

**Summary of Changes to Chapter 494, Florida Statutes  
Senate Bill 2226  
2009 Florida Legislative Session**

Effective July 1, 2009	Effective January 1, 2010	Effective September 1, 2010	Effective October 1, 2010
Section 494.00165 – Added violation for engaging in unfair, deceptive, or misleading advertising.	Section 494.001 – Definition of mortgage broker amended to include loan modification activities. Requires loan modifiers to be licensed under Chapter 494.	Provides that all mortgage broker, mortgage brokerage business, correspondent mortgage lender, and mortgage lender licenses issued prior to October 1, 2010 will expire on December 31, 2010.	Requires applicants and licensees to submit filings on uniform forms via the Nationwide Mortgage Licensing System and Registry (NMLS).  Requires the Office to accept filings via NMLS.
	Creates Section 494.00115 (Exemptions) which is a consolidation of 494.003 and 494.006. Repeals individual mortgage broker license exemption for loan originators working as employees of lenders.	Provides individuals holding an active mortgage broker license issued prior to October 1, 2010 that apply for the new loan originator license between October 1, 2010 and December 31, 2010 may continue to operate under the active mortgage broker license until the Office either approves or denies the loan originator license. <ul style="list-style-type: none"> <li>• Provides that loan originator applications received between October 1, 2010 and December 31, 2010 the Office shall have 60 days to issue a deficiency letter and 180 days to approve or deny a completed application.</li> </ul>	Reclassifies and redefines the following licenses: <ol style="list-style-type: none"> <li>1. Individual Mortgage Broker to Loan Originator.</li> <li>2. Mortgage Brokerage Business to Mortgage Broker.</li> </ol> Maintains Mortgage Lender license.
	Creates Section 494.00296 (Loan Modifications). Provides for loan modification agreement terms, civil remedies, and definitions.  Section 494.00296 also prohibits: <ol style="list-style-type: none"> <li>1. Engaging in loan modification activities without first entering into a written loan modification agreement with the borrower.</li> <li>2. Executing a loan modification without the borrower’s consent after the borrower is made aware of each modified term.</li> <li>3. Soliciting, charging, receiving, or attempting to collect or secure payment, directly or indirectly, for loan modification services before completing or performing all services</li> </ol>	Provides companies holding an active mortgage brokerage business license issued prior to October 1, 2010 that apply for either the new mortgage broker or mortgage lender license between October 1, 2010 and December 31, 2010 may continue to operate under the active mortgage brokerage business license until the Office either approves or denies the mortgage broker or mortgage lender license.	Repeals the following licenses: <ol style="list-style-type: none"> <li>1. Mortgage Business Schools</li> <li>2. Correspondent Mortgage Lenders</li> <li>3. Savings Clause Mortgage Lenders.</li> </ol>

	included in the agreement for loan modification services. A fee may only be charged if the modification results in material benefit to the borrower.		
		Provides companies holding an active correspondent mortgage lender license issued prior to October 1, 2010 that apply for the new mortgage broker or mortgage lender license between October 1, 2010 and December 31, 2010 may continue to operate under the active mortgage brokerage business license until the Office either approves or denies the mortgage broker or mortgage lender license.	Reclassifies and redefines the following designations: <ol style="list-style-type: none"> <li>1. Principal Representative and Principal Broker to Principal Loan Originator.</li> <li>2. Branch Broker to Branch Manager.</li> </ol>
			Defines "Material Change" as used in Section 494.004 with regards to requirement of a mortgage broker to notify the borrower of "material changes" in the loan prior to closing. "Material Change" includes: <ol style="list-style-type: none"> <li>1. Change in interest rate previously offered.</li> <li>2. Change in type of loan offered.</li> <li>3. Change in fees to be charged to the borrower greater than \$100.</li> </ol>
		Provides that all licenses under Chapter 494 issued on or after October 1, 2010 shall expire on December 31, 2011.	Requires the Office to regularly report violations of Chapter 494 and disciplinary actions to the NMLS.
			Provides the Office authority to order refunds of any amount collected for the payment of third-party fees which exceeds the cost of the service provided.
			Establishes a Mortgage Broker Guaranty Trust Fund, payment of fees into the fund by applicants and licensees, and provides procedures for claims against the trust fund by borrowers that have taken certain actions against a licensee for violations of Chapter 494. Provides that payment from the fund in settlement of a claim or in satisfaction of a judgment against a licensee constitutes prima facie grounds for the revocation of the license.
			Establishes new licensing criteria for the new loan originator, mortgage broker, and mortgage lender licenses.  Provides an application is considered received for

			purposes of section 120.60, F.S., upon the Office's receipt of all documentation from the NMLS, including the completed application form, documentation of completion of the pre-licensing course, test results, criminal history information, and independent credit report, as well as the license application fee, guarantee fund assessment, and fingerprint processing fees.
			Provides that all licenses issued under Chapter 494 shall be renewed annually by December 31 via the NMLS.
			Requires that the Office shall not renew a license under Chapter 494 if the licensee fails to meet initial licensing standards.
			Requires the principal loan originator or branch manager to sign and date the mortgage broker agreement. Requires the loan originator's unique NMLS identifier to be recorded on the mortgage broker agreement.
			Requires all fees received by the business (mortgage broker) from a borrower to be identified as a loan origination fee, with the exception of application and third-party fees.  Requires all fees disclosed on the mortgage brokerage agreement must be disclosed in dollar amounts.  Requires all loan origination fees must be paid to the business (mortgage broker).
			Provides for increased fines for violations of Chapter 494: <ol style="list-style-type: none"> <li>1. Up to \$25,000 for each count or separate offense.</li> <li>2. Up to \$1,000 per day, but not to exceed \$25,000 cumulatively, for unlicensed activity.</li> </ol>
			Provides the Office with authority to summarily suspend a license if: <ol style="list-style-type: none"> <li>1. The Office has reason to believe that a licensee poses an immediate, serious danger to the public's health, safety, or welfare.</li> <li>2. The arrest of a licensee, or the mortgage broker or the mortgage lender's control person, for any</li> </ol>

			felony crime or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.
			The Office may deny a request to terminate a license or withdraw an application if the Office believes that an act that would be ground for license denial, suspension, restriction, or revocation under this chapter has been committed.
			Repeals requirement for businesses and lenders to file quarterly reports.
			Requires loan originators and control persons of mortgage brokers and mortgage lenders to authorize the NMLS to request a credit report that will be used in part to determine financial responsibility and character.
			Requires mortgage lenders that do not service loans to maintain a minimum net worth amount of \$63,000.  Requires mortgage lenders who service loans for more than four months to obtain a “servicing endorsement” by continuously maintaining a net worth of \$250,000. **Exception – Savings Clause Lenders applying for a mortgage lender license between 10/1/10 and 12/31/10 must maintain the following net worth amounts: <ol style="list-style-type: none"> <li>1. \$63,000 between 10/1/10 and 9/30/11.</li> <li>2. \$125,000 between 10/1/11 and 9/30/12.</li> </ol> \$250,000 on or after 10/1/2010.
			Requires mortgage lender licensees to obtain an annual audited financial statement as of the date of the licensee’s fiscal year end and submit a copy of the financial statement to the Office within 120 days after the fiscal year end.

			<p>Creates Section 494.00255 (administrative penalties and fines; license violations) and consolidates Sections 494.0041 &amp; 494.0072. Adds additional penalties including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Attempting to manipulate or influence an appraiser's evaluation of a property.</li> <li>2. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, any felony.</li> <li>3. Having a loan originator, mortgage broker, or mortgage lender license, or the equivalent of such license, revoked in any jurisdiction.</li> </ol>
			<p>Increase the maximum administrative fine from \$5,000 to \$25,000 per violation. Provides administrative fines of up to \$1,000 per day for unlicensed activity up to a maximum of \$25,000 cumulative.</p>