

SB0515



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0515

Introduced 2/8/2007, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-4

from Ch. 17, par. 2321-4

Amends the Residential Mortgage License Act of 1987. Provides that certain loan originators that are now exempt shall be subject to registration. Provides that an employee of a loan originator is exempt from registration.

LRB095 04902 MJR 24967 b

FISCAL NOTE ACT
MAY APPLY

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 Section 1-4 as follows:

6 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

7 Sec. 1-4. Definitions.

8 (a) "Residential real property" or "residential real
9 estate" shall mean real property located in this State improved
10 by a one-to-four family dwelling used or occupied, wholly or
11 partly, as the home or residence of one or more persons and may
12 refer, subject to regulations of the Commissioner, to
13 unimproved real property upon which those kinds dwellings are
14 to be constructed.

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

20 (c) "Soliciting, processing, placing, or negotiating a
21 residential mortgage loan" shall mean for compensation or gain,
22 either directly or indirectly, accepting or offering to accept
23 an application for a residential mortgage loan, assisting or

1 offering to assist in the processing of an application for a
2 residential mortgage loan on behalf of a borrower, or
3 negotiating or offering to negotiate the terms or conditions of
4 a residential mortgage loan with a lender on behalf of a
5 borrower including, but not limited to, the submission of
6 credit packages for the approval of lenders, the preparation of
7 residential mortgage loan closing documents, including a
8 closing in the name of a broker.

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

10 (1) (i) Any banking organization or foreign banking
11 corporation licensed by the Illinois Commissioner of Banks
12 and Real Estate or the United States Comptroller of the
13 Currency to transact business in this State; (ii) any
14 national bank, federally chartered savings and loan
15 association, federal savings bank, federal credit union;
16 (iii) any pension trust, bank trust, or bank trust company;
17 (iv) any bank, savings and loan association, savings bank,
18 or credit union organized under the laws of this or any
19 other state; (v) any Illinois Consumer Installment Loan Act
20 licensee; (vi) any insurance company authorized to
21 transact business in this State; (vii) any entity engaged
22 solely in commercial mortgage lending; (viii) any service
23 corporation of a savings and loan association or savings
24 bank organized under the laws of this State or the service
25 corporation of a federally chartered savings and loan
26 association or savings bank having its principal place of

1 business in this State, other than a service corporation
2 licensed or entitled to reciprocity under the Real Estate
3 License Act of 2000; or (ix) any first tier subsidiary of a
4 bank, the charter of which is issued under the Illinois
5 Banking Act by the Illinois Commissioner of Banks and Real
6 Estate, or the first tier subsidiary of a bank chartered by
7 the United States Comptroller of the Currency and that has
8 its principal place of business in this State, provided
9 that the first tier subsidiary is regularly examined by the
10 Illinois Commissioner of Banks and Real Estate or the
11 Comptroller of the Currency, or a consumer compliance
12 examination is regularly conducted by the Federal Reserve
13 Board. However, loan originators, as defined in this
14 Section, shall be subject to registration pursuant to
15 Section 7-1 of this Act, except for those entities listed
16 in items (ii), (vii), and (viii), but only as to a service
17 corporation of a federally chartered savings and loan
18 association or savings bank having its principal place of
19 business in this State, and item (ix), but only as to any
20 first tier subsidiary of a bank chartered by the United
21 States Comptroller of the Currency and that has its
22 principal place of business in this State (provided that
23 the first tier subsidiary is regularly examined by the
24 Comptroller of the Currency or a consumer compliance
25 examination is regularly conducted by the Federal Reserve
26 Board). An employee of a loan originator mentioned in this

1 subdivision (1) is not subject to the requirements of
2 Section 7-1 of this Act.

3 (1.5) Any employee of a person or entity mentioned in
4 subdivision ~~item~~ (1) of this subsection (d).

5 (2) Any person or entity that does not originate
6 mortgage loans in the ordinary course of business making or
7 acquiring residential mortgage loans with his or her or its
8 own funds for his or her or its own investment without
9 intent to make, acquire, or resell more than 10 residential
10 mortgage loans in any one calendar year.

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

14 (4) Any person licensed pursuant to the Real Estate
15 License Act of 2000, who engages only in the taking of
16 applications and credit and appraisal information to
17 forward to a licensee or an exempt entity under this Act
18 and who is compensated by either a licensee or an exempt
19 entity under this Act, but is not compensated by either the
20 buyer (applicant) or the seller.

21 (5) Any individual, corporation, partnership, or other
22 entity that originates, services, or brokers residential
23 mortgage loans, as these activities are defined in this
24 Act, and who or which receives no compensation for those
25 activities, subject to the Commissioner's regulations with
26 regard to the nature and amount of compensation.

1 (6) A person who prepares supporting documentation for
2 a residential mortgage loan application taken by a licensee
3 and performs ministerial functions pursuant to specific
4 instructions of the licensee who neither requires nor
5 permits the preparer to exercise his or her discretion or
6 judgment; provided that this activity is engaged in
7 pursuant to a binding, written agreement between the
8 licensee and the preparer that:

9 (A) holds the licensee fully accountable for the
10 preparer's action; and

11 (B) otherwise meets the requirements of this
12 Section and this Act, does not undermine the purposes
13 of this Act, and is approved by the Commissioner.

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

18 (f) "Mortgage loan" "residential mortgage loan" or "home
19 mortgage loan" shall mean a loan to or for the benefit of any
20 natural person made primarily for personal, family, or
21 household use, primarily secured by either a mortgage on
22 residential real property or certificates of stock or other
23 evidence of ownership interests in and proprietary leases from,
24 corporations, partnerships, or limited liability companies
25 formed for the purpose of cooperative ownership of residential
26 real property, all located in Illinois.

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

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

13 (i) "Residential mortgage financing transaction" shall
14 mean the negotiation, acquisition, sale, or arrangement for or
15 the offer to negotiate, acquire, sell, or arrange for, a
16 residential mortgage loan or residential mortgage loan
17 commitment.

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

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

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

25 (m) "Payments" shall mean payment of all or any of the
26 following: principal, interest and escrow reserves for taxes,

1 insurance and other related reserves, and reimbursement for
2 lender advances.

3 (n) "Commissioner" shall mean the Commissioner of Banks and
4 Real Estate or a person authorized by the Commissioner, the
5 Office of Banks and Real Estate Act, or this Act to act in the
6 Commissioner's stead.

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

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

24 (q) "Servicing" shall mean the collection or remittance for
25 or the right or obligation to collect or remit for any lender,
26 noteowner, noteholder, or for a licensee's own account, of

1 payments, interests, principal, and trust items such as hazard
2 insurance and taxes on a residential mortgage loan in
3 accordance with the terms of the residential mortgage loan; and
4 includes loan payment follow-up, delinquency loan follow-up,
5 loan analysis and any notifications to the borrower that are
6 necessary to enable the borrower to keep the loan current and
7 in good standing.

8 (r) "Full service office" shall mean office and staff in
9 Illinois reasonably adequate to handle efficiently
10 communications, questions, and other matters relating to any
11 application for, or an existing home mortgage secured by
12 residential real estate situated in Illinois with respect to
13 which the licensee is brokering, funding originating,
14 purchasing, or servicing. The management and operation of each
15 full service office must include observance of good business
16 practices such as adequate, organized, and accurate books and
17 records; ample phone lines, hours of business, staff training
18 and supervision, and provision for a mechanism to resolve
19 consumer inquiries, complaints, and problems. The Commissioner
20 shall issue regulations with regard to these requirements and
21 shall include an evaluation of compliance with this Section in
22 his or her periodic examination of each licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (dd) "Affiliate" shall mean:

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

22 (2) any entity:

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

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

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

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

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

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

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

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

10 (hh) "Loan originator" means any natural person who, for
11 compensation or in the expectation of compensation, either
12 directly or indirectly makes, offers to make, solicits, places,
13 or negotiates a residential mortgage loan.

14 (ii) "Confidential supervisory information" means any
15 report of examination, visitation, or investigation prepared
16 by the Commissioner under this Act, any report of examination
17 visitation, or investigation prepared by the state regulatory
18 authority of another state that examines a licensee, any
19 document or record prepared or obtained in connection with or
20 relating to any examination, visitation, or investigation, and
21 any record prepared or obtained by the Commissioner to the
22 extent that the record summarizes or contains information
23 derived from any report, document, or record described in this
24 subsection. "Confidential supervisory information" does not
25 include any information or record routinely prepared by a
26 licensee and maintained in the ordinary course of business or

1 any information or record that is required to be made publicly
2 available pursuant to State or federal law or rule.

3 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)