Beryl D. Roberts

VII. STAFF DIRECTOR:

Wyatt T Martin

Wyatt T. Martin

STORAGE NAME: sa-pcs/hb837

Date: April 11, 1986
Revised: April 15, 1986 <
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

7 1637

BILL #: PCS/HB 837

RELATING TO: Mortgage Brokerage Licensing

SPONSOR(S): Commerce & Gibbons

EFFECTIVE DATE: September 1, 1986

COMPANION BILL(S): SB 609

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

The Proposed Committee Substitute substantially revises the Mortgage Brokerage Act, Chapter 494, F.S., to provide for the restructuring of the licensing procedure. Additionally, the bill revises the process relating to the Mortgage Brokerage Guaranty Fund. The proposed legislation increases the powers and duties of the Department of Banking and Finance (department) and provides for administrative penalties and fines and license violations.

A. Current Law & Present Situation:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance.

The definition section of Chapter 494, F.S., provides that the term "mortgage broker" refers to any person who makes, negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. A mortgage solicitor is any individual who is not licensed as a mortgage broker, but who performs the function of such a broker and who is employed by a mortgage broker or is under the direction of a mortgage broker.

Exempt from the statutory provisions of Chapter 494, F.S., are lending institutions, individuals who lend their own funds without intent to resell the mortgage, and attorneys rendering service in the course of their law practice.

The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged to have suffered monetary damages as the result of certain specified acts committed by a mortgage broker or solicitor. The Fund, established within s. 494.043, F.S., provides for the payment of a guaranty fee which is in addition to the license fee. A principal mortgage broker must annually pay a \$50 fee for both a new license and the renewal of a license. A mortgage solicitor and other brokers must pay a \$10 fee per license year for the granting of a new license and the renewal of a license.

However, from October 1, 1985, until the balance in the fund first reaches \$1.5 million, the fees shall apply only to initial issuance of a license to a person who has not previously been licensed.

The conditions for recovery under the Guaranty Fund are set forth in s. 494.044, F.S., of the Mortgage Brokerage Act. Benefits payable from the Guaranty Fund for individual claims are limited to \$20,000. However, claims in the aggregate against any one mortgage broker or mortgage solicitor are limited to \$100,000 with payment made in the order notice is received.

A license granted under the Mortgage Brokerage Act can be suspended, denied, or revoked as provided in s. 494.05, F.S. The Act sets forth specific conditions under which such action may occur.

Section 494.06, F.S., describes the requirements relating to the maintaining of books, accounts and records by the principal broker. The authority of the department to prescribe the minimum information to be shown in such documents and the authority to examine such documents is addressed in this section.

The power of the department relating to the issuance of subpoenas, to petition the court for a subpoena duces tecum, and to promulgate rules is discussed in s. 494.07, F.S.

The restraining of a violation by the obtaining of an injunction is addressed in s. 494.071, F.S., of the Act. Whenever any person engages in any practices or transactions which would be fraudulent and inconsistent with the intent of this chapter or violates this chapter, the department may bring an action to enjoin such activity. In addition, the department's authority to investigate questionable activity is provided for in this section.

When any provision of this Act has been violated, the department has authority under s. 494.072, F.S., to issue cease and desist orders. Administrative fines may also be imposed for violating the order.

Penalties for noncompliance with this Act are set forth in s. 494.10, F.S.

B. Effect of Proposed Changes:

Section 1 of this bill amends the definition section of the act in the following manner:

- eliminates the definition of "mortgage solicitor." Currently, the qualifications to become a broker and solicitor are the same, therefore, a justification for differentiating between individual brokers and solicitors does not exist.

- defines the term "mortgage brokerage business" in a manner consistent with the definition of a mortgage broker. It allows the act to differentiate between an individual who is licensed and a business that is licensed under the act.

- amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

- amends the definition of a "principal mortgage broker." A licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers constitutes a principal mortgage broker.

- defines the term "ultimate equitable owner." A natural person who has any type of ownership interest in a business licensed under this act is termed as such an owner and may be liable for the conduct of the business.

- defines the term "designated associated broker" to mean the licensed mortgage broker in charge of a branch office.

- creates additional definitions which will have the effect of clarifying the intent of the act.

Section 2 of the Proposed Committee Substitute amends s. 494.03, F.S., to provide that it is not necessary to negate any of the exemptions provided in this chapter in any proceedings brought under the act. The party claiming the exemption must establish the right to the exemption. The act does not apply to banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, consumer finance companies, federally licensed small business investment companies, or certain securities dealers.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this

section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria. It provides that each initial application for a mortgage broker license shall be in written form as prescribed by the department. Any information reasonably necessary to make a determination of eligibility for licensure may be requested by the department.

- In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

- This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. The license shall state the place of employment. No later than 15 business days after any termination of employment, both the registrant and the employee shall send written notice of such change.

- The department shall endorse any change of employment and shall set, by rule, a fee not to exceed \$50 for endorsement.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license.

- The department shall renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an update of all information provided on the initial application. This section authorizes the department to adopt rules establishing a biennial renewal of mortgage broker licenses.

- If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active shall expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

- A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

- The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

- This section also authorizes the department to request specific information regarding the business ownership and formation. Additionally, any information which the department believes is reasonably necessary to determine eligibility may be requested.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

- A completed application with a nonrefundable fee not to exceed \$150 must be submitted to the department. Further, each branch office must pay a fee not to exceed \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

- This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration shall automatically become inactive for up to 2 years. The same procedure for reactivating a license will apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S. The permit shall be issued only upon receipt of a

completed application and a nonrefundable fee not to exceed \$150.00. However, the branch office permit shall include specific information regarding the branch office and the registrant. The permit shall be issued in the name of the registrant which maintains the branch office.

Section 9 of this legislation creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days after said action is instituted.

Section 10 of the Proposed Committee Substitute amends s. 494.041, F.S., to conform the language to the change in the licensing structure. The term "mortgage solicitor" is deleted, and the provision is conformed to the procedure proposed by this bill.

Section 11 of the bill conforms the language within the provisions prescribing the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders. Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail.

Section 13 further amends provisions governing the Guaranty fund to conform the section to the proposed changes in the licensing structure. It also adds clarification to existing law regarding recovery for claimants giving notice after 2 years from the first completed and valid notice. Such claimants may only recover from the remaining portion of the \$100,000 aggregate in an amount equal to the unsatisfied portion of that person's judgment or \$20,000, whichever is less.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance with this chapter. When the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifically delineates the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to issue a satisfaction of mortgage when the proceeds were not disbursed and when the mortgagor has fully paid the mortgage broker's costs and commission; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; consistently underestimating the maximum closing costs; and, failure to comply with or violation of any other provision of this chapter.

Section 16 amends s. 494.06, F.S., to incorporate needed technical changes in order that the language may be conformed to the proposed licensing process.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation or proceeding pursuant to this act.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 19 amends s. 494.071, F.S., and removes a major portion of the law to other sections in the proposed bill. The remaining changes in this section are merely technical and provide clarity as to the intent of the provisions.

Section 20 amends the provisions relating to the issuing of cease and desist orders and refund orders. Primarily, the changes in this section are technical and allow the provisions to

conform to the proposed licensing structure. The deleted language has been transferred to another section of the bill.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide for needed conforming language regarding the proposed licensing structure.

- Additionally, this section contains a new provision which would allow for some flexibility in the total cost associated with processing and closing the mortgage loan. Current law requires that the total maximum cost be provided to the borrower. This amendment would permit the broker to provide an estimate of the total costs. The maximum estimated costs may be expressed as a range of possible costs. However, the costs excludes the mortgage brokerage fee, loan origination fee and prepaid items.

- The actual cost must be within 10 percent or \$100.00 of the estimate, whichever is greater, in order for the borrower to be obligated to the contract. Where the actual cost exceeds the estimate by more than 10 percent, the broker is required to obtain a written agreement from the borrower acknowledging the consent to continue with the obligation. This applies only to brokerage agreements on loans to be secured by residential properties containing four or less units. Larger contracts would be governed only by the contracts and would be subject to contractual remedies.

- Each deposit agreement entered into by a licensee or registrant shall contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund. This amendment was recommended by the Auditor General.

Section 22 of the proposed legislation amends s. 494.081, F.S., to incorporate needed language to further the change in the licensing structure as set forth by this bill.

Section 23 amends the provision which discusses liability where an unlawful mortgage transaction occurs, s. 494.091, F.S. The change expands the scope of this section to both borrowers and the lender. Current law only speaks to the liability to the lender.

Section 24 addresses the section entitled prohibited practices, s. 494.093, F.S. The language is transferred from s. 494.04, F.S., and provides that a mortgage broker must obtain a license and a mortgage brokerage business must be issued a registration by the department.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more

serious, the penalty has been raised to a first degree felony. If the value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

Section 26 allows licensees as of the effective date to be grandfathered.

Section 27 of the proposed committee substitute creates new language providing that no judicial or administrative proceeding pending on September 1, 1986, shall be abated as a result of any amendment, repeal, or addition to chapter 494, F.S., by this act.

Section 28 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revisions of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the Proposed Committee Substitute.

Section 29 requires that each section within Chapter 494, F.S., which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 30 provides that this act shall take effect September 1, 1986.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the simplification and clarification of the licensing procedure. Any additional impact of the proposed legislation is negligible.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions (nor provide any other significant fiscal impact.) However, the proposed legislation will have the effect of simplifying the current licensing procedure for mortgage brokers, and thereby produce an administrative benefit to the department.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

Statement of Substantial Changes

In the Proposed Committee Substitute, the term "principal mortgage broker" means a licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers. Here the principal mortgage broker is not designated as the primary broker. However, the Proposed Committee Substitute does explicitly state that the principal mortgage broker has a certain degree of responsibility for the activity that occurs in the business. All other terms in the definitional section remain as in the original bill.

Section 2 of the Proposed Committee Substitute specifically incorporates consumer finance companies as being exempt from the provisions of this act. The original bill utilized the term "small loan companies."

Under s. 494.035, F.S., department duties and powers, the Proposed Committee Substitute deletes subsection (4) which granted the department authority to lower specific fees. House Bill 837 permitted the lowering of fees provided it was done by rule.

The language in section 4 of the Proposed Committee Substitute provides that the time period for reporting a change in employment to the department is no later than 15 business days after such a change. The original bill only allowed 10 calendar days.

Additionally, this bill adds language stating that the initial mortgage brokerage license shall be valid for the remainder of the biennium in which the license is issued. This language was not contained in the original bill.

The renewal of the mortgage brokerage business registration has been amended by the Proposed Committee Substitute to allow the language to apply to branch office permits. Only registrants were addressed in the original bill.

Several additions to the section discussing branch office permits were incorporated in the Proposed Committee Substitute to require more information concerning the business. House Bill 837 requested minimal information.

Changes in sections 9 and 11 of the Proposed Committee Substitute add clarity to the language of the original bill.

Throughout the bill there are several places where calendar days have been amended to business days. This provides a longer time period in which to respond with the appropriate behavior.

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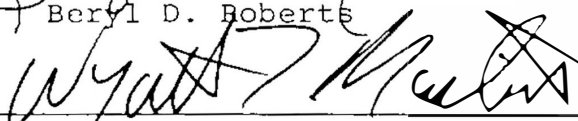
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V. AMENDMENTS:

VI. PREPARED BY:


Beryl D. Roberts

VII. STAFF DIRECTOR:


Wyatt T. Martin

STORAGE NAME: sa-cs/hb837

Date: April 11, 1986

Revised: April 24, 1986

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

19 1632

BILL #: CS/HB 837

RELATING TO: Mortgage Brokerage Licensing

SPONSOR(S): Commerce & Gibbons

EFFECTIVE DATE: September 1, 1986

COMPANION BILL(S): SB 609

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

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- This section also authorizes the department to request specific information regarding the business ownership and formation. Additionally, any information which the department believes is reasonably necessary to determine eligibility may be requested.

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- A completed application with a nonrefundable fee not to exceed \$150 must be submitted to the department. Further, each branch office must pay a fee not to exceed \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

- This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration shall automatically become inactive for up to 2 years. The same procedure for reactivating a license will apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S. The permit shall be issued only upon receipt of a

completed application and a nonrefundable fee not to exceed \$150.00. However, the branch office permit shall include specific information regarding the branch office and the registrant. The permit shall be issued in the name of the registrant which maintains the branch office.

Section 9 of this legislation creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days after said action is instituted.

Section 10 of the Committee Substitute amends s. 494.041, F.S., to conform the language to the change in the licensing structure. The term "mortgage solicitor" is deleted, and the provision is conformed to the procedure proposed by this bill.

Section 11 of the bill conforms the language within the provisions prescribing the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders. Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail.

Section 13 further amends provisions governing the Guaranty fund to conform the section to the proposed changes in the licensing structure. It also adds clarification to existing law regarding recovery for claimants giving notice after 2 years from the first completed and valid notice. Such claimants may only recover from the remaining portion of the \$100,000 aggregate in an amount equal to the unsatisfied portion of that person's judgment or \$20,000, whichever is less.

Section 14 creates s. 494.052, F.S., to extend the penalties applicable for noncompliance with this chapter. When

the department finds any person in violation of the grounds set forth in s. 494.055(1), F.S., the department may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the act.

Section 15 creates s. 494.055, F.S., which specifically delineates the activity which may result in disciplinary action being taken. The activities specified are either transferred from s. 494.042, F.S., or newly created. Examples of such grounds include: fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction; a material misstatement of fact on an initial or renewal application; any breach of trust funds or escrow funds, or any misuse of personal property; failure to issue a satisfaction of mortgage when the proceeds were not disbursed and when the mortgagor has fully paid the mortgage broker's costs and commission; failure to timely pay any fee, charge or fine under this chapter; refusal to permit an investigation or examination of books and records; consistently underestimating the maximum closing costs; and, failure to comply with or violation of any other provision of this chapter. Additionally, this section provides that a principal mortgage broker shall be subject to suspension or revocation for employee actions if there is a pattern of repeated violations by employees or such broker has knowledge of the violations.

Section 16 amends s. 494.06, F.S., to incorporate needed technical changes in order that the language may be conformed to the proposed licensing process.

Section 17 creates s. 494.065, F.S., and prescribes the authority of the department relating to investigations and complaints. Portions of this section are derived from current law. The department has the authority to exempt from the disclosure requirements in s. 119.01, F.S., all records and information obtained pursuant to an investigation under specified circumstances. A privilege against civil liability is granted to any complainant or any witness with regard to information furnished with respect to an investigation or proceeding pursuant to this act.

Section 18 amends the section entitled "powers of the department" to conform it to s. 517.201, F.S., Securities Transactions. The changes are a substantial rewording of this section and grant the department broad powers relating to subpoenas.

Section 19 amends s. 494.071, F.S., and removes a major portion of the law to other sections in the bill. The remaining changes in this section are merely technical and provide clarity as to the intent of the provisions.

Section 20 amends the provisions relating to the issuing of cease and desist orders and refund orders. Primarily, the changes in this section are technical and allow the provisions to conform to the proposed licensing structure. The deleted language has been transferred to another section of the bill.

Section 21 amends the provisions on "requirements and prohibitions," s. 494.08, F.S., to provide for needed conforming language regarding the proposed licensing structure.

- Additionally, this section contains a new provision which would allow for some flexibility in the total cost associated with processing and closing the mortgage loan. Current law requires that the total maximum cost be provided to the borrower. This amendment would permit the broker to provide an estimate of the total costs. The maximum estimated costs may be expressed as a range of possible costs. However, the costs excludes the mortgage brokerage fee, loan origination fee and prepaid items.

- The actual cost must be within 10 percent or \$100.00 of the estimate, whichever is greater, in order for the borrower to be obligated to the contract. Where the actual cost exceeds the estimate by more than 10 percent, the broker is required to obtain a written agreement from the borrower acknowledging the consent to continue with the obligation. This applies only to brokerage agreements on loans to be secured by residential properties containing four or less units. Larger contracts would be governed only by the contracts and would be subject to contractual remedies.

- Each deposit agreement entered into by a licensee or registrant shall contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund. This amendment was recommended by the Auditor General.

Section 22 of the legislation amends s. 494.081, F.S., to incorporate needed language to further the change in the licensing structure as set forth by this bill.

Section 23 amends the provision which discusses liability where an unlawful mortgage transaction occurs, s. 494.091, F.S. The change expands the scope of this section to both borrowers and the lender. Current law only speaks to the liability to the lender.

Section 24 addresses the section entitled prohibited practices, s. 494.093, F.S. The language is transferred from s. 494.04, F.S., and provides that a mortgage broker must obtain a license and a mortgage brokerage business must be issued a registration by the department.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to a first degree felony. If the value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

Section 26 allows licensees as of the effective date to be grandfathered.

Section 27 of the committee substitute creates new language providing that no judicial or administrative proceeding pending on September 1, 1986, shall be abated as a result of any amendment, repeal, or addition to Chapter 494, F.S., by this act.

Section 28 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revisions of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the Committee Substitute.

Section 29 requires that each section within Chapter 494, F.S., which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 30 provides that this act shall take effect September 1, 1986.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the simplification and clarification of the licensing procedure. Any additional impact of the legislation is negligible.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions (nor provide any other significant fiscal impact). However, the legislation will have the effect of simplifying the current licensing procedure for mortgage brokers, and thereby produce an administrative benefit to the department.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

Statement of Substantial Changes

In the Committee Substitute, the term "principal mortgage broker" means a licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers. Here the principal mortgage broker is not designated as the primary broker. However, the Committee Substitute does explicitly state that the principal mortgage broker has a certain degree of responsibility for the activity that occurs in the business. All other terms in the definition section remain as in the original bill.

Section 2 of the Committee Substitute specifically incorporates consumer finance companies as being exempt from the provisions of this act. The original bill utilized the term "small loan companies."

Under s. 494.035, F.S., department duties and powers, the Committee Substitute deletes subsection (4) which granted the department authority to lower specific fees. House Bill 837 permitted the lowering of fee, provided it was done by rule.

The language in Section 4 of the Committee Substitute provides that the time period for reporting a change in employment to the department is no later than 15 business days after such a change. The original bill only allowed 10 calendar days.

Additionally, this bill adds language stating that the initial mortgage brokerage license shall be valid for the remainder of the biennium in which the license is issued. This language was not contained in the original bill.

The renewal of the mortgage brokerage business registration has been amended by the Committee Substitute to allow the language to apply to branch office permits. Only registrants were addressed in the original bill.

Several additions to the section discussing branch office permits were incorporated in the Committee Substitute to require more information concerning the business. House Bill 837 requested minimal information.

Changes in Sections 9 and 11 of the Committee Substitute add clarity to the language of the original bill.

The Committee Substitute deletes language which permitted the department to intervene on behalf of the mortgage broker in any action against a mortgage broker. The original bill granted such authority to the department as an effort to provide protection to the Guaranty Fund.

Throughout the bill there are several places where calendar days have been amended to business days. This provides a longer time period in which to respond with the appropriate behavior.

The Committee Substitute provides that consistently underestimating the maximum closing costs is a ground for disciplinary action. This was not included in House Bill 837. This section of the Committee Substitute incorporates current law which was inadvertently left out of the bill. The inserted material provides that failure to issue a satisfaction of mortgage under specified conditions is ground for disciplinary action.

Additionally, the Committee Substitute provides that a principal mortgage broker is subject to suspension or revocation for employee actions if there is a pattern of repeated violations by employees or the principal mortgage broker has knowledge of the violations. Under House Bill 837 the liability of the principal mortgage broker for employee actions was not restricted or limited in any manner.

In the Committee Substitute, the language relating to the estimating of costs by the broker is specified in greater detail. Additionally, it allows the maximum estimated costs to be expressed as a range of costs. It also explicitly excludes certain costs from being incorporated in the total actual cost when it is compared to the estimate. The actual cost cannot be more than 10 percent or \$100, whichever is greater, above the estimate if the obligation of the borrower is to remain on the mortgage loan.

A new section is created in the Committee Substitute which provides that no judicial or administrative proceeding pending on September 1, 1986, shall be abated as a result of any amendment, repeal, or addition to Chapter 494, F.S., by this act.

Several of the fees in the Committee Substitute are stated in terms of amounts which cannot be exceeded, maximum costs, while the original bill states the fees with exactness.

V. AMENDMENTS:

VI. PREPARED BY:

Beryl D. Roberts
Beryl D. Roberts

VII. STAFF DIRECTOR:

Wyatt T. Martin
Wyatt T. Martin

STORAGE NAME: fsa-cs/hb837:67

Date: June 15, 1986

Revised: _____

Final: _____

Final

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS

19 1632

BILL #: CS/HB 837

RELATING TO: Mortgage Brokerage Licensing

SPONSOR(S): Representative Gibbons

EFFECTIVE DATE: September 1, 1986

BECAME LAW: June 5, 1986

CHAPTER 86-68, LAWS OF FLORIDA

COMPANION BILL(S): SB 609

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

The Committee Substitute substantially revises the Mortgage Brokerage Act, Chapter 494, F.S., to provide for the restructuring of the licensing procedure. Additionally, the bill revises the process relating to the Mortgage Brokerage Guaranty Fund. This legislation increases the powers and duties of the Department of Banking and Finance (department) and provides for administrative penalties and fines for license violations.

A. Current Law & Present Situation:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage solicitors by the Division of Finance of the Department of Banking and Finance.

The definition section of Chapter 494, F.S., provides that the term "mortgage broker" refers to any person who makes, negotiates, acquires, sells, or arranges for or offers to make, negotiate, acquire, sell, or arrange for a mortgage loan or mortgage loan commitment. A mortgage solicitor is any individual who is not licensed as a mortgage broker, but who performs the function of such a broker and who is employed by a mortgage broker or is under the direction of a mortgage broker.

Exempt from the statutory provisions of Chapter 494, F.S., are lending institutions, individuals who lend their own funds without intent to resell the mortgage, and attorneys rendering service in the course of their law practice.

The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged to have suffered monetary damages as the result of certain specified acts committed by a mortgage broker or solicitor. The Fund, established within s. 494.043, F.S., provides for the payment of a guaranty fee which is in addition to the license fee. A principal mortgage broker must annually pay a \$50 fee for both a new license and the renewal of a license. A mortgage solicitor and other brokers must pay a \$10 fee per license year for the granting of a new license and the renewal of a license.

However, from October 1, 1985, until the balance in the fund first reaches \$1.5 million, the fees shall apply only to initial issuance of a license to a person who has not previously been licensed.

The conditions for recovery under the Guaranty Fund are set forth in s. 494.044, F.S., of the Mortgage Brokerage Act. Benefits payable from the Guaranty Fund for individual claims are limited to \$20,000. However, claims in the aggregate against any one mortgage broker or mortgage solicitor are limited to \$100,000 with payment made in the order notice is received.

A license granted under the Mortgage Brokerage Act can be suspended, denied, or revoked as provided in s. 494.05, F.S. The Act sets forth specific conditions under which such action may occur.

Section 494.06, F.S., describes the requirements relating to the maintaining of books, accounts and records by the principal broker. The authority of the department to prescribe the minimum information to be shown in such documents and the authority to examine such documents is addressed in this section.

The power of the department relating to the issuance of subpoenas, to petition the court for a subpoena duces tecum, and to promulgate rules is discussed in s. 494.07, F.S.

The restraining of a violation by the obtaining of an injunction is addressed in s. 494.071, F.S., of the Act. Whenever any person engages in any practices or transactions which would be fraudulent and inconsistent with the intent of this chapter or violates this chapter, the department may bring an action to enjoin such activity. In addition, the department's authority to investigate questionable activity is provided for in this section.

When any provision of this Act has been violated, the department has authority under s. 494.072, F.S., to issue cease and desist orders. Administrative fines may also be imposed for violating the order.

Penalties for noncompliance with this Act are set forth in s. 494.10, F.S.

B. Effect of Proposed Changes:

Section 1 of this bill amends the definition section of the act in the following manner:

- eliminates the definition of "mortgage solicitor." Currently, the qualifications to become a broker and solicitor are the same, therefore, a justification for differentiating between individual brokers and solicitors does not exist.

- defines the term "mortgage brokerage business" in a manner consistent with the definition of a mortgage broker. It allows the act to differentiate between an individual who is licensed and a business that is licensed under the act.

- amends the definition of a "licensee" to reflect the change in the regulatory structure regarding the licensing of a business. A registrant is a business which is registered pursuant to this act.

- amends the definition of a "principal mortgage broker." A licensee in charge of, and responsible for, the operation of the principal place of business and all designated associate brokers constitutes a principal mortgage broker.

- defines the term "ultimate equitable owner." A natural person who has any type of ownership interest in a business licensed under this act is termed as such an owner and may be liable for the conduct of the business.

- defines the term "designated associated broker" to mean the licensed mortgage broker in charge of a branch office.

- creates additional definitions which will have the effect of clarifying the intent of the act.

Section 2 of the Committee Substitute amends s. 494.03, F.S., to provide that it is not necessary to negate any of the exemptions provided in this chapter in any proceedings brought under the act. The party claiming the exemption must establish the right to the exemption. The act does not apply to banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, consumer finance companies, federally licensed small business investment companies, or certain securities dealers.

Section 3 of the bill creates s. 494.035, F.S., which specifies the duties of the department. New language directs the department to be responsible for the administration and enforcement of this chapter. Current law is added to this section which gives the department authority to adopt rules necessary to administer the act. Similarly, language placing all fees, charges and fines collected within the State Treasury is transferred to this section.

Section 4 creates s. 494.037, F.S., which describes the mortgage brokerage licensure requirements. This section combines portions of existing law with new language to set forth specific initial licensing criteria. It provides that each initial application for a mortgage broker license shall be in written form as prescribed by the department. Any information reasonably necessary to make a determination of eligibility for licensure may be requested by the department.

- In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a complete set of fingerprints. However, a license may be denied if the applicant has violated any of the provisions of s. 494.055(1) of the act. Further, if the applicant has pending any criminal prosecutions or administrative enforcement actions, the license may be denied. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter.

- This section prohibits the department from granting to any individual more than one mortgage broker license at any one time. Currently, an individual broker or solicitor may have a different license for each employer. This limitation prevents an individual from possessing more than one license, but does not prohibit employment with more than one business. It directs a licensee to be employed by a registrant or registrants, unless self-employed. The license shall state the place of employment. No later than 15 business days after any termination of employment, both the registrant and the employee shall send written notice of such change.

- The department shall endorse any change of employment and shall set, by rule, a fee not to exceed \$50 for endorsement.

Section 5 of the bill creates s. 494.038, F.S., to set forth the requirements relating to the renewal of a mortgage broker license.

- The department shall renew a mortgage broker license upon receipt of the completed renewal application and the \$150 renewal fee. Additionally, the department is authorized to prescribe the form of the renewal application and require an

update of all information provided on the initial application. This section authorizes the department to adopt rules establishing a biennial renewal of mortgage broker licenses.

- If a license is not renewed by the end of the biennium, it shall automatically revert to inactive status. However, it may be reactivated upon the filing of a completed reactivation application, payment of the renewal fee, and payment of a reactivation fee. A license not renewed within 2 years of becoming active shall expire.

Section 6 provides for the registration of mortgage brokerage businesses. The following criteria must be met in order for a business to be registered under this act.

- A business must submit a completed application form, pay a nonrefundable application fee of \$150, and designate a qualified principal mortgage broker.

- The registration may be denied if the designated principal mortgage broker; any officer, director, partner, joint venturer, or any natural person owning a 10 percent or greater interest in the mortgage brokerage business; or any natural person who is the ultimate equitable owner of a 10 percent or greater interest in the business has committed any violation set forth in s. 494.055, F.S. If there is any pending criminal prosecution or administrative enforcement action which involve fraud, dishonest dealing, or any other act of moral turpitude the registration may be denied.

- This section also authorizes the department to request specific information regarding the business ownership and formation. Additionally, any information which the department believes is reasonably necessary to determine eligibility may be requested.

Section 7 sets forth the criteria for renewal of the mortgage brokerage business registration.

- A completed application with a nonrefundable fee not to exceed \$150 must be submitted to the department. Further, each branch office must pay a fee not to exceed \$150 at the time of renewal. The department may require an update of all information provided in the registrant's initial application.

- This section gives the department the authority to establish a procedure for a biennium renewal period for registrants. Where the renewal does not occur by the biennium prescribed by the department, the registration shall automatically become inactive for up to 2 years. The same procedure for reactivating a license will apply for registrants.

Section 8 prescribes the process regarding the issuing of a permit to a branch office. This is basically a change from granting a "branch office license" to the granting of a "branch office permit." The language is primarily current law, s. 494.04, F.S. The permit shall be issued only upon receipt of a completed application and a nonrefundable fee not to exceed \$150.00. However, the branch office permit shall include specific information regarding the branch office and the registrant. The permit shall be issued in the name of the registrant which maintains the branch office.

Section 9 of this legislation creates s. 494.0393, F.S., and sets forth the requirements relating to licensees and registrants. However, the language within this section basically incorporates current law in s. 494.04, F.S. This section does add a provision which requires each registrant and self-employed licensee to report any action in bankruptcy, voluntary or involuntary, to the department not later than 7 calendar days after said action is instituted.

Section 10 of the Committee Substitute amends s. 494.041, F.S., to conform the language to the change in the licensing structure. The term "mortgage solicitor" is deleted, and the provision is conformed to the procedure proposed by this bill.

Section 11 of the bill conforms the language within the provisions prescribing the Guaranty Fund to the proposed changes in the licensing structure. In addition, this section adds language providing that recovery from the fund shall only be allowable for borrowers or lenders. Only the party to a mortgage financing transaction who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant may recover from the fund. The deleted language within this section is transferred to another section in the bill.

Section 12 amends s. 494.043, F. S., to provide that recovery from the Guaranty Fund must be preceded by a recorded final judgement issued by a Florida court of competent jurisdiction. Additionally, language is added which requires that the department receive a copy of a complaint being filed at the time the action is instituted. If the licensee or registrant against which a claim is sought has filed for bankruptcy or has been adjudicated bankrupt, the claimant must file a proof of claim in the bankruptcy proceedings and shall notify the department by certified mail.

Section 13 further amends provisions governing the Guaranty fund to conform the section to the proposed changes in the licensing structure. It also adds clarification to existing law regarding recovery for claimants giving notice after 2 years from the first completed and valid notice. Such claimants may only recover from the remaining portion of the \$100,000 aggregate in

an amount equal to the unsatisfied portion of that person's judgment or \$20,000, whichever is less.

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- Additionally, this section contains a new provision which would allow for some flexibility in the total cost associated with processing and closing the mortgage loan. Current law requires that the total maximum cost be provided to the borrower. This amendment would permit the broker to provide an estimate of the total costs. The maximum estimated costs may be expressed as a range of possible costs. However, the costs excludes the mortgage brokerage fee, loan origination fee and prepaid items.

- The actual cost must be within 10 percent or \$100.00 of the estimate, whichever is greater, in order for the borrower to be obligated to the contract. Where the actual cost exceeds the estimate by more than 10 percent, the broker is required to obtain a written agreement from the borrower acknowledging the consent to continue with the obligation. This applies only to brokerage agreements on loans to be secured by residential properties containing four or less units. Larger contracts would be governed only by the contracts and would be subject to contractual remedies.

- Each deposit agreement entered into by a licensee or registrant shall contain language summarizing the limits and conditions of recovery from the Mortgage Guaranty Fund. This amendment was recommended by the Auditor General.

Section 22 of the legislation amends s. 494.081, F.S., to incorporate needed language to further the change in the licensing structure as set forth by this bill.

Section 23 creates s. 494.082, F.S., to allow a limited exemption to a defined group of sellers and lenders. This section provides that federally approved and regulated mortgage sellers and lenders are exempted from several provisions of the act. The exemptions are permitted in order to prevent areas of regulatory duplication which would result because of the changes to chapter 494, F.S. Additionally, the structural differences

which exist between various lenders licensed under the Mortgage Brokerage Act necessitate these exemptions.

Section 23 amends the provision which discusses liability where an unlawful mortgage transaction occurs, s. 494.091, F.S. The change expands the scope of this section to both borrowers and the lender. Current law only speaks to the liability to the lender.

Section 24 addresses the section entitled prohibited practices, s. 494.093, F.S. The language is transferred from s. 494.04, F.S., and provides that a mortgage broker must obtain a license and a mortgage brokerage business must be issued a registration by the department.

Section 25 of the bill contains language which limits the scope of criminal violations from any violation to specified violations. Additionally, it raises the penalty from a misdemeanor to a third degree felony. Where the offense is more serious, the penalty has been raised to a first degree felony. If the value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims involved, the convicted person shall be guilty of a first degree felony.

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Section 28 repeals s. 494.04, F.S., as amended by Chapters 84-216 and 85-271, Laws of Florida. It also repeals s. 494.05, F.S., as amended by Chapter 85-271, Laws of Florida. These sections are repealed due to the revisions of the licensing process and the denial and suspension procedure. The contents of both sections are restructured and placed within other sections of the Committee Substitute.

Section 29 requires that each section within Chapter 494, F.S., which is amended or added to by this act is repealed on October 1, 1991. A review by the Legislature pursuant to s. 11.61, F.S., is provided for in this section.

Section 30 provides that this act shall take effect September 1, 1986.

II. ECONOMIC IMPACT:

A. Public:

The economic impact of this bill on the public, which is basically mortgage brokers and mortgage businesses licensed under the act, is the simplification and clarification of the licensing procedure. Any additional impact of the legislation is negligible.

B. Government:

According to the Department of Banking and Finance, the implementation of this bill should not necessitate the creation of any additional positions (nor provide any other significant fiscal impact). However, the legislation will have the effect of simplifying the current licensing procedure for mortgage brokers, and thereby produce an administrative benefit to the department.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. LEGISLATIVE HISTORY:

A. Enacted Bill:

Representative Gibbons prefiled House Bill 837 on March 7, 1986. It was referred to House Commerce and Appropriations. Both HB 837 as introduced and the proposed committee substitute (PCS) as described above, were agendaed for consideration by the Subcommittee on Banking and Finance. The Subcommittee reported the PCS favorably, as a Proposed Committee Substitute on April 15, 1986. On April 23, the full Commerce Committee reported the PCS favorably as a Committee Substitute. After being withdrawn from Appropriations, the bill was placed on Special Order. It passed the House 110-0 on May 9 (HJ 00310). The Senate received the bill and referred it to Senate Commerce and Appropriations. The bill was withdrawn from both committees and taken up on the Senate floor where it was substituted for CS/SB 609. The House Bill passed as amended 37-0 (SJ 00333). The amendment provided that federally approved and regulated mortgage sellers and lenders are exempted from certain provisions of the bill. It was immediately certified (SJ 00333). The House concurred on May 22 and the Committee Substitute passed as amended 114-0 (HJ 00490).

Committee Substitute for House Bill 837 was approved by the Governor on June 5, 1986 (HJ 01474).

B. Disposition of Companion:

Senator Hair prefiled Senate Bill 609 on March 26, 1986. The Senate Commerce Committee reported it as a Committee Substitute on April 17 (SJ 00120). The bill was withdrawn from Senate Appropriations on May 13 and placed on the Special Order Calendar (SJ 00250). On May 20, 1986, CS/HB 837 was passed in lieu of CS/SB 609 which was laid on the table (SJ 00333).

VI. PREPARED BY:

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