

AN ACT concerning regulation.

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

Section 5. The Residential Mortgage License Act of 1987 is amended by changing Sections 1-3 and 1-4 as follows:

(205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

Sec. 1-3. Necessity for License; Scope of Act.

(a) No person, partnership, association, corporation or other entity shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans without first obtaining a license from the Commissioner in accordance with the licensing procedure provided in this Article I and such regulations as may be promulgated by the Commissioner. The licensing provisions of this Section shall not apply to any entity engaged solely in commercial mortgage lending or to any person, partnership, association, corporation or other entity exempted pursuant to Section 1-4, subsection (d), of this Act or in accordance with regulations promulgated by the Commissioner hereunder. No provision of this Act shall apply to an exempt person or entity as defined in items (1) and (1.5) of subsection (d) of Section 1-4 of this Act. Notwithstanding anything to the contrary in the preceding sentence, an individual acting as a mortgage loan

originator who is not employed by and acting for an entity described in item (1) of subsection (tt) of Section 1-4 of this Act shall be subject to the mortgage loan originator licensing requirements of Article VII of this Act.

Effective January 1, 2011, no provision of this Act shall apply to an exempt person or entity as defined in item (1.8) of subsection (d) of Section 1-4 of this Act. Notwithstanding anything to the contrary in the preceding sentence, an individual acting as a mortgage loan originator who is not employed by and acting for an entity described in item (1) of subsection (tt) of Section 1-4 of this Act shall be subject to the mortgage loan originator licensing requirements of Article VII of this Act, and provided that an individual acting as a mortgage loan originator under item (1.8) of subsection (d) of Section 1-4 of this Act shall be further subject to a determination by the U.S. Department of Housing and Urban Development through final rulemaking or other authorized agency determination under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(b) No person, partnership, association, corporation, or other entity except a licensee under this Act or an entity exempt from licensing pursuant to Section 1-4, subsection (d), of this Act shall do any business under any name or title, or circulate or use any advertising or make any representation or give any information to any person, which indicates or reasonably implies activity within the scope of this Act.

(c) The Commissioner may, through the Attorney General, request the circuit court of either Cook or Sangamon County to issue an injunction to restrain any person from violating or continuing to violate any of the foregoing provisions of this Section.

(d) When the Commissioner has reasonable cause to believe that any entity which has not submitted an application for licensure is conducting any of the activities described in subsection (a) hereof, the Commissioner shall have the power to examine all books and records of the entity and any additional documentation necessary in order to determine whether such entity should become licensed under this Act.

(d-1) The Commissioner may issue orders against any person if the Commissioner has reasonable cause to believe that an unsafe, unsound, or unlawful practice has occurred, is occurring, or is about to occur, if any person has violated, is violating, or is about to violate any law, rule, or written agreement with the Commissioner, or for the purposes of administering the provisions of this Act and any rule adopted in accordance with this Act.

(e) Any person, partnership, association, corporation or other entity who violates any provision of this Section commits a business offense and shall be fined an amount not to exceed \$25,000.

(f) Each person, partnership, association, corporation or other entity conducting activities regulated by this Act shall

be issued one license. Each office, place of business or location at which a residential mortgage licensee conducts any part of his or her business must be recorded with the Commissioner pursuant to Section 2-8 of this Act.

(g) Licensees under this Act shall solicit, broker, fund, originate, service and purchase residential mortgage loans only in conformity with the provisions of this Act and such rules and regulations as may be promulgated by the Commissioner.

(h) This Act applies to all entities doing business in Illinois as residential mortgage bankers, as defined by "An Act to provide for the regulation of mortgage bankers", approved September 15, 1977, as amended, regardless of whether licensed under that or any prior Act. Any existing residential mortgage lender or residential mortgage broker in Illinois whether or not previously licensed, must operate in accordance with this Act.

(i) This Act is a successor Act to and a continuance of the regulation of residential mortgage bankers provided in, "An Act to provide for the regulation of mortgage bankers", approved September 15, 1977, as amended.

Entities and persons subject to the predecessor Act shall be subject to this Act from and after its effective date.

(Source: P.A. 96-112, eff. 7-31-09; 96-1216, eff. 1-1-11.)

Sec. 1-4. Definitions.

(a) "Residential real property" or "residential real estate" shall mean any real property located in Illinois, upon which is constructed or intended to be constructed a dwelling.

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

(c) "Soliciting, processing, placing, or negotiating a residential mortgage loan" shall mean for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower including, but not limited to, the submission of credit packages for the approval of lenders, the preparation of residential mortgage loan closing documents, including a closing in the name of a broker.

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

(1) (i) Any banking organization or foreign banking corporation licensed by the Illinois Commissioner of Banks and Real Estate or the United States Comptroller of the Currency to transact business in this State; (ii) any

national bank, federally chartered savings and loan association, federal savings bank, federal credit union; (iii) any pension trust, bank trust, or bank trust company; (iv) any bank, savings and loan association, savings bank, or credit union organized under the laws of this or any other state; (v) any Illinois Consumer Installment Loan Act licensee; (vi) any insurance company authorized to transact business in this State; (vii) any entity engaged solely in commercial mortgage lending; (viii) any service corporation of a savings and loan association or savings bank organized under the laws of this State or the service corporation of a federally chartered savings and loan association or savings bank having its principal place of business in this State, other than a service corporation licensed or entitled to reciprocity under the Real Estate License Act of 2000; or (ix) any first tier subsidiary of a bank, the charter of which is issued under the Illinois Banking Act by the Illinois Commissioner of Banks and Real Estate, or the first tier subsidiary of a bank chartered by the United States Comptroller of the Currency and that has its principal place of business in this State, provided that the first tier subsidiary is regularly examined by the Illinois Commissioner of Banks and Real Estate or the Comptroller of the Currency, or a consumer compliance examination is regularly conducted by the Federal Reserve Board.

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

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

(2) (Blank).

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

(4) (Blank).

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

(6) (Blank).

(e) "Licensee" or "residential mortgage licensee" shall mean a person, partnership, association, corporation, or any other entity who or which is licensed pursuant to this Act to engage in the activities regulated by this Act.

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

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

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

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

residential mortgage loan or residential mortgage loan commitment.

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

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

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

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

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

(n-1) "Director" shall mean the Director of the Division of Banking of the Department of Financial and Professional Regulation, except that, beginning on July 31, 2009 (the effective date of Public Act 96-112), all references in this Act to the Director are deemed, in appropriate contexts, to be

the Secretary of Financial and Professional Regulation, or his or her designee, including the Director of the Division of Banking of the Department of Financial and Professional Regulation.

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

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

(q) "Servicing" shall mean the collection or remittance for or the right or obligation to collect or remit for any lender, noteowner, noteholder, or for a licensee's own account, of payments, interests, principal, and trust items such as hazard insurance and taxes on a residential mortgage loan in

accordance with the terms of the residential mortgage loan; and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing.

(r) "Full service office" shall mean an office, provided by the licensee and not subleased from the licensee's employees, and staff in Illinois reasonably adequate to handle efficiently communications, questions, and other matters relating to any application for, or an existing home mortgage secured by residential real estate situated in Illinois with respect to which the licensee is brokering, funding originating, purchasing, or servicing. The management and operation of each full service office must include observance of good business practices such as proper signage; adequate, organized, and accurate books and records; ample phone lines, hours of business, staff training and supervision, and provision for a mechanism to resolve consumer inquiries, complaints, and problems. The Commissioner shall issue regulations with regard to these requirements and shall include an evaluation of compliance with this Section in his or her periodic examination of each licensee.

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

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

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

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

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

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

(w) "Advertisement" shall mean the attempt by publication, dissemination, or circulation to induce, directly or indirectly, any person to enter into a residential mortgage loan agreement or residential mortgage loan brokerage agreement relative to a mortgage secured by residential real estate situated in Illinois.

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

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

(z) "Annual audit" shall mean a certified audit of the

licensee's books and records and systems of internal control performed by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

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

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

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

(dd) "Affiliate" shall mean:

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

(2) any entity:

(A) that is controlled, directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the

licensee or any company that controls the licensee; or

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

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

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

(ee) "First tier subsidiary" shall be defined by regulation incorporating the comparable definitions used by the Office of the Comptroller of the Currency and the Illinois Commissioner of Banks and Real Estate.

(ff) "Gross delinquency rate" means the quotient determined by dividing (1) the sum of (i) the number of government-insured residential mortgage loans funded or purchased by a licensee in the preceding calendar year that are delinquent and (ii) the number of conventional residential mortgage loans funded or purchased by the licensee in the preceding calendar year that are delinquent by (2) the sum of (i) the number of government-insured residential mortgage loans funded or purchased by the licensee in the preceding calendar year and (ii) the number of conventional residential

mortgage loans funded or purchased by the licensee in the preceding calendar year.

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

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

(ii) "Confidential supervisory information" means any report of examination, visitation, or investigation prepared by the Commissioner under this Act, any report of examination visitation, or investigation prepared by the state regulatory authority of another state that examines a licensee, any document or record prepared or obtained in connection with or relating to any examination, visitation, or investigation, and any record prepared or obtained by the Commissioner to the extent that the record summarizes or contains information derived from any report, document, or record described in this subsection. "Confidential supervisory information" does not include any information or record routinely prepared by a

licensee and maintained in the ordinary course of business or any information or record that is required to be made publicly available pursuant to State or federal law or rule.

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

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

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

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

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

(kk) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes

any credit union.

(ll) "Dwelling" means a residential structure or mobile home which contains one to 4 family housing units, or individual units of condominiums or cooperatives.

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

(nn) "Individual" means a natural person.

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

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

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

communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

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

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

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

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

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

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

(3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with

providing financing with respect to any such transaction;

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

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

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

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

(A) a depository institution;

(B) a subsidiary that is:

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

(ii) regulated by a federal banking agency; or

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

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

(uu) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

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

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

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

(Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09; 96-1000, eff. 7-2-10; 96-1216, eff. 1-1-11.)

Section 99. Effective date. This Act takes effect upon becoming law.