

AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

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June 8, 2010

MEMBERS

Governor Charlie Crist
Attorney General Bill McCollum
Chief Financial Officer Alex Sink
Commissioner Charlie Bronson

Contact: Andrea Moreland (OFR)
(850) 410-9601

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
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| 1. | The Office requests approval to publish a Notice of Proposed Rule for Rule Chapter 69V-40, relating to mortgage brokering and lending. | |
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The proposed rules will implement the statutory provisions that will take effect October 1, 2010, to bring Chapter 494, F.S., into compliance with the federal S.A.F.E. Mortgage Licensing Act, Title V of P.L. 110-289.

(ATTACHMENT 1)

APPROVAL FOR PUBLICATION

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| 2. | The Office requests approval to publish a Notice of Proposed Rule for Rule 69U-100.045, relating to examination manuals and referenced standards. | |
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The rule is amended to reflect the current versions of manuals and guides that the Office uses to examine state-chartered financial institutions. The Financial Services Commission authorized the Office to publish a Notice of Proposed Rule for this rule at its May 25, 2010, meeting. This agenda item corrects a drafting error contained in the previously approved notice.

(ATTACHMENT 2)

APPROVAL FOR PUBLICATION

ATTACHMENT 1

**Financial Services Commission
Office of Financial Regulation
Agenda Item #1**

Briefing Sheet

I. Action Requested

The Office requests approval to publish a Notice of Proposed Rule for Rule Chapter 69V-40, relating to mortgage brokering and lending.

II. Overview

In 2009, the Florida Legislature passed Senate Bill 2226 to bring Florida law into compliance with the federal S.A.F.E. Mortgage Licensing Act of 2008, Title V of P.L. 110-289. (See Chapter 2009-241, Laws of Florida.) In addition, during the 2010 legislation session, the Florida Legislature passed additional changes to Chapter 494, F.S. (See HB 1281, Chapter 2010-67, Laws of Florida.) These changes will take effect on October 1, 2010, which coincides with when the new licensure requirements to implement SB 2226 will take effect. The proposed changes to Rule Chapter 69V-40, F.A.C., reflect and implement the new statutory licensure requirements for mortgage loan originators, mortgage brokers and mortgage lenders; conform terminology to statutory changes; repeal rules that have been superseded by state or federal statutes; and make other changes to clarify and simplify regulations relating to mortgage brokering and lending.

III. Summary of Proposed Changes

The proposed rule changes include: 1) requiring license applications for mortgage loan originators, mortgage brokers, and mortgage lenders to be submitted through the National Mortgage Licensing System and Registry on forms approved by the Registry; 2) requiring statutory fees to be submitted through the Registry; 3) requiring loan originator license applicants to meet national pre-licensure testing requirements; 4) requiring loan originator applicants and licensees to meet national education requirements; 5) requiring fingerprints to be submitted via live scan technology; 6) requiring authorization to obtain credit reports; 7) establishing criteria for evaluating the character, general fitness, and financial responsibility of license applicants; 8) conforming licensure disqualification periods to statutory requirements for persons with criminal events; 9) requiring annual renewal of licenses; and 10) requiring licensees to be re-evaluated upon renewal to ensure they continue to meet initial licensure requirements.

Proposed Changes to Rule Chapter 69V-40

Proposed New Rules

- 69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure.
- 69V-40.0113 Demonstrating Character, General Fitness, and Financial Responsibility.
- 69V-40.0312 Application Procedure for Loan Originator License.
- 69V-40.0313 Loan Originator License Renewal.
- 69V-40.0321 Application Procedure for a Mortgage Broker License.
- 69V-40.0322 Mortgage Broker License Renewal.
- 69V-40.0331 Declaration of Intent to Engage Solely in Loan Processing.
- 69V-40.036 Application Procedure for a Mortgage Broker Branch Office License.
- 69V – 40.0611 Application Procedure for a Mortgage Lender License.
- 69V-40.0612 Mortgage Lender License Renewal.
- 69V-40.066 Application Procedure for a Mortgage Lender Branch Office License.

Proposed Amendments to Existing Rules

- 69V-40.001 Definitions.
- 69V-40.002 Adoption of Forms.
- 69V-40.003 Electronic Filing of Forms and Fees.
- 69V-40.008 Fees and Commissions.
- 69V-40.099 Amendments, Change of Name, Change of Entity and Change in Control or Ownership.
- 69V-40.155 Lock-in Statement.
- 69V-40.156 Third-party Fee Accounts.
- 69V-40.170 Books and Records.
- 69V-40.175 Mortgage Brokerage Files.
- 69V-40.260 Mortgage Lender Files.
- 69V-40.265 Mortgage Brokerage and Lending Transaction Journal.

- 69V-40.285 Noninstitutional Investor Funds Account.

Proposed Rule Repeals

- 69V-40.021 Fictitious Name Registration.
- 69V-40.022 Quarterly Report Filing Requirements.
- 69V-40.025 Mortgage Broker Examination.
- 69V-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education.
- 69V-40.027 Mortgage Broker Pre-licensing Education Requirement.
- 69V-40.0271 Professional Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives.
- 69V-40.028 Permit for Mortgage Business School.
- 69V-40.0281 Mortgage Business Schools Prohibited Practices and Advertising/Publicity.
- 69V-40.029 Mortgage Business School Permit Renewal.
- 69V-40.030 Accreditation Process for a Mortgage Business School.
- 69V-40.031 Application Procedure for Mortgage Broker License.
- 69V-40.0311 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure.
- 69V-40.033 Disciplinary Guidelines for Mortgage Business Schools.
- 69V-40.043 Mortgage Broker License Renewal and Reactivation.
- 69V-40.051 Application Procedure for Mortgage Brokerage Business License.
- 69V-40.0511 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure.
- 69V-40.053 Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation.
- 69V-40.058 Application Procedure for Mortgage Brokerage Business Branch Office License.
- 69V-40.060 Fees Earned Upon Obtaining a Bona Fide Commitment.
- 69V-40.088 Referrals.
- 69V-40.100 Application Procedure for Transfer in Ownership or Control of Saving Clause Mortgage Lender.

- 69V-40.105 Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender.
- 69V-40.160 Principal Brokers.
- 69V-40.165 Branch Brokers.
- 69V-40.200 Application Procedure for Mortgage Lender License.
- 69V-40.201 Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure.
- 69V-40.205 Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation.
- 69V-40.220 Application Procedure for Correspondent Mortgage Lender License.
- 69V-40.225 Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation.
- 69V-40.240 Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License.
- 69V-40.242 Principal Representative.
- 69V-40.245 Independent Contractors.
- 69V-40.250 Documentation of Net Worth and Surety Bond.
- 69V-40.290 Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender.

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Finance

RULE NO: RULE TITLE

69V-40.001: Definitions

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

69V-40.002: Adoption of Forms

69V-40.003: Electronic Filing of Forms and Fees

69V-40.008: Fees and Commissions

69V-40.0113: Demonstrating Character, General Fitness, and Financial Responsibility

69V-40.021: Fictitious Name Registration

69V-40.022: Quarterly Report Filing Requirements

69V-40.025: Mortgage Broker Examination

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

69V-40.027: Mortgage Broker Pre-licensing Education Requirement

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

69V-40.028: Permit for Mortgage Business School

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

69V-40.029: Mortgage Business School Permit Renewal

69V-40.030: Accreditation Process for a Mortgage Business School

69V-40.031: Application Procedure for Mortgage Broker License

69V-40.0311: Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure

69V-40.0312: Application Procedure for Loan Originator License

69V-40.0313: Loan Originator License Renewal

69V-40.0321: Application Procedure for a Mortgage Broker License

69V-40.0322: Mortgage Broker License Renewal

69V-40.033: Disciplinary Guidelines for Mortgage Business Schools

69V-40.0331: Declaration of Intent to Engage Solely in Loan Processing

69V-40.036: Application Procedure for a Mortgage Broker Branch Office License

69V-40.043: Mortgage Broker License Renewal and Reactivation

69V-40.051: Application Procedure for Mortgage Brokerage Business License

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

69V-40.053: Mortgage Brokerage Business License and Branch Office License Renewal and Reactivation

69V-40.058: Application Procedure for Mortgage Brokerage Business Branch Office License

69V-40.060: Fees Earned Upon Obtaining a Bona Fide Commitment

69V-40.0611: Application Procedure for a Mortgage Lender License

69V-40.0612: Mortgage Lender License Renewal

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

69V-40.088: Referrals

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

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

69V-40.105: Branch Office License for Transfer in Ownership or Control of Saving Clause Mortgage Lender
69V-40.155: Lock-in Statement
69V-40.156: Third-party Fee Accounts
69V-40.160: Principal Brokers
69V-40.165: Branch Brokers
69V-40.170: Books and Records
69V-40.175: Mortgage Brokerage Files
69V-40.200: Application Procedure for Mortgage Lender License
69V-40.201: Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure
69V-40.205: Mortgage Lender License, Mortgage Lender License Pursuant to Saving Clause, and Branch Office License Renewal and Reactivation
69V-40.220: Application Procedure for Correspondent Mortgage Lender License
69V-40.225: Correspondent Mortgage Lender License and Branch Office License Renewal and Reactivation
69V-40.240: Application Procedure for Mortgage Lender or Correspondent Mortgage Lender Branch Office License
69V-40.242: Principal Representative
69V-40.245: Independent Contractors
69V-40.250: Documentation of Net Worth and Surety Bond
69V-40.260: Mortgage Lender Files
69V-40.265: Mortgage Brokerage and Lending Transaction Journal
69V-40.285: Noninstitutional Investor Funds Account
69V-40.290: Acts Requiring Licensure as a Mortgage Broker, Mortgage Brokerage Business, Mortgage Lender or Correspondent Mortgage Lender

PURPOSE AND EFFECT: In 2009, the Florida Legislature passed Senate Bill 2226 to bring Florida law into compliance with the federal S.A.F.E. Mortgage Licensing Act of 2008, Title V of P.L. 110-289. (See Chapter 2009-241, Laws of Florida.) In addition, during the 2010 legislation session, the Florida Legislature passed additional changes to Chapter 494, F.S. (See HB 1281, Chapter 2010-67, Laws of Florida.) These changes will take effect on October 1, 2010, which coincides with when the new licensure requirements to implement SB 2226 will take effect. The proposed changes to Rule Chapter 69V-40, F.A.C., reflect and implement the new statutory licensure requirements for mortgage loan originators, mortgage brokers and mortgage lenders; conform terminology to statutory changes; repeal rules that have been superseded by state or federal statutes; and make other changes to clarify and simplify regulations relating to mortgage brokering and lending.

SUMMARY: The proposed rule changes include: 1) requiring license applications for mortgage loan originators, mortgage brokers, and mortgage lenders to be submitted through the National Mortgage Licensing System and Registry on forms approved by the Registry; 2) requiring statutory fees to be submitted through the Registry; 3) requiring loan originator license applicants to meet national pre-licensure testing requirements; 4) requiring loan originator applicants and licensees to meet national education requirements; 5) requiring fingerprints to be submitted via live scan technology; 6) requiring authorization to obtain credit reports; 7) establishing criteria for evaluating the character, general fitness, and financial responsibility of license applicants; 8) conforming licensure disqualification periods to statutory requirements for persons with criminal events; 9) requiring annual renewal of licenses; and 10) requiring licensees to be re-evaluated upon renewal to ensure they continue to meet initial licensure requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory cost has been prepared. The Office has determined that the proposed rules will not impact small businesses.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 494.0011, 494.0016, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.0032, 494.004, 494.00612, 494.0066, 494.0677, 494.0069 FS

LAW IMPLEMENTED: 120.695, 494.0011, 494.00115, 494.0016, 494.0023, 494.00255, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.0038, 494.0042, 494.0043, 494.00612, 494.0063, 494.0066, 494.0067, 494.0068, 494.0069, 494.007, 494.0073, 494.0075 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-40.001 Definitions.

The definitions provided in Section 494.001, F.S., and the following defined terms, shall apply to this rule chapter and shall serve as the Office of Financial Regulation's interpretation unless the language of the rule indicates to the contrary:

- ~~(1) "Audited Financial Statements" shall be defined as those financial statements prepared by an independent certified public accountant, and shall include at least the following information:
 - ~~(a) Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;~~
 - ~~(b) Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this rule however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this rule;~~
 - ~~(c) Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report, and the accounting principles and practices reflected therein, and as to the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;~~
 - ~~(d) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and to the extent practicable, the effect of each such exception on the related financial statements given.~~~~
- ~~(2) "Financial Statements and Reports" shall be defined as those reports, schedules and statements, which contain at least a Statement of Financial Condition or Balance Sheet.~~
- ~~(3) "Unaudited Financial Statements" shall be defined as those financial statements not accompanied by the statements and representations as set forth in paragraphs (1)(b), (c) and (d) of this rule.~~
- ~~(4) Net worth shall be defined as total assets minus total liabilities, except that total assets shall not include the~~

following:

~~(a) Any amount in excess of the lower of the cost or market value of mortgages in foreclosure, construction loans, or foreclosed property acquired through foreclosures;~~

~~(b) Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease;~~

~~(c) Commitment fees paid which are not recoverable through the closing or selling of loans; and~~

~~(d) The value of any servicing contracts not determined in accordance with Financial Accounting Standards Board, Statement of Accounting Standards No. 65, dated September 1982.~~

~~(5) For the purposes of subsection 494.001(26), F.S., "receive" means obtaining possession of money or a negotiable instrument prior to receipt by the lender or investor.~~

~~(1)(6) "Appraiser" as used in~~ For the purposes of Section subsection 494.0043(1)(a), F.S., when providing an opinion of value of security property for brokering or selling a mortgage loan to a noninstitutional investor, "appraiser"² means any person who is licensed, registered or certified in the State of Florida pursuant to the provisions of Chapter 475, F.S.

~~(7) For purposes of licensing and enforcement actions under Chapter 494, F.S., the phrase "Having a license, or the equivalent, to practice any profession or occupation revoked, suspended, or otherwise acted against . . ." as utilized in subsections 494.0041(2)(i) and 494.0072(2)(i), F.S., is deemed to include state or federal enforcement actions for orders of prohibition or removal of an officer, director, or employee of a state or federal financial institution, or any orders of prohibition or orders of removal, or any combination thereof, entered against or stipulated to by officers, directors, and employees of state or federal financial institutions.~~

~~(8) For the purpose of subsection 494.006(2)(a), F.S., "employed" or "employee" means a natural person engaged in the service of another for a salary or wages. Such person is subject to withholding, FICA, and other lawful deductions by the employer as a condition of employment and is subjected to the right of the employer to direct and control the actions of the employee.~~

~~(9) "Independent contractor" means a person who contracts with another to perform a service where this person is not directed or controlled by the other person or is required to maintain separate records regarding his contract for services in respect to, but not limited to, accounting and taxes.~~

~~(10) "Notice of noncompliance" means a notification by the Office of Financial Regulation that a person has violated an administrative rule which is classified as a minor offense as set forth in Section 120.695, F.S. The mandatory fine that is associated with the administrative rule is waived for the first offense.~~

~~(11) For purposes of Rules 69V-40.100, 69V-40.200, 69V-40.220, and 69V-40.242, F.A.C.:~~

~~(a) "Operate" shall mean to exercise power or influence over the business operations.~~

~~(b) "Exercise" shall mean the discharge of an official duty or function.~~

~~(c) "Control" shall mean to have the influence and power to make decisions for the business.~~

(2) "Hold himself or herself out to the public as being in the mortgage lending business" in Section 494.00115(2)(e) and (f), F.S., means that any individual who does any of the following, but not limited to, is not exempt from regulation under Part III of Chapter 494, F.S:

- (a) Is employed with a business where mortgage lending or mortgage brokering services may be received;
- (b) Has placed himself or herself in a position where he or she is likely to come into contact with borrowers or investors or buyers or sellers of mortgage loans;
- (c) Advertises, related to mortgage loans, by soliciting for borrowers, lenders or purchasers in any manner;
- (d) Advertises in any manner that would lead a person to believe the individual was in the business of buying, making or selling mortgage loans. For example, placing an advertisement which states "I buy and sell mortgages" would lead a person to believe the individual was in the mortgage lending business; or
- (e) Solicits in a manner which would lead a person to believe the individual was in the business of buying, making or selling mortgage loans.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2) FS. Law Implemented 494.00115(2)(e),(f), 420.695, 494.001, 494.004(1), 494.0041(2)(a), (i), 494.0043, 494.0061(2), (8), 494.0062(2), (11), 494.0067(5), 494.0072(2)(i) FS. History—Revised 9-23-65, Renumbered from 3-3.01 to 3D-40.01 on 9-8-75, Formerly 3D-40.01, Amended 12-7-89, 6-23-91, 8-24-92, 2-11-93, 11-17-93, 4-14-94, 9-7-94, 5-14-95, 7-25-96, 12-12-99, 12-8-02, Formerly 3D-40.001, Amended 3-23-08,___.

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

- (1) General Procedure Regarding Law Enforcement Records. For the purposes of this rule each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant shall be referred to collectively as "relevant persons." If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule. As part of the application review process, the Office is required to consider a relevant person's law enforcement record when deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender. When conducting this review, the Office reviews the relevant person's Form MU1, MU2 or MU4 responses and criminal history information derived from the fingerprint check. In the event of a question regarding the relevant person's criminal history, the Office may request additional information from the relevant person to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined to be relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. The requested documents must be legible. Documentation that is typically requested includes:
- (a) A copy of the police arrest affidavit, arrest report or similar document.
 - (b) A certified copy of the charges.
 - (c) A certified copy of the plea, judgment, and sentence where applicable.
 - (d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.
 - (e) A certified copy of an order of termination of probation or supervised release, if applicable.

If the requested documentation cannot be obtained, the relevant person shall submit evidence of that fact in order for the applicant to be deemed complete. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed on Form MU1, MU2, or MU4 is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.00255(1)(s), F.S.

(b) If the Office discovers the relevant person's failure to disclose any part of a law enforcement record required to be disclosed on the Form MU1, MU2, or MU4 after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:

1. Suspension for 12 months if, had the application been accurate, the application would have been granted, based on the statutes and rules applicable to the application at the time the Office granted licensure.

2. Revocation if, had the application been accurate, the application would have been denied, based on the statutes and rules applicable to the application at the time the Office granted licensure.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C and D as listed in subsections (14), (15), (16) and (17) of this rule.

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

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

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

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

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

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

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

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

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

(5) Applicants With Multiple Crimes.

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

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

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

(6) Mitigating Factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Effect of Varying Terminology.

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

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

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

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

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

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

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

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while a relevant person is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant when a relevant person has been released from imprisonment, based upon a charge of criminal conduct that would authorize denial of licensure under Chapter 494, F.S., until the later of the period otherwise set out in the rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare. For the purposes of this section, the term "imprisonment" shall include confinement in a state or federal prison or county jail for a period of more than one year.

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

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

(14) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute

a complete or exclusive list of all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.

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

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand Theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity theft.

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

(n) Misuse of public office.

(o) Racketeering.

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

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

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

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

(v) Money Laundering.

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

(a) Murder in all degrees.

(b) Arson.

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

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

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

(f) Rape.

(g) Sexually molesting any minor.

(h) Sexual battery.

(i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(j) Kidnapping.

(k) Video Voyeurism.

(16) Class "C" Crimes include all felonies not Class "A" or Class "B" Crimes.

(17) Class "D" Crimes includes any misdemeanor that involves fraud, dishonesty, or any other act of moral turpitude.

(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

(19) For purposes of this rule, "certified" means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer's office and the issuer's seal, if any.

(20) Uniform Mortgage Lender/Mortgage Broker Form, MU1; Uniform Mortgage Biographical Statement & Consent Form, MU2; and Uniform Individual Mortgage License/Registration & Consent Form, MU4, are incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2)(c) FS. Law Implemented 494.0011(2)(c), 494.00312, 494.00321, 494.00611FS.

History – New

69V-40.002 Adoption of Forms.

(1) The forms referred to in this section below are incorporated by reference and readopted by this rule for the purposes of Rules 69V-40.001-.290, F.A.C.:

~~(a) Application for Mortgage Brokerage Business and Lender License, Form OFR-494-01, effective December 25, 2008;~~

~~(b) Application for Branch Office License, Form OFR-494-02, effective March 23, 2008;~~

~~(c) Application for Licensure as a Mortgage Broker, Form OFR-494-03, effective December 25, 2008;~~

~~(d) Application for a Mortgage Business School Permit, Form OFR-494-04, effective March 23, 2008;~~

~~(e) Mortgage Brokerage and Mortgage Lending Act Surety Bond, Form OFR-494-05, effective March 23, 2008;~~

~~(f) Mortgage Lender License Renewal and Reactivation Form, Form OFR-494-06, effective March 23, 2008;~~

~~(g) Mortgage Broker License Renewal and Reactivation Form, Form OFR-494-07, effective March 23, 2008;~~

~~(h) Quarterly Report Form, Form OFR-494-08, effective March 23, 2008;~~

- (i) Mortgage Brokerage Deposit Account Form, Form OFR 494-09, effective March 23, 2008;
- (j) Mortgage Brokerage Transaction and Lending Journal, Form OFR 494-10, effective March 23, 2008;
- (k) Calculation of Aggregate Value of Mortgage Loans Serviced, Form OFR 494-11, effective March 23, 2008;
- (l) Non-Institutional Investor's Funds Account Form, Form OFR 494-12, effective March 23, 2008.
- (m) FL921050Z, Florida Fingerprint Card, effective March 23, 2008.

(a) Registry Forms:

1. Uniform Mortgage Lender/Mortgage Broker Form, MU1, dated 1/25/2010.
2. Uniform Mortgage Biographical Statement & Consent Form, MU2, dated 1/25/2010.
3. Uniform Mortgage Branch Office Form, MU3, dated 1/2/2008.
4. Uniform Individual Mortgage License/Registration & Consent Form, MU4, dated 1/25/2010.

(b) Florida Forms:

1. Mortgage Brokerage Deposit Account Form, Form OFR-494-09, effective March 23, 2008;
2. Mortgage Brokerage Transaction and Lending Journal, Form OFR-494-10, effective March 23, 2008;
3. Calculation of Aggregate Value of Mortgage Loans Serviced, Form OFR-494-11, effective March 23, 2008;
4. Non-Institutional Investor's Funds Account Form, Form OFR-494-12, effective March 23, 2008.
5. Declaration of Intent to Engage in Contract Loan Processing, Form OFR-494-13, effective _____.

(2) All forms adopted by this rule are available on the Office's website at www.flofr.com and by mail from the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 215.405, 494.0011(2), 494.0016(4), 494.00312(2), 494.00313(1), 494.00321(1), 494.00322(1), 494.00331(2), 494.0036(2), 494.00611(2), 494.00612(1), 494.0066(2) FS. Law Implemented 494.0016, 494.00312, 494.00313, 494.00321, 494.00322, 494.00331, 494.0036, 494.00611, 494.00612, 494.0066, 494.0025, 494.0033, 494.0041, 494.0042, 943.053 FS. History—New 3-23-08, Amended 12-25-08, _____.

69V-40.003 Electronic Filing of Forms and Fees.

- (1) For purposes of this rule, "REAL System" means the Office of Financial Regulation's Regulatory Enforcement and Licensing System, which is accessible through the Office of Financial Regulation's website at www.flofr.com.
 - (2) All forms adopted under paragraphs 69V-40.002(1)(a) through (d) and (f) through (h), F.A.C., must be filed with the Office of Financial Regulation through the REAL system.
 - (3) All fees required to be filed with the Office of Financial Regulation under Chapter 69V-40, F.A.C., must be filed through the REAL System.
 - (4) Any person may petition for a waiver of the requirement of electronic filing of any form or fee under Chapter 69V-40, F.A.C., by filing a petition under Rule 28-106.301, F.A.C. The petition must demonstrate a technological or financial hardship that entitles the person to file the form or fees in a paper format. The Office of Financial Regulation will provide any person granted a waiver under this subsection a hardcopy version of the applicable form.
- (1) All forms adopted under Rule 69V-40.002(1)(a), F.A.C., must be electronically filed through the Registry.

(2) Unless otherwise specifically instructed in this Rule Chapter all fees required in conjunction with an initial application, amendment, and license renewal must be filed electronically through the Registry.

(3) Annual Financial Audit Reports required in Section 494.0063, F.S. must be filed electronically through the Registry.

Proposed Effective Date: October 1, 2010

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

69V-40.008 Fees and Commissions.

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

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

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

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

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

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

1. Appraisal fee charged to obtain a statement of property value for the lender prior to closing. This subparagraph shall not be construed to prevent a licensee or lender from setting reasonable criteria for the selection of an appraiser;
2. Inspection fees required by the lender, its agents, or a governmental body or agency or quasi-governmental body or agency for the security property;
3. Loan assumption fee and a transfer fee charged to enable the buyer to assume existing loans;
4. Pest inspection fee charged to cover inspections for termites or other pest infestations;

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

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

(4)(a) Premiums or other charges for life, credit life, accident, health, or loss-of-income insurance written in connection with a loan are not included in determining the loan origination ~~mortgage broker~~ fee if:

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

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

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

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

(7) In determining the maximum fees or commissions on the gross proceeds of a loan, the following method may be

used: On loans in excess of \$1,000 and not over \$5,650, add \$1,500 to the gross proceeds of the loan and divide that sum by 11; and, on loans of \$5,760 and over, divide the gross proceeds by 11 and add \$227.27. On loans that are over \$5,650 but less than \$5,750, the maximum fee is the amount in excess of \$5,000.

~~(8) If a mortgage brokerage business brokers an extension of the maturity date of the unpaid portion of an existing mortgage loan previously brokered by him, the total fees and commissions he may charge or receive on both the original transaction and the extension may not exceed in the aggregate the amount of costs and expenses permitted in subsection 494.0042(2), F.S.~~

~~(8) (9)~~ No person shall charge or exact, directly or indirectly, from the mortgagor or lender a fee or commission in excess of the maximum fees or commissions as set forth herein. All fees paid to or on behalf of the licensee including, but not limited to, bonus plans, advertisement allowances, incentive plans, kick-backs, premiums or discounts whether paid directly or indirectly or to an affiliate firm in which the licensee has an ownership interest, must be included in determining the maximum loan origination ~~brokerage~~ fees.

~~(9) (10)~~ All loan origination ~~brokerage~~ fees to other mortgage ~~brokers~~ ~~brokerage~~ businesses disbursed from the loan proceeds shown on the closing statement shall reflect the name of each mortgage ~~broker~~ ~~brokerage~~ business or co-brokering mortgage ~~broker~~ ~~brokerage~~ business paid.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2)494.0016(4), 494.0038(2)(b) FS. Law Implemented 494.0038, 494.0025, 494.0041, 494.0042 FS. History—Revised 9-23-65, Amended 9-1-67, 5-8-68, Renumbered from 3-3.08 to 3D-40.08 on 9-8-75, Amended 9-29-75, 4-27-77, Joint Administrative Procedures Committee Objection Filed—See FAW Vol. 2, No. 19, May 7, 1976, Joint Administrative Procedures Committee Objection Withdrawn—See FAW Vol. 3, No. 30, July 29, 1977, Amended 7-6-78, 2-5-80, 8-17-83, Formerly 3D-40.08, Amended 1-5-87, 5-24-89, 8-24-92, Formerly 3D-40.008, Amended 3-23-08,___.

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

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

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

1. Personal bankruptcy within the previous year.
2. Bankruptcy within the previous year of any organization based on events that occurred while the relevant person was a control person.
3. Outstanding tax lien or other governmental lien.
4. Outstanding judgment based upon grounds of fraud, embezzlement, misrepresentation, or deceit.
5. Open collection account or account that is actively assigned to a collection agency.
6. Any account that has been "charged off" within the previous 5 years and remains unpaid.
7. Foreclosure on personally owned property within the last 5 years.

(b) "Charge off" means an account that has been identified by the creditor as an uncollectable debt. A charged off account is normally reported on the credit report as an R9, I9, or M9.

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

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

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

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

1. Copies of satisfaction of judgment.

2. Copies of satisfaction of outstanding tax liens or other governmental liens.

3. Copies of court documents that reflect the substance of the matter and how the matter was resolved or adjudicated.

4. Copies of recent account statements or letters from the creditors explaining the current status of accounts. The account statement or letter from the creditor must be dated within 30 days after the received date of the application or the Office's request, whichever is later. For security purposes, the relevant person may redact all but the last four (4) digits of the account number prior to submitting the document to the Office.

5. Copies of tax returns, pay stubs, or other documentation of income.

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

(3) Procedure for Reviewing Adverse Credit History Information.

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

1. The relevant person's entire credit history as reflected in the credit report.

2. The information provided by the relevant person under subsection (2).

3. The responses contained in the license application.

4. The previous licensing history with the Office including whether the relevant person was named in any regulatory action by the Office.

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

Proposed Effective Date: October 1, 2010

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

69V-40.021 Fictitious Name Registration.

No mortgage business school, mortgage brokerage business or lender having a license or permit pursuant to Chapter 494, F.S., will be permitted to use a fictitious name unless they have provided evidence to the Office of Financial Regulation that such fictitious name is duly registered with the Florida Secretary of State, pursuant to Section 865.09, F.S.

Proposed Effective Date: October 1, 2010

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

69V-40.022 Quarterly Report Filing Requirements.

(1) Each mortgage brokerage business, correspondent mortgage lender, mortgage lender, and mortgage lender licensed pursuant to the savings clause, that was licensed with the Office of Financial Regulation on or before March 31, 2000, shall file an initial quarterly report on or before April 30, 2000 as required by subsections 494.004(6) and 494.0067(9), F.S. Thereafter, a quarterly report shall be filed as required by subsections 494.004(6) and 494.0067(9), F.S., within 30 days of the end of each calendar quarter.

(2) Each mortgage brokerage business, correspondent mortgage lender, mortgage lender and mortgage lender licensed pursuant to the savings clause, that becomes licensed with the Office of Financial Regulation after March 31, 2000, shall file an initial quarterly report within 30 days of the end of the calendar quarter in which the original license is issued, and thereafter shall file a quarterly report as required by subsections 494.004(6) and 494.0067(9), F.S.

(3) The report shall be filed electronically on Form OFR-494-08 by accessing the Office of Financial Regulation's website at www.flofr.com.

(a) Any person may petition for a waiver of the requirement of electronic filing of quarterly reports by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the quarterly report in a paper format. Such petitions are timely filed if received by the

office by the quarterly report filing deadline.

(b) Any person granted a waiver pursuant to paragraph (3)(a) above will be provided a copy of Form OFR-494-08.

(4) All reports shall be filed with the Office of Financial Regulation within thirty (30) days after the last day of each calendar quarter. If the 30th day falls on a weekend or official holiday such reports will be considered timely filed on the next business day.

(5) If a correct initial report or correct quarterly report thereafter is not timely received (incidental and isolated clerical errors or omissions shall not be considered a violation) as required by subsection 494.004(6), F.S., or subsection 494.0067(9), F.S., the penalty shall be the issuance of a "notice of noncompliance" for the first offense. Any subsequent finding of a violation of this rule shall be a fine of \$500. The penalty for any intentional violations of this rule shall be a fine of \$500 and suspension of the license.

(6) Form OFR-494-08 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011(2), 494.004(7), 494.0067(9) FS. Law Implemented 494.0011(2), 494.004(7), 494.0067(9) FS. History—New 11-7-00, Formerly 3D-40.022, Amended 3-23-08, Repealed .

69V-40.025 Mortgage Broker Examination.

(1) For purposes of this rule, "REAL System" means the Office of Financial Regulation's Regulatory Enforcement and Licensing System, which is accessible through the Office of Financial Regulation's website at www.flofr.com.

(2) Upon receipt of an application filed through the REAL System, each test candidate will be responsible for scheduling his or her mortgage broker examination with the Office of Financial Regulation or its designee. In addition to any application fee as prescribed by Chapter 494, F.S., and any other fee required by administrative rule, the candidate shall pay \$43 for the mortgage broker examination and every retake of the examination. The Office of Financial Regulation or its designee shall be responsible for the administration and grade notification of the Mortgage Broker Examination.

(3) All examinations shall be administered and supervised by proctors who are Office of Financial Regulation employees or its designees. During the examination the examinees shall abide by the instructions of the proctors. Specific instructions for completion of the examination shall be communicated prior to the examination and the examinees shall be permitted to ask reasonable questions relating to the instructions. The Office of Financial Regulation or its designee shall be responsible for determining that the student taking the examination is the actual person authorized to take the examination. Examinees shall not give or receive help from other examinees. There shall be no talking or communication between the examinees while the exam is in progress. Reference materials shall not be permitted in the examination room unless specifically authorized in the instructions.

(4) Cheating on an examination or violating test center or examination procedures published orally, in writing, or electronically at the test site by Office of Financial Regulation employees or its designees shall be grounds for denial of licensure by the Office of Financial Regulation.

(5) Candidates failing the examination will be notified of the review procedures and will be responsible for requesting a retake of the mortgage broker examination through the REAL system. Candidates will not be permitted

to request an examination that will be conducted on a date beyond the candidate's ninety (90) day application period. Candidates who fail the examination may request a review of their previous examination one time, for a \$30 fee, and must do so through the REAL system. Candidates reviewing shall have the right to have access to the examination questions, their examination responses, and the correct answers. Rules of examinee conduct during the review are the same as those for the examination.

(6) Examinations will be written and composed of 110 (100 scored and 10 pretest questions) multiple choice questions. Examination scores will be computed based on the following criteria:

(a) The examination will be scored on the basis of 100 points.

(b) An applicant who receives a grade of 75 points or higher shall be passed. A passing score will be valid for a period of 2 years from the date of passing the examination.

(c) Test scores will be derived from the number of correct responses.

(7) Candidates will be allowed 3 hours to complete the examination. Candidates will be permitted to use a non-programmable hand held or battery type calculator.

(8) Notification of results. The applicant will be notified of the results of the examination by the Office of Financial Regulation or its designee.

Proposed Effective Date: October 1, 2010

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

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

Section 494.0033, F.S., requires any person applying for a mortgage brokerage license after July 1, 1992, to have completed twenty-four (24) hours of classroom education prior to becoming licensed. The curriculum for the education shall cover primary and subordinated financing transactions, the provisions of Chapter 494, F.S., and Chapter 69V-40, F.A.C., federal statutes which apply to the financing of real estate, current and accepted mortgage principles and technical information basic to the mortgage broker profession, and shall include the following:

(1) Demonstrate customer relationship skills as related to a mortgage broker. The student should be able to:

(a) Assist and advise customers in selecting loan programs, including interest rate, discount points and fees.

(b) Provide customer with required disclosures (good faith estimate, Reg-Z, ARM rate, lock in, etc.)

(c) Interpret and satisfy commitment contingencies with borrower.

(d) Explain the commitment of a lender.

(e) Demonstrate basic knowledge of the FAR/BAR real estate sale contract as it relates to financing real estate.

(f) Discuss types of real estate ownership with the consumer and determine how title shall be held.

(g) Explain closing documents and the procedure for determining that the borrower fully understands these documents. These documents include the following:

1. The note.

2. Mortgage contract.

3. HUD-1 closing statement.

(h) Demonstrate the ability to explain the need and technical basis for the following:

1. Property inspection.

2. Survey.

3. Title insurance.

4. Restrictive covenants; deed restrictions; encroachments.

(i) Understand the pertinent provisions in a standard mortgage contract. Explain the purpose and use of a contract for deed.

(2) Demonstrate the ability to prepare, explain and execute written and oral communications. The student should be able to:

(a) Prepare, explain, execute and deliver brokerage agreement to the consumer.

(b) Demonstrate the ability to understand and explain FNMA application procedures including required disclosures; knowledge of credit report procedures; verifications of income, deposit and employment.

(c) Demonstrate basic knowledge of the appraisal process and identify FNMA appraisal procedures.

(d) Evaluate appraiser's conclusions for support by accurate, complete and consistent data.

(3) Explain and compute the mathematical skills necessary for success as a mortgage broker. The student should be able to:

(a) Calculate brokerage fees for gross loans and net loans.

(b) Prepare, explain, execute, and deliver a good faith estimate of maximum costs to the consumer.

(c) Calculate and analyze ratios of house payment to income and total obligations to income to determine acceptability according to FNMA standards.

(d) Calculate loan to value ratios, origination fees, and discounts.

(e) Understand and calculate documentary stamp tax on deed and mortgage, intangible tax on mortgage, calculation of daily interest and pro rata of ad valorem tax.

(f) Calculate rate changes on ARMS (Adjustable Rate Mortgages).

(g) Convert hourly and weekly salaries to monthly income to compare income ratios.

(4) Identify and explain state laws and policies in regards to mortgage brokerage and lending procedures. The student should have a knowledge of the following:

(a) The "Definitions" and all subjects identified in the General Provisions, Part I, of Chapter 494, F.S.

(b) "Prohibited Practices" discussed in the General Provisions, Part I, of Chapter 494, F.S.

(c) Principles necessary to establish and operate a mortgage brokerage business.

(d) The authority of the various licensees in Chapter 494, F.S.

(e) The rules in Chapter 69V-40, F.A.C., which apply to a mortgage brokerage business, including, but not limited to: definition of moral turpitude, restoration of civil rights, and mortgage brokerage file requirements.

(f) The difference in licensing requirements for the two types of lenders; exemptions; lock in procedures; fines and penalties for lenders; and ability to sell and service a loan for non-institutional investor.

(g) Penalties for failure to comply with Chapter 494, F.S., and the administrative rules in Chapter 69V-40, F.A.C.

(5) Explain federal laws which affect mortgage brokerage and lending transactions in the state of Florida. The

student should understand the following federal statutes and/or procedures:

(a) Truth in Lending Act; Real Estate Settlement Procedures Act (RESPA); Fair Credit Reporting Act; Equal Credit Opportunity Act; and National Flood Insurance Act.

(b) Various government agencies which administer the federal statutes named in paragraph (a) above.

(6) Demonstrate knowledge of FNMA underwriting procedures. The student should be able to perform the following based on FNMA Guidelines:

(a) Demonstrate the ability to verify that the property is adequate security for the loan. Assess value of property, area markets and adverse conditions.

(b) Explain the requirements for determining if property meets investor's guidelines. Assess physical aspects such as age, location, drainage and utilities.

(c) Analyze stability of employment and probability of continued employment at verified income level.

(d) Analyze acceptability of credit history. Understand how to read a credit report.

(e) Calculate and analyze status of house payments to income and total obligations to income to determine acceptability.

(f) Analyze income tax returns of self-employed borrowers to confirm monthly average income.

(g) Determine that funds for closing and sources of those funds are acceptable.

(h) Determine and collect necessary exhibits to clear all underwriting contingencies.

(i) Understand the procedures for issuing adverse action notices.

(j) Assemble for submission an entire loan package for underwriting.

(7) Demonstrate basic business operations applicable to mortgage brokerage and banking. The student should be able to:

(a) Arrange rate lock in. Identify and satisfy any outstanding commitment contingencies.

(b) Investigate and confirm application data including, but not limited to, credit report and property appraisal.

(c) Determine that survey of property has been arranged and guidelines have been met. Ascertain that no encroachments exist.

(d) Arrange for property inspection.

(e) Evaluate and review title insurance policy. Understand owners vs. mortgagee's policy. Define acceptable exceptions on an ALTA policy according to FNMA guidelines.

(f) Demonstrate the ability to arrange for funds in the amount of loan proceeds and disburse to proper parties. Understand the various methods of funding a loan.

(g) Discuss and identify principles and practices of mortgage brokerage and banking.

(h) Understand and explain the function and operation of Private Mortgage Insurance (PMI) and know when it is required.

(i) Explain to the customer the meaning of the terms: novation, assumption of mortgage, subject to the mortgage, and release of liability.

(8) Demonstrate knowledge and understanding of the secondary mortgage market by explaining the following principles:

- ~~(a) Terms of a loan commitment.~~
- ~~(b) FNMA eligibility requirements to purchase a single family residential conventional mortgage loan.~~
- ~~(c) Primary and secondary mortgage markets.~~
- ~~(d) Function and method of operation of FNMA, GNMA, and FHLMC.~~
- ~~(e) Method and marketing aspect of a GNMA mortgage backed pass through security consisting of FHA-VA mortgage loans.~~
- ~~(9) Demonstrate an understanding of the basic concepts of mortgage financing. The student should have an understanding of the following:~~
 - ~~(a) Fixed and adjustable rate mortgages.~~
 - ~~(b) Negative and positive amortization and when they occur.~~
 - ~~(c) Various loan products available in the marketplace such as Graduated Payment Mortgages, Reverse Mortgages, and Growing Equity Mortgages.~~
 - ~~(d) Buy down of an interest rate and its benefit to the borrower.~~
 - ~~(e) Wraparound Mortgage.~~
- ~~(10) Demonstrate the ability to explain to the borrower the following basic functions of mortgage servicing:~~
 - ~~(a) Collection and remittance of monthly payments.~~
 - ~~(b) Escrow accounts (taxes and insurance).~~
 - ~~(c) Foreclosure and/or deed in lieu of foreclosure.~~
 - ~~(d) Payoffs and/or assumptions.~~
 - ~~(e) Transfer of servicing rights from one servicer to another and effect on borrower.~~
- ~~(11) Intended Outcome: After successfully completing the program, the student should be able to:~~
 - ~~(a) Demonstrate customer relationship skills as related to a mortgage broker.~~
 - ~~(b) Demonstrate the ability to prepare, explain and execute written and oral communications which relate to the mortgage origination process.~~
 - ~~(c) Explain and compute the mathematical skills necessary for success as a mortgage broker.~~
 - ~~(d) Identify and explain federal and state laws and policies in regards to mortgage brokerage and lending procedures.~~
 - ~~(e) Utilize effective selling techniques and procedures by explaining to the consumer the various loan products available in the marketplace and advising the consumer of the advantages and disadvantages of each.~~
 - ~~(f) Demonstrate knowledge of FNMA application and underwriting procedures.~~
 - ~~(g) Demonstrate the ability to explain the loan closing process; various funding methods; secondary market procedures; and FNMA purchase requirements.~~
 - ~~(h) Demonstrate basic business operations applicable to mortgage brokerage and banking.~~
 - ~~(i) Demonstrate the ability to satisfy consumer needs by explaining the basic concepts of mortgage financing and mortgage servicing.~~

Proposed Effective Date: October 1, 2010

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

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

- (1) ~~Effective July 5, 1992, persons desiring to become licensed as a mortgage broker pursuant to Section 494.0033, F.S., shall satisfactorily complete twenty-four (24) hours of classroom study on primary and subordinated financing transactions and the provisions of Chapter 494, F.S., and Chapter 69V-40, F.A.C. The course of study shall include the curriculum for mortgage broker classroom education in Rule 69V-40.026, F.A.C.~~
- (2) ~~Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business School or an accredited college, university, community college, or area vocational-technical school in this State which offers the twenty-four (24) hour mortgage brokerage training course. Any school offering qualifying hours must include the curriculum for mortgage broker classroom education, Rule 69V-40.026, F.A.C., and the provisions of Chapter 494, F.S., and Chapter 69V-40, F.A.C., as the basis for course study.~~
- (3) ~~For the purpose of this rule "School" means any duly permitted and accredited Mortgage Business School and any accredited college, university, community college or area vocational-technical school in this State, which offers the twenty-four (24) hour mortgage brokerage training course as a condition precedent to licensure as a mortgage broker. Such course shall include the curriculum described in Rule 69V-40.026, F.A.C.~~
- (4) ~~Within five (5) days of completion of each twenty-four (24) hour mortgage broker course, each school shall submit to the Office of Financial Regulation the full name of the student, the social security number of each student, the school's name, the school's license number, if applicable, and the completion date of all students who successfully completed the course. Each school shall submit the required information on the Office of Financial Regulation's website at www.flofr.com. Each mortgage business school shall maintain student completion records for at least three (3) years from the completion dates.~~
- (5) ~~An instructor of a school who teaches a pre-licensing course may use the course toward the satisfactory completion of the pre-licensing education requirement.~~

Proposed Effective Date: October 1, 2010

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

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

- (1) ~~All persons licensed as a mortgage broker shall satisfactorily complete fourteen (14) hours of professional continuing education covering primary and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494, F.S., and the rules in Chapter 69V-40, F.A.C.~~
- (2) ~~The principal representative and each loan originator of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause shall satisfactorily complete fourteen (14) hours of professional continuing education covering primary and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494,~~

F.S., and the rules in Chapter 69V-40, F.A.C.

(3) Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business School or an accredited college, university, community college, or area vocational technical school in this State which offers the fourteen (14) hours professional continuing education course(s). Qualifying hour of at least 4 hours may be obtained by attending training courses covering the provisions of Chapter 494, F.S., and Chapter 69V-40, F.A.C., that are conducted by the Office of Financial Regulation or its Regional Offices.

(4) For the purpose of this rule, the following definitions will apply:

(a) "Hour" shall mean 60 minutes of class time, of which 50 minutes shall be instruction, with a maximum of 10 minutes of break per hour.

(b) "School" shall mean any duly permitted and accredited Mortgage Business School and any accredited college, university, community college, or area vocational technical school in this State, which offers the fourteen (14) hours professional continuing education course.

(c) "Student" shall mean all persons licensed as a mortgage broker, the principal representative, and loan originators of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause.

(d) "Good Cause" means an incident or occurrence which is beyond the control of the student and which prevents attendance. Examples of good cause include, but are not limited to, disabling accident, illness, call to military duty, or declared national emergency.

(5) The fourteen (14) hours of professional continuing education can be taken in one or more courses at one or more schools.

(6) Schools shall not issue certificates of completion to students who do not attend or complete the scheduled hours for any professional continuing education course.

(a) Schools shall be responsible for determining that the student attending or completing the professional continuing education course is the actual person scheduled to complete the class or session.

(b) At the discretion of the school, students may miss a class or session and attend a make-up class or session to complete the attendance requirements upon showing good cause.

(c) The school may hold make-up classes or sessions to accommodate the student.

(7) An instructor of a school who teaches a professional continuing education course may use the course toward the satisfactory completion of the professional continuing education requirement.

(8) Neither students nor instructors may earn professional continuing education credit for attending or instructing at any subsequent offering of the same professional continuing education course during any two (2) year period.

(9) The professional continuing education courses may be offered through classroom instruction, electronic transmission ("Internet"), or distance education ("correspondence course").

(10) The professional continuing education courses taught by using the Internet and correspondence courses shall have:

(a) Course subject matter, assignment work, scholastic standards and other related requirements substantially similar to the course offered by classroom instruction, having due regard however, to the different methods of presentation.

(b) Shall provide students with instructions on how to contact an instructor to answer inquiries. The school shall also

disclose to the student when the instructor will be available, however the instructor shall respond within 2 business days to the student's inquiries.

~~(e) When the course is in the form of a video tape or CD-Rom, the presentation must be of a quality that permits the student to view and listen to the presentation without interfering with the learning process.~~

~~(11) Within five (5) days of completion of each professional continuing education course, each permitted school shall submit to the student a certificate of completion indicating successful completion of the course, and the number of hours that course consisted of. Within five (5) days of completion of each professional continuing education course, each permitted school shall submit to the Office of Financial Regulation the full name and mortgage broker license number or social security number of each student, the school's name and license number, the number of hours completed by the student, and the completion date for individuals licensed as mortgage brokers. Each permitted school shall submit the required information on the Office of Financial Regulation's website at www.flofr.com. Each mortgage business school shall maintain all student course completion records for at least four (4) years from the completion dates.~~

Proposed Effective Date: October 1, 2010

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

69V-40.028 Permit for Mortgage Business School.

~~(1) Application Process. Each person, school, or institution desiring to obtain a permit for a Mortgage Business School shall apply to the Office of Financial Regulation by submitting the following:~~

~~(a) A completed Application for Mortgage Business School Permit, Form OFR 494 04.~~

~~(b) A nonrefundable application fee of \$500.~~

~~(c) A \$400 nonrefundable accreditation fee.~~

~~(d) For schools teaching the 24-hour pre-licensing course, all training materials that the applicant plans to distribute to course participants including a copy of all teaching aids, such as flash cards, hand-outs, audio/video materials, computer disks/eds, and any computer-based training.~~

~~(2) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within thirty (30) days from the date of the request. Failure to respond to the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application, and the application shall be denied pursuant to subsection 120.60(1), F.S.~~

~~(3) Amendments to Pending Applications. If the information contained in any application for a permit for a Mortgage Business School or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494 04. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a~~

matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office.

(4) ~~Withdrawal of Application.~~ An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. ~~Withdrawals will be deemed effective upon receipt by the Office.~~

(5) ~~Refunds.~~ If the application is withdrawn or denied, all fees are non-refundable.

(6) ~~Valid Period of Permit.~~ Upon approval of an application, a permit will be issued for the remainder of the annual license period, which ends each September 30th. The permit will be valid for this period unless the Office of Financial Regulation takes administrative action against it or unless the permit is terminated by the holder.

(7) Form OFR 494-04 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

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

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

(1) The following practices are prohibited from being used in any publicity or advertising done by mortgage business schools and will be considered a violation of subsections 494.0029(2)(c) and (d), F.S.:

(a) Making any reference or comparison to another school (named or unnamed).

(b) Any type of guarantee of non-measurable outcomes, such as, but not limited to, "satisfaction guaranteed."

(c) Any claim to being the only, largest, best, less expensive, or other such comparison.

(d) Any claim or reference as to a school's knowledge of the State of Florida Mortgage Broker Test questions and answers.

(2) For the purpose of this rule, any publicity or advertising shall include:

(a) Any written material, including but not limited to, study guides, business cards, flyers, pamphlets, and correspondence.

(b) Any electronic media, including but not limited to, video and audio tapes, cassettes, or disks.

(c) Any oral presentation, including but not limited to, speeches and telephone conversations.

(3) Pass/Fail Ratio as used in subsection 494.0029(2)(f), F.S., shall be defined as any reference to how a student or any group of students performed on the State Mortgage Broker Examination. No reference shall be made to any comparative superlatives such as, but not limited to, "excellent passing ratio" or "better than average results."

(4) The following additional practices of mortgage business schools are prohibited:

(a) Misrepresenting any material fact furnished to the Office of Financial Regulation.

(b) Failing to conduct classes or sessions for the total required hours.

(c) Allowing a proxy to complete the pre-licensing or continuing education course(s).

(d) Falsifying any pre-licensing or continuing education course completion record or other document related to the course.

(e) Offering to teach a pre-licensing or continuing education course without first being permitted as a mortgage

~~business school.~~

~~*Proposed Effective Date: October 1, 2010*~~

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

69V-40.029 Mortgage Business School Permit Renewal.

~~(1) Each active Mortgage Business School permit shall be renewed for the annual period beginning October 1 of each year upon submission of the following:~~

~~(a) A permit renewal fee of \$500.~~

~~(b) A recertification accreditation fee of \$400 for the school; and~~

~~(c) For schools teaching the 24-hour pre-licensing course, all training materials that the applicant plans to distribute to course participants including a copy of all teaching aids, such as flash cards, hand-outs, audio/video materials, computer disks/cds, and any computer-based training.~~

~~(2) Renewal fees shall be sent directly to the Office of Financial Regulation or may be paid electronically by following the applicable instructions on the Office of Financial Regulation's website at www.flofr.com. The Office of Financial Regulation shall deem a renewal received upon receipt of the requisite fees and training materials at such time as it has been date stamped by the Cashier's Office of the Department of Financial Services or the date the renewal process has been completed on the Office's website. All renewal fees and training materials must be received by September 30 of the year in which the permit expires. If September 30 falls on a Saturday, Sunday or legal holiday pursuant to Section 110.117, F.S., the renewals received on the next business day will be considered timely received.~~

~~(3) Failure to submit the fees and training materials required in subsection (1) prior to October 1 of each renewal year shall automatically result in the permit becoming expired. After the license has expired, there is no provision for reinstatement. A new application for a permit must be submitted as described in Rule 69V-40.028, F.A.C.~~

~~*Proposed Effective Date: October 1, 2010*~~

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

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

~~(1) Section 494.0029, F.S., authorizes the Office of Financial Regulation to evaluate each school by an accreditation process to determine compliance and competency of mortgage business schools and to recertify each school on an annual basis.~~

~~(2) The basis for accreditation of mortgage business schools that offer the 24-hour mortgage broker pre-licensing course and the professional education ("continuing education") will consist of the following evaluation criteria:~~

~~(a) Minimum adherence to the required curriculum.~~

~~(b) Quality and substance of course outline, workbooks and study guide available to student from school.~~

~~(c) Reference material, library and training manuals available for non-classroom study.~~

- ~~(d) Training and visual aids equipment utilized in classroom.~~
- ~~(e) Instructor's ability to convey subject matter.~~
- ~~(f) Classroom and review procedures.~~
- ~~(g) Student interviews (post-course).~~
- ~~(h) Compliance with Americans with Disabilities Act.~~
- ~~(i) Physical classroom facilities.~~
- ~~(j) Compliance with Florida Statutes and Administrative Rules.~~
- ~~(3) The basis for accreditation of mortgage business schools that only offer the 14-hour professional education ("continuing education") will consist of the following evaluation criteria:~~
 - ~~(a) Compliance with Florida Statutes and Administrative Rules.~~
 - ~~(b) Compliance with Americans with Disabilities Act.~~
- ~~(4) The accreditation process will be conducted by the Office of Financial Regulation or its designee during the license year by one or more of the following methods:~~
 - ~~(a) Pre-arranged on-site interview with owners and/or management;~~
 - ~~(b) Visitation with no prior notice to observe instructor during classroom session;~~
 - ~~(c) Questionnaires and/or personal interviews with current and former students;~~
 - ~~(d) Questionnaires completed by owners and/or management;~~
 - ~~(e) Written correspondence from prior students/student complaints;~~
 - ~~(f) Compliance with Florida Statutes and Administrative Rules.~~

Proposed Effective Date: October 1, 2010

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

69V-40.031 Application Procedure for Mortgage Broker License.

- ~~(1) Each person desiring to obtain licensure as a mortgage broker shall apply to the Office of Financial Regulation by submitting the following:~~
 - ~~(a) A completed Application for Licensure as a Mortgage Broker, Form OFR-494-03;~~
 - ~~(b) The statutory nonrefundable application fee required by Section 494.0033, F.S., which shall be the fee for the biennial period beginning September 1 of each odd-numbered year or any part thereof;~~
 - ~~(c) A completed fingerprint card (FL921050Z) mailed to the Office of Financial Regulation, 200 East Gaines St., Tallahassee, Florida 32399-0376;~~
 - ~~(d) A nonrefundable fingerprint card processing fee of \$43.25;~~
 - ~~(e) A nonrefundable mortgage broker examination fee of \$43;~~
 - ~~(f) Evidence that the applicant has completed the mortgage broker education requirements of subsection 494.0033(3), F.S.; and~~
 - ~~(g) Evidence that the applicant has passed the mortgage broker examination as defined in Rule 69V-40.025, F.A.C.~~
- ~~(2) Request for Additional Information. Any request for additional information, including a passing score on the~~

Mortgage Broker Examination, will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(3) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Broker or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-03. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee(s), will be required. A material change means a change to a response to the disclosure questions listed in section 10 on Form OFR-494-03.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(5) Refunds. If the application is withdrawn or denied, the application fee and fingerprint processing fee are nonrefundable.

(6) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.

(7) All applications, fees, data and forms required, except the fingerprint card, to be filed under this rule shall be filed electronically at www.flofr.com. An application and fees submitted electronically on the Office's website shall be considered received on the date the Office issues a confirmation of submission and payment to the applicant via the Office's website. A confirmation is issued by the Office upon successful submission of an application and payment of all fees.

(8) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, Florida Administrative Code. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format.

(9) Form OFR-494-03 and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Specific Authority 215.405, 494.0011(2) FS. Law Implemented 120.60(1), 494.0033 FS. History—New 10-30-86, Amended 1-30-89, 5-23-89, 11-28-89, 10-1-91, 6-8-92, 6-3-93, 6-6-93, 4-25-94, 5-14-95, 9-3-95, 11-24-97, 8-22-99, 12-12-99, 12-11-03, Formerly 3D-40.031, Amended 5-24-05, 3-23-08, 12-25-08, 3-4-09, Repealed.

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

~~(1) General Procedure Regarding Law Enforcement Records. At the time of submitting a mortgage broker application, an applicant for a mortgage broker license shall disclose on the application form any pending criminal charges and all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation, as specified in this rule, relating to: 1) all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", "C", or "D" crime as described in this rule, 2) any pending criminal charges relating to a class "A", "B", "C", or "D" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:~~

- ~~(a) A copy of the police arrest affidavit, arrest report or similar document.~~
- ~~(b) A certified copy of the charges.~~
- ~~(c) A certified copy of the plea, judgment, and sentence where applicable.~~
- ~~(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.~~
- ~~(e) A certified copy of an order of termination of probation or supervised release, if applicable.~~

~~(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.~~

- ~~(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (1) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), F.S.~~
- ~~(b) Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", "C" or "D" crime and the applicant has disclosed the crime on the application form.~~
- ~~(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:~~
 - ~~1. Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.~~
 - ~~2. Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.~~

~~(3) Classification of Crimes.~~

- ~~(a) The Office makes a general classification of crimes into four classes: A, B, C, and D as listed in subsections (15), (16), (17), and (18) of this rule.~~

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

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

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

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

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

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

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

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

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

(5) Applicants With Multiple Crimes.

(a) The Office construes Section 494.0041, F.S., to require that an applicant whose law enforcement record includes multiple crimes wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

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

(6) Mitigating Factors.

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

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.
2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.
3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.
4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.
5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.
 - (b) In no event shall the aggregate mitigation result in less than a seven (7) year disqualifying period where the underlying crime committed was a felony.
 - (c) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.
- (7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:
 - (a) Type of Plea. The Office draws no distinction among types of plea, i.e., found guilty; pled guilty; pled nolo contendere.
 - (b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.
 - (c) The Office finds that subjective factors involving state of mind have no mitigating weight.
- (8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.
 - (a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office

will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

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

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

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

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

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application. In such situations the Office policy is as follows:

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

2. However, if the applicant did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), F.S.

(11) Effect of Restoration of Civil Rights.

(a) An applicant must disclose crimes even where civil rights have been restored.

(b) If a person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, F.S., and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(12) Effect of Varying Terminology.

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

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

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

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

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

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

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

~~(13) Imprisoned Persons and Community Supervision.~~

~~(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare.~~

~~(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.~~

~~(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.~~

~~(15) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of all crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.~~

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

~~(b) Perjury.~~

~~(c) Armed robbery.~~

~~(d) Robbery.~~

~~(e) Extortion.~~

~~(f) Bribery.~~

~~(g) Embezzlement.~~

~~(h) Grand theft.~~

~~(i) Larceny.~~

~~(j) Burglary.~~

~~(k) Breaking and entering.~~

~~(l) Identity Theft.~~

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

~~(n) Misuse of public office.~~

- ~~(o) Racketeering.~~
- ~~(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.~~
- ~~(q) Treason against the United States, or a state, district, or territory thereof.~~
- ~~(r) Altering public documents.~~
- ~~(s) Witness tampering.~~
- ~~(t) Tax evasion.~~
- ~~(u) Impersonating or attempting to impersonate a law enforcement officer.~~
- ~~(v) Money laundering.~~
- ~~(16) Class "B" Crimes include the following list of felonies, or similar felonies, and the Office finds that such crimes constitute crimes of moral turpitude.~~
 - ~~(a) Murder in all degrees.~~
 - ~~(b) Arson.~~
 - ~~(c) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.~~
 - ~~(d) Aggravated Assault (e.g., as with a deadly weapon).~~
 - ~~(e) Aggravated Battery (e.g., as with a deadly weapon).~~
 - ~~(f) Rape.~~
 - ~~(g) Sexually molesting any minor.~~
 - ~~(h) Sexual battery.~~
 - ~~(i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.~~
 - ~~(j) Kidnapping.~~
- ~~(17) Class "C" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" or Class "B" crimes.~~
- ~~(18) Class "D" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.~~
- ~~(19) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:~~
 - ~~(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;~~
 - ~~(b) The degree of penalty associated with the same or similar crimes in the United States; and~~
 - ~~(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.~~

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0033, 494.0041 FS. History—New 12-2-08, Repealed .

69V-40.0312 Application procedure for Loan Originator license.

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

(a) A completed Uniform Individual Mortgage License/Registration & Consent Form, MU4, filed through the Registry;

(b) The statutory nonrefundable application fee of \$195 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$20 filed through the Registry;

(d) Evidence that the applicant has been awarded a high school diploma or the equivalent;

(e) Confirmation from the Registry that the applicant has satisfied the requirement to complete a 20-hour pre-license class approved by the Registry.

(f) Confirmation from the Registry that the applicant has satisfied the requirement to pass a test developed by the Registry and administered by a provider approved by the Registry. For the purposes of this rule, a test developed by the Registry and administered by a provider approved by the Registry includes both a national component and a state component. (g) Submit fingerprints to the Registry for submission to the Federal Bureau of Investigation for a federal criminal background check;

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

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00312(2) FS. Law Implemented 494.0011(2), 494.00312, FS. History–New

69V-40.0313 Loan originator license renewal.

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

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

(b) Submit a total payment of \$195.25 paid through the Registry which includes the following:

1. \$150 nonrefundable renewal fee;

2. \$20 nonrefundable mortgage broker guaranty fund fee, and

3. \$25.25 to cover further costs of criminal background check.

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

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

(3) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00312, F.S., and Rules 69V-40.0112 & 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the loan originator license which shall be valid until December 31 of the year following the expiration date of the loan originator license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renew request pursuant to Section 494.00313(2), F.S.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00313, FS. Law Implemented 494.0011(2), 494.00313, FS. History–New

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

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

(a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;

(b) The statutory nonrefundable application fee of \$425 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100 filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

(e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4c03-9993-379244e0da50/livescan.aspx>) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal

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

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

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

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

69V-40.0322 Mortgage Broker License Renewal.

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

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

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

1. \$375 nonrefundable renewal fee; and

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

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

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

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

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

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

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00321, F.S., and Rules 69V-40.0112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0322(2), F.S.

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00322, FS. Law Implemented 494.0011(2), 494.00322, FS. History—New

69V-40.033 Disciplinary Guidelines for Mortgage Business Schools.

Each permitted and accredited mortgage business school which violates any provision of Chapter 494, F.S., or which fails to achieve minimum standards in the accreditation process described in Rule 69V-40.030, F.A.C., shall be subject to the following disciplinary guidelines:

(1) Failure to achieve minimum standards of accreditation shall result in any of the following penalties:

(a) Reprimand,

(b) Suspension;

(c) Revocation, and/or

(d) Probation.

(2) The probation shall be for such period of time and subject to such conditions as the Office of Financial Regulation may specify.

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011(2), 494.0029 FS. Law Implemented 494.0029, 494.0041 FS. History—New 11-5-95, Amended 12-9-01, Formerly 3D-40.033-, Repealed

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

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

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

(b) Submit a completed Form OFR-494-14 (Declaration of Intent to Engage Solely in Loan Processing) to the Office.

(2) Form OFR-494-14 (Declaration of Intent to Engage Solely in Loan Processing) is incorporated by reference in Rule 69V-40.002, F.A.C.

(3) A person who currently has on file with the Office a Declaration of Intent to Engage Solely in Loan Processing may withdraw the declaration by filing Form OFR-494-14 (Declaration of Intent to Engage Solely in Loan Processing) indicating on the form the person's intent to withdraw the declaration.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.00331, FS. Law Implemented 494.00331, FS. History—New—

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

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

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0036(2), FS. Law Implemented 494.0011(2), 494.0036, FS. History—New

69V-40.043 Mortgage Broker License Renewal and Reactivation.

~~(1) Each active mortgage broker license shall be renewed for the biennial period beginning September 1 of each odd-numbered year upon submission of the statutory renewal fee required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and a completed renewal form, Form OFR 494-07, Mortgage Broker License Renewal and Reactivation Form.~~

~~(2) A mortgage broker license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive license may be reactivated within two (2) years after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

~~(3) A mortgage broker license that is not renewed within two (2) years after becoming inactive shall expire.~~

~~(4) The Office of Financial Regulation shall not renew or reactivate a mortgage broker license if the minimum continuing education requirements are not satisfied prior to the renewal or reactivation.~~

~~(5) The licensee is responsible for maintaining copies of the certificate of completion for all continuing education courses completed and shall supply them to the Office of Financial Regulation upon request.~~

~~(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.~~

~~(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format. If the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.~~

~~(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.~~

~~(9) Form OFR 494-07 is incorporated by reference in subsection 69V 40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

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

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

~~(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494-01;~~

~~(b) The statutory, nonrefundable application fee required by Section 494.0031, F.S., which shall be the fee for the~~

biennial period beginning September 1 of each even-numbered year or any part thereof.

(c) Evidence that the applicant's designated principal broker has been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Office of Financial Regulation that the designated principal broker has been actively engaged in a mortgage-related business for at least one year.

(d) For the purpose of this rule, examples of "actively engaged in a mortgage-related business" shall include, but are not limited to, the following positions that are engaged in the origination, underwriting, closing, and servicing of mortgage loans: loan originator, loan underwriter, officer, or director of a mortgage lender or correspondent mortgage lender; mortgage loan officer of a financial institution; mortgage broker in another state; loan closer for a title insurance company or agency; loan representative, loan underwriter, officer, or director of a private mortgage insurance company; and regulator that is directly responsible for the examination, investigation, or regulation of mortgage companies from this state, another state, or a federal government agency.

(2) Each ultimate equitable owner of 10% or greater interest, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for licensure as a mortgage brokerage business, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR-494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If any ultimate equitable owner of 10% or greater interest, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, control person, member, partner, joint venturer, of the applicant holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership interest or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty five (45) days from the date of the request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Brokerage Business or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-01. An applicant may amend the application as to those factors generally within the control or selection of the applicant

once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:

- (a) A change to a response to the disclosure questions listed in section 8 on Form OFR-494-01,
 - (b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR-494-01, or
 - (c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal broker.
- (5) ~~Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~
- (6) ~~Refunds. If the application is withdrawn or denied, the all fees are nonrefundable.~~
- (7) ~~Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~
- (8) ~~Form OFR-494-01 and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

69V-40.0511 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business

Licensure.

(1) ~~General Procedure Regarding Law Enforcement Records. For purposes of this rule each officer, director, control person, member, partner, or joint venturer of a Mortgage Brokerage Business License applicant, and each ultimate equitable owner with a 10 percent or greater interest in the applicant shall be referred to collectively as "relevant persons." If the applicant is a natural person, he or she is a relevant person under this rule. At the time of submitting a Mortgage Brokerage Business Application, the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class "A", "B", or "C" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the~~

agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

- (a) A copy of the police arrest affidavit, arrest report or similar document.
- (b) A certified copy of the charges.
- (c) A certified copy of the plea, judgment, and sentence where applicable.
- (d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.
- (e) A certified copy of an order of termination of probation or supervised release, if applicable.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) herein is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), F.S.

(b) Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", or "C" crime and the applicant has disclosed the crime on the application form.

(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:

1. Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.
2. Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.

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

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

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

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

~~(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.~~

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

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

~~(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.~~

~~(5) Relevant Persons With Multiple Crimes:~~

~~(a) The Office construes Section 494.0041, F.S., to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.~~

~~(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.~~

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

~~(6) Mitigating Factors:~~

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

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

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

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

~~4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is~~

~~currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.~~

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

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

~~(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:~~

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

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

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

~~(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.~~

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

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

~~(9) Pre Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.~~

~~(10) Effect of Sealing or Expunging of Criminal Record.~~

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

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

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

~~2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), F.S.~~

~~(11) Effect of Restoration of Civil Rights.~~

~~(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.~~

~~(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, F.S., and the rules promulgated thereunder.~~

~~(c) The burden is upon the applicant to prove the restoration of their civil rights.~~

~~(12) Effect of Varying Terminology.~~

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

~~1. Adjudicated guilty; convicted.~~

~~2. Found guilty; entered a finding of guilt.~~

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

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

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

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

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

~~(13) Imprisoned Persons and Community Supervision.~~

~~(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.~~

~~(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or~~

~~any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.~~

~~(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.~~

~~(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.~~

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

~~(b) Perjury.~~

~~(c) Armed robbery.~~

~~(d) Robbery.~~

~~(e) Extortion.~~

~~(f) Bribery.~~

~~(g) Embezzlement.~~

~~(h) Grand theft.~~

~~(i) Larceny.~~

~~(j) Burglary.~~

~~(k) Breaking and entering.~~

~~(l) Identity Theft.~~

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

~~(n) Misuse of public office.~~

~~(o) Racketeering.~~

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

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

~~(r) Altering public documents.~~

~~(s) Witness tampering.~~

~~(t) Tax evasion.~~

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

~~(v) Money laundering.~~

~~(w) Murder in all degrees.~~

~~(x) Arson.~~

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

- ~~(z) Aggravated Assault (e.g., as with a deadly weapon).~~
- ~~(aa) Aggravated Battery (e.g., as with a deadly weapon).~~
- ~~(bb) Rape.~~
- ~~(cc) Sexually molesting any minor.~~
- ~~(dd) Sexual battery.~~
- ~~(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.~~
- ~~(ff) Kidnapping.~~
- ~~(16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.~~
- ~~(17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.~~
- ~~(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:~~
 - ~~(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;~~
 - ~~(b) The degree of penalty associated with the same or similar crimes in the United States; and~~
 - ~~(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.~~

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0031, 494.0041 FS. History—New 12-2-08; Repealed .

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

- ~~(1) Each active mortgage brokerage business license shall be renewed for the biennial period beginning September 1 of each even-numbered year upon submission of the statutory renewal fee required by Section 494.0032, F.S.~~
- ~~(2) A mortgage brokerage business license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive license may be renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0032, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~
- ~~(3) Each active mortgage brokerage business branch office license shall be renewed in conjunction with the mortgage brokerage business license renewal upon submission of the statutory renewal fee required by Section 494.0032, F.S.~~
- ~~(4) A mortgage brokerage business branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive branch office license may be renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees~~

required by Section 494.0032, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

~~(5) A mortgage brokerage business license and branch office license that is not renewed within six months after the end of the biennial period automatically expires.~~

~~(6) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.~~

~~(7) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.~~

~~(8) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the application, fees, data or form in a paper format. In the event the renewal payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.~~

Proposed Effective Date: October 1, 2010

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

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

~~(1) Every mortgage brokerage business which conducts mortgage brokerage business in this state from a branch office shall apply to the Office of Financial Regulation for a license to operate a branch office by submitting the following:~~

~~(a) A completed Application for Branch Office License, Form OFR-494-02;~~

~~(b) The statutory, nonrefundable license fee required by Section 494.0036, F.S., which shall be the fee for the biennial period beginning September 1 of each even numbered year or any part thereof.~~

~~(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.~~

~~(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty-five (45) days from the date of the request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.~~

~~(4) Amendments to Pending Applications. If the information contained in an Application for Mortgage Brokerage Business Branch Office License or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-02. An~~

applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation.

(5) ~~Withdrawal of Application.~~ An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) ~~Refunds.~~ If the application is withdrawn or denied, all fees are nonrefundable.

(7) ~~Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

(8) ~~Form OFR-494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

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

Any consumer that would like to file a complaint with the Office of Financial Regulation as a result of any provision of Section 494.00421, F.S., not being met, may contact the Office of Financial Regulation by calling (800)848-3792 or any of the Office of Financial Regulation's regional offices.

Proposed Effective Date: October 1, 2010

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

69V – 40.0611 Application Procedure for a Mortgage Lender License.

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

(a) A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1, filed through the Registry;

(b) The statutory nonrefundable application fee of \$500 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100 filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

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

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

- (g) Submit a copy of the applicant's financial audit report in compliance with Section 494.00611(2)(f), F.S.
- (2) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage lender application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to provide the requested information.
- (3) Amendments to Pending Applications. If the information contained in Form MU1-or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question 9 on the Form MU1 or question 8 on Uniform Mortgage Biographical Statement & Consent Form, MU2, shall be considered a material change to the application and grounds for denial of the application.
- (4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.
- (5) Upon approval of an application, a mortgage lender license will be issued with an expiration date of December 31 for the year in which the license was issued. Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.
- (6) Uniform Mortgage Lender/Mortgage Broker Form, MU1, and Uniform Mortgage Biographical Statement & Consent Form, MU2, are incorporated by reference in Rule 69V-40.002, F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011, 494.00611(2) FS. Law Implemented 494.0011(2), 494.00611, FS. History—New

69V-40.0612 Mortgage Lender License Renewal.

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

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

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

1. \$475 nonrefundable renewal fee; and

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

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

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

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

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

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

(4) Upon the Office determining that a renewal request has been completed the Office shall determine if the licensee continues to meet the minimum standards for licensure as set forth in Section 494.00611, F.S., and Rules 69V-40.0112 and 69V-40.0113, F.A.C. If a licensee continues to meet the minimum standards for licensure the Office shall renew the mortgage broker license which shall be valid until December 31 of the year following the expiration date of the mortgage broker license. If a licensee does not continue to meet the minimum standards for licensure the Office shall deny the renewal request pursuant to Section 494.0612(2), F.S.

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.00612, FS. Law Implemented 494.0011(2), 494.00612, FS. History—New

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

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

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

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

(2) Request for additional information. The Office shall review each mortgage lender branch office application and

inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be construed by the Office as grounds for denial of the renewal request.

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

Proposed Effective Date: October 1, 2010

Rulemaking Authority 494.0011(2), 494.0066, FS. Law Implemented 494.0011(2), 494.0066, FS. History—New

69V-40.088 Referrals.

~~(1) Any person who, for compensation or gain or in the expectation of compensation or gain, refers a borrower to a mortgage brokerage business, mortgage lender or correspondent mortgage lender is deemed to be acting as a mortgage broker requiring licensure pursuant to Chapter 494, Florida Statutes. The referring person shall enter into a written mortgage brokerage business agreement with the borrower as required by Section 494.0038, F.S. If the fee to be paid to the referring person is solely for making the referral, the mortgage brokerage business agreement shall clearly and explicitly state that the fee is being earned solely for making the referral.~~

~~(2)(a) A person acting as a mortgage brokerage business shall not assign a written mortgage brokerage business agreement to another person acting as a mortgage brokerage business, mortgage lender acting as a mortgage brokerage business or correspondent mortgage lender acting as a mortgage brokerage business unless the assignment is agreed to in writing by the borrower. The agreement to accept the assignment shall be segregated from other provisions of the written mortgage brokerage business agreement and shall include the name of the assignee. This agreement shall require the signature of the borrower apart from the borrower's original signature for entering into the mortgage brokerage business agreement.~~

~~(b) As an alternative to paragraph (2)(a) herein, the borrower may enter into a separate mortgage brokerage business agreement with the successor mortgage brokerage business, mortgage lender or correspondent mortgage lender. The separate mortgage brokerage business agreement shall identify the amount of fees to be earned by each mortgage brokerage business as compensation for acting as a mortgage broker in the mortgage brokerage transaction involved.~~

Proposed Effective Date: October 1, 2010

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

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

(1) Each person licensed as a loan originator, mortgage broker, or mortgage lender ~~mortgage broker, mortgage brokerage business, mortgage lender, correspondent mortgage lender, or permitted mortgage business school~~ which proposes to change its name, form of business organization, or any other information contained in any initial application form or any amendment thereto, must file an amendment through the Registry pursuant to Sections 494.004 494.004(6) and 494.0067 494.0067(4), F.S., not later than 30 thirty days (30) after the effective date of the change, on Form OFR-494-01 for Mortgage Brokerage Businesses and Lenders, Form OFR-494-02 for Branch

Offices, Form OFR-494-03 for Mortgage Brokers, and Form OFR-494-04 for Mortgage Business Schools. Any licensee pursuant to Section 494.0061 or 494.0062, F.S., shall additionally provide a completed surety bond, on Form OFR-494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond, executed in the new name of the licensee as documented by the requirements of this subsection. Name changes pursuant to this subsection shall not involve any change in controlling interest of the licensed entity.

(2) Each licensed mortgage ~~broker~~ ~~brokerage business, or~~ mortgage lender, ~~or correspondent mortgage lender~~ which proposes to change any of the control persons listed on the initial application or amendment thereto personnel described in Sections 494.004 and 494.0067, F.S., listed in any initial application form or any amendment thereto must file an amendment through the Registry not later than 30 thirty days (30) prior to the effective date of the change or within 2 two (2) business days after the date the licensee first received notice of the change, ~~on Form OFR-494-01 for Mortgage Brokerage Businesses and Lenders~~. In the event an amendment filed pursuant to this rule the change in personnel in Sections 494.004 and 494.0067, F.S., listed in any initial application or any amendment thereto results in the addition of new control person not previously disclosed on the license anyone referenced in this subsection, such persons must comply with Sections 494.0031(2)(e) and (d), 494.0061(2)(g) and (h), 494.0062(2)(g) and (h), or 494.0065(5)(e) and (f), F.S. unless such person is subject to the fingerprinting and credit report requirements required in Sections 494.00321 and 494.00611, F.S., unless the new control person is currently licensed as a loan originator at the time the amendment is filed through the Registry. has previously complied with an entity currently licensed under this chapter and the person is currently affiliated with such entity.

(3) Applications for licensure as a mortgage brokerage business, mortgage lender or correspondent mortgage lender required as a result of an acquisition of a controlling interest in a licensee pursuant to Section 494.004(6) and 494.0067(4), F.S., must be filed in a timely manner as to allow the Office to complete its review of the application prior to the effective date of the acquisition, but no later than thirty (30) days prior to the date of such acquisition. Such applications must be filed in accordance with Section 494.0031, 494.0061, or 494.0062, F.S.

(4) Any person who is subjected to the requirements of subsection (2) or (3) herein, and who seeks to own, control, or hold power to vote of a mortgage lender licensed pursuant to the Saving Clause, Section 494.0065, F.S., is subjected to the net worth requirements as specified in subsection 494.0065(1)(a)2., F.S., when reapplying for licensure as required in subsections (2) and (3) above. An application for licensure under this subsection shall be submitted in accordance with Rule 69V-40.100, F.A.C.

(5) The office shall waive the requirement for a licensee to file a new application pursuant to Sections 494.004(6) and 494.0067(4), F.S.:

(a) When a person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously filed the information with the Office required in Sections 494.0031(2)(e) and (d), 494.0061(2)(g) and (h), 494.0062(2)(g) and (h), or 494.0065(5)(e) and (f), F.S., with a mortgage brokerage business or lender currently licensed to the office, provided that such person is currently affiliated with the mortgage brokerage business or lender licensee; or

(b) When the acquirer is currently licensed with the office as a mortgage broker, mortgage brokerage business or lender.

(6) If the requirement to file a new application for a change in controlling interest is waived pursuant to subsection (5) of this rule, the licensee must file an amendment as prescribed in subsection (2) of this rule to report the change in controlling interest.

(7) Form OFR 494-01, Form OFR 494-02, Form OFR 494-03, Form OFR 494-04, and Form OFR 494-05 are incorporated by reference in subsection 69V-40.002(1), F.A.C.

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

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.004(1), 494.0067 FS. Law Implemented 494.0011(2), 494.00312, 494.00313, 494.00321, 494.00322, 44.0036, 494.00611, 494.00612, . 494.0066, 494.0067 494.0029(1)(d), 494.0031, 494.0061, 494.0062, 494.0065 FS. History—New 1-10-93, Amended 5-14-95, 9-3-95, 12-12-99, 11-1-00, Formerly 3D-40.099, Amended 3-23-08,___.

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

- (1) Each person who seeks to obtain a controlling ownership or voting interest in a mortgage lender licensed pursuant to the saving clause shall apply to the Office of Financial Regulation by submitting the following:
- (a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494-01;
 - (b) A nonrefundable application fee of \$500, which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;
 - (c) A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0065(4)(c)2., F.S.;
 - (d) Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, then an audited statement from the previous fiscal year end is acceptable.
 - (e) Designate a principal representative who shall operate and exercise control over the licensee's business. Each mortgage lender applicant pursuant to the saving clause transfer shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.
- (2) Each ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, control person, member, partner, or joint venturer of an entity applying for licensure as a mortgage lender licensed pursuant to the savings clause, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR-

494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If the individual owner, director, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, principal representative, control person, member, partner, or joint venturer holds an active mortgage broker's license with the Office of Financial Regulation, he or she is exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond to the request within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in any application for a license for a Saving Clause Mortgage Lender or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office to be grounds for denial and a new application, accompanied by the appropriate filing fees, will be required. Material changes include:

(a) A change to a response to the disclosure questions listed in section 8 on Form OFR-494-01.

(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR-494-01.

(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.

(d) A change to the applicant's net worth.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.

(7) Form OFR-494-01 and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

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

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

~~(1) Each person applying for a transfer in ownership or control of a saving clause mortgage lender, who also wishes to operate branch offices of that saving clause mortgage lender shall apply to the Office of Financial Regulation for a license to operate each branch office by submitting the following:~~

~~(a) A completed Application for Branch Office License, Form OFR-494-02.~~

~~(b) The statutory, nonrefundable license fee required by Section 494.0066, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.~~

~~(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.~~

~~(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty-five (45) days from the date of the request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.~~

~~(4) Amendments to Pending Applications. If the information contained in any application for a license for a branch office of a Savings Clause Mortgage Lender or any amendment thereto, becomes inaccurate for any reason, the application shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-02. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within (30) days from receipt of the application by the Office. Otherwise the application may be amended only with prior written permission from the Office of Financial Regulation.~~

~~(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(6) Refunds. If the application is withdrawn or denied, the application fee is nonrefundable.~~

~~(7) Upon approval of an application, a license will be issued for the remainder of the biennial period.~~

~~(8) Form OFR-494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

69V-40.155 Lock-in Statement.

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

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0069(6) FS. Law Implemented 494.0069(1)(f) FS. History—New 12-3-91, Formerly 3D-40.155, Amended _____.

69V-40.156 Third-party Fee Accounts.

(1) All third-party fees and refundable application fees received by a mortgage broker ~~brokerage-business~~ shall immediately be deposited in a segregated account in a federally insured financial institution located in Florida. The account shall be in the name of the mortgage broker ~~brokerage-business~~ and shall provide for withdrawal of funds without notice. The account shall be used exclusively for third-party fees and refundable application fees. The licensee shall maintain an updated and accurate record of account activity on Form OFR-494-09, Mortgage Brokerage Deposit Account Form or on a format which is substantially similar to Form OFR-494-09.

(2) For the purposes of this rule “immediately” means within 7 ~~seven (7)~~ business days of receipt of the funds.

(3) The administrative penalty for the failure to comply with this rule shall be \$500. Incidental and isolated clerical errors or omissions shall not be considered a violation of this rule. For the purposes of this rule “isolated clerical errors or omissions” shall mean less than three (3), or a percentage less than 20% of the deposit entries examined or reviewed. The penalty for intentional or repeat violations of this rule shall be a \$500 fine and suspension or revocation.

(4) For the purposes of this rule, failure to maintain an escrow account is a violation of this rule. Failure to maintain a record of account activity in a current manner is a violation of this rule. Failure to make immediate deposits as required is a violation of this rule. Each of the above shall be considered separate violations with each subject to the penalties provided therein.

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

(6) Form OFR-494-09 is incorporated by reference in Rule ~~subsection~~ 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority ~~494.0011(2), 494.0016(4) FS. Law Implemented 120.695, 494.00255(1)(a), 494.0038, 494.0068 494.0038(5), 494.0041(2)(e), 494.0068(3), 494.0072(2)(e) FS. History–New 12-3-91, Amended 7-25-96, 12-12-99, Formerly 3D-40.156, Amended 3-23-08, ___.~~

69V-40.160 Principal Brokers.

~~(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the principal broker and the individual designated shall accept responsibility by completing the Principal Broker/Representative Designation section of Form OFR-494-01.~~

~~(2) Upon any change of principal broker, the licensee and the newly designated principal broker shall amend the Principal Broker/Representative Designation section of Form OFR-494-01 pursuant to subsection 69V-40.099(1), F.A.C. Form OFR-494-01 shall be maintained at the principal office of the mortgage brokerage business. Anyone being designated as a principal broker, must have been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Office of Financial Regulation that the designated principal broker has been actively engaged in a mortgage-related business for at least one year, as defined in Rule 69V-40.051, F.A.C.~~

~~(3) The penalty for failure to maintain the Principal Broker/Representative Designation section of Form OFR-494-01 shall be the issuance of a “notice of noncompliance” for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. In cases where the failure to maintain the Principal Broker/Representative Designation section of Form OFR-494-01 is intentional, the penalty shall be a fine of \$5,000.~~

~~(4) Each licensee shall notify the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 in writing, within thirty (30) days, of the termination or resignation of a principal broker.~~

~~(5) Form OFR-494-01 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

69V-40.165 Branch Brokers.

~~(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the branch broker of the branch office, and the individual shall accept such responsibility by completing the Branch Broker/Employee in Charge section of Form OFR-494-02.~~

~~(2) Upon any change of Branch Broker, the licensee and the newly designated branch broker shall complete the Branch Broker/Employee in Charge section of Form OFR-494-02 pursuant to subsection 69V-40.099(1), F.A.C. Form OFR-494-02 shall be maintained at the applicable branch office of the mortgage brokerage business.~~

~~(3) The penalty for failure to maintain Form OFR-494-02 shall be the issuance of a “notice of noncompliance” for a~~

~~first offense. Any subsequent finding of a violation OFR 494-02 is intentional, the penalty shall be a fine of \$5,000.~~

~~(4) Each licensee shall notify the Office of Financial Regulation in writing, within thirty (30) days, of termination or resignation of a branch broker.~~

~~(5) Form OFR-494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

69V-40.170 Books and Records.

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

~~(2)(a) A licensee may maintain required books, accounts, and records at a location other than the principal place of business. The licensee must notify the Office of Financial Regulation in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376. Each licensed mortgage broker or mortgage lender which proposes to change the location of books, accounts, and records must file an amendment to Form MU1 through the Registry not later than 30 days prior to the effective date of the change.~~

~~(b) The books, accounts, and records must be stored in notification shall include confirmation by the licensee that the proposed storage facilities are a building of stationary construction wherein the books, accounts, and records will be kept in a secured location under conditions, which will not lead to the damage or destruction of the records.~~

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

~~(4) The licensee shall maintain at the principal place of business a copy of the confirmation letter from the Office of Financial Regulation to maintain its records at a location other than the principal place of business.~~

~~(4)(5)~~ All books, accounts, and records must be maintained for 3 ~~three (3)~~ years from the date of "original entry". For the purpose of this rule, "original entry" means the date the documentation was originated by the licensee or received by the licensee.

~~(5)(6)(a)~~ The penalty for maintaining books, accounts, and records at a location other than the principal place of business, without written notification to the Office of Financial Regulation, shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a \$500 fine.

(b) The penalty for refusal to permit an investigation or examination of books, accounts, and records, after a

reasonable request by the Office of Financial Regulation, shall be revocation of the license. This paragraph shall not apply to a proceeding governed by the rules of civil procedure of any state or federal court.

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

F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0016(4) FS. Law Implemented 120.595, 494.0016, 494.00255

494.0041(2) FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, 1-16-03, Formerly 3D-40.170, Amended 3-23-08,___.

69V-40.175 Mortgage Brokerage Files.

- (1) Each mortgage ~~broker~~ ~~brokerage business~~ shall maintain a file for each mortgage ~~broker~~ ~~brokerage~~ transaction. The files shall be maintained in a central location and in an alphabetical or numerical sequence.
- (2) Each file shall contain at least the following:
 - (a) Mortgage ~~broker~~ ~~brokerage~~ agreement pursuant to Section 494.0038, F.S.;
 - (b) Copy of signed closing statement or documentation of denial or cancellation of the mortgage loan application; and
 - (c) A copy of the good faith estimate of costs pursuant to Section ~~subsection~~ 494.0038(2)(c), F.S.
- (3) Supporting documentation shall be maintained for all expenses or fees paid by the licensee on behalf of the client indicating the amount and the date paid. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.
- (4) If the mortgage ~~broker~~ ~~brokerage business~~ issues to the client a written commitment for the loan on behalf of the lender then the following must be maintained in the file:
 - (a) A copy of the written commitment issued by the mortgage ~~broker~~ ~~brokerage business~~; and
 - (b) A copy of the written commitment provided by the lender.
- (5) If the mortgage ~~broker~~ ~~brokerage business~~ issues to the client a written lock-in for the loan on behalf of the lender then the following must be maintained in the file:
 - (a) A copy of the written lock-in issued by the mortgage ~~broker~~ ~~brokerage business~~; and
 - (b) A copy of the written lock-in provided by the lender.
- (6) If the mortgage ~~broker~~ ~~brokerage business~~ receives a mortgage loan application, then the mortgage ~~broker~~ ~~brokerage business~~ shall maintain a copy in the file.
- (7) If the loan is funded by a non-institutional investor then the file must also include the following:
 - (a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgment by the non-institutional investor of receipt of the appraisal or opinion of value, or
 2. A copy of a waiver of the appraisal dated and executed by the non-institutional investor.
 - (b)1. A receipt acknowledging that the non-institutional investor has been furnished with title insurance or a legal opinion of title, or
 2. A written waiver thereof.

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

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0016(4) FS. Law Implemented 494.0016, 494.00255, 494.0038,

69V-40.200 Application Procedure for Mortgage Lender License.

(1) Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a mortgage lender shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR-494-01;

(b) The statutory, nonrefundable fee required by Section 494.0061, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;

(c) A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0061(8), F.S.;

(d) Audited financial statements documenting a minimum net worth of \$250,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;

(e) A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form OFR-494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond.

(f) Designate a principal representative who shall operate and exercise control over the licensee's business. Each mortgage lender applicant shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.

(2) Each ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for licensure as a mortgage lender, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR-494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.

(a) If any ultimate equitable owner of 10% or greater interest, principal representative, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, or director of the applicant holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).

(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.

(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Office of

~~Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond to the request within ninety (90) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.~~

~~(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Mortgage Lender or in any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:~~

~~(a) A change to a response to the disclosure questions listed in section 8 on Form OFR-494-01.~~

~~(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR-494-01.~~

~~(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.~~

~~(d) A change to the applicant's net worth.~~

~~(e) Any change relating to the surety bond.~~

~~(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.~~

~~(7) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

~~(8) Form OFR-494-01, Form OFR-494-05, and Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

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

~~(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each designated principal representative and each officer, director, control person, member, partner, or joint venturer of a Mortgage Lender or Correspondent Lender License applicant, and each ultimate equitable owner with a 10 percent or greater interest in the applicant shall be referred to collectively as "relevant persons." At the time of submitting a Mortgage Lender or Correspondent Lender Application, the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class "A", "B", or "C" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:~~

~~(a) A copy of the police arrest affidavit, arrest report or similar document.~~

~~(b) A certified copy of the charges.~~

~~(c) A certified copy of the plea, judgment, and sentence where applicable.~~

~~(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.~~

~~(e) A certified copy of an order of termination of probation or supervised release, if applicable.~~

~~(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application:~~

~~(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (1) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0072(2)(c), F.S.~~

~~(b) Notwithstanding paragraph (a), the Office shall not deny an application for failure to provide documentation listed in subsection (1) when the crime is not a class "A", "B", or "C" crime and the applicant has disclosed the crime on the application form.~~

~~(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:~~

~~1. Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.~~

~~2. Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.~~

~~(3) Classification of Crimes.~~

~~(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.~~

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

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

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

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

~~(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.~~

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

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

~~(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.~~

~~(5) Relevant Persons With Multiple Crimes.~~

~~(a) The Office construes Section 494.0072, F.S., to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.~~

~~(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.~~

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

~~(6) Mitigating Factors for Class "C" Crimes.~~

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

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.
2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.
3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.
4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.
5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.
 - (b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.
- (7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:
 - (a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.
 - (b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.
 - (c) The Office finds that subjective factors involving state of mind have no mitigating weight.
- (8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.
 - (a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

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

~~(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.~~

~~(10) Effect of Sealing or Expunging of Criminal Record.~~

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

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

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

~~2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0072(2)(c), F.S.~~

~~(11) Effect of Restoration of Civil Rights.~~

~~(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.~~

~~(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, F.S., and the rules promulgated thereunder.~~

~~(c) The burden is upon the applicant to prove the restoration of their civil rights.~~

~~(12) Effect of Varying Terminology.~~

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

~~1. Adjudicated guilty; convicted.~~

~~2. Found guilty; entered a finding of guilt.~~

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

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

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

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

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

~~(13) Imprisoned Persons and Community Supervision.~~

~~(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.~~

~~(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.~~

~~(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.~~

~~(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.~~

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

~~(b) Perjury.~~

~~(c) Armed robbery.~~

~~(d) Robbery.~~

~~(e) Extortion.~~

~~(f) Bribery.~~

~~(g) Embezzlement.~~

~~(h) Grand theft.~~

~~(i) Larceny.~~

~~(j) Burglary.~~

~~(k) Breaking and entering.~~

~~(l) Identity Theft.~~

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

~~(n) Misuse of public office.~~

~~(o) Racketeering.~~

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

- ~~(q) Treason against the United States, or a state, district, or territory thereof.~~
- ~~(r) Altering public documents.~~
- ~~(s) Witness tampering.~~
- ~~(t) Tax evasion.~~
- ~~(u) Impersonating or attempting to impersonate a law enforcement officer.~~
- ~~(v) Money laundering.~~
- ~~(w) Murder in all degrees.~~
- ~~(x) Arson.~~
- ~~(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.~~
- ~~(z) Aggravated Assault (e.g., as with a deadly weapon).~~
- ~~(aa) Aggravated Battery (e.g., as with a deadly weapon).~~
- ~~(bb) Rape.~~
- ~~(cc) Sexually molesting any minor.~~
- ~~(dd) Sexual battery.~~
- ~~(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.~~
- ~~(ff) Kidnapping.~~
- ~~(16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.~~
- ~~(17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.~~
- ~~(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:~~
 - ~~(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;~~
 - ~~(b) The degree of penalty associated with the same or similar crimes in the United States; and~~
 - ~~(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.~~

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0061, 494.0062, 494.0072 FS. History—New 12-2-08; Repealed

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

~~(1)(a) Each active mortgage lender license and mortgage lender license pursuant to the saving clause shall be renewed for the biennial period beginning September 1 of each even numbered year upon submission of the~~

statutory renewal fee required by Section 494.0064, F.S., and a completed renewal form. Form OFR 494-06, Mortgage Lender License Renewal and Reactivation Form.

(b) In lieu of submitting audited financial statements, the licensee shall certify that it has continuously maintained the net worth requirements of:

1. \$25,000 or more imposed by Section 494.0065, F.S.; or
2. \$250,000 or more imposed by Section 494.0061, F.S.

Upon request of the Office, the licensee shall provide a copy of its most recent audited financial statements that substantiate its net worth.

(2) A license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(3) Each active mortgage lender branch office license shall be renewed in conjunction with the mortgage lender license renewal upon submission of the statutory renewal fee required by Section 494.0064, F.S.

(4) A mortgage lender branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(5) A mortgage lender license and branch office license that is not renewed within six months after the end of the biennial period automatically expires.

(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.

(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the applications, fees, data and form in paper format. In the event the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.

(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.

(9) Form OFR 494-06 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

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

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

~~(1) Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a correspondent mortgage lender shall apply to the Office of Financial Regulation by submitting the following:~~

~~(a) A completed Application for Mortgage Brokerage Business and Lender License, Form OFR 494-01;~~

~~(b) The statutory, nonrefundable fee required by Section 494.0062, F.S., which shall be the fee for the biennial period beginning September 1 of each even numbered year or any part thereof;~~

~~(c) A nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Section 494.0062(11), F.S.;~~

~~(d) Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;~~

~~(e) A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form OFR 494-05, Mortgage Brokerage and Mortgage Lending Act Surety Bond.~~

~~(f) Designate a principal representative who shall operate and exercise control over the licensee's business. Each correspondent mortgage lender applicant shall include as part of the application a statement that the principal representative will operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.~~

~~(2) Each ultimate equitable owner of 10% or greater interest, principal representative, each chief executive officer, each chief financial officer, chief operations officer, chief legal officer, chief compliance officer, control person, member, partner, joint venturer, and each director of an entity applying for licensure as a correspondent mortgage lender, shall submit a completed fingerprint card (FL921050Z) and Biographical Summary from Form OFR 494-01, to the Office of Financial Regulation along with a \$43.25 nonrefundable processing fee.~~

~~(a) If the individual principal representative, owner, director, or chief executive officer holds an active mortgage broker's license with the Office of Financial Regulation, they are exempt from the provisions of subsection (2).~~

~~(b) If an entity holds an active license under Chapter 494, F.S., with the Office of Financial Regulation, it is exempt from the provisions of subsection (2) when it applies for a different type of license under Chapter 494, F.S., unless there has been a change of control of 25% or more of the ownership or in controlling interest since the time its initial license was approved by the Office of Financial Regulation.~~

~~(c) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.~~

~~(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within ninety (90) days from the date of the request. Failure to respond within ninety (90) days from the date of request shall be construed by the~~

Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to subsection 120.60(1), F.S.

~~(4) Amendments to Pending Applications. If the information contained in an Application for Licensure as a Correspondent Mortgage Lender or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR 494-01. An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from receipt of the application by the Office. Otherwise, the application may be amended only with prior written permission from the Office of Financial Regulation. The Office will grant permission to amend the application, unless the amendment constitutes a material change to the application. Requests to make changes which are material to the application will be deemed by the Office of Financial Regulation to be grounds for denial, and a new application, accompanied by the appropriate filing fee, will be required. Material changes include:~~

~~(a) A change to a response to the disclosure questions listed in section 8 on Form OFR 494-01.~~

~~(b) A change to disclosure questions listed in section 3 on the biographical summary on Form OFR 494-01.~~

~~(c) The substitution or addition of an ultimate equitable owner of 10% or greater interest, a chief executive officer, a chief financial officer, a chief operations officer, a chief legal officer, a chief compliance officer, a control person, a member, a partner, a joint venturer, or principal representative.~~

~~(d) A change to the applicant's net worth.~~

~~(e) Any change relating to the surety bond.~~

~~(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.~~

~~(6) Refunds. If the application is withdrawn or denied, all fees are nonrefundable.~~

~~(7) Upon approval of an application, a license will be issued for the remainder of the biennial licensure period.~~

~~(8) Form OFR 494-01, Form OFR 494-05, Form FL921050Z are incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

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

~~(1)(a) Each active correspondent mortgage lender license shall be renewed for the biennial period beginning September 1 of each even-numbered year upon submission of the statutory renewal fee required by Section 494.0064, F.S., and a completed renewal form. Form OFR 494-06, Mortgage Lender License Renewal and Reactivation Form.~~

~~(b) In lieu of submitting audited financial statements, the licensee shall certify that it has continuously maintained~~

the net worth requirements of \$25,000 or more imposed by Section 494.0062, F.S. Upon request of the Office, the licensee shall provide a copy of its most recent audited financial statements that substantiate its net worth.

~~(2) A correspondent mortgage lender license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be reactivated within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0064, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

~~(3) Each active correspondent mortgage lender branch office license shall be renewed in conjunction with the correspondent mortgage lender license renewal upon submission of the statutory renewal fee required by Section 494.0064, F.S.~~

~~(4) A correspondent mortgage lender branch office license that is not renewed as required in subsection (3) prior to September 1 of the renewal year shall revert to inactive status. An inactive license may be renewed within six (6) months after becoming inactive upon payment of the statutory renewal and reactivation late fees required by Section 494.0064, F.S. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.~~

~~(5) A correspondent mortgage lender license and branch office license that is not renewed within six (6) months after the end of the biennial period automatically expires.~~

~~(6) All applications, fees, data and forms required to be filed under this rule shall be filed electronically at www.flofr.com.~~

~~(7) Any person may petition for waiver of the requirement of electronic submission of applications, fees, data and forms by filing a petition pursuant to Rule 28-106.301, F.A.C. Such petition shall demonstrate a technological or financial hardship that entitles the person to file the applications, fees, data and form in paper format. In the event the payment is received in a paper format, the received date shall be the date stamped on the payment when received by the Department of Financial Services' Cashier's Office in Tallahassee, Florida.~~

~~(8) A renewal fee filed electronically on the Office's website shall be considered received on the date the Office issues a confirmation of payment to the licensee via the Office's website. A confirmation is issued by the Office upon successful submission of your renewal payment.~~

~~(9) Form OFR-494-06 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Proposed Effective Date: October 1, 2010

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

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

~~(1) Every mortgage lender or correspondent mortgage lender which conducts mortgage lending business in this state~~

from a branch office shall apply to the Office of Financial Regulation for a license to operate a branch office by submitting the following:

(a) A completed Application for Branch Office License, Form OFR-494-02;

(b) The statutory, nonrefundable license fee required by Section 494.0066, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(2) Any office or location shall be deemed to be a branch office if it meets the definition in subsection 494.001(7), F.S.

(3) Request for Additional Information. Any request for additional information will be made by the Office of Financial Regulation within thirty (30) days after receipt of the application by the Office of Financial Regulation. The additional information must be received by the Office of Financial Regulation within forty-five (45) days from the date of the request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Office of Financial Regulation as grounds for denial for failure to complete the application and the application shall be denied pursuant to Section 120.60(1), F.S.

(4) Amendments to Pending Applications. If the information contained in an Application for Mortgage Lender Branch Office or Correspondent Mortgage Lender Branch Office License or in any amendment thereto, becomes inaccurate for any reason, the applicant shall file an amendment correcting such information within thirty (30) days of the change on Form OFR-494-02.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office of Financial Regulation by submitting a written request that the application be withdrawn. Withdrawals will be deemed effective upon receipt by the Office.

(6) Refunds. If the application is withdrawn or denied, the license fee is nonrefundable.

(7) Upon approval of an application, a license will be issued for the remainder of the biennial period.

(8) Form OFR-494-02 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

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

69V-40.242 Principal Representative.

(1) Each mortgage lender, correspondent mortgage lender, and mortgage lender pursuant to the saving clause shall designate a principal representative who operates and exercises control over the business and the individual so designated shall accept responsibility by completing the Principal Broker/Representative Designation section of Form OFR-494-01.

(2) Each mortgage lender, correspondent mortgage lender, and mortgage lender pursuant to the saving clause shall maintain the Principal Broker/Representative Designation section of Form OFR-494-01, which includes a statement notifying the licensee that the principal representative is required by statute to operate and exercise control over the business as defined in subsection 69V-40.001(11), F.A.C.

(3) Upon any change of principal representative, the licensee and the newly designated principal representative shall

amend the Principal Broker/Representative Designation section of Form OFR 494-01 pursuant to subsection 69V-40.099(1), F.A.C.; Form OFR 494-01, shall be maintained at the principal office of the mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the saving clause.

(4) The penalty for failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. In cases where the failure to maintain the Principal Broker/Representative Designation section of Form OFR 494-01 is intentional, the penalty shall be a fine of \$5,000.

(5) Each licensee shall notify the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0376 in writing, within thirty (30) days, of the termination or resignation of its principal representative.

(6) Form OFR 494-01 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

(7) At the time of filing an amendment to designate a new principal representative, the licensee shall file a nonrefundable mortgage broker examination fee of \$43 for the designated principal representative if required to take the mortgage broker examination pursuant to Sections 494.0061(8), 494.0062(11) and 494.0065(4)(c)2., F.S.

Proposed Effective Date: October 1, 2010

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

69V-40.245 Independent Contractors.

A natural person is not exempt from the licensure requirements of Section 494.0033, F.S., when acting as an independent contractor as defined in subsection 69V-40.001(9), F.A.C., for licensees pursuant to Sections 494.006-.0077, F.S.

Proposed Effective Date: October 1, 2010

Specific Authority 494.0011(2) FS. Law Implemented 120.695, 494.001, 494.0025, 494.0041 FS. History—New 7-25-96, Amended 12-12-99, Formerly 3D-40.245, Repealed .

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

(1) Each licensee under Sections 494.0061, 494.0062, and 494.0065, F.S., shall document and verify the required net worth with audited financial statements, prepared in accordance with Generally Accepted Accounting Principles, by an independent licensed certified public accountant.

(a) Each mortgage lender shall continuously maintain a net worth of \$250,000, or more.

(b) Each mortgage lender licensed pursuant to the saving clause, Section 494.0065, F.S., shall continuously maintain a net worth of \$25,000, or more.

(c) Each correspondent mortgage lender shall continuously maintain a net worth of \$25,000, or more.

(2) Each licensee identified in subsection (1) above shall have completed, annually, the required audited financial statement within 120 days of the fiscal year end date of said licensee. All audited financial statements shall be

maintained in the licensee's principal place of business in this state and made available to Office of Financial Regulation examiners upon request.

~~(3) Failure to maintain net worth. Each licensee who fails to maintain net worth as prescribed in paragraphs (1)(a), (b), and (c) of this rule shall immediately cease taking any new mortgage loan applications and notify the Office of Financial Regulation in writing by U.S. certified mail within 48 hours. A licensee shall not resume business without written Office of Financial Regulation authorization.~~

~~(4) Surety Bond. Surety bonds required as a condition of licensure under Sections 494.0061 and 494.0062, F.S., shall be continuously maintained. A copy of the surety bond shall be maintained in the principal place of business in this state and made available to Office of Financial Regulation examiners upon request.~~

~~(a) In the event a licensee changes the issuer of the surety bond, or the issuer of the surety bond cancels the bond, a licensee shall inform the Office of Financial Regulation of such change in writing by U.S. certified mail and provide a new surety bond to the Office of Financial Regulation.~~

~~(b) Each surety bond shall be issued by a company authorized to do business in this state by the Office of Financial Regulation.~~

~~(c) Each surety bond shall be in the amount of \$10,000 and on the form prescribed by the Office of Financial Regulation.~~

~~(d) A mortgage lender licensed pursuant to the saving clause, Section 494.0065, F.S., is not required to have or maintain a \$10,000 surety bond.~~

Proposed Effective Date: October 1, 2010

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

69V-40.260 Mortgage Lender Files.

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

(2) Each file shall contain the following:

(a) A copy of the good faith estimate.

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

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

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

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

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

(3) Each mortgage lender ~~or correspondent mortgage lender~~ shall maintain supporting documentation of all expenses or fees paid by the mortgage lender ~~or correspondent mortgage lender~~. The supporting documentation shall indicate the name and address of the person paid, the amount and date of the payment, and a description of the products or

services purchased. Invoices from third parties involving multiple loans, maintained in a central file, need not be copied and placed in each individual loan file. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.

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

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

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

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

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

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

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

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

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

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

3. Said written request confirms the right of the noninstitutional investor to at any time terminate the agreement with the mortgage lender and request that the mortgage lender deliver all such documents to the noninstitutional investor forthwith. The written request, which includes subparagraphs 1. through 3. above, may be maintained in one location separate from the mortgage loan file.

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

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

(5) If the mortgage lender ~~or correspondent mortgage lender~~ acts as a mortgage broker ~~brokerage~~ business it must comply with the file requirement set forth in Rule 69V-40.175, F.A.C.

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

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

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

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

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

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

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

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

(d) Repeat violations of the requirements of this rule shall subject the licensee to the maximum penalties under the provisions of Sections 494.001-.0074, F.S.

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

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0016(2), (4) FS. Law Implemented 120.695, 494.0016, 494.00255, 494.0072, 494.0023, 494.0067(8), 494.0068, 494.0069, 494.007, 494.0075 FS. History--New 1-10-93, Amended 7-25-96, 8-7-97, Formerly 3D-40.260, Amended

69V-40.265 Mortgage Brokerage and Lending Transaction Journal.

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

(a) Name of applicant;

(b) Date applicant applied for the mortgage loan;

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

(d) Name of lender, if applicable.

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

(3) In lieu of maintaining Form OFR-494-10, each mortgage lender ~~or correspondent mortgage lender~~ may maintain the Home Mortgage Disclosure Act loan/application register, Form FR HMDA-LAR, found at 12 C.F.R., part 203, Appendix A, (2010) if all lending transactions are recorded on this form. The form is hereby incorporated by reference ~~and may be accessed through the Government Printing Office website: <http://www.gpoaccess.gov/cfr/>.~~ The effective date of the form is 1-10-93.

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

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

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

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority 494.0011(2), 494.0016(4) FS. Law Implemented 120.695, 494.0016, 494.00255 494.0072(2) FS. History—New 1-10-93, Amended 7-25-96, 12-12-99, Formerly 3D-40.265, Amended 3-23-08,___.

69V-40.285 Noninstitutional Investor Funds Account.

(1) All money received by a mortgage lender ~~or correspondent mortgage lender~~ from a noninstitutional investor for disbursement at a mortgage loan closing shall be deposited in a trust account in a federally insured financial institution within 7 ~~seven~~ business days of receipt of the funds unless otherwise directed, in writing, by the noninstitutional investor. Such trust account may be used for more than one noninstitutional investor’s funds. Noninstitutional funds may not be commingled with the licensee’s operating account or funds. The account shall be in the name of the mortgage lender ~~or correspondent mortgage lender~~ and shall provide for withdrawal of funds without notice. The licensee shall maintain an updated and accurate record of account activity on Form OFR-494-12 or on a format which is substantially similar to Form OFR-494-12 ~~OFR-MX-555~~.

(2) In lieu of depositing noninstitutional investor money into a trust account the mortgage lender ~~or correspondent mortgage lender~~ may have noninstitutional investor money intended for mortgage loan closings deposited with and disbursed by an attorney licensed in this state or by a title company duly licensed in this state if such title company is not owned, controlled or affiliated with the licensee.

(3) The administrative penalty for failure to comply with this rule shall be \$500. Incidental and isolated clerical

errors or omissions shall not be considered a violation of this rule. The penalty for intentional or repeat violations of this rule shall be a \$500 fine and suspension or revocation.

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

(5) Form OFR-494-12 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Proposed Effective Date: October 1, 2010

Rulemaking Specific Authority ~~494.0011(2)~~ 494.0016(4) FS. Law Implemented 120.695, 494.0043, 494.0073 FS. History—New 8-24-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.285, Amended 3-23-08,_____.

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

~~(1) A person shall not be deemed to be acting as a mortgage broker pursuant to subsection 494.001(3), F.S., to be acting as a correspondent mortgage lender pursuant to subsection 494.001(1), F.S., or a mortgage lender pursuant to subsection 494.001(4), F.S., for:~~

~~(a) Purchasing or offering to purchase a mortgage loan from a member of the general public.~~

~~(b) Selling or offering to sell a mortgage loan to an institutional investor.~~

~~(c) Negotiating or offering to negotiate the purchase or sale of a mortgage loan to an institutional investor.~~

~~(2) The phrase “holds himself out to the public in any manner” in subsection 494.006(1)(i) and (j), F.S., means that any person who does any of the following, but not limited to, is not exempt from mortgage lender or correspondent mortgage lender license requirements:~~

~~(a) Is a business entity which makes, sells, or offers to sell, mortgage loans to noninstitutional investors;~~

~~(b) Is employed or associated with a business where mortgage lending or mortgage brokering services may be received;~~

~~(c) Has placed himself in a position where he is likely to come into contact with borrowers or investors or buyers or sellers of mortgage loans;~~

~~(d) Advertises, related to mortgage loans, by soliciting for borrowers, lenders or purchasers in a telephone directory;~~

~~(e) Advertises in newspapers, magazines, or the like in a manner which would lead the reader to believe the person was in the business of buying, making or selling mortgage loans. For example, placing an advertisement which states “I buy and sell mortgages” would lead the public to believe the person was in the mortgage lending business;~~

~~or~~

~~(f) Solicits in a manner which would lead the reader to believe the person was in the business of buying, making or selling mortgage loans.~~

Proposed Effective Date: October 1, 2010

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 08, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 21, 2010

ATTACHMENT 2

**Financial Services Commission
Office of Financial Regulation
Agenda Item #2**

Briefing Sheet

I. Action Requested

The Office requests approval to publish a Notice of Proposed Rule for Rule 69U-100.045, Examination Manuals and Referenced Standards. The Financial Services Commission authorized the Office to file a Notice of Proposed Rule for this rule at its May 25, 2010, meeting. This agenda item corrects a drafting error contained in the previously approved notice. In the previous notice, the rule referenced the FDIC Trust Examination Manual from 2005; the correct reference is 2008.

II. Summary

The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions. The manuals include:

- a) *Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2010) produced by the Federal Financial Institutions Examination Council.
- b) *DSC Risk Management Manual of Examination Policies* (12/2004) produced by Federal Deposit Insurance Corporation.
- c) *Trust Examination Manual* (2008) produced by Federal Deposit Insurance Corporation.
- d) *Examiner's Guide* (06/2002) produced by the National Credit Union Administration.
- e) *State Credit Union Examination Manual* (03/25/09) produced by the Office of Financial Regulation.
- f) *Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations* (07/1997) produced by The Federal Reserve Board.

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

FSC - Financial Institution Regulation

RULE NO: RULE TITLE

69U-100.045: Examination Manuals and Referenced Standards

PURPOSE AND EFFECT: The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions.

SUMMARY: The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions. The manuals include: a) Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering Examination Manual (2010); b) Federal Deposit Insurance Corporation, DSC Risk Management Manual of Examination Policies (12/2004); c) Federal Deposit Insurance Corporation, Trust Examination Manual (2008); d) National Credit Union Administration Examiner's Guide (06/2002); e) State Credit Union Examination Manual (03/25/09); and f) The Federal Reserve Board's Examination Manual for U.S. Branches and Agencies of Foreign Banking organizations (07/1997).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 655.012(2) FS

LAW IMPLEMENTED: 655.045 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Charity, Director, Division of Financial Institutions, Office of Financial Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399, linda.charity@flofr.com, (850)410-9800

THE FULL TEXT OF THE PROPOSED RULE IS:

69U-100.045 Examination Manuals and Referenced Standards.

~~(1) Examination manuals used by OFR which contain referenced standards are available for inspection at OFR's Office in Tallahassee and at the following location:~~

Federal Deposit Insurance Corporation

10 Tenth Street N. E.

Suite 800

Atlanta, Georgia 30309-3906

(2) The OFR uses the following examination manuals ~~are used by OFR in the~~ implementation of its examination responsibilities; which ~~and~~ are hereby adopted and incorporated by reference into the body of printed materials that the ~~which~~ OFR uses for the purposes of conducting examinations of financial institutions to assess the performance and condition of such institutions. The OFR examiners use the manuals ~~are used by the examiners~~ as reference guidelines when conducting safety and soundness examinations of such financial institutions:

(a) Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2010), which may be obtained electronically through the following website:

http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf ~~.OFR Examination Procedures Manual (7/89).~~

(b) Federal Deposit Insurance Corporation, *DSC Risk Management Revised DOS Manual of Examination Policies* (12/2004 Revised 6/95), which may be obtained electronically through the following website:

http://www.fdic.gov/regulations/safety/manual/manual_examinations_full.pdf.

(c) Federal Deposit Insurance Corporation, *Trust Examination Manual* (2008), which may be obtained electronically through the following website:

<http://www.fdic.gov/regulations/examinations/trustmanual/> ~~Management Evaluation Guidelines (5/93).~~

(d) National Credit Union Administration, *Examiner's Guide* (06/2002), which may be obtained electronically through the following website:

http://www.ncua.gov/GenInfo/GuidesManuals/examiners_guide/examguide.aspx. ~~Examiner's Guide for the Core Examination Program (2/87).~~

(e) Office of Financial Regulation, *State Credit Union Examination Manual Section Examiner's Guide* (03/25/09 Revised 7/90), which may be obtained from the Florida Office of Financial Regulation, Division of Banking, 200 E. Gaines Street, Tallahassee, FL 32399.

(f) The Federal Reserve Board's Examination Manual for U.S. Branches and Agencies of Foreign Banking organizations (07/1997), which may be obtained electronically through the following website:

http://www.federalreserve.gov/boarddocs/supmanual/us_branches/usbranch.pdf. ~~Bureau of International Banking Examination Procedures Manual (3/90).~~

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

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