



# The Lending Industry Update

Florida Financial Services Commission  
Office of Financial Regulation, Bureau of Finance Regulation  
(800) 848-3792

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SUMMER 2006

## MORTGAGE BROKERAGE BUSINESS & MORTGAGE LENDER ON-LINE LICENSE RENEWAL FOR AUGUST 2006

You may renew electronically by logging on our website at: [www.flofr.com/licensing](http://www.flofr.com/licensing) and follow the instructions below. In order to access your record, you will need your "authorization number" which is located on the back of your main office license.

### RENEWAL INSTRUCTIONS

- Log on to our website:  
[www.flofr.com/licensing](http://www.flofr.com/licensing)
- Click on link: [Mortgage Brokers & Lenders](#).
- Then click on [your license type](#).
- Then click on [Renew License](#).
- Enter FEIN/SSN of the business licensee.
- Enter your private Authorization Number located on the back of your main office license.
- Update address and email information.
- The website will compute your renewal fee and display an invoice.
- Submit check electronically – no special software required – credit cards are not accepted.
- You will be asked to type in certain information such as the bank identification number, checking account number and the name of the person authorized to sign on the account.
- Upon completion, the system displays an image of your check for verification.

**Once you have validated the information and selected "Finish" to complete the process, you will receive a Receipt and Confirmation Number as evidence the Office received your payment – be sure to print and keep this for your records until you receive your license by mail.**

If you have any questions about license renewal, you may contact the Bureau of Regulatory Review at 800 848-3792.

## COMMISSIONS AND FEES

### "CAN I PAY MY LLC?"

One of the most frequently asked questions to the Office from licensed individuals is: *"Can the licensed Mortgage Brokerage Business or Lender I work for pay commissions to my Limited Liability Company (LLC) or other corporation?"*

Simply put the answer is **NO**. Section 494.0025(8), Florida Statutes, states that all mortgage related fees shall be paid to a licensed mortgage brokerage business or lender. The licensed business or lender then pays the natural person who is working as a licensed associate or loan originator. Unless your LLC or corporation is licensed by OFR, no fee or commission may be paid to an unlicensed person or entity. Section 494.0025(8), Florida Statutes, states that it is unlawful for any person to pay a fee or commission in any mortgage loan transaction to any **person** or **entity** other than a **licensed** mortgage brokerage business, mortgage lender or correspondent lender, unless otherwise exempt.

All persons who pay a fee or commission to an unlicensed person or entity are subject to violation of Subsection 494.0025(8) Florida Statutes, and are subject to the disciplinary penalties set forth in Administrative Rule 69V-40.111. The maximum penalty for this violation is revocation of your license.

### "CAN I PAY REFERRAL FEES TO OTHERS?"

Several frequently asked questions are:

1) *"Can I co-broker a mortgage loan?"* The answer is yes, as long as the other Mortgage Brokerage Business/Lender is licensed and complies with Administrative Rule 69V-40.088. This would include a written co-brokerage agreement signed by the borrower.

2) *“Can I pay a fee to Mr. Smith, a licensed real estate person when the loan closes?”* The answer is yes, under certain circumstances. First, Mr. Smith must be either a W-2 employee of a licensed Lender or a licensed Mortgage Broker working as an Associate for a licensed Mortgage Brokerage Business/Lender. In addition, the location where Mr. Smith is operating from must be a licensed branch location of the business licensee under Chapter 494, Florida Statutes.

However, you should also check with the Florida Real Estate Commission to determine if this is allowed by the real estate regulations and also check with HUD to determine compliance with RESPA. If Mr. Smith is not properly licensed, or is not a W-2 employee of the licensed lender, the licensee paying the referral fee is subject to violation of Section 494.0025(8), Florida Statutes and the disciplinary penalties of Administrative Rule 69V-40.111.

### “ELECTRONIC STORAGE OF BUSINESS RECORDS”

Recently, many licensees have inquired if they are permitted to use electronic storage for loan files or other books and records that are required to be maintained. We understand that the main reasons for storing documents by electronic means are to conserve physical storage space while ensuring the safe storage of documents, easy examination, and retrieval and copying as needed. At this time, Chapter 494, Florida Statutes does not address the issue directly. However, the requirement is satisfied by retaining an electronic record (copy stored on disk) of the information so long as it accurately reflects the information in the record after first generated in final form and without the ability to alter the record.

In general, the electronic storage on media such as CD-ROM disks may be permitted as long as the integrity of the original records are maintained by insuring that electronic copies are adequate substitutes for the original records, with no ability to alter the documents once scanned, and that they serve the purpose for which the original records were created or maintained. Refer further to Administrative Rule 69V-40.175 (8) when

brokering mortgage loans or Rule 69V-40.260 for lenders. Copies of your electronic records should be made in case of natural disasters and stored in a safe and secure location.

Notification of your intent to store records electronically should be directed to: Office of Financial Regulation, Bureau of Finance Regulation, Attn: Compliance Section, 200 E. Gaines Street, Tallahassee, FL 32399-0373, or email: [ofr@fldfs.com](mailto:ofr@fldfs.com). Should you have any questions, you may contact the Finance Compliance Section at (850) 410-9805 or Fax 850-410-9748.

### THE LICENSEE’S RESPONSIBILITIES and NON-INSTITUTIONAL INVESTORS

Every mortgage professional desires an increased share of mortgage loan activity. Offering a wider variety of funding options helps increase loan availability for potential borrowers. You may consider funding a mortgage loan through a non-institutional investor for potential borrowers with lower credit scores to potentially offer increased solutions to secure funding for these borrowers.

Non-institutional investors realize that funding mortgage loans that a financial institution normally would deny increases their risk. These investors expect a higher return on their investment for assuming this risk. However, the investors are not the only party in the transaction with more risk. As a Mortgage Brokerage Business, Correspondent Mortgage Lender or Mortgage Lender, you are also assuming more responsibility.

As a licensed **Mortgage Brokerage Business (MBB)**, you are permitted to broker a mortgage loan to a non-institutional investor. However, as an MBB you may not take control of non-institutional funds, or service any mortgage loans. Also you must ensure that finance charges and other costs of the loan to the borrower do not place the investors or your business in violation of Part IV of Chapter 494, Florida Statutes, The Florida Fair Lending Act.

A **Correspondent Mortgage Lender (CL)** may broker a non-institutional loan (s. 494.0073, F.S.) but is not authorized to make a mortgage loan and sell the loan to a non-institutional investor.

When the Office of Financial Regulation staff comes to review your loan files, additional documents are required for loans funded by a non-institutional investor. You must demonstrate that there is:

1. Proof that the non-institutional investor received an opinion of value by an appraiser for the property securing the loan. The opinion must provide a value as of the date of the opinion. You must provide information to the non-institutional investor concerning any relationship between you, the broker business, and the appraiser. Keep in mind the non-institutional lender may waive the opinion of value by an appraiser. However, you must have a copy of the written waiver for the opinion from the investor in the loan file for the specific property.
2. Proof of a title insurance policy or an opinion of title by an attorney. The policy must insure the non-institutional investor against the unmarketability of the investor(s)' interest in the property. The policy must state if superior liens exist against the property. If the title insurance policy is not available at closing, an insurance binder or opinion must provide the same identical terms as the policy. This may be waived in writing by the non-institutional investor. The waiver for each mortgage loan must contain specific language noted in the Statute (ss: 494.0043(1), 494.0075(1), Florida Statutes).
3. A copy of the recorded mortgage and/or the recorded assignment of the mortgage that was delivered to the non-institutional investor. As the broker, you are required to deliver the properly endorsed mortgage note to the non-institutional investor.

As a **Mortgage Lender** or a **Savings Clause Mortgage Lender** working with non-institutional investors, you can accept a larger share of responsibilities. This may include handling funds of the non-institutional investors for funding the mortgage loans and/or servicing the mortgage loans for the investors (ss:494.0075, 494.0076, Florida Statutes). When you assume these responsibilities, you must demonstrate how you handled the additional responsibilities, which include:

1. Comprehensive controls for segregating and accounting for non-institutional investors' funds received prior to the mortgage loan closing. Maintain a segregated account and be able to identify the amount of money held for each non-institutional investor. The servicing mortgage lender must show how the individual investors are secured to include a mortgage in the name of the investor or an assignment of mortgage to the investor and a properly endorsed note secured by the mortgage.
2. The terms for servicing the mortgage loans for the non-institutional investors. If you provide loan servicing, you are required to enter into a written servicing agreement with the non-institutional investor for the mortgage loan before servicing the loan (Rule 69V-40.260(6), F.A.C.). At a minimum, the servicing agreement should identify the record keeping relationship for the loan servicing, how costs and fees are to be collected and disbursed; and how proceeds from mortgage loan payoffs are to be handled.
3. The total amount payable to the non-institutional investors, by individual investor, for the mortgage loans included in their loan portfolio. You should be able to provide the history of what the investor held in their portfolio since investing in mortgage loans through you.
4. The total amount of receivables controlled under servicing agreements. The loan record should indicate the name of the non-institutional investor funding the loan, and the servicing mortgage lender must be able to show the current balance, payment history and payment status on each mortgage loan.
5. The aggregate value of mortgage loans serviced to determine if the audited financial statement is to include a single line audit or whether the amount serviced may be secured by a bond or insurance against theft, loss, or the illegal diversion of funds.
6. Ensuring that finance charges and other costs of the loan to the borrower do not place the non-institutional investor or your business in

violation of Part IV of Chapter 494, Florida Statute, The Florida Fair Lending Act.

Remember that in order to secure their investment, the non-institutional investor must have a recorded mortgage. If the mortgage loan was not closed in the investor's name, the investor should receive an absolute assignment of mortgage. The non-institutional investor must always receive a properly endorsed "original" mortgage note.

Any method used to secure a separate note for the non-institutional investor other than the original mortgage note may be in violation of the mortgage and/or securities statutes. An example of such a potential violation would be a company maintaining the mortgages and notes in the company name and issuing a second note to the investor indicating a payment schedule at a fixed rate that may or may not correspond to the terms of the mortgage purportedly securing the investment. There have been instances where these guaranteed investments were secured by a collateral assignment of mortgage, which guaranteed the promissory note issued to the investor. OFR has seen instances where the collateral assignments have been recorded and instances where they have not. These business practices are a concern to the Office and, again, may be in violation of both the mortgage and/or securities acts.

Licenses issuing promissory notes and/or corporate notes purportedly secured by a pool of mortgages may also be in violation of the mortgage and/or securities acts.

#### FRACTIONALIZED MORTGAGES

There are a number of practices that are of concern to OFR when licenses either broker or sell loans to non-institutional investors. Companies and individuals offering fractionalized mortgage loans are of particular interest to the office. A fractionalized mortgage is one with multiple mortgagees listed on the same mortgage. (non-institutional investors). The investors are often placed in a mortgage investment (pooled) with other investors that they do not necessarily know. The office has seen, and continues to see, cases of fractionalized mortgages where the payment to the non-institutional investor is guaranteed, regardless

of the performance of the underlying security (mortgage).

Often times, companies operating in this manner find themselves in a negative cash flow situation and rely, in part, on new investor monies to make payments to current investors and continue the program. Many of you are familiar with the phrase "Ponzi Scheme", which refers to new investor monies paying old investor obligations. This activity may result in action being taken by OFR for possible violations of the mortgage and/or securities acts.

Borrowers requiring non-traditional loans have always been present in the market, and demand for housing has increased, as households become more diverse and innovative solutions toward homeownership become reality. The OFR staff has specific responsibilities to ensure that borrowers and investors are protected when you utilize the services of a non-institutional investor. Please consider all costs and requirements when working with non-institutional investors and review the liabilities and your responsibilities under Chapters 494 and 517, Florida Statutes, with your attorney.

Should you see this activity, we would appreciate your bringing it to our attention. You may do so anonymously by calling the Bureau of Financial Regulation or one of our regional offices. We recommend that you contact the OFR before you consider placing more than one non-institutional investor together on the funding of a mortgage (fractionalized mortgage).

For further information or answers to any questions you may have, please contact the **Office of Financial Regulation - Bureau of Finance Regulation** in Tallahassee at 1-800-848-3792 or (850) 410-9805 or at: [www.flofr.com](http://www.flofr.com). Or, contact one of our regional offices at:

- **Ft. Lauderdale (954) 958-5508**
- **Jacksonville (904) 390-4660**
- **Miami (305) 536-0308**
- **Orlando (407) 245-0760**
- **Pensacola (850) 453-7908**
- **Tampa (813) 272-2565**
- **West Palm Beach (561) 837-5203**
- **Ft. Myers (239) 461-4008**

## SUMMARY OF THE OFR LICENSING BILL

### OFR Licensing Bill

HB 7153 by Representative Detert (Companion bill: SB 2744 by Senator Atwater)

#### **The bill is effective October 1, 2006:**

- Allows the Office to require the electronic filing of applications, renewals, and fees unless granted a waiver by OFR due to a hardship. NOTE: The only license type that can file an application on-line presently is a mortgage broker (MB).
- Allows the Office to contract with a third party vendor to administer the mortgage broker test. This will allow the test to be conducted electronically at multiple locations, several times a week versus the current once a month process at limited locations.
- Requires permitted mortgage business schools to electronically report the names of mortgage brokers who have successfully completed required training courses.
- Authorizes the Commission to adopt rules for the requirements for the destruction of records maintained by licensees after the retention period has expired.
- Provides that applications are not deemed received until all required fees are received. Authorizes disciplinary action if fees are paid with a bad check.
- Provides that each licensee shall report any change in the principal broker, principal representative, officers, partners, members, joint venturers, directors, control persons or any individual who is the ultimate equitable owner of 10% or greater interest.
- Provides that a change of control whether through the power to direct management, ownership or otherwise shall require an application to be submitted to OFR unless a waiver has been granted.
- Audited financial statements of all licensed lenders have to be in accordance with U.S. generally accepted accounting principles.
- Provides under certain conditions that existing principal representatives can be grandfathered in without class or testing requirements.
- Eliminates the requirement to display main and branch office licenses.
- Eliminates the requirement to display individual mortgage broker licenses.
- Eliminates the requirement to report the continuing education of loan "Associates" when renewing a lender's license.
- Provides grounds for disciplinary action when a final judgment is entered against an applicant or licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.
- Provides grounds for disciplinary action when action is taken by other federal and state regulatory organizations located in or outside the State of Florida involving securities, insurance, real estate, and lending activities.

# LICENSING STATISTICS

## CHAPTERS 494, 516, 520, & 559, FLORIDA STATUTES

### NUMBER OF ACTIVE LICENSEES

<u>6/30/04</u>	<u>6/30/05</u>	<u>6/30/06</u>	<b>INCLUDING BRANCHES</b>
45,006	59,441	67,266	Mortgage Brokers (494)
6,362	7,326	9,801	Mortgage Brokerage Businesses (494)
8,754	9,942	12,334	Correspondent Mortgage Lenders & Mortgage Lenders (494)
607	532	584	Consumer Finance Companies (516)
4,622	3,984	4,758	Motor Vehicle Retail Installment Sellers (520 – PART I)
6,851	5,910	7,136	Retail Installment Sellers (520 – PART II)
1,147	1,032	1,143	Sales Finance Companies (520 – PART III)
199	138	168	Home Improvement Retail Installment Sellers (520–PART VI)
99	111	126	Commercial Collection Agencies (559 – Part V)
887	1,017	1,045	Consumer Collection Agencies (559 – Part VI)
<b><u>74,534</u></b>	<b><u>89,433</u></b>	<b><u>104,361</u></b>	<b>TOTAL ACTIVE CHAPTER 494, 516, 520, &amp; 559 LICENSEES</b>

### NEW LICENSES ISSUED

<u>FISCAL YEAR</u>			<b>INCLUDING BRANCHES</b>
<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	
10,737	13,228	16,785	Mortgage Brokers (494)
1,580	2,265	2,829	Mortgage Brokerage Businesses (494)
2,915	3,623	3,993	Correspondent Mortgage Lenders & Mortgage Lenders (494)
74	43	66	Consumer Finance Companies (516)
713	703	758	Motor Vehicle Retail Installment Sellers (520 – PART I)
935	1,023	1,061	Retail Installment Sellers (520 – PART II)
201	138	145	Sales Finance Companies (520– PART III)
27	25	30	Home Improvement Retail Installment Sellers (520 –PART IV)
26	20	32	Commercial Collection Agencies (559 – Part V)
308	276	291	Consumer Collection Agencies (559 – Part VI)
<b><u>17,516</u></b>	<b><u>21,344</u></b>	<b><u>25,990</u></b>	<b>TOTAL NEW CHAPTER 494, 516, 520, &amp; 559 LICENSEES</b>

## FOR YOUR INFORMATION

### CHAPTERS 494, 516, 520 & 559, FLORIDA STATUTES

### EXAMINATIONS & COMPLIANCE REVIEWS

The Bureau of Finance Regulation conducted examinations and compliance reviews of the following types of companies during the prior three fiscal years: The preliminary numbers for 2005/06 are as of 6-30-2006.

<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<b>INCLUDING BRANCHES</b>
136	121	91	Mortgage Brokerage Businesses (494)
113	148	87	Correspondent Mortgage Lenders & Mortgage Lenders (494)
	736	841	Compliance Reviews (494)
32	10	2	Consumer Finance Companies (516)
216	172	205	Retail Installment Sales (520 - ALL PARTS)
<b><u>497</u></b>	<b><u>1,187</u></b>	<b><u>1,226</u></b>	<b>TOTAL EXAMINATIONS &amp; COMPLIANCE REVIEWS</b>

### COMPLAINTS

The Bureau of Finance Regulation has received complaints against the following types of companies during the prior three fiscal years: The preliminary numbers for 2005/06 are as of 6-30-2006.

<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<b>INCLUDING BRANCHES</b>
311	267	233	Mortgage Brokerage Businesses (494)
1,557	1,750	1,287	Correspondent Mortgage Lenders & Mortgage Lenders (494)
99	62	48	Consumer Finance Companies (516)
356	269	261	Retail Installment Sales (520 – ALL PARTS)
495	562	490	Consumer & Commercial Collection Agencies (559 Part V & IV)
<b><u>2,818</u></b>	<b><u>2,910</u></b>	<b><u>2,319</u></b>	<b>TOTAL COMPLAINTS</b>

**CHAPTERS 494, 516, 520 - LEGAL ACTIONS (JULY 2005-JUNE 2006)**

NAME OF COMPANY / INDIVIDUAL	LOCATION CITY & STATE	TYPE OF LICENSE	ACTION TAKEN	DATE OF ACTION
Della Savoury-Mayo	Miami, FL	MB	Revocation	08/11/05
Eric Scott Leto	Brandon, FL	MB	Revocation	08/11/05
Jeffrey D. Elizondo	Tampa, FL	MB	Denial	08/23/05
Vivia E. Palmer	Pompano Beach, FL	MB	Revocation	09/20/05
Johanna Rosario Afa Escala	Hallandale, FL	MB	Revocation	09/05/05
George Philip McCook	Miami, FL	MB	Denial	10/17/05
Richard Van Austin	Tallahassee, FL	MB	Denial	10/17/05
Lisa Denise Lane	Orlando, FL	MB	Denial	11/01/05
Island Mortgage Co	Amelia Island, FL	MBB	Surrender	11/21/05
Marcus Hester	Jacksonville, FL	MB	Denial	12/13/05
Blanca Rosa Diaz	Kissimmee, FL	MB	Denial	12/26/05
Thomas A. Bowman	Tequesta, FL	MB	Revocation	03/06/06
United Associates Mortgage Services Ltd.	Clermont, FL	MBB	Revocation	03/17/06
Kathryn Irene Weed	Clermont, FL	MB	Revocation	03/17/06
United Funding Inc	Weston, FL	CL	Revocation	03/27/06
Mortgage Resource Inc	Tampa, FL	CL	Revocation	03/27/06
Pacific Home Funding Corp	Corona, CA	CL	Revocation	03/27/06
Malan Financial Alliance Corp	Escondido, CA	CL	Revocation	04/06/06
Edward Winton	Tampa, FL	MB	Denial	04/10/06
Charles Vizcaino	Hialeah, FL	MB	Revocation	05/14/06
Trinity Empire Mortgage Corp	Miami, FL	MBB	Revocation	06/06/06
Addriaen Veronica Smith-Riley	Miami, FL	MB	Revocation	06/06/06
Home Mortgage Company Inc.	Union, NJ	MBB	Surrender	06/06/06
Trusted Mortgage Company Inc.	Maple Grove, MN	CL	Revocation	06/27/06
Bravo Auto Brokers Inc.	Hallandale, FL	MV	Revocation	06/27/06

VISIT OUR WEBSITE

[www.flofr.com/licensing](http://www.flofr.com/licensing)**REGIONAL OFFICE LOCATIONS**

The Office of Financial Regulation, in an effort to provide current information, would like to provide the following names and addresses of our regional offices, the counties they serve, and the individuals responsible for finance regulation. (The 800, 877, and 888 numbers listed below are toll-free in Florida.)

**Bureau of Finance Regulation**

Bob Tedcastle, Bureau Chief  
200 East Gaines Street  
Tallahassee, Florida 32399-0373

**Phone Numbers**

(850) 410-9805  
(800) 848-3792

**Regional Offices**

Mr. Ronn Hoover, Area Financial Manager  
Pensacola Regional Office  
4900 Bayou Boulevard, Suite 103  
Pensacola, Florida 32503-2530

**Counties**

Bay, Calhoun, Escambia, Franklin, (850) 453-7908  
Gadsden, Gulf, Holmes, Jackson, Leon, (888) 494-7380  
Liberty, Okaloosa, Santa Rosa, Wakulla,  
Walton, and Washington

Ms. Elizabeth Peters, Area Financial Manager  
Jacksonville Regional Office  
921 N. Davis Street, Building B - Suite 225  
Jacksonville, Florida 32209

Alachua, Baker, Bradford, Clay, Columbia, (904) 798-5808  
Dixie, Duval, Flagler, Gilchrist, Hamilton, (888) 434-3910  
Jefferson, Lafayette, Levy, Madison,  
Nassau, Putnam, St. Johns, Suwannee,  
Taylor, and Union

Ms. Laura Royal, Area Financial Manager  
Tampa Regional Office  
1313 Tampa Street, Suite 615  
Tampa, Florida 33602-3394

Citrus, Hernando, Hillsborough, (813) 218-5308  
Manatee, Pasco, Pinellas, Polk,  
and Sarasota (800) 258-8403

Mr. Richard Roll, Area Financial Manager  
Orlando Regional Office  
400 West Robinson Street,  
Hurst South Tower, Suite 225  
Orlando, Florida 32801-1799

Brevard, Lake, Marion, Orange, (407) 245-0608  
Osceola, Seminole, Sumter,  
and Volusia (800) 342-2247

Mr. John Kneissel, Area Financial Manager  
Miami Regional Office  
401 NW Second Avenue, Suite North 708  
Miami, Florida 33128-1796

Dade and Monroe (305) 536-0308

Mr. Hank Nagel, Area Financial Manager  
Southeast Florida Regional Office  
3111 South Dixie Highway, Suite 302  
West Palm Beach, FL 33405

Glades, Henry, Highlands, (561) 837-5203  
Indian River, Martin, Okeechobee,  
Palm Beach, and St. Lucie (800) 837-7946

Mr. Hank Nagel, Area Financial Manager  
Southwest Florida Regional Office  
2295 Victoria Avenue, Suite 170  
Fort Myers, Florida 33901

Charlotte, Collier, DeSoto (239) 461-4008  
Hardee, and Lee (877) 336-2445

Ms. Sharon Dawes, Area Financial Manager  
Ft. Lauderdale Regional Office  
1400 West Commercial Blvd., Suite 135  
Fort Lauderdale, Florida 33309

Broward (954) 958-5508  
(800) 298-0485



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