

Committee Substitute for House Bill No. 455

An act relating to mortgage brokering and lending; amending s. 494.001, F.S.; defining the term “principal representative”; creating s. 494.00295, F.S.; providing license renewal educational requirements for licensees and principal representatives; amending s. 494.00311, F.S.; expanding the scope of mortgage business schools to include training for certain other persons; amending s. 494.0034, F.S.; adding continuing education requirements for mortgage broker license renewal; amending s. 494.0035, F.S.; requiring brokerage experience requirements for principal brokers; amending s. 494.0061, F.S.; providing educational requirements for mortgage lenders and principal representatives; requiring the designation of a principal representative; requiring testing of such persons; amending s. 494.0062, F.S.; providing educational requirements for correspondent mortgage lenders; requiring the designation of a principal representative; requiring the testing of such persons; amending s. 494.0064, F.S.; requiring licensees to submit certification of completion of certain educational requirements by certain persons; amending s. 494.0067, F.S.; requiring licensees to require loan originators and associates to complete certain continuing education programs; requiring licensees to maintain certain records; providing effective dates.

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

Section 1. Subsections (29) is added to section 494.001, Florida Statutes, to read:

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

(29) “Principal representative” means an individual who operates the business operations of a licensee under part III.

Section 2. Section 494.00295, Florida Statutes, is created to read:

494.00295 Professional education.—

(1) Each mortgage broker, mortgage lender, and correspondent mortgage lender must certify to the department at the time of renewal that during the 2 years prior to an application for license renewal, all mortgage brokers, and the principal representative, loan originators, and associates of a mortgage lender or correspondent mortgage lender have successfully completed at least 14 hours of professional education programs covering primary and subordinate mortgage financing transactions and the provisions of this chapter. Licensees shall maintain records documenting compliance with this subsection for a period of 4 years.

(2) Professional education programs must contribute directly to the professional competency of the participants, may only be offered by permitted mortgage business schools or entities specifically exempted from permitting

as mortgage business schools, and may include electronically transmitted or distance education courses.

(3) The department shall adopt rules necessary to administer this section, including rules governing qualifying hours for professional education programs and standards for electronically transmitted or distance education courses, including course completion requirements.

Section 3. Section 494.00311, Florida Statutes, is renumbered as section 494.0029, Florida Statutes, and is amended to read:

494.0029 ~~494.00311~~ Mortgage business ~~brokerage~~ schools.—

(1) Each person, school, or institution, except accredited colleges, universities, community colleges, and area technical centers in this state, which offers or conducts mortgage business ~~brokerage~~ training as a condition precedent to licensure as a mortgage broker or lender or a correspondent mortgage lender shall obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules adopted pursuant to this chapter. The department shall, by rule, recertify ~~the mortgage brokerage school~~ permits annually on an annual basis with initial and renewal permit fees that do ~~which shall~~ not exceed \$500 plus the cost of accreditation.

(2) All such ~~mortgage brokerage~~ schools shall maintain curriculum and training materials necessary to determine the ~~mortgage brokerage~~ school's compliance with this chapter and rules adopted pursuant to this chapter. Any school ~~that which~~ offers or conducts mortgage business ~~brokerage~~ training shall at all times maintain an operation of training, materials, and curriculum which is open to review by the department to determine compliance and competency as a mortgage business ~~brokerage~~ school.

(3)(a) It is unlawful for any such person, school, or institution to offer or conduct mortgage business ~~brokerage~~ courses, regardless of the number of pupils, without first procuring a permit or to guarantee that the pupils will pass any mortgage business ~~brokerage~~ examination given on behalf of the department or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The location of classes and the frequency of class meetings shall be in the discretion of the school offering ~~the mortgage brokerage~~ courses, if provided such courses conform to this chapter and related rules adopted by the department.

(c) A mortgage business ~~brokerage~~ school may ~~shall~~ not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a mortgage business ~~brokerage~~ school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(d) ~~A No~~ representative of a any mortgage business brokerage school subject to the provisions of this chapter ~~may not shall~~ promise or guarantee employment or placement of any pupil or prospective pupil, using information, training, or skill purported to be provided or otherwise enhanced by a course or school as inducement to enroll in the school, unless such person offers the pupil or prospective pupil a bona fide contract of employment.

(e) A school shall advertise only as a school and under the permitted name of such school as recognized by the department.

(f) ~~No~~ Reference ~~may not~~ be made in any publication or communication medium as to a pass/fail ratio on mortgage business brokerage examinations by any school permitted by the department.

Section 4. Subsection (1) of section 494.0034, Florida Statutes, is amended to read:

494.0034 Renewal of mortgage broker's license.—

(1) The department shall renew a mortgage broker license upon receipt of the completed renewal form, certification of compliance with continuing education requirements of s. 494.00295, and payment of a nonrefundable renewal fee of \$150.

Section 5. Subsection (1) of section 494.0035, Florida Statutes, is amended to read:

494.0035 Principal broker and branch broker requirements.—

(1) Each mortgage brokerage business must have a principal broker who shall operate the business under such broker's full charge, control, and supervision. The principal broker must have been ~~be~~ a licensed mortgage broker pursuant to s. 494.0033 for at least 1 year prior to being designated as a principal broker, or shall demonstrate to the satisfaction of the department that such principal broker has been actively engaged in a mortgage-related business for at least 1 year prior to being designated as a principal broker. Each mortgage brokerage business shall maintain a form as prescribed by the department indicating the business's designation of principal broker and the individual's acceptance of such responsibility. If the form is unavailable, inaccurate, or incomplete, it is deemed that the business was operated in the full charge, control, and supervision by each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business, or any other person in a similar capacity.

Section 6. Subsection (1) of section 495.0061, Florida Statutes, is amended, and subsections (8), (9), and (10) are added to said section, to read:

494.0061 Mortgage lender's license requirements.—

(1) The department may require each applicant for a mortgage lender license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The department shall issue an initial mortgage lender license to any person that submits:

- (a) A completed application form;
- (b) A nonrefundable application fee of \$575;
- (c) Audited financial statements, which documents disclose that the applicant has a bona fide and verifiable net worth, pursuant to generally accepted accounting principles, of at least \$250,000, which must be continuously maintained as a condition of licensure;
- (d) A surety bond in the amount of \$10,000, payable to the state and conditioned upon compliance with ss. 494.001-494.0077, which inures to the department and which must be continuously maintained thereafter in full force; ~~and~~
- (e) Documentation that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States; and

(f) For applications submitted after October 1, 2001, proof that the applicant's principal representative has completed 24 hours of classroom instruction in primary and subordinate financing transactions and in the provisions of this chapter and rules adopted under this chapter.

(8) Each lender, regardless of the number of branches it operates, shall designate a principal representative who exercises control of the licensee's business and shall maintain a form prescribed by the department designating the principal representative. If the form is not accurately maintained, the business is considered to be operated by each officer, director, or equitable owner of a 10 percent or greater interest in the business.

(9) After October 1, 2001, an applicant's principal representative must pass a written test prescribed by the department which covers primary and subordinate mortgage financing transactions and the provisions of this chapter and rules adopted under this chapter.

(10) A lender shall notify the department of the name and address of any new principal representative and shall document that the person has completed the educational and testing requirements of this section upon the designation of a new principal representative.

Section 7. Subsection (1) of section 494.0062, Florida Statutes, is amended, and subsections (11), (12), and (13) are added to said section, to read:

494.0062 Correspondent mortgage lender's license requirements.—

(1) The department shall issue an initial correspondent mortgage lender license to any person who submits:

- (a) A completed application form;
- (b) A nonrefundable application fee of \$500;

(c) Audited financial statements, which document that the application has a bona fide and verifiable net worth pursuant to generally accepted accounting principles of \$25,000 or more, which must be continuously maintained as a condition of licensure;

(d) A surety bond in the amount of \$10,000, payable to the State of Florida and conditioned upon compliance with ss. 494.001-494.0077, which inures to the department and which must be continuously maintained, thereafter, in full force; and

(e) Documentation that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States; and

(f) For applications filed after October 1, 2001, proof that the applicant's principal representative has completed 24 hours of classroom instruction in primary and subordinate financing transactions and in the provisions of this chapter and rules enacted under this chapter.

(11) Each correspondent lender shall designate a principal representative who exercises control over the business and shall maintain a form prescribed by the department designating the principal representative. If the form is not accurately maintained, the business is considered to be operated by each officer, director, or equitable owner of a 10 percent or greater interest in the business.

(12) After October 1, 2001, an applicant's principal representative must pass a written test prescribed by the department which covers primary and subordinate mortgage financing transactions and the provisions of this chapter and rules adopted under this chapter.

(13) A correspondent lender shall notify the department of the name and address of any new principal representative and shall document that such person has completed the educational and testing requirements of this section upon the lender's designation of a new principal representative.

Section 8. Subsection (1) of section 494.0064, Florida Statutes, is amended to read:

494.0064 Renewal of mortgage lender's license; branch office license renewal.—

(1)(a) The department shall renew a mortgage lender license upon receipt of a completed renewal form and the nonrefundable renewal fee of \$575. The department shall renew a correspondent lender license upon receipt of a completed renewal form and a nonrefundable renewal fee of \$475. Each licensee shall pay at the time of renewal a nonrefundable fee of \$325 for the renewal of each branch office license.

(b) A licensee shall also submit, as part of the renewal form, certification that during the preceding 2 years the licensee's principal representative, loan originators, and associates have completed the education requirements of s. 494.00295.

Section 9. Effective October 1, 2002, subsection (10) is added to section 494.0067, Florida Statutes, to read:

494.0067 Requirements of licensees under ss. 494.006-494.0077.—

(10)(a) Each licensee shall require the principal representative and all loan originators or associates who perform services for the licensee to complete 14 hours of professional education during each biennial license period. The education shall cover primary and subordinate mortgage financing transactions and the provisions of this chapter and the rules adopted under this chapter.

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

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

Section 10. Except as otherwise provided herein, this act shall take effect October 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.