

FLORIDA OFFICE OF FINANCIAL REGULATION

Division of Finance

Frequently Asked Questions

<http://www.flofr.com/Finance/faq.aspx>

Bureau of Finance Regulation

12/8/2009

Loan Modifications: License to perform loan modification Do I have to be licensed to perform a loan modification?

Answer: Yes, effective January 1, 2010.

Loan Modifications: Upfront Fees.

Can a licensee take an upfront fee to perform a loan modification?

Answer: No. Section 494.00296(1)(c), F.S., states, "When offering or providing loan modification services, a mortgage broker, mortgage brokerage business, mortgage lender, or correspondent mortgage lender licensed, or required to be licensed, under ss. 494.001-494.0077 may not solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for loan modification services before completing or performing all services included in the agreement for loan modification services."

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Loan Modifications: Format for "notice of cancellation"

Is there a prescribed format for the "notice of cancellation" referenced in 494.00296(2)(b)?

Answer: Yes, per Section 494.00296(2)(c), F.S.

Loan Modifications: Engaging in loan modification services

Is taking an application from the potential borrower to engage in loan modification services prohibited by 494.00296(1)(a)?

Answer: Pursuant to Section 494.00296(1)(a), F.S., a written agreement is required prior to taking an application.

Loan Modifications: Short Sales

Does a company that facilitates short sale transactions for borrowers need to be licensed?

Answer: Effective January 1, 2010, the definition of "acting as a mortgage broker" will include negotiating the terms or conditions of an existing mortgage loan on behalf of a borrower. See Section 494.001(3), F.S. Since a company that facilitates short sale transactions for borrowers will be asking the lender to accept less than the amount owed, it will be affecting the terms or conditions of an existing mortgage loan. Accordingly, a company that facilitates short sale transactions needs to be licensed under Chapter 494, F.S.

Loan Modifications: Short Sale Dialogue Between RE Licensee & Lender

If a real estate licensee, who has been asked by a client to list a house for sale, enters into dialogue with the client's lender to see if a short sale would be acceptable, would the licensee need to comply with the loan modification provisions under Section 494.00296, F.S., if the only compensation for the real estate licensee would be the commission on the sale?

Answer: The conversations between the real estate licensee and the lender appear to be ancillary to the services being provided by the real estate licensee in the sale of his client's property. As long as the only remuneration sought is the standard commission for the area on the sale of the property and no other fees are collected for the dialogue with the lender, the activity mentioned above does not appear to fall under the provisions of Section 494.00296, F.S.