

HB4404



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4404

by Rep. Margo McDermed

SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-4

Amends the Residential Mortgage License Act of 1987. Provides that "soliciting, processing, placing, or negotiating a residential mortgage loan" excludes independent loan processing as permitted by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

LRB100 16949 SMS 32094 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 1-4 as follows:

6 (205 ILCS 635/1-4)

7 Sec. 1-4. Definitions. The following words and phrases have
8 the meanings given to them in this Section:

9 (a) "Residential real property" or "residential real
10 estate" shall mean any real property located in Illinois,
11 upon which is constructed or intended to be constructed a
12 dwelling. Those terms include a manufactured home as
13 defined in subdivision (53) of Section 9-102 of the Uniform
14 Commercial Code which is real property as defined in
15 Section 5-35 of the Conveyance and Encumbrance of
16 Manufactured Homes as Real Property and Severance Act.

17 (b) "Making a residential mortgage loan" or "funding a
18 residential mortgage loan" shall mean for compensation or
19 gain, either directly or indirectly, advancing funds or
20 making a commitment to advance funds to a loan applicant
21 for a residential mortgage loan.

22 (c) "Soliciting, processing, placing, or negotiating a
23 residential mortgage loan" shall mean for compensation or

1 gain, either directly or indirectly, accepting or offering
2 to accept an application for a residential mortgage loan,
3 assisting or offering to assist in the processing of an
4 application for a residential mortgage loan on behalf of a
5 borrower, or negotiating or offering to negotiate the terms
6 or conditions of a residential mortgage loan with a lender
7 on behalf of a borrower including, but not limited to, the
8 submission of credit packages for the approval of lenders,
9 the preparation of residential mortgage loan closing
10 documents, including a closing in the name of a broker.
11 "Soliciting, processing, placing, or negotiating a
12 residential mortgage loan" excludes independent loan
13 processing as permitted by the federal Secure and Fair
14 Enforcement for Mortgage Licensing Act of 2008, as may be
15 amended.

16 (d) "Exempt person or entity" shall mean the following:

17 (1) (i) Any banking organization or foreign
18 banking corporation licensed by the Illinois
19 Commissioner of Banks and Real Estate or the United
20 States Comptroller of the Currency to transact
21 business in this State; (ii) any national bank,
22 federally chartered savings and loan association,
23 federal savings bank, federal credit union; (iii)
24 (blank); (iv) any bank, savings and loan association,
25 savings bank, or credit union organized under the laws
26 of this or any other state; (v) any Illinois Consumer

1 Installment Loan Act licensee; (vi) any insurance
2 company authorized to transact business in this State;
3 (vii) any entity engaged solely in commercial mortgage
4 lending; (viii) any service corporation of a savings
5 and loan association or savings bank organized under
6 the laws of this State or the service corporation of a
7 federally chartered savings and loan association or
8 savings bank having its principal place of business in
9 this State, other than a service corporation licensed
10 or entitled to reciprocity under the Real Estate
11 License Act of 2000; or (ix) any first tier subsidiary
12 of a bank, the charter of which is issued under the
13 Illinois Banking Act by the Illinois Commissioner of
14 Banks and Real Estate, or the first tier subsidiary of
15 a bank chartered by the United States Comptroller of
16 the Currency and that has its principal place of
17 business in this State, provided that the first tier
18 subsidiary is regularly examined by the Illinois
19 Commissioner of Banks and Real Estate or the
20 Comptroller of the Currency, or a consumer compliance
21 examination is regularly conducted by the Federal
22 Reserve Board.

23 (1.5) Any employee of a person or entity mentioned
24 in item (1) of this subsection, when acting for such
25 person or entity, or any registered mortgage loan
26 originator when acting for an entity described in

1 subsection (tt) of this Section.

2 (1.8) Any person or entity that does not originate
3 mortgage loans in the ordinary course of business, but
4 makes or acquires residential mortgage loans with his
5 or her own funds for his or her or its own investment
6 without intent to make, acquire, or resell more than 3
7 residential mortgage loans in any one calendar year.

8 (2) (Blank).

9 (3) Any person employed by a licensee to assist in
10 the performance of the residential mortgage licensee's
11 activities regulated by this Act who is compensated in
12 any manner by only one licensee.

13 (4) (Blank).

14 (5) Any individual, corporation, partnership, or
15 other entity that originates, services, or brokers
16 residential mortgage loans, as these activities are
17 defined in this Act, and who or which receives no
18 compensation for those activities, subject to the
19 Commissioner's regulations and the federal Secure and
20 Fair Enforcement for Mortgage Licensing Act of 2008 and
21 the rules promulgated under that Act with regard to the
22 nature and amount of compensation.

23 (6) (Blank).

24 (e) "Licensee" or "residential mortgage licensee"
25 shall mean a person, partnership, association,
26 corporation, or any other entity who or which is licensed

1 pursuant to this Act to engage in the activities regulated
2 by this Act.

3 (f) "Mortgage loan" "residential mortgage loan" or
4 "home mortgage loan" shall mean any loan primarily for
5 personal, family, or household use that is secured by a
6 mortgage, deed of trust, or other equivalent consensual
7 security interest on a dwelling as defined in Section
8 103(v) of the federal Truth in Lending Act, or residential
9 real estate upon which is constructed or intended to be
10 constructed a dwelling.

11 (g) "Lender" shall mean any person, partnership,
12 association, corporation, or any other entity who either
13 lends or invests money in residential mortgage loans.

14 (h) "Ultimate equitable owner" shall mean a person who,
15 directly or indirectly, owns or controls an ownership
16 interest in a corporation, foreign corporation, alien
17 business organization, trust, or any other form of business
18 organization regardless of whether the person owns or
19 controls the ownership interest through one or more persons
20 or one or more proxies, powers of attorney, nominees,
21 corporations, associations, partnerships, trusts, joint
22 stock companies, or other entities or devices, or any
23 combination thereof.

24 (i) "Residential mortgage financing transaction" shall
25 mean the negotiation, acquisition, sale, or arrangement
26 for or the offer to negotiate, acquire, sell, or arrange

1 for, a residential mortgage loan or residential mortgage
2 loan commitment.

3 (j) "Personal residence address" shall mean a street
4 address and shall not include a post office box number.

5 (k) "Residential mortgage loan commitment" shall mean
6 a contract for residential mortgage loan financing.

7 (l) "Party to a residential mortgage financing
8 transaction" shall mean a borrower, lender, or loan broker
9 in a residential mortgage financing transaction.

10 (m) "Payments" shall mean payment of all or any of the
11 following: principal, interest and escrow reserves for
12 taxes, insurance and other related reserves, and
13 reimbursement for lender advances.

14 (n) "Commissioner" shall mean the Commissioner of
15 Banks and Real Estate, except that, beginning on April 6,
16 2009 (the effective date of Public Act 95-1047), all
17 references in this Act to the Commissioner of Banks and
18 Real Estate are deemed, in appropriate contexts, to be
19 references to the Secretary of Financial and Professional
20 Regulation, or his or her designee, including the Director
21 of the Division of Banking of the Department of Financial
22 and Professional Regulation.

23 (n-1) "Director" shall mean the Director of the
24 Division of Banking of the Department of Financial and
25 Professional Regulation, except that, beginning on July
26 31, 2009 (the effective date of Public Act 96-112), all

1 references in this Act to the Director are deemed, in
2 appropriate contexts, to be the Secretary of Financial and
3 Professional Regulation, or his or her designee, including
4 the Director of the Division of Banking of the Department
5 of Financial and Professional Regulation.

6 (o) "Loan brokering", "brokering", or "brokerage
7 service" shall mean the act of helping to obtain from
8 another entity, for a borrower, a loan secured by
9 residential real estate situated in Illinois or assisting a
10 borrower in obtaining a loan secured by residential real
11 estate situated in Illinois in return for consideration to
12 be paid by either the borrower or the lender including, but
13 not limited to, contracting for the delivery of residential
14 mortgage loans to a third party lender and soliciting,
15 processing, placing, or negotiating residential mortgage
16 loans.

17 (p) "Loan broker" or "broker" shall mean a person,
18 partnership, association, corporation, or limited
19 liability company, other than those persons, partnerships,
20 associations, corporations, or limited liability companies
21 exempted from licensing pursuant to Section 1-4,
22 subsection (d), of this Act, who performs the activities
23 described in subsections (c), (o), and (yy) of this
24 Section.

25 (q) "Servicing" shall mean the collection or
26 remittance for or the right or obligation to collect or

1 remit for any lender, noteowner, noteholder, or for a
2 licensee's own account, of payments, interests, principal,
3 and trust items such as hazard insurance and taxes on a
4 residential mortgage loan in accordance with the terms of
5 the residential mortgage loan; and includes loan payment
6 follow-up, delinquency loan follow-up, loan analysis and
7 any notifications to the borrower that are necessary to
8 enable the borrower to keep the loan current and in good
9 standing. "Servicing" includes management of third-party
10 entities acting on behalf of a residential mortgage
11 licensee for the collection of delinquent payments and the
12 use by such third-party entities of said licensee's
13 servicing records or information, including their use in
14 foreclosure.

15 (r) "Full service office" shall mean an office,
16 provided by the licensee and not subleased from the
17 licensee's employees, and staff in Illinois reasonably
18 adequate to handle efficiently communications, questions,
19 and other matters relating to any application for, or an
20 existing home mortgage secured by residential real estate
21 situated in Illinois with respect to which the licensee is
22 brokering, funding originating, purchasing, or servicing.
23 The management and operation of each full service office
24 must include observance of good business practices such as
25 proper signage; adequate, organized, and accurate books
26 and records; ample phone lines, hours of business, staff

1 training and supervision, and provision for a mechanism to
2 resolve consumer inquiries, complaints, and problems. The
3 Commissioner shall issue regulations with regard to these
4 requirements and shall include an evaluation of compliance
5 with this Section in his or her periodic examination of
6 each licensee.

7 (s) "Purchasing" shall mean the purchase of
8 conventional or government-insured mortgage loans secured
9 by residential real estate situated in Illinois from either
10 the lender or from the secondary market.

11 (t) "Borrower" shall mean the person or persons who
12 seek the services of a loan broker, originator, or lender.

13 (u) "Originating" shall mean the issuing of
14 commitments for and funding of residential mortgage loans.

15 (v) "Loan brokerage agreement" shall mean a written
16 agreement in which a broker or loan broker agrees to do
17 either of the following:

18 (1) obtain a residential mortgage loan for the
19 borrower or assist the borrower in obtaining a
20 residential mortgage loan; or

21 (2) consider making a residential mortgage loan to
22 the borrower.

23 (w) "Advertisement" shall mean the attempt by
24 publication, dissemination, or circulation to induce,
25 directly or indirectly, any person to enter into a
26 residential mortgage loan agreement or residential

1 mortgage loan brokerage agreement relative to a mortgage
2 secured by residential real estate situated in Illinois.

3 (x) "Residential Mortgage Board" shall mean the
4 Residential Mortgage Board created in Section 1-5 of this
5 Act.

6 (y) "Government-insured mortgage loan" shall mean any
7 mortgage loan made on the security of residential real
8 estate insured by the Department of Housing and Urban
9 Development or Farmers Home Loan Administration, or
10 guaranteed by the Veterans Administration.

11 (z) "Annual audit" shall mean a certified audit of the
12 licensee's books and records and systems of internal
13 control performed by a certified public accountant in
14 accordance with generally accepted accounting principles
15 and generally accepted auditing standards.

16 (aa) "Financial institution" shall mean a savings and
17 loan association, savings bank, credit union, or a bank
18 organized under the laws of Illinois or a savings and loan
19 association, savings bank, credit union or a bank organized
20 under the laws of the United States and headquartered in
21 Illinois.

22 (bb) "Escrow agent" shall mean a third party,
23 individual or entity charged with the fiduciary obligation
24 for holding escrow funds on a residential mortgage loan
25 pending final payout of those funds in accordance with the
26 terms of the residential mortgage loan.

1 (cc) "Net worth" shall have the meaning ascribed
2 thereto in Section 3-5 of this Act.

3 (dd) "Affiliate" shall mean:

4 (1) any entity that directly controls or is
5 controlled by the licensee and any other company that
6 is directly affecting activities regulated by this Act
7 that is controlled by the company that controls the
8 licensee;

9 (2) any entity:

10 (A) that is controlled, directly or
11 indirectly, by a trust or otherwise, by or for the
12 benefit of shareholders who beneficially or
13 otherwise control, directly or indirectly, by
14 trust or otherwise, the licensee or any company
15 that controls the licensee; or

16 (B) a majority of the directors or trustees of
17 which constitute a majority of the persons holding
18 any such office with the licensee or any company
19 that controls the licensee;

20 (3) any company, including a real estate
21 investment trust, that is sponsored and advised on a
22 contractual basis by the licensee or any subsidiary or
23 affiliate of the licensee.

24 (ee) "First tier subsidiary" shall be defined by
25 regulation incorporating the comparable definitions used
26 by the Office of the Comptroller of the Currency and the

1 Illinois Commissioner of Banks and Real Estate.

2 (ff) "Gross delinquency rate" means the quotient
3 determined by dividing (1) the sum of (i) the number of
4 government-insured residential mortgage loans funded or
5 purchased by a licensee in the preceding calendar year that
6 are delinquent and (ii) the number of conventional
7 residential mortgage loans funded or purchased by the
8 licensee in the preceding calendar year that are delinquent
9 by (2) the sum of (i) the number of government-insured
10 residential mortgage loans funded or purchased by the
11 licensee in the preceding calendar year and (ii) the number
12 of conventional residential mortgage loans funded or
13 purchased by the licensee in the preceding calendar year.

14 (gg) "Delinquency rate factor" means the factor set by
15 rule of the Commissioner that is multiplied by the average
16 gross delinquency rate of licensees, determined annually
17 for the immediately preceding calendar year, for the
18 purpose of determining which licensees shall be examined by
19 the Commissioner pursuant to subsection (b) of Section 4-8
20 of this Act.

21 (hh) "Loan originator" means any natural person who,
22 for compensation or in the expectation of compensation,
23 either directly or indirectly makes, offers to make,
24 solicits, places, or negotiates a residential mortgage
25 loan. This definition applies only to Section 7-1 of this
26 Act.

1 (ii) "Confidential supervisory information" means any
2 report of examination, visitation, or investigation
3 prepared by the Commissioner under this Act, any report of
4 examination visitation, or investigation prepared by the
5 state regulatory authority of another state that examines a
6 licensee, any document or record prepared or obtained in
7 connection with or relating to any examination,
8 visitation, or investigation, and any record prepared or
9 obtained by the Commissioner to the extent that the record
10 summarizes or contains information derived from any
11 report, document, or record described in this subsection.
12 "Confidential supervisory information" does not include
13 any information or record routinely prepared by a licensee
14 and maintained in the ordinary course of business or any
15 information or record that is required to be made publicly
16 available pursuant to State or federal law or rule.

17 (jj) "Mortgage loan originator" means an individual
18 who for compensation or gain or in the expectation of
19 compensation or gain:

20 (i) takes a residential mortgage loan application;

21 or

22 (ii) offers or negotiates terms of a residential
23 mortgage loan.

24 "Mortgage loan originator" includes an individual
25 engaged in loan modification activities as defined in
26 subsection (yy) of this Section. A mortgage loan originator

1 engaged in loan modification activities shall report those
2 activities to the Department of Financial and Professional
3 Regulation in the manner provided by the Department;
4 however, the Department shall not impose a fee for
5 reporting, nor require any additional qualifications to
6 engage in those activities beyond those provided pursuant
7 to this Act for mortgage loan originators.

8 "Mortgage loan originator" does not include an
9 individual engaged solely as a loan processor or
10 underwriter except as otherwise provided in subsection (d)
11 of Section 7-1A of this Act.

12 "Mortgage loan originator" does not include a person or
13 entity that only performs real estate brokerage activities
14 and is licensed in accordance with the Real Estate License
15 Act of 2000, unless the person or entity is compensated by
16 a lender, a mortgage broker, or other mortgage loan
17 originator, or by any agent of that lender, mortgage
18 broker, or other mortgage loan originator.

19 "Mortgage loan originator" does not include a person or
20 entity solely involved in extensions of credit relating to
21 timeshare plans, as that term is defined in Section
22 101(53D) of Title 11, United States Code.

23 (kk) "Depository institution" has the same meaning as
24 in Section 3 of the Federal Deposit Insurance Act, and
25 includes any credit union.

26 (ll) "Dwelling" means a residential structure or

1 mobile home which contains one to 4 family housing units,
2 or individual units of condominiums or cooperatives.

3 (mm) "Immediate family member" means a spouse, child,
4 sibling, parent, grandparent, or grandchild, and includes
5 step-parents, step-children, step-siblings, or adoptive
6 relationships.

7 (nn) "Individual" means a natural person.

8 (oo) "Loan processor or underwriter" means an
9 individual who performs clerical or support duties as an
10 employee at the direction of and subject to the supervision
11 and instruction of a person licensed, or exempt from
12 licensing, under this Act. "Clerical or support duties"
13 includes subsequent to the receipt of an application:

14 (i) the receipt, collection, distribution, and
15 analysis of information common for the processing or
16 underwriting of a residential mortgage loan; and

17 (ii) communicating with a consumer to obtain the
18 information necessary for the processing or
19 underwriting of a loan, to the extent that the
20 communication does not include offering or negotiating
21 loan rates or terms, or counseling consumers about
22 residential mortgage loan rates or terms. An
23 individual engaging solely in loan processor or
24 underwriter activities shall not represent to the
25 public, through advertising or other means of
26 communicating or providing information, including the

1 use of business cards, stationery, brochures, signs,
2 rate lists, or other promotional items, that the
3 individual can or will perform any of the activities of
4 a mortgage loan originator.

5 (pp) "Nationwide Mortgage Licensing System and
6 Registry" means a mortgage licensing system developed and
7 maintained by the Conference of State Bank Supervisors and
8 the American Association of Residential Mortgage
9 Regulators for the licensing and registration of licensed
10 mortgage loan originators.

11 (qq) "Nontraditional mortgage product" means any
12 mortgage product other than a 30-year fixed rate mortgage.

13 (rr) "Person" means a natural person, corporation,
14 company, limited liability company, partnership, or
15 association.

16 (ss) "Real estate brokerage activity" means any
17 activity that involves offering or providing real estate
18 brokerage services to the public, including:

19 (1) acting as a real estate agent or real estate
20 broker for a buyer, seller, lessor, or lessee of real
21 property;

22 (2) bringing together parties interested in the
23 sale, purchase, lease, rental, or exchange of real
24 property;

25 (3) negotiating, on behalf of any party, any
26 portion of a contract relating to the sale, purchase,

1 lease, rental, or exchange of real property, other than
2 in connection with providing financing with respect to
3 any such transaction;

4 (4) engaging in any activity for which a person
5 engaged in the activity is required to be registered or
6 licensed as a real estate agent or real estate broker
7 under any applicable law; or

8 (5) offering to engage in any activity, or act in
9 any capacity, described in this subsection (ss).

10 (tt) "Registered mortgage loan originator" means any
11 individual that:

12 (1) meets the definition of mortgage loan
13 originator and is an employee of:

14 (A) a depository institution;

15 (B) a subsidiary that is:

16 (i) owned and controlled by a depository
17 institution; and

18 (ii) regulated by a federal banking
19 agency; or

20 (C) an institution regulated by the Farm
21 Credit Administration; and

22 (2) is registered with, and maintains a unique
23 identifier through, the Nationwide Mortgage Licensing
24 System and Registry.

25 (uu) "Unique identifier" means a number or other
26 identifier assigned by protocols established by the

1 Nationwide Mortgage Licensing System and Registry.

2 (vv) "Residential mortgage license" means a license
3 issued pursuant to Section 1-3, 2-2, or 2-6 of this Act.

4 (ww) "Mortgage loan originator license" means a
5 license issued pursuant to Section 7-1A, 7-3, or 7-6 of
6 this Act.

7 (xx) "Secretary" means the Secretary of the Department
8 of Financial and Professional Regulation, or a person
9 authorized by the Secretary or by this Act to act in the
10 Secretary's stead.

11 (yy) "Loan modification" means, for compensation or
12 gain, either directly or indirectly offering or
13 negotiating on behalf of a borrower or homeowner to adjust
14 the terms of a residential mortgage loan in a manner not
15 provided for in the original or previously modified
16 mortgage loan.

17 (zz) "Short sale facilitation" means, for compensation
18 or gain, either directly or indirectly offering or
19 negotiating on behalf of a borrower or homeowner to
20 facilitate the sale of residential real estate subject to
21 one or more residential mortgage loans or debts
22 constituting liens on the property in which the proceeds
23 from selling the residential real estate will fall short of
24 the amount owed and the lien holders are contacted to agree
25 to release their lien on the residential real estate and
26 accept less than the full amount owed on the debt.

1 The Commissioner may define by rule and regulation any
2 terms used in this Act for the efficient and clear
3 administration of this Act.

4 (Source: P.A. 98-749, eff. 7-16-14; 98-1081, eff. 1-1-15;
5 99-78, eff. 7-20-15.)