



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB1998

Introduced 2/7/2008, by Sen. Jacqueline Y. Collins

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Residential Mortgage License Act of 1987. Replaces references to the Commissioner of Banks and Real Estate with the Director of the Division of Banking of the Department of Financial and Professional Regulation throughout the Act. Makes changes in provisions concerning the necessity for a license. Makes changes defining the term "exempt person or entity" and "full service office". Makes changes in provisions concerning the application process for obtaining a license, including provisions concerning a multistate automated licensing system. Makes changes in provisions concerning the application form used to obtain a license. Makes changes in provisions that require specified averments that accompany an application for a license. Makes changes in provisions concerning the Director's refusal to issue a license, including failure to comply with provisions of the multistate automated licensing system. Makes changes in provisions concerning the license issuance and renewal. Makes changes in provisions concerning (i) additional full service offices and (ii) the requirements for posting a license. Makes changes in a provision concerning a licensee's office and staff within the State. Makes changes in provisions requiring that the business affairs of a licensee shall be examined for compliance. Makes changes in provisions concerning the suspension or revocation of a license. Makes changes in provisions concerning annual reports of certain activities. Makes other changes. Contains a nonacceleration clause. Effective January 1, 2009.

LRB095 18639 MJR 44726 b

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 1-3, 1-4, 1-5, 2-2, 2-3, 2-4, 2-5,  
6 2-6, 2-7, 2-8, 2-9, 2-11, 3-1, 3-2, 3-3, 3-4, 3-5, 3-9, 4-1,  
7 4-2, 4-3, 4-4, 4-5, 4-6, 4-8, 4-8.1, 4-8.2, 4-8.3, 4-10, 4-11,  
8 4-12, 4-13, 5-1, 6-3, and 7-1 and by adding Section 1-1.5 as  
9 follows:

10 (205 ILCS 635/1-1.5 new)

11 Sec. 1-1.5. Findings.

12 The General Assembly finds that establishing and  
13 implementing an automated multistate licensing system for  
14 residential mortgage licensees is consistent with and furthers  
15 the Purpose of Act and Policy Statement of Section 1-2. For  
16 this purpose, the Director is authorized:

17 (a) to participate in a multistate automated licensing  
18 system as the exclusive record collection and maintenance  
19 system to apply for, renew, amend, and surrender residential  
20 mortgage licenses;

21 (b) to adopt rules as necessary to implement a multistate  
22 automated licensing system;

23 (c) to cause criminal history background checks by the

1 Illinois State Police and Federal Bureau of Identification to  
2 be performed for use in the multistate automated licensing  
3 system;

4 (d) to require payments of licensing fees be made to the  
5 third-party administrator for the multistate automated  
6 licensing system for transfer to the State of Illinois and  
7 payment of processing fees for use of the multistate automated  
8 licensing system with those processing fees to be retained by  
9 the third-party administrator; and

10 (e) to share licensing information in the multistate  
11 automated licensing system pursuant to agreement with  
12 participating state regulators and to protect licensing  
13 information as so required by this Act or other applicable law.

14 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

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

16 (a) No person, partnership, association, corporation or  
17 other entity shall engage in the business of brokering,  
18 funding, originating, servicing or purchasing of residential  
19 mortgage loans without first obtaining a license from the  
20 Director ~~Commissioner~~ in accordance with the licensing  
21 procedure provided in this Article I and such regulations as  
22 may be promulgated by the Director ~~Commissioner~~. The licensing  
23 provisions of this Section shall not apply to any entity  
24 engaged solely in commercial mortgage lending or to any person,  
25 partnership association, corporation or other entity exempted

1 pursuant to Section 1-4, subsection (d), of this Act or in  
2 accordance with regulations promulgated by the Director  
3 ~~Commissioner~~ hereunder. No person, partnership, association,  
4 corporation, or other entity that is not required to obtain a  
5 license under this Act shall be granted a license under this  
6 Act. The license of any person, partnership, association,  
7 corporation, or other entity that is not required to obtain a  
8 license under this Act shall be void and shall not be renewed.

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

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

21 (d) When the Director ~~Commissioner~~ has reasonable cause to  
22 believe that any entity which has not submitted an application  
23 for licensure is conducting any of the activities described in  
24 subsection (a) hereof, the Director ~~Commissioner~~ shall have the  
25 power to examine all books and records of the entity and any  
26 additional documentation necessary in order to determine

1 whether such entity should become licensed under this Act.

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

10 (e) Any person, partnership, association, corporation or  
11 other entity who violates any provision of this Section commits  
12 a business offense and shall be fined an amount not to exceed  
13 \$25,000.

14 (f) Each person, partnership, association, corporation or  
15 other entity conducting activities regulated by this Act shall  
16 be issued one license. The person, partnership, association,  
17 corporation, or other entity shall apply for a license only  
18 under its real name and, if the application is approved, the  
19 license shall be issued under and state the real name of the  
20 person, partnership, association, corporation, or other  
21 entity. In addition to the real name of the licensee, the  
22 license shall also state any assumed name under which the  
23 licensee intends to operate. A licensee may not operate under  
24 an assumed name unless the Department has approved the use of  
25 the assumed name and such name is stated on the license in  
26 addition to the real name of the licensee. Each office, place

1 of business or location at which a residential mortgage  
2 licensee conducts any part of his or her business must be  
3 recorded with the Director ~~Commissioner~~ pursuant to Section 2-8  
4 of this Act.

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

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

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

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

24 (Source: P.A. 93-1018, eff. 1-1-05.)

25 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

1           Sec. 1-4. Definitions.

2           (a) "Residential real property" or "residential real  
3           estate" shall mean real property located in this State improved  
4           by a one-to-four family dwelling used or occupied, wholly or  
5           partly, as the home or residence of one or more persons and may  
6           refer, subject to regulations of the Director ~~Commissioner~~, to  
7           unimproved real property upon which those kinds dwellings are  
8           to be constructed.

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

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

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

1           (1) (i) Any banking organization or foreign banking  
2 corporation licensed by the Director ~~Illinois Commissioner~~  
3 ~~of Banks and Real Estate~~ or the United States Comptroller  
4 of the Currency to transact business in this State; (ii)  
5 any national bank, federally chartered savings and loan  
6 association, federal savings bank, federal credit union;  
7 (iii) any pension trust, bank trust, or bank trust company;  
8 (iv) any bank, savings and loan association, savings bank,  
9 industrial bank, or credit union organized under the laws  
10 of this or any other state; (v) any Illinois Consumer  
11 Installment Loan Act licensee; (vi) any insurance company  
12 authorized to transact business in this State; (vii) any  
13 entity engaged solely in commercial mortgage lending;  
14 (viii) any service corporation or subsidiary of a savings  
15 and loan association or savings bank organized under the  
16 laws of this State, or any other state, or the service  
17 corporation or subsidiary of a federally chartered savings  
18 and loan association or savings bank ~~having its principal~~  
19 ~~place of business in this State,~~ other than a service  
20 corporation or subsidiary licensed or entitled to  
21 reciprocity under the Real Estate License Act of 2000; or  
22 (ix) any first tier subsidiary of a bank, the charter of  
23 which is issued under the Illinois Banking Act by the  
24 Illinois Department of Financial and Professional  
25 Regulation, Division of Banking, or the charter of which is  
26 issued under the banking laws of any other state



1 ~~Commissioner of Banks and Real Estate, or the first tier~~  
2 subsidiary of a bank chartered by the United States  
3 Comptroller of the Currency and that has its principal  
4 place of business in this State, provided that the first  
5 tier subsidiary is regularly examined by the Illinois  
6 Commissioner of Banks and Real Estate or the Comptroller of  
7 the Currency, or a consumer compliance examination is  
8 regularly conducted by the Federal Reserve Board.

9 (1.5) Any employee of a person or entity mentioned in  
10 item (1) of this subsection.

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

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

20 (4) Any person licensed pursuant to the Real Estate  
21 License Act of 2000, who engages only in the taking of  
22 applications and credit and appraisal information to  
23 forward to a licensee or an exempt entity under this Act  
24 and who is compensated by either a licensee or an exempt  
25 entity under this Act, but is not compensated by either the  
26 buyer (applicant) or the seller.

1           (5) Any individual, corporation, partnership, or other  
2           entity that originates, services, or brokers residential  
3           mortgage loans, as these activities are defined in this  
4           Act, and who or which receives no compensation for those  
5           activities, subject to the Director's ~~Commissioner's~~  
6           regulations with regard to the nature and amount of  
7           compensation.

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

16                 (A) holds the licensee fully accountable for the  
17                 preparer's action; and

18                 (B) otherwise meets the requirements of this  
19                 Section and this Act, does not undermine the purposes  
20                 of this Act, and is approved by the Director  
21                 ~~Commissioner~~.

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

26          (f) "Mortgage loan" "residential mortgage loan" or "home

1 mortgage loan" shall mean a loan to or for the benefit of any  
2 natural person made primarily for personal, family, or  
3 household use, primarily secured by either a mortgage on  
4 residential real property or certificates of stock or other  
5 evidence of ownership interests in and proprietary leases from,  
6 corporations, partnerships, or limited liability companies  
7 formed for the purpose of cooperative ownership of residential  
8 real property, all located in Illinois.

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

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

21 (i) "Residential mortgage financing transaction" shall  
22 mean the negotiation, acquisition, sale, or arrangement for or  
23 the offer to negotiate, acquire, sell, or arrange for, a  
24 residential mortgage loan or residential mortgage loan  
25 commitment.

26 (j) "Personal residence address" shall mean a street

1 address and shall not include a post office box number.

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

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

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

11 (n) "Director" ~~"Commissioner"~~ shall mean the Director of  
12 the Division of Banking of the Department of Financial and  
13 Professional Regulation ~~Commissioner of Banks and Real Estate~~  
14 or a person authorized by the Director, the Division of Banking  
15 of the Department of Financial and Professional Regulation  
16 ~~Commissioner, the Office of Banks and Real Estate Act,~~ or this  
17 Act to act in the Director's ~~Commissioner's~~ stead.

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

1 residential mortgage loans.

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

9 (q) "Servicing" shall mean the collection or remittance for  
10 or the right or obligation to collect or remit for any lender,  
11 noteowner, noteholder, or for a licensee's own account, of  
12 payments, interests, principal, and trust items such as hazard  
13 insurance and taxes on a residential mortgage loan in  
14 accordance with the terms of the residential mortgage loan; and  
15 includes loan payment follow-up, delinquency loan follow-up,  
16 loan analysis and any notifications to the borrower that are  
17 necessary to enable the borrower to keep the loan current and  
18 in good standing.

19 (r) "Full service office" shall mean an office, provided by  
20 the licensee and not subleased from the licensee's employees,  
21 and staff in Illinois reasonably adequate to handle efficiently  
22 communications, questions, and other matters relating to any  
23 application for, or an existing home mortgage secured by  
24 residential real estate situated in Illinois with respect to  
25 which the licensee is brokering, funding originating,  
26 purchasing, or servicing. The management and operation of each

1 full service office must include observance of good business  
2 practices such as adequate, organized, and accurate books and  
3 records; ample phone lines, hours of business, staff training  
4 and supervision, and provision for a mechanism to resolve  
5 consumer inquiries, complaints, and problems. The Director  
6 ~~Commissioner~~ shall issue regulations with regard to these  
7 requirements and shall include an evaluation of compliance with  
8 this Section in his or her periodic examination of each  
9 licensee.

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

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

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

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

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

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

26 (w) "Advertisement" shall mean the attempt by publication,

1 dissemination, or circulation to induce, directly or  
2 indirectly, any person to enter into a residential mortgage  
3 loan agreement or residential mortgage loan brokerage  
4 agreement relative to a mortgage secured by residential real  
5 estate situated in Illinois.

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

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

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

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

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

1 mortgage loan.

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

4 (dd) "Affiliate" shall mean:

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

9 (2) any entity:

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

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

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

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

26 (ee) "First tier subsidiary" shall be defined by regulation



1 incorporating the comparable definitions used by the Office of  
2 the Comptroller of the Currency and the "Director" ~~Illinois~~  
3 ~~Commissioner of Banks and Real Estate~~.

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

16 (gg) "Delinquency rate factor" means the factor set by rule  
17 of the "Director" ~~Commissioner~~ that is multiplied by the  
18 average gross delinquency rate of licensees, determined  
19 annually for the immediately preceding calendar year, for the  
20 purpose of determining which licensees shall be examined by the  
21 "Director" ~~Commissioner~~ pursuant to subsection (b) of Section  
22 4-8 of this Act.

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

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

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

18 (205 ILCS 635/1-5) (from Ch. 17, par. 2321-5)

19 Sec. 1-5. Residential Mortgage Board.

20 (a) Board composition, compensation. There is created the  
21 Residential Mortgage Board composed of 5 members appointed by  
22 the Director of the Division of Banks of the Department of  
23 Financial and Professional Regulation ~~Commissioner of Banks~~  
24 ~~and Real Estate~~. The majority of persons on the Board shall  
25 have no financial interest in any residential mortgage business

1 and one member shall be a representative of the Mortgage  
2 Banking Trade Association and one member shall be a  
3 representative of the Mortgage Broker Trade Association.  
4 Members of the Board serving on the effective date of this  
5 amendatory Act of 1996 shall continue to serve their unexpired  
6 terms as members of the Residential Mortgage Board. Thereafter,  
7 on or before January 15 of each year, the Director ~~Commissioner~~  
8 shall appoint one or more board members, as shall be necessary  
9 to maintain a 5 member Board, whose terms shall be for 3 years  
10 commencing February 1 of the year in which they are  
11 respectively appointed.

12 If a vacancy occurs on the Residential Mortgage Board, the  
13 Director ~~Commissioner~~ shall within 60 days appoint a new member  
14 who shall hold office for the remainder of the vacated term.

15 The Board shall meet at the call of the chairman, who along  
16 with a Secretary, shall be selected by the Board from among its  
17 members.

18 The members of the Board serve at the pleasure of the  
19 Director ~~Commissioner~~.

20 (b) Duties of Board. The Residential Mortgage Board shall  
21 assist the Director ~~Commissioner~~ by:

22 (1) submitting recommendations to the Director  
23 ~~Commissioner~~ for the efficient administration of this Act;  
24 and

25 (2) performing other duties as are prescribed by the  
26 Director ~~Commissioner~~.

1 (c) Conflict of interest declarations. Each member of the  
2 Residential Mortgage Board shall file annually, no later than  
3 February 1, with the Director ~~Commissioner~~ a statement of his  
4 or her current business transactions or other affiliations with  
5 any licensee under this Act. The Director ~~Commissioner~~ may  
6 adopt rules to avoid conflicts of interest on the part of  
7 members of the Residential Mortgage Board in connection with  
8 their position on the Board.

9 (Source: P.A. 93-1018, eff. 1-1-05.)

10 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

11 Sec. 2-2. Application process; investigation; fee.

12 (a) The Director ~~Commissioner~~ shall issue a license upon  
13 completion of all of the following:

14 (1) The filing of an application for license with the  
15 Director or a multistate automated licensing system  
16 approved by the Director. If an application is filed with  
17 an approved multistate automated licensing system, then  
18 the Director shall issue a license upon completion of the  
19 multistate automated licensing system.

20 (2) The filing with the Director ~~Commissioner~~ of a  
21 listing of judgments entered against, and bankruptcy  
22 petitions by, the license applicant for the preceding 10  
23 years.

24 (3) The payment, in certified funds, of investigation  
25 and application fees, the total of which shall be in an

1 amount equal to \$2,700 annually, however, alternatively a  
2 licensing fee equal to \$2,700 shall be paid through an  
3 approved credit card or Automated Clearing House (ACH)  
4 payment to the multistate automated licensing system. The  
5 Director ~~the Commissioner~~ may increase the investigation  
6 and application fees by rule as provided in Section 4-11.

7 (4) Except for a broker applying to renew a license,  
8 the filing of an audited balance sheet including all  
9 footnotes prepared by a certified public accountant in  
10 accordance with generally accepted accounting principles  
11 and generally accepted auditing principles which evidences  
12 that the applicant meets the net worth requirements of  
13 Section 3-5.

14 (5) The filing of proof satisfactory to the Director  
15 ~~Commissioner~~ that the applicant, the members thereof if the  
16 applicant is a partnership or association, the members or  
17 managers thereof that retain any authority or  
18 responsibility under the operating agreement if the  
19 applicant is a limited liability company, or the officers  
20 thereof if the applicant is a corporation have 3 years  
21 experience preceding application in real estate finance.  
22 Instead of this requirement, the applicant and the  
23 applicant's officers or members, as applicable, may  
24 satisfactorily complete a program of education in real  
25 estate finance and fair lending, as approved by the  
26 Director ~~Commissioner~~, prior to receiving the initial

1 license. The Director ~~Commissioner~~ shall promulgate rules  
2 regarding proof of experience requirements and educational  
3 requirements and the satisfactory completion of those  
4 requirements. The Commissioner may establish by rule a list  
5 of duly licensed professionals and others who may be exempt  
6 from this requirement.

7 (6) An investigation of the averments required by  
8 Section 2-4, which investigation must allow the Director  
9 ~~Commissioner~~ to issue positive findings stating that the  
10 financial responsibility, experience, character, and  
11 general fitness of the license applicant and of the members  
12 thereof if the license applicant is a partnership or  
13 association, of the officers and directors thereof if the  
14 license applicant is a corporation, and of the managers and  
15 members that retain any authority or responsibility under  
16 the operating agreement if the license applicant is a  
17 limited liability company are such as to command the  
18 confidence of the community and to warrant belief that the  
19 business will be operated honestly, fairly and efficiently  
20 within the purpose of this Act. If the Director  
21 ~~Commissioner~~ shall not so find, he or she shall not issue  
22 such license, and he or she shall notify the license  
23 applicant of the denial.

24 The Director ~~Commissioner~~ may impose conditions on a  
25 license if the Director ~~Commissioner~~ determines that the  
26 conditions are necessary or appropriate. These conditions

1 shall be imposed in writing and shall continue in effect for  
2 the period prescribed by the Director ~~Commissioner~~.

3 (b) All licenses shall be issued ~~in duplicate with one copy~~  
4 ~~being transmitted~~ to the license applicant or license status  
5 may be posted on the multistate automated licensing system ~~and~~  
6 ~~the second being retained with the Commissioner~~.

7 Upon receipt of such license, a residential mortgage  
8 licensee shall be authorized to engage in the business  
9 regulated by this Act. Such license shall remain in full force  
10 and effect until it expires without renewal, is surrendered by  
11 the licensee or revoked or suspended as hereinafter provided.

12 (Source: P.A. 93-32, eff. 7-1-03; 93-1018, eff. 1-1-05.)

13 (205 ILCS 635/2-3) (from Ch. 17, par. 2322-3)

14 Sec. 2-3. Application form.

15 (a) Application for a residential mortgage license must be  
16 made in accordance with Section 2-6 and the requirements of the  
17 multistate automated licensing system approved by the  
18 Director. The application shall be in writing, under oath, and  
19 on a form obtained from and prescribed by the Director, or may  
20 be submitted electronically, with attestation, to the  
21 multistate automated licensing system ~~Commissioner~~.

22 (b) The application shall contain the name and complete  
23 business and residential address or addresses of the license  
24 applicant. If the license applicant is a partnership,  
25 association, corporation or other form of business

1 organization, the application shall contain the names and  
2 complete business and residential addresses of each member,  
3 director and principal officer thereof. Such application shall  
4 also include a description of the activities of the license  
5 applicant, in such detail and for such periods, as the Director  
6 ~~Commissioner~~ may require, including all of the following:

7 (1) An affirmation of financial solvency noting such  
8 capitalization requirements as may be required by the  
9 Director ~~Commissioner~~, and access to such credit as may be  
10 required by the Director ~~Commissioner~~.

11 (2) An affirmation that the license applicant or its  
12 members, directors or principals as may be appropriate, are  
13 at least 18 years of age.

14 (3) Information as to the character, fitness,  
15 financial and business responsibility, background,  
16 experience, and criminal record of any (i) person, entity,  
17 or ultimate equitable owner that owns or controls, directly  
18 or indirectly, 10% or more of any class of stock of the  
19 license applicant; (ii) person, entity, or ultimate  
20 equitable owner that is not a depository institution, as  
21 defined in Section 1007.50 of the Savings Bank Act, that  
22 lends, provides, or infuses, directly or indirectly, in any  
23 way, funds to or into a license applicant, in an amount  
24 equal to or more than 10% of the license applicant's net  
25 worth; (iii) person, entity, or ultimate equitable owner  
26 that controls, directly or indirectly, the election of 25%



1 or more of the members of the board of directors of a  
2 license applicant; or (iv) person, entity, or ultimate  
3 equitable owner that the Director ~~Commissioner~~ finds  
4 influences management of the license applicant.

5 (4) Upon written request by the licensee and  
6 notwithstanding the provisions of paragraphs (1), (2), and  
7 (3) of this subsection, the Director ~~Commissioner~~ may  
8 permit the licensee to omit all or part of the information  
9 required by those paragraphs if, in lieu of the omitted  
10 information, the licensee submits an affidavit stating  
11 that the information submitted on the licensee's previous  
12 renewal application is still true and accurate. The  
13 Director ~~Commissioner~~ may promulgate rules prescribing the  
14 form and content of the affidavit that are necessary to  
15 accomplish the purposes of this Section.

16 (5) Such other information as required by regulations  
17 of the Director ~~Commissioner~~.

18 In the event the information required by the multistate  
19 automated licensing system, as adopted by the Director,  
20 conflicts with any information required in this subsection  
21 (b), the requirements of the multistate automated  
22 licensing system as adopted shall prevail.

23 (Source: P.A. 89-355, eff. 8-17-95.)

24 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

25 Sec. 2-4. Averments of Licensee. Each application for

1 license or for the renewal of a license shall be accompanied by  
2 the following averments stating that the applicant:

3 (a) Will maintain at least one full service office  
4 within the State of Illinois pursuant to Section 3-4 of  
5 this Act;

6 (b) Will maintain staff reasonably adequate to meet the  
7 requirements of Section 3-4 of this Act;

8 (c) Will keep and maintain for 36 months the same  
9 written records as required by the federal Equal Credit  
10 Opportunity Act, and any other information required by  
11 regulations of the Director ~~Commissioner~~ regarding any  
12 home mortgage in the course of the conduct of its  
13 residential mortgage business;

14 (d) Will file with the Director, or multistate  
15 automated licensing system ~~Commissioner~~, when due, any  
16 report or reports which it is required to file under any of  
17 the provisions of this Act;

18 (e) Will not engage, whether as principal or agent, in  
19 the practice of rejecting residential mortgage  
20 applications without reasonable cause, or varying terms or  
21 application procedures without reasonable cause, for home  
22 mortgages on real estate within any specific geographic  
23 area from the terms or procedures generally provided by the  
24 licensee within other geographic areas of the State;

25 (f) Will not engage in fraudulent home mortgage  
26 underwriting practices;

1 (g) Will not make payment, whether directly or  
2 indirectly, of any kind to any in house or fee appraiser of  
3 any government or private money lending agency with which  
4 an application for a home mortgage has been filed for the  
5 purpose of influencing the independent judgment of the  
6 appraiser with respect to the value of any real estate  
7 which is to be covered by such home mortgage;

8 (h) Has filed tax returns (State and Federal) for the  
9 past 3 years or filed as required by the Director ~~with the~~  
10 ~~Commissioner~~ an accountant's or attorney's statement as to  
11 why no return was filed;

12 (i) Will not engage in any discrimination or redlining  
13 activities prohibited by Section 3-8 of this Act;

14 (j) Will not knowingly make any false promises likely  
15 to influence or persuade, or pursue a course of  
16 misrepresentation and false promises through agents,  
17 solicitors, advertising or otherwise;

18 (k) Will not knowingly misrepresent, circumvent or  
19 conceal, through whatever subterfuge or device, any of the  
20 material particulars or the nature thereof, regarding a  
21 transaction to which it is a party to the injury of another  
22 party thereto;

23 (l) Will disburse funds in accordance with its  
24 agreements;

25 (m) Has not committed a crime against the law of this  
26 State, any other state or of the United States, involving

1 moral turpitude, fraudulent or dishonest dealing, and that  
2 no final judgment has been entered against it in a civil  
3 action upon grounds of fraud, misrepresentation or deceit  
4 which has not been previously reported to the Director  
5 ~~Commissioner~~;

6 (n) Will account or deliver to the owner upon request  
7 ~~any person~~ any personal property such as money, fund,  
8 deposit, check, draft, mortgage, other document or thing of  
9 value, ~~which has come into its possession, and which is not~~  
10 ~~its property, or~~ which it is not in law or equity entitled  
11 to retain under the circumstances, ~~at the time which has~~  
12 ~~been agreed upon or is required by law, or, in the absence~~  
13 ~~of a fixed time, upon demand of the person entitled to such~~  
14 ~~accounting and delivery~~;

15 (o) Has not engaged in any conduct which would be cause  
16 for denial of a license;

17 (p) Has not become insolvent;

18 (q) Has not submitted an application for a license  
19 under this Act which contains a material misstatement;

20 (r) Has not demonstrated by course of conduct,  
21 negligence or incompetence in performing any act for which  
22 it is required to hold a license under this Act;

23 (s) Will advise the Director ~~Commissioner~~ in writing,  
24 or the multistate automated licensing system by electronic  
25 means, of any changes to the information submitted on the  
26 most recent application for license within 30 days of said

1        change, or by the date required for entry of changes to the  
2        multistate automated licensing system. The written notice  
3        must be signed in the same form as the application for  
4        license being amended;

5            (t) Will comply with the provisions of this Act, or  
6        with any lawful order, rule or regulation made or issued  
7        under the provisions of this Act;

8            (u) Will submit to periodic examination by the Director  
9        ~~Commissioner~~ as required by this Act;

10           (v) Will advise the Director ~~Commissioner~~ in writing of  
11        judgments entered against, and bankruptcy petitions by,  
12        the license applicant within 5 days of occurrence;

13           (w) Will advise the Director ~~Commissioner~~ in writing  
14        within 30 days of any request made to ~~when the license~~  
15        ~~applicant requests~~ a licensee under this Act to repurchase  
16        a loan in a manner that completely and clearly identifies  
17        to whom the request was made, the loans involved, and the  
18        reason for the request ~~, and the circumstances therefor;~~

19           (x) Will advise the Director ~~Commissioner~~ in writing  
20        within 30 days of any request from any entity ~~when the~~  
21        ~~license applicant is requested by another entity~~ to  
22        repurchase a loan in a manner that completely and clearly  
23        identifies who made the request, the loans involved, and  
24        the reason for the request, ~~and the circumstances therefor;~~

25           (y) Will at all times act in a manner consistent with  
26        subsections (a) and (b) of Section 1-2 of this Act; and

1           (z) Will not knowingly hire or employ a loan originator  
2           who is not registered with the Director ~~Commissioner~~ as  
3           required under Section 7-1 of this Act.

4           A licensee who fails to fulfill obligations of an averment,  
5           to comply with averments made, or otherwise violates any of the  
6           averments made under this Section shall be subject to the  
7           penalties in Section 4-5 of this Act.

8           (Source: P.A. 95-331, eff. 8-21-07.)

9           (205 ILCS 635/2-5) (from Ch. 17, par. 2322-5)

10          Sec. 2-5. Refusal to Issue License. The Director  
11 ~~Commissioner~~ shall refuse to license or renew a license if:

12           (1) it is determined that the applicant is not in  
13           compliance with any provisions of the Act or the provisions  
14           of the multistate automated licensing system as approved by  
15           the Director; or

16           (2) there is substantial continuity between the  
17           applicant and any violator of this Act; or

18           (3) the Director ~~Commissioner~~ cannot make the findings  
19           specified in Section 2-2, subsection (a), of this Act.

20          (Source: P.A. 86-137; 87-642.)

21          (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

22          Sec. 2-6. License issuance and renewal; fee.

23           (a) Beginning July 1, 2003, licenses shall be renewed every  
24           year on the anniversary of the date of issuance of the original

1 license, or if the multistate automated licensing system is  
2 approved, then on the common renewal date selected for the  
3 multistate automated licensing system. Properly completed  
4 renewal application forms and filing fees must be received by  
5 the Director ~~Commissioner~~ 60 days prior to the renewal date, or  
6 if the multistate automated licensing system is approved, then  
7 by the date of receipt selected for the multistate automated  
8 licensing system.

9 (b) It shall be the responsibility of each licensee to  
10 accomplish renewal of its license; failure of the licensee to  
11 receive renewal forms or electronic notice ~~absent a request~~  
12 ~~sent by certified mail for such forms~~ will not waive said  
13 responsibility. Failure by a licensee to submit a properly  
14 completed renewal application form, or complete renewal on the  
15 multistate automated licensing system, and pay fees in a timely  
16 fashion, absent a written extension from the Director  
17 ~~Commissioner~~, will result in the assessment of additional fees,  
18 as follows:

19 (1) A fee of \$750 will be assessed to the licensee 30  
20 days after the proper renewal date and \$1,500 each month  
21 thereafter, or late fees as determined by the Director in  
22 conjunction with the multistate automated licensing  
23 system, until the license is either renewed or expires  
24 pursuant to Section 2-6, subsections (c) and (d), of this  
25 Act.

26 (2) Such fee will be assessed without prior notice to

1 the licensee, but will be assessed only in cases wherein  
2 the Director ~~Commissioner~~ has in his or her possession  
3 documentation of the licensee's continuing activity for  
4 which the unrenewed license was issued.

5 (c) A license which is not renewed by the date required in  
6 this Section shall automatically become inactive. No activity  
7 regulated by this Act shall be conducted by the licensee when a  
8 license becomes inactive. The Director ~~Commissioner~~ may  
9 require the licensee to provide a plan for the disposition of  
10 any residential mortgage loans not closed or funded when the  
11 license becomes inactive. The Director ~~Commissioner~~ may allow a  
12 licensee with an inactive license to conduct activities  
13 regulated by this Act for the sole purpose of assisting  
14 borrowers in the closing or funding of loans for which the loan  
15 application was taken from a borrower while the license was  
16 active. An inactive license may be reactivated by the Director,  
17 or by the multistate automated licensing system at the  
18 direction of the Director, ~~Commissioner~~ upon payment of the  
19 renewal fee, and payment of a reactivation fee equal to the  
20 renewal fee.

21 (d) A license which is not renewed within one year of  
22 becoming inactive shall expire.

23 (e) A licensee ceasing an activity or activities regulated  
24 by this Act and desiring to no longer be licensed shall so  
25 inform the Director ~~Commissioner~~ in writing and, at the same  
26 time, convey the license and all other symbols or indicia of



1 licensure, or request a license status change on the multistate  
2 automated licensing system. The licensee shall include a plan  
3 for the withdrawal from regulated business, including a  
4 timetable for the disposition of the business and comply with  
5 surrender guidelines of the Director to ensure proper surrender  
6 of the license. Upon completion of all requirements ~~receipt of~~  
7 ~~such written notice,~~ the Director ~~Commissioner~~ shall issue a  
8 certified statement canceling the license or the surrendered or  
9 cancelled license status shall be posted on the multistate  
10 automated licensing system.

11 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,  
12 eff. 1-1-05.)

13 (205 ILCS 635/2-7) (from Ch. 17, par. 2322-7)

14 Sec. 2-7. Waiver of licensing fee. The Director  
15 ~~Commissioner~~ may waive the licensing fee upon receipt of:

16 (a) an application for a residential mortgage license in  
17 Illinois,

18 (b) an addendum requesting waiver of the fee stating the  
19 grounds in support of such waiver, including but not limited  
20 to, not for profit status, bankruptcy or the showing of undue  
21 hardship, and

22 (c) in case of an out-of-state servicer of loans in  
23 Illinois, the following documentation is required:

24 (1) A verification that the firm services only 100 or  
25 fewer loans secured by residential real estate situated in

1 Illinois;

2 (2) An agreement not to originate, purchase or acquire  
3 additional servicing of loans secured by residential real  
4 estate situated in Illinois;

5 (3) An agreement to maintain a dedicated toll free  
6 (800) number for exclusive use by the licensee's Illinois  
7 customers;

8 (4) An agreement to provide a written notice at least  
9 annually to the licensee's Illinois customers advising  
10 them of the dedicated toll free (800) number; and to  
11 furnish the Director ~~Commissioner~~ with a copy of such  
12 written notice.

13 A request for waiver of the filing fee must be submitted  
14 each year in conjunction with the license renewal procedure.

15 (Source: P.A. 90-301, eff. 8-1-97.)

16 (205 ILCS 635/2-8) (from Ch. 17, par. 2322-8)

17 Sec. 2-8. Additional Full-service Offices.

18 (a) A licensee may apply for authority to open and maintain  
19 additional full-service offices by:

20 (1) Giving the Director or multistate automated licensing  
21 system ~~Commissioner~~ prior notice of its intention in such form  
22 as shall be prescribed by the Commissioner.

23 (2) Payment of a fee to be established by regulation.

24 (b) Upon receipt of the notice and fee required in  
25 subsection (a) above, the Commissioner shall issue a

1 certificate for the additional full-service office, or the  
2 license status shall be posted to the multistate automated  
3 licensing system.

4 (c) The certificate, if issued by the Director, shall be  
5 conspicuously posted in the respective additional full-service  
6 offices.

7 (Source: P.A. 85-735.)

8 (205 ILCS 635/2-9) (from Ch. 17, par. 2322-9)

9 Sec. 2-9. Posting of license. The license of a licensee  
10 whose home office is within the State of Illinois or of an  
11 out-of-state licensee, if issued by the Director, shall be  
12 conspicuously posted in every office of the licensee located in  
13 Illinois. Out-of-state licensees without an Illinois office  
14 shall produce the license, if issued, upon request. Licensees  
15 originating loans on the Internet shall post on their Internet  
16 web site their license number and ~~the address and~~ telephone  
17 number of the Director ~~Commissioner~~. The license shall state  
18 the full name and address of the licensee. The license shall  
19 not be transferable or assignable. A separate certificate may  
20 ~~shall~~ be issued for posting in each full service Illinois  
21 office.

22 (Source: P.A. 91-586, eff. 8-14-99.)

23 (205 ILCS 635/2-11) (from Ch. 17, par. 2322-11)

24 Sec. 2-11. Miscellaneous fees. In addition to any license

1 fee collected under this Act, the Director ~~Commissioner~~ shall  
2 by rule and regulation establish a schedule to apply to  
3 assessment and collection of necessary contingent and  
4 miscellaneous fees.

5 (Source: P.A. 85-735.)

6 (205 ILCS 635/3-1) (from Ch. 17, par. 2323-1)

7 Sec. 3-1. Bonds of licensees.

8 (a) Every licensee, with respect to any person appointed or  
9 elected to any position requiring the receipt of payment,  
10 management, or use of money belonging to a residential mortgage  
11 licensee engaged in the activities of originating, servicing,  
12 or purchasing mortgage loans or whose duties permit him or her  
13 to have access to or custody of any of its money or securities  
14 or custody of any money or securities belonging to third  
15 parties or whose duties permit him or her regularly to make  
16 entries in the books or other records of a licensee, shall,  
17 before assuming his or her duties, maintain a fidelity bond in  
18 the amount of \$100,000 by some fidelity insurance company  
19 licensed to do business in this State.

20 (b) Each bond shall be for any loss the licensee may  
21 sustain in money or other property through the commission of  
22 any dishonest or criminal act or omission by any person  
23 required to be bonded, whether committed alone or in concert  
24 with another. The bond shall be in the form and amount approved  
25 by the Director ~~Commissioner~~ who may at any time require one or

1 more additional bonds. A true copy of every bond, including all  
2 riders and endorsements executed subsequent to the effective  
3 date of the bond, shall be filed at all times with the Director  
4 ~~Commissioner~~. Each bond shall provide that a cancellation  
5 thereof shall not become effective unless and until 30 days  
6 notice in writing first shall have been given to the Director  
7 ~~Commissioner~~ unless he or she shall have approved the  
8 cancellation earlier. If the Director ~~Commissioner~~ believes  
9 the licensee's business is being conducted in an unsafe manner  
10 due to the lack of bonds or the inadequacy of bonds, he or she  
11 may proceed against the licensee as provided for in Section  
12 4-5.

13 (c) All licensees shall maintain a bond in accordance with  
14 this subsection. Each bond shall be for the recovery of  
15 expenses, fines, or fees due to or levied by the Director  
16 ~~Commissioner~~ in accordance with this Act. The bond shall be  
17 payable when the licensee fails to comply with any provisions  
18 of this Act and shall be in the form of a surety or licensure  
19 bond in the amount and form as prescribed by the Director  
20 ~~Commissioner~~ pursuant to rules and regulations. The bond shall  
21 be payable to the Division of Banking of the Department of  
22 Financial and Professional Regulation ~~Office of Banks and Real~~  
23 ~~Estate~~ and shall be issued by some insurance company authorized  
24 to do business in this State. A copy of the bond, including any  
25 and all riders and endorsements executed subsequent to the  
26 effective date of the bond, shall be placed on file with the

1 Division of Banking of the Department of Financial and  
2 Professional Regulation ~~Office of Banks and Real Estate~~ within  
3 10 days of the execution thereof.

4 (d) The Director ~~Commissioner~~ may promulgate rules with  
5 respect to bonding requirements for residential mortgage  
6 licensees that are reasonable and necessary to accomplish the  
7 purposes of this Act.

8 (Source: P.A. 89-508, eff. 7-3-96.)

9 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

10 Sec. 3-2. Annual audit.

11 (a) At the licensee's fiscal year-end, but in no case more  
12 than 12 months after the last audit conducted pursuant to this  
13 Section, except as otherwise provided in this Section, it shall  
14 be mandatory for each residential mortgage licensee to cause  
15 its books and accounts to be audited by a certified public  
16 accountant licensed under the Illinois Public Accounting Act or  
17 by an equivalent state licensing law not connected with such  
18 licensee. The books and records of all licensees under this Act  
19 shall be maintained on an accrual basis. The audit must be  
20 sufficiently comprehensive in scope to permit the expression of  
21 an opinion on the financial statements, which must be prepared  
22 in accordance with generally accepted accounting principles,  
23 and must be performed in accordance with generally accepted  
24 auditing standards. Notwithstanding the requirements of this  
25 subsection, a licensee that is a first tier subsidiary may

1 submit audited consolidated financial statements of its parent  
2 as long as the consolidated statements are supported by  
3 consolidating statements. The licensee's chief financial  
4 officer shall attest to the licensee's financial statements  
5 disclosed in the consolidating statements.

6 (b) As used herein, the term "expression of opinion"  
7 includes either (1) an unqualified opinion, (2) a qualified  
8 opinion, (3) a disclaimer of opinion, or (4) an adverse  
9 opinion.

10 (c) If a qualified or adverse opinion is expressed or if an  
11 opinion is disclaimed, the reasons therefore must be fully  
12 explained. An opinion, qualified as to a scope limitation,  
13 shall not be acceptable.

14 (d) The most recent audit report shall be filed with the  
15 Director ~~Commissioner~~ within 90 days after the end of the  
16 licensee's fiscal year. The report filed with the Director  
17 ~~Commissioner~~ shall be certified by the certified public  
18 accountant conducting the audit. The Director ~~Commissioner~~ may  
19 promulgate rules regarding late audit reports.

20 (e) If any licensee required to make an audit shall fail to  
21 cause an audit to be made, the Director ~~Commissioner~~ shall  
22 cause the same to be made by a certified public accountant at  
23 the licensee's expense. The Director ~~Commissioner~~ shall select  
24 such certified public accountant by advertising for bids or by  
25 such other fair and impartial means as he or she establishes by  
26 regulation.

1 (f) In lieu of the audit or compilation financial statement  
2 required by this Section, a licensee shall submit and the  
3 Director ~~Commissioner~~ may accept any audit made in conformance  
4 with the audit requirements of the U.S. Department of Housing  
5 and Urban Development.

6 (g) With respect to licensees who solely broker residential  
7 mortgage loans as defined in subsection (o) of Section 1-4,  
8 instead of the audit required by this Section, the Director  
9 ~~Commissioner~~ may accept compilation financial statements  
10 prepared at least every 12 months, and the compilation  
11 financial statement must be prepared by an independent  
12 certified public accountant licensed under the Illinois Public  
13 Accounting Act or by an equivalent state licensing law with  
14 full disclosure in accordance with generally accepted  
15 accounting principals and must be submitted within 90 days  
16 after the end of the licensee's fiscal year. If a licensee  
17 under this Section fails to file a compilation as required, the  
18 Director ~~Commissioner~~ shall cause an audit of the licensee's  
19 books and accounts to be made by a certified public accountant  
20 at the licensee's expense. The Director ~~Commissioner~~ shall  
21 select the certified public accountant by advertising for bids  
22 or by such other fair and impartial means as he or she  
23 establishes by rule. A licensee who files false or misleading  
24 compilation financial statements is guilty of a business  
25 offense and shall be fined not less than \$5,000.

26 (h) The workpapers of the certified public accountants



1 employed by each licensee for purposes of this Section are to  
2 be made available to the Director ~~Commissioner~~ or the  
3 Director's ~~Commissioner's~~ designee upon request and may be  
4 reproduced by the Director ~~Commissioner~~ or the Director's  
5 ~~Commissioner's~~ designee to enable to the Director ~~Commissioner~~  
6 to carry out the purposes of this Act.

7 (i) Notwithstanding any other provision of this Section, if  
8 a licensee relying on subsection (g) of this Section causes its  
9 books to be audited at any other time or causes its financial  
10 statements to be reviewed, a complete copy of the audited or  
11 reviewed financial statements shall be delivered to the  
12 Director ~~Commissioner~~ at the time of the annual license renewal  
13 payment following receipt by the licensee of the audited or  
14 reviewed financial statements. All workpapers shall be made  
15 available to the Director ~~Commissioner~~ upon request. The  
16 financial statements and workpapers may be reproduced by the  
17 Director ~~Commissioner~~ or the Director's ~~Commissioner's~~  
18 designee to carry out the purposes of this Act.

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

20 (205 ILCS 635/3-3) (from Ch. 17, par. 2323-3)

21 Sec. 3-3. Advertising. In addition to such other rules,  
22 regulations and policies as the Director ~~Commissioner~~ may  
23 promulgate to effectuate the purpose of this Act, the Director  
24 ~~Commissioner~~ shall prescribe regulations governing the  
25 advertising of mortgage loans, including without limitation,

1 the following requirements:

2 (a) Advertising for loans transacted under this Act may not  
3 be false, misleading or deceptive. No entity whose activities  
4 are regulated under this Act may advertise in any manner so as  
5 to indicate or imply that its interest rates or charges for  
6 loans are in any way "recommended", "approved", "set" or  
7 "established" by the State or by this Act. The Director  
8 ~~Commissioner~~ may issue a cease and desist order for any  
9 violation of this Section.

10 (b) All advertisements by a licensee shall contain the name  
11 and an office address of such entity, which shall conform to a  
12 name and address on record with the Director ~~Commissioner~~.

13 (c) No licensee shall advertise its services in Illinois in  
14 any media, whether print or electronic, without the words  
15 "Illinois Residential Mortgage Licensee".

16 (Source: P.A. 87-1098.)

17 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

18 Sec. 3-4. Office and staff within the State.

19 (a) A licensee whose principal place of business is located  
20 in the State of Illinois shall maintain at least one full  
21 service office with staff reasonably adequate to handle  
22 efficiently communications, questions, and all other matters  
23 relating to any application for a home mortgage or an existing  
24 home mortgage with respect to which such licensee is performing  
25 services, regardless of kind, for any borrower or lender, note

1 owner or holder, or for himself or herself while engaged in the  
2 residential mortgage business. The location and operation of a  
3 full service office shall be in compliance with any applicable  
4 zoning laws or ordinances and home office or business  
5 regulations. The office or place of business shall not be  
6 located in any real estate, retail, or financial business  
7 establishment unless it is separated from the other business by  
8 a separate and distinct area within the establishment.

9 (b) In lieu of maintaining a full service office in the  
10 State of Illinois, and subject to the rules of the Department,  
11 a licensee whose principal place of business is located outside  
12 the State of Illinois may comply with all of the following  
13 requirements:

14 (1) maintain a limited service office in Illinois that  
15 is adequate to accommodate a full-scope examination of the  
16 licensee's books and records as they relate to activity in  
17 Illinois, as determined by the Department;

18 (2) ~~must~~ submit a certified audit as required in  
19 Section 3-2 of this Act evidencing a minimum net worth of  
20 \$150,000 ~~\$100,000~~, which must be maintained at all times;  
21 and

22 (3) ~~, and shall submit and~~ maintain a fidelity bond in  
23 the amount of \$100,000, a copy of which must be submitted  
24 to the Department. The Department may promulgate rules  
25 permitting licensees that do not comply with the net worth  
26 requirement established on the effective date of this

1       amendatory Act of the 95th General Assembly to do so within  
2       12 months after the effective date of this amendatory Act  
3       of the 95th General Assembly.

4       (Source: P.A. 93-1018, eff. 1-1-05.)

5               (205 ILCS 635/3-5) (from Ch. 17, par. 2323-5)

6       Sec. 3-5. Net worth requirement. A licensee that holds a  
7       license on the effective date of this amendatory Act of the  
8       93rd General Assembly shall have and maintain a net worth of  
9       not less than \$100,000; however, no later than 2 years after  
10      the effective date of this amendatory Act of the 93rd General  
11      Assembly, the licensee must maintain a net worth of not less  
12      than \$150,000. A licensee that first obtains a license after  
13      the effective date of this amendatory Act of the 93rd General  
14      Assembly must have and maintain a net worth of not less than  
15      \$150,000. Notwithstanding other requirements of this Section,  
16      the net worth requirement for a residential mortgage licensee  
17      whose only licensable activity is that of brokering residential  
18      mortgage loans and that holds a license on the effective date  
19      of this amendatory Act of the 93rd General Assembly shall be  
20      \$35,000; however, no later than 2 years after the effective  
21      date of this amendatory Act of the 93rd General Assembly, the  
22      licensee must maintain a net worth of not less than \$50,000.  
23      Such a licensee that first obtains a license after the  
24      effective date of this amendatory Act of the 93rd General  
25      Assembly must have and maintain a net worth of not less than

1 \$50,000. Net worth shall be evidenced by a balance sheet  
2 prepared by a certified public accountant in accordance with  
3 generally accepted accounting principles and generally  
4 accepted auditing standards or by the compilation financial  
5 statements authorized under subsection (g) of Section 3-2. The  
6 Director ~~Commissioner~~ may promulgate rules with respect to net  
7 worth definitions and requirements for residential mortgage  
8 licensees as necessary to accomplish the purposes of this Act.  
9 In lieu of the net worth requirement established by this  
10 Section, the Director ~~Commissioner~~ may accept evidence of  
11 conformance by the licensee with the net worth requirements of  
12 the United States Department of Housing and Urban Development.  
13 (Source: P.A. 93-561, eff. 1-1-04.)

14 (205 ILCS 635/3-9) (from Ch. 17, par. 2323-9)  
15 Sec. 3-9. Escrow Funds. The Director ~~Commissioner~~ may  
16 promulgate rules with respect to placement in escrow accounts  
17 by any licensee of any money, fund, deposit, check or draft  
18 entrusted to it by any persons dealing with it as a residential  
19 mortgage licensee.  
20 (Source: P.A. 85-735.)

21 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)  
22 Sec. 4-1. Director of the Division of Banking of the  
23 Department of Financial and Professional Regulation  
24 ~~Commissioner of Banks and Real Estate~~; functions, powers, and

1 duties. The functions, powers, and duties of the Director  
2 ~~Commissioner of Banks and Real Estate~~ shall include the  
3 following:

4 (a) To issue or refuse to issue any license as provided by  
5 this Act;

6 (b) To revoke or suspend for cause any license issued under  
7 this Act;

8 (c) To keep records of all licenses issued under this Act;

9 (d) To receive, consider, investigate, and act upon  
10 complaints made by any person in connection with any  
11 residential mortgage licensee in this State;

12 (e) To consider and act upon any recommendations from the  
13 Residential Mortgage Board;

14 (f) To prescribe the forms of and receive:

15 (1) applications for licenses; and

16 (2) all reports and all books and records required to  
17 be made by any licensee under this Act, including annual  
18 audited financial statements and annual reports of  
19 mortgage activity;

20 (g) To adopt rules and regulations necessary and proper for  
21 the administration of this Act;

22 (h) To subpoena documents and witnesses and compel their  
23 attendance and production, to administer oaths, and to require  
24 the production of any books, papers, or other materials  
25 relevant to any inquiry authorized by this Act;

26 (h-1) To issue orders against any person, if the Director

1 ~~Commissioner~~ has reasonable cause to believe that an unsafe,  
2 unsound, or unlawful practice has occurred, is occurring, or is  
3 about to occur, if any person has violated, is violating, or is  
4 about to violate any law, rule, or written agreement with the  
5 Director ~~Commissioner~~, or for the purpose of administering the  
6 provisions of this Act and any rule adopted in accordance with  
7 the Act;

8 (h-2) To address any inquiries to any licensee, or the  
9 officers thereof, in relation to its activities and conditions,  
10 or any other matter connected with its affairs, and it shall be  
11 the duty of any licensee or person so addressed, to promptly  
12 reply in writing to such inquiries. The Director ~~Commissioner~~  
13 may also require reports from any licensee at any time the  
14 Director ~~Commissioner~~ may deem desirable;

15 (i) To require information with regard to any license  
16 applicant as he or she may deem desirable, with due regard to  
17 the paramount interests of the public as to the experience,  
18 background, honesty, truthfulness, integrity, and competency  
19 of the license applicant as to financial transactions involving  
20 primary or subordinate mortgage financing, and where the  
21 license applicant is an entity other than an individual, as to  
22 the honesty, truthfulness, integrity, and competency of any  
23 officer or director of the corporation, association, or other  
24 entity, or the members of a partnership;

25 (j) To examine the books and records of every licensee  
26 under this Act at intervals as specified in Section 4-2;

1 (k) To enforce provisions of this Act;

2 (l) To levy fees, fines, and charges for services performed  
3 in administering this Act; the aggregate of all fees collected  
4 by the Director ~~Commissioner~~ on and after the effective date of  
5 this Act shall be paid promptly after receipt of the same,  
6 accompanied by a detailed statement thereof, into the Savings  
7 and Residential Finance Regulatory Fund; the amounts deposited  
8 into that Fund shall be used for the ordinary and contingent  
9 expenses of the Office of Banks and Real Estate. Nothing in  
10 this Act shall prevent continuing the practice of paying  
11 expenses involving salaries, retirement, social security, and  
12 State-paid insurance of State officers by appropriation from  
13 the General Revenue Fund.

14 (m) To appoint examiners, supervisors, experts, and  
15 special assistants as needed to effectively and efficiently  
16 administer this Act;

17 (n) To conduct hearings for the purpose of:

18 (1) appeals of orders of the Director ~~Commissioner~~;

19 (2) suspensions or revocations of licenses, or fining  
20 of licensees;

21 (3) investigating:

22 (i) complaints against licensees; or

23 (ii) annual gross delinquency rates; and

24 (4) carrying out the purposes of this Act;

25 (o) To exercise exclusive visitorial power over a licensee  
26 unless otherwise authorized by this Act or as vested in the



1 courts, or upon prior consultation with the Director  
2 ~~Commissioner~~, a foreign residential mortgage regulator with an  
3 appropriate supervisory interest in the parent or affiliate of  
4 a licensee;

5 (p) To enter into cooperative agreements with state  
6 regulatory authorities of other states to provide for  
7 examination of corporate offices or branches of those states  
8 and to accept reports of such examinations;

9 (q) To assign an examiner or examiners to monitor the  
10 affairs of a licensee with whatever frequency the Commissioner  
11 determines appropriate and to charge the licensee for  
12 reasonable and necessary expenses of the Director  
13 ~~Commissioner~~, if in the opinion of the Director ~~Commissioner~~ an  
14 emergency exists or appears likely to occur; and

15 (r) To impose civil penalties of up to \$50 per day against  
16 a licensee for failing to respond to a regulatory request or  
17 reporting requirement.

18 (Source: P.A. 93-1018, eff. 1-1-05.)

19 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

20 Sec. 4-2. Examination; prohibited activities.

21 (a) The business affairs of a licensee under this Act shall  
22 be examined for compliance with this Act as often as the  
23 Director ~~Commissioner~~ deems necessary and proper. The Director  
24 ~~Commissioner~~ shall promulgate rules with respect to the  
25 frequency and manner of examination. The Director ~~Commissioner~~

1 shall appoint a suitable person to perform such examination.  
2 The Director ~~Commissioner~~ and his appointees may examine the  
3 entire books, records, documents, and operations of each  
4 licensee and its subsidiary, affiliate, or agent, and may  
5 examine any of the licensee's or its subsidiary's, affiliate's,  
6 or agent's officers, directors, employees and agents under  
7 oath. For purposes of this Section, "agent" includes service  
8 providers such as accountants, closing services providers,  
9 providers of outsourced services such as call centers,  
10 marketing consultants, and loan processors, even if exempt from  
11 licensure under this Act.

12 (b) The Director ~~Commissioner~~ shall prepare a sufficiently  
13 detailed report of each licensee's examination, shall issue a  
14 copy of such report to each licensee's principals, officers, or  
15 directors and shall take appropriate steps to ensure correction  
16 of violations of this Act.

17 (c) Affiliates of a licensee shall be subject to  
18 examination by the Director ~~Commissioner~~ on the same terms as  
19 the licensee, but only when reports from, or examination of a  
20 licensee provides for documented evidence of unlawful activity  
21 between a licensee and affiliate benefiting, affecting or  
22 deriving from the activities regulated by this Act.

23 (d) The expenses of any examination of the licensee and  
24 affiliates shall be borne by the licensee and assessed by the  
25 Commissioner as established by regulation.

26 (e) Upon completion of the examination, the Director

1 ~~Commissioner~~ shall issue a report to the licensee. All  
2 confidential supervisory information, including the  
3 examination report and the work papers of the report, shall  
4 belong to the Director's ~~Commissioner's~~ office and may not be  
5 disclosed to anyone other than the licensee, law enforcement  
6 officials or other regulatory agencies that have an appropriate  
7 regulatory interest as determined by the Commissioner, or to a  
8 party presenting a lawful subpoena to the Office of the  
9 Director ~~Commissioner~~. The Director ~~Commissioner~~ may  
10 immediately appeal to the court of jurisdiction the disclosure  
11 of such confidential supervisory information and seek a stay of  
12 the subpoena pending the outcome of the appeal. Reports  
13 required of licensees by the Director ~~Commissioner~~ under this  
14 Act and results of examinations performed by the Director  
15 ~~Commissioner~~ under this Act shall be the property of only the  
16 Director ~~Commissioner~~, but may be shared with the licensee.  
17 Access under this Act to the books and records of each licensee  
18 shall be limited to the Director ~~Commissioner~~ and his agents as  
19 provided in this Act and to the licensee and its authorized  
20 agents and designees. No other person shall have access to the  
21 books and records of a licensee under this Act. Any person upon  
22 whom a demand for production of confidential supervisory  
23 information is made, whether by subpoena, order, or other  
24 judicial or administrative process, must withhold production  
25 of the confidential supervisory information and must notify the  
26 Director ~~Commissioner~~ of the demand, at which time the Director

1 ~~Commissioner~~ is authorized to intervene for the purpose of  
2 enforcing the limitations of this Section or seeking the  
3 withdrawal or termination of the attempt to compel production  
4 of the confidential supervisory information. The Director  
5 ~~Commissioner~~ may impose any conditions and limitations on the  
6 disclosure of confidential supervisory information that are  
7 necessary to protect the confidentiality of such information.  
8 Except as authorized by the Director ~~Commissioner~~, no person  
9 obtaining access to confidential supervisory information may  
10 make a copy of the confidential supervisory information. The  
11 Director ~~Commissioner~~ may condition a decision to disclose  
12 confidential supervisory information on entry of a protective  
13 order by the court or administrative tribunal presiding in the  
14 particular case or on a written agreement of confidentiality.  
15 In a case in which a protective order or agreement has already  
16 been entered between parties other than the Director  
17 ~~Commissioner~~, the Director ~~Commissioner~~ may nevertheless  
18 condition approval for release of confidential supervisory  
19 information upon the inclusion of additional or amended  
20 provisions in the protective order. The Director ~~Commissioner~~  
21 may authorize a party who obtained the records for use in one  
22 case to provide them to another party in another case, subject  
23 to any conditions that the Director ~~Commissioner~~ may impose on  
24 either or both parties. The requestor shall promptly notify  
25 other parties to a case of the release of confidential  
26 supervisory information obtained and, upon entry of a

1 protective order, shall provide copies of confidential  
2 supervisory information to the other parties.

3 (f) The Director, deputy directors, and employees of the  
4 Division of Banks of the Department of Financial and  
5 Professional Regulation Commissioner, deputy commissioners,  
6 ~~and employees of the Office of Banks and Real Estate~~ shall be  
7 subject to the restrictions provided in Section 2.5 of the  
8 Office of Banks and Real Estate Act including, without  
9 limitation, the restrictions on (i) owning shares of stock or  
10 holding any other equity interest in an entity regulated under  
11 this Act or in any corporation or company that owns or controls  
12 an entity regulated under this Act; (ii) being an officer,  
13 director, employee, or agent of an entity regulated under this  
14 Act; and (iii) obtaining a loan or accepting a gratuity from an  
15 entity regulated under this Act.

16 (g) After the initial examination for those licensees whose  
17 only mortgage activity is servicing fewer than 1,000 Illinois  
18 residential loans, the examination required in subsection (a)  
19 may be waived upon submission of a letter from the licensee's  
20 independent certified auditor that the licensee serviced fewer  
21 than 1,000 Illinois residential loans during the year in which  
22 the audit was performed.

23 (Source: P.A. 93-1018, eff. 1-1-05.)

24 (205 ILCS 635/4-3) (from Ch. 17, par. 2324-3)

25 Sec. 4-3. Subpoena power of the Director ~~Commissioner~~. (a)

1 The Director ~~Commissioner~~ shall have the power to issue and to  
2 serve subpoenas and subpoenas duces tecum to compel the  
3 attendance of witnesses and the production of all books,  
4 accounts, records and other documents and materials relevant to  
5 an examination or investigation. The Director ~~Commissioner~~ or  
6 his or her duly authorized representative, shall have power to  
7 administer oaths and affirmations to any person.

8 (b) In the event of noncompliance with a subpoena or  
9 subpoena duces tecum issued or caused to be issued by the  
10 Director ~~Commissioner~~, the Director ~~Commissioner~~ may petition  
11 the circuit court of the county in which the person subpoenaed  
12 resides or has its principal place of business for an order  
13 requiring the subpoenaed person to appear and testify and to  
14 produce such books, accounts, records and other documents as  
15 are specified in the subpoena duces tecum. The court may grant  
16 injunctive relief restraining the person from advertising,  
17 promoting, soliciting, entering into, offering to enter into,  
18 continuing, or completing any residential mortgage financing  
19 transaction or residential mortgage servicing transaction. The  
20 court may grant such other relief, including, but not limited  
21 to, the restraint, by injunction or appointment of a receiver,  
22 of any transfer, pledge, assignment or other disposition of the  
23 person's assets or any concealment, alteration, destruction or  
24 other disposition of books, accounts, records or other  
25 documents and materials as the court deems appropriate, until  
26 the person has fully complied with the subpoena or subpoena

1 duces tecum and the Director ~~Commissioner~~ has completed an  
2 investigation or examination.

3 (c) When it shall appear to the Director ~~Commissioner~~ that  
4 the compliance with a subpoena or subpoena duces tecum issued  
5 or caused to be issued by the Director ~~Commissioner~~ pursuant to  
6 this Section is essential to an investigation or examination,  
7 the Director ~~Commissioner~~, in addition to the other remedies  
8 provided for herein, may apply for relief to the circuit court  
9 of the county in which the subpoenaed person resides or has its  
10 principal place of business. The court shall thereupon direct  
11 the issuance of an order against the subpoenaed person  
12 requiring sufficient bond conditioned on compliance with the  
13 subpoena or subpoena duces tecum. The court shall cause to be  
14 endorsed on the order a suitable amount of bond or payment  
15 pursuant to which the person named in the order shall be freed,  
16 having a due regard to the nature of the case.

17 (d) In addition, the Director ~~Commissioner~~ may seek a writ  
18 of attachment or an equivalent order from the circuit court  
19 having jurisdiction over the person who has refused to obey a  
20 subpoena, who has refused to give testimony or who has refused  
21 to produce the matters described in the subpoena duces tecum.

22 (Source: P.A. 85-735.)

23 (205 ILCS 635/4-4) (from Ch. 17, par. 2324-4)

24 Sec. 4-4. Report Required of Licensee; False Statements;  
25 Delay; Penalties.(a) In addition to any reports required under

1 this Act, every licensee shall file such other reports as the  
2 Director ~~Commissioner~~ shall request.

3 (b) Any licensee or any officer, director, employee or  
4 agent of any licensee who shall fail to file any reports  
5 required by this Act, including those under subsection (a)  
6 above, or who shall deliberately, wilfully or knowingly make,  
7 subscribe to or cause to be made any false entry with intent to  
8 deceive the Director ~~Commissioner~~ or his or her appointees or  
9 who shall purposely cause unreasonable delay in filing such  
10 reports, shall be guilty of a Class 4 Felony.

11 (Source: P.A. 85-735.)

12 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

13 Sec. 4-5. Suspension, revocation of licenses; fines.

14 (a) Upon written notice to a licensee, the Director  
15 ~~Commissioner~~ may suspend or revoke any license issued pursuant  
16 to this Act if he or she shall make a finding of one or more of  
17 the following in the notice that:

18 (1) Through separate acts or an act or a course of  
19 conduct, the licensee has violated any provisions of this  
20 Act, any rule or regulation promulgated by the Director  
21 ~~Commissioner~~ or of any other law, rule or regulation of  
22 this State or the United States.

23 (2) Any fact or condition exists which, if it had  
24 existed at the time of the original application for such  
25 license would have warranted the Director ~~Commissioner~~ in



1 refusing originally to issue such license.

2 (3) If a licensee is other than an individual, any  
3 ultimate equitable owner, officer, director, or member of  
4 the licensed partnership, association, corporation, or  
5 other entity has so acted or failed to act as would be  
6 cause for suspending or revoking a license to that party as  
7 an individual.

8 (b) No license shall be suspended or revoked, except as  
9 provided in this Section, nor shall any licensee be fined  
10 without notice of his or her right to a hearing as provided in  
11 Section 4-12 of this Act.

12 (c) The Director ~~Commissioner~~, on good cause shown that an  
13 emergency exists, may suspend any license for a period not  
14 exceeding 180 days, pending investigation. Upon a showing that  
15 a licensee has failed to meet the experience or educational  
16 requirements of Section 2-2 or the requirements of subsection  
17 (g) of Section 3-2, the Director ~~Commissioner~~ shall suspend,  
18 prior to hearing as provided in Section 4-12, the license until  
19 those requirements have been met.

20 (d) The provisions of subsection (e) of Section 2-6 of this  
21 Act shall not affect a licensee's civil or criminal liability  
22 for acts committed prior to surrender of a license.

23 (e) No revocation, suspension or surrender of any license  
24 shall impair or affect the obligation of any pre-existing  
25 lawful contract between the licensee and any person.

26 (f) Every license issued under this Act shall remain in

1 force and effect until the same shall have expired without  
2 renewal, have been surrendered, revoked or suspended in  
3 accordance with the provisions of this Act, but the Director  
4 ~~Commissioner~~ shall have authority to reinstate a suspended  
5 license or to issue a new license to a licensee whose license  
6 shall have been revoked if no fact or condition then exists  
7 which would have warranted the Director ~~Commissioner~~ in  
8 refusing originally to issue such license under this Act.

9 (g) Whenever the Director ~~Commissioner~~ shall revoke or  
10 suspend a license issued pursuant to this Act or fine a  
11 licensee under this Act, he or she shall forthwith execute ~~in~~  
12 ~~duplicate~~ a written order to that effect. The Director  
13 ~~Commissioner~~ shall publish notice of such order in the Illinois  
14 Register or ~~and~~ post notice of the order on an agency Internet  
15 site maintained by the Director ~~Commissioner~~ and shall  
16 forthwith serve a copy of such order upon the licensee. Any  
17 such order may be reviewed in the manner provided by Section  
18 4-12 of this Act.

19 (h) When the Director ~~Commissioner~~ finds any person in  
20 violation of the grounds set forth in subsection (i), he or she  
21 may enter an order imposing one or more of the following  
22 penalties:

23 (1) Revocation of license;

24 (2) Suspension of a license subject to reinstatement  
25 upon satisfying all reasonable conditions the Director  
26 ~~Commissioner~~ may specify;

1 (3) Placement of the licensee or applicant on probation  
2 for a period of time and subject to all reasonable  
3 conditions as the Director ~~Commissioner~~ may specify;

4 (4) Issuance of a reprimand;

5 (5) Imposition of a fine not to exceed \$25,000 for each  
6 count of separate offense; and

7 (6) Denial of a license.

8 (i) The following acts shall constitute grounds for which  
9 the disciplinary actions specified in subsection (h) above may  
10 be taken:

11 (1) Being convicted or found guilty, regardless of  
12 pendency of an appeal, of a crime in any jurisdiction which  
13 involves fraud, dishonest dealing, or any other act of  
14 moral turpitude;

15 (2) Fraud, misrepresentation, deceit or negligence in  
16 any mortgage financing transaction;

17 (3) A material or intentional misstatement of fact on  
18 an initial or renewal application;

19 (4) Failure to follow the Director's ~~Commissioner's~~  
20 regulations with respect to placement of funds in escrow  
21 accounts;

22 (5) Insolvency or filing under any provision of the  
23 Bankruptcy Code as a debtor;

24 (6) Failure to account or deliver to any person any  
25 property such as any money, fund, deposit, check, draft,  
26 mortgage, or other document or thing of value, which has

1           come into his or her hands and which is not his or her  
2           property or which he or she is not in law or equity  
3           entitled to retain, under the circumstances and at the time  
4           which has been agreed upon or is required by law or, in the  
5           absence of a fixed time, upon demand of the person entitled  
6           to such accounting and delivery;

7           (7) Failure to disburse funds in accordance with  
8           agreements;

9           (8) Any misuse, misapplication, or misappropriation of  
10          trust funds or escrow funds;

11          (9) Having a license, or the equivalent, to practice  
12          any profession or occupation revoked, suspended, or  
13          otherwise acted against, including the denial of licensure  
14          by a licensing authority of this State or another state,  
15          territory or country for fraud, dishonest dealing or any  
16          other act of moral turpitude;

17          (10) Failure to issue a satisfaction of mortgage when  
18          the residential mortgage has been executed and proceeds  
19          were not disbursed to the benefit of the mortgagor and when  
20          the mortgagor has fully paid licensee's costs and  
21          commission;

22          (11) Failure to comply with any order of the  
23          Commissioner or rule made or issued under the provisions of  
24          this Act;

25          (12) Engaging in activities regulated by this Act  
26          without a current, active license unless specifically

1 exempted by this Act;

2 (13) Failure to pay in a timely manner any fee, charge  
3 or fine under this Act;

4 (14) Failure to maintain, preserve, and keep available  
5 for examination, all books, accounts or other documents  
6 required by the provisions of this Act and the rules of the  
7 Director ~~Commissioner~~;

8 (15) Refusing, obstructing, evading, or unreasonably  
9 delaying an investigation, information request, or  
10 examination authorized under this Act, or refusing,  
11 obstructing, evading, or unreasonably delaying compliance  
12 with the Director's Refusal to permit an investigation or  
13 examination of the licensee's or its affiliates' books and  
14 records or refusal to comply with the Commissioner's  
15 subpoena or subpoena duces tecum;

16 (16) A pattern of substantially underestimating the  
17 maximum closing costs;

18 (17) Failure to comply with or violation of any  
19 provision of this Act.

20 (j) A licensee shall be subject to the disciplinary actions  
21 specified in this Act for violations of subsection (i) by any  
22 officer, director, shareholder, joint venture, partner,  
23 ultimate equitable owner, or employee of the licensee.

24 (k) Such licensee shall be subject to suspension or  
25 revocation for employee actions only if there is a pattern of  
26 repeated violations by employees or the licensee has knowledge

1 of the violations.

2 (1) Procedure for surrender of license:

3 (1) The Director ~~Commissioner~~ may, after 10 days notice  
4 by certified mail to the licensee at the address set forth  
5 on the license, stating the contemplated action and in  
6 general the grounds therefor and the date, time and place  
7 of a hearing thereon, and after providing the licensee with  
8 a reasonable opportunity to be heard prior to such action,  
9 fine such licensee an amount not exceeding \$25,000 per  
10 violation, or revoke or suspend any license issued  
11 hereunder if he or she finds that:

12 (i) The licensee has failed to comply with any  
13 provision of this Act or any order, decision, finding,  
14 rule, regulation or direction of the Director  
15 ~~Commissioner~~ lawfully made pursuant to the authority  
16 of this Act; or

17 (ii) Any fact or condition exists which, if it had  
18 existed at the time of the original application for the  
19 license, clearly would have warranted the Commissioner  
20 in refusing to issue the license.

21 (2) A surrender of a license ~~Any licensee may surrender~~  
22 ~~a license by delivering to the Commissioner written notice~~  
23 ~~that he or she thereby surrenders such license, but~~  
24 ~~surrender~~ shall not affect the licensee's civil or criminal  
25 liability for acts committed prior to surrender or entitle  
26 the licensee to a return of any part of the license fee.

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

2 (205 ILCS 635/4-6) (from Ch. 17, par. 2324-6)

3 Sec. 4-6. Investigation of Complaints. The Director  
4 ~~Commissioner~~ shall at all times maintain staff and facilities  
5 adequate to receive, record and investigate complaints and  
6 inquiries made by any person concerning this Act and any  
7 licensees under this Act. Each licensee shall open its books,  
8 records, documents and offices wherever situated to the  
9 Director ~~Commissioner~~ or his or her appointees as needed to  
10 facilitate such investigations.

11 (Source: P.A. 85-735.)

12 (205 ILCS 635/4-8) (from Ch. 17, par. 2324-8)

13 Sec. 4-8. Default rate; examination.

14 (a) The Director ~~Commissioner~~ shall obtain from the U.S.  
15 Department of Housing and Urban Development on a semi-annual  
16 basis that Department's default claim rates for endorsements  
17 issued by that Department.

18 (b) The Director ~~Commissioner~~ shall conduct an examination  
19 of each licensee having a default rate equal to or greater than  
20 5%.

21 This subsection shall not be construed as a limitation of  
22 the Director's ~~Commissioner's~~ examination authority under  
23 Section 4-2 of this Act or as otherwise provided in this Act.  
24 The Director ~~Commissioner~~ may require a licensee to provide

1 loan default data as the Director ~~Commissioner~~ deems necessary  
2 for the proper enforcement of the Act.

3 (c) The purpose of the examination under subsection (b)  
4 shall be to determine whether the default rate of the licensee  
5 has resulted from practices which deviate from sound and  
6 accepted mortgage underwriting practices, including but not  
7 limited to credit fraud, appraisal fraud and property  
8 inspection fraud. For the purpose of conducting this  
9 examination, the Director ~~Commissioner~~ may accept materials  
10 prepared for the U.S. Department of Housing and Urban  
11 Development. At the conclusion of the examination, the Director  
12 ~~Commissioner~~ shall make his or her findings available to the  
13 Residential Mortgage Board.

14 (d) The Director ~~Commissioner~~, at his or her discretion,  
15 may hold public hearings, or at the direction of the  
16 Residential Mortgage Board, shall hold public hearings. Such  
17 testimony shall be by a homeowner or mortgagor or his agent,  
18 whose residential interest is affected by the activities of the  
19 residential mortgage licensee subject to such hearing. At such  
20 public hearing, a witness may present testimony on his or her  
21 behalf concerning only his or her home, or home mortgage or a  
22 witness may authorize a third party to appear on his or her  
23 behalf. The testimony shall be restricted to information and  
24 comments related to a specific residence or specific  
25 residential mortgage application or applications for a  
26 residential mortgage or residential loan transaction. The



1 testimony must be preceded by either a letter of complaint or a  
2 completed consumer complaint form prescribed by the  
3 Commissioner.

4 (e) The Director ~~Commissioner~~ shall, at the conclusion of  
5 the public hearings, release his or her findings and shall also  
6 make public any action taken with respect to the licensee. The  
7 Director ~~Commissioner~~ shall also give full consideration to the  
8 findings of this examination whenever reapplication is made by  
9 the licensee for a new license under this Act.

10 (f) A licensee that is examined pursuant to subsection (b)  
11 shall submit to the Director ~~Commissioner~~ a plan which shall be  
12 designed to reduce that licensee's default rate to a figure  
13 that is less than 5%. The plan shall be implemented by the  
14 licensee as approved by the Director ~~Commissioner~~. A licensee  
15 that is examined pursuant to subsection (b) shall report  
16 monthly, for a one year period, one, 2, and 3 month defaults.

17 (g) Whenever the Director ~~Commissioner~~ finds that a  
18 licensee's default rate on insured mortgages is unusually high  
19 within a particular geographic area, he or she shall require  
20 that licensee to submit such information as is necessary to  
21 determine whether that licensee's practices have constituted  
22 credit fraud, appraisal fraud or property inspection fraud. The  
23 Director ~~Commissioner~~ shall promulgate such rules as are  
24 necessary to determine whether any licensee's default rate is  
25 unusually high within a particular area.

26 (Source: P.A. 89-355, eff. 1-1-96; 89-626, eff. 8-9-96; 90-301,

1 eff. 8-1-97.)

2 (205 ILCS 635/4-8.2)

3 Sec. 4-8.2. Reports of violations. Any person licensed  
4 under this Act or any other person may report to the Director  
5 ~~Commissioner~~ any information to show that a person subject to  
6 this Act is or may be in violation of this Act.

7 (Source: P.A. 93-561, eff. 1-1-04.)

8 (205 ILCS 635/4-8.3)

9 Sec. 4-8.3. Annual reports ~~report~~ of mortgage, brokerage,  
10 and servicing activity. On or before March 1 of each year, or  
11 by the date selected by the multistate automated licensing  
12 system, each licensee, ~~except residential mortgage brokers,~~  
13 shall file a report of its mortgage, brokerage, and servicing  
14 activity with the Director ~~Commissioner~~ that shall disclose  
15 such information as the Commissioner requires. Exempt entities  
16 as defined in subsection (d) of Section 1-4 shall not file the  
17 annual reports ~~report~~ of mortgage, brokerage, and servicing  
18 activity required by this Section.

19 (Source: P.A. 93-1018, eff. 1-1-05.)

20 (205 ILCS 635/4-10) (from Ch. 17, par. 2324-10)

21 (Text of Section before amendment by P.A. 95-691)

22 Sec. 4-10. Rules and Regulations of the Director  
23 ~~Commissioner~~. (a) In addition to such powers as may be

1 prescribed by this Act, the Director ~~Commissioner~~ is hereby  
2 authorized and empowered to promulgate regulations consistent  
3 with the purposes of this Act, including but not limited to:

4 (1) Such rules and regulations in connection with the  
5 activities of licensees as may be necessary and appropriate for  
6 the protection of consumers in this State;

7 (2) Such rules and regulations as may be necessary and  
8 appropriate to define improper or fraudulent business  
9 practices in connection with the activities of licensees in  
10 making mortgage loans;

11 (3) Such rules and regulations as may define the terms used  
12 in this Act and as may be necessary and appropriate to  
13 interpret and implement the provisions of this Act; and

14 (4) Such rules and regulations as may be necessary for the  
15 enforcement of this Act.

16 (b) The Director ~~Commissioner~~ is hereby authorized and  
17 empowered to make such specific rulings, demands and findings  
18 as he or she may deem necessary for the proper conduct of the  
19 mortgage lending industry.

20 (Source: P.A. 85-735.)

21 (Text of Section after amendment by P.A. 95-691)

22 Sec. 4-10. Rules and Regulations of the Director  
23 ~~Commissioner~~.

24 (a) In addition to such powers as may be prescribed by this  
25 Act, the Director ~~Commissioner~~ is hereby authorized and

1 empowered to promulgate regulations consistent with the  
2 purposes of this Act, including but not limited to:

3 (1) Such rules and regulations in connection with the  
4 activities of licensees as may be necessary and appropriate  
5 for the protection of consumers in this State;

6 (2) Such rules and regulations as may be necessary and  
7 appropriate to define improper or fraudulent business  
8 practices in connection with the activities of licensees in  
9 making mortgage loans;

10 (3) Such rules and regulations as may define the terms  
11 used in this Act and as may be necessary and appropriate to  
12 interpret and implement the provisions of this Act; and

13 (4) Such rules and regulations as may be necessary for  
14 the enforcement of this Act.

15 (b) The Director ~~Commissioner~~ is hereby authorized and  
16 empowered to make such specific rulings, demands and findings  
17 as he or she may deem necessary for the proper conduct of the  
18 mortgage lending industry.

19 (c) A person or entity may make a written application to  
20 the Department for a written interpretation of this Act. The  
21 Department may then, in its sole discretion, choose to issue a  
22 written interpretation. To be valid, a written interpretation  
23 must be signed by the Secretary, or his or her designated  
24 Director of Financial and Professional Regulation, and the  
25 Department's General Counsel. A written interpretation expires  
26 2 years after the date that it was issued.

1 (d) No provision in this Act that imposes liability or  
2 establishes violations shall apply to any act taken by a person  
3 or entity in conformity with a written interpretation of this  
4 Act that is in effect at the time the act is taken,  
5 notwithstanding whether the written interpretation is later  
6 amended, rescinded, or determined by judicial or other  
7 authority to be invalid for any reason.

8 (Source: P.A. 95-691, eff. 6-1-08.)

9 (205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

10 Sec. 4-11. Costs of Supervision; Examination and  
11 Investigative Fees. The expenses of administering this Act,  
12 including investigations and examinations provided for in this  
13 Act shall be borne by and assessed against entities regulated  
14 by this Act. The Director ~~Commissioner~~ shall establish fees by  
15 regulation in at least the following categories:

16 (1) application fees;

17 (2) investigation of license applicant fees;

18 (3) examination fees;

19 (4) contingent fees;

20 and such other categories as may be required to administer this  
21 Act.

22 (Source: P.A. 85-735.)

23 (205 ILCS 635/4-12) (from Ch. 17, par. 2324-12)

24 Sec. 4-12. Appeal and Review. (a) Any person or entity

1 affected by a decision of the Director ~~Commissioner~~ under any  
2 provision of this Act may obtain review of such decision within  
3 the Office of the Director ~~Commissioner~~.

4 (b) The Director ~~Commissioner~~ shall, in accordance with the  
5 "Illinois Administrative Procedure Act", promulgate rules and  
6 regulations to provide for review within the Office of the  
7 Director ~~Commissioner~~ (hereinafter referred to as "agency  
8 review") of his or her decisions affecting the rights of  
9 entities under this Act. Such review shall provide for, at a  
10 minimum:

11 (1) appointment of a hearing officer other than a regular  
12 employee of the Office of the Director ~~Commissioner~~;

13 (2) appropriate procedural rules, specific deadlines for  
14 filings, and standards of evidence and of proof;

15 (3) provision for apportioning costs among parties to the  
16 appeal.

17 (c) All final agency determinations of appeals to decisions  
18 of the Director ~~Commissioner~~ may be reviewed in accordance with  
19 and under the provisions of the "Administrative Review Law".  
20 Appeals from all final orders and judgments entered by a court  
21 in review of any final administrative decision of the Director  
22 ~~Commissioner~~ or of any final agency review of a decision of the  
23 Director ~~Commissioner~~ may be taken as in other civil cases.

24 (Source: P.A. 85-735.)

25 (205 ILCS 635/4-13) (from Ch. 17, par. 2324-13)

1           Sec. 4-13. Violations of this Act; Director's  
2 ~~Commissioner's~~ Orders. If the Director ~~Commissioner~~ finds, as  
3 the result of examination, investigation or review of reports  
4 submitted by a licensee that the business and affairs of a  
5 licensee are not being conducted in accordance with this Act,  
6 the Director ~~Commissioner~~ shall notify the licensee of the  
7 correction necessary. Should a licensee fail to correct such  
8 violations, the Director ~~Commissioner~~ shall issue an order  
9 requiring immediate correction and compliance with this Act,  
10 specifying a reasonable date for performance.

11           The Director ~~Commissioner~~ shall promulgate rules and  
12 regulations to provide for an orderly and timely appeal of all  
13 orders within the Office of the Director ~~Commissioner~~. Such  
14 rules shall include provision for assessment of fees and costs.  
15 (Source: P.A. 85-735.)

16           (205 ILCS 635/5-1) (from Ch. 17, par. 2325-1)

17           Sec. 5-1. The Director ~~Commissioner~~ may promulgate rules  
18 with respect to brokering and lending procedures of residential  
19 mortgage licensees as necessary to accomplish the purposes of  
20 this Act.

21 (Source: P.A. 85-735.)

22           (205 ILCS 635/6-3) (from Ch. 17, par. 2326-3)

23           Sec. 6-3. Appointment of receiver or conservator. When the  
24 Director ~~Commissioner~~ makes a finding that a receivership or

1 conservatorship is necessary to protect consumers of a licensee  
2 from the consequences of the licensee's failures to comply with  
3 this Act or other unsafe and unsound practices, the Director  
4 ~~Commissioner~~ shall request the Attorney General of this State  
5 to petition the Circuit Court of Cook County, or of the county  
6 in which the licensee is located, to appoint a receiver or  
7 conservator for purposes of protecting consumers and resolving  
8 the affairs of the licensee.

9 (Source: P.A. 87-1098.)

10 (205 ILCS 635/7-1)

11 Sec. 7-1. Registration required; rules and regulations.  
12 Beginning 6 months after the effective date of this amendatory  
13 Act of the 93rd General Assembly, it is unlawful for any  
14 natural person to act or assume to act as a loan originator, as  
15 defined in subsection (hh) of Section 1-4, without being  
16 registered with the Director ~~Commissioner~~ unless the natural  
17 person is exempt under items (1) and (1.5) of subsection (d) of  
18 Section 1-4 of this Act. The Director ~~Commissioner~~ shall  
19 promulgate rules prescribing the criteria for the registration  
20 and regulation of loan originators, including but not limited  
21 to, qualifications, fees, examination, education, supervision,  
22 and enforcement.

23 (Source: P.A. 93-561, eff. 1-1-04.)

24 Section 95. No acceleration or delay. Where this Act makes



1 changes in a statute that is represented in this Act by text  
2 that is not yet or no longer in effect (for example, a Section  
3 represented by multiple versions), the use of that text does  
4 not accelerate or delay the taking effect of (i) the changes  
5 made by this Act or (ii) provisions derived from any other  
6 Public Act.

7 Section 99. Effective date. This Act takes effect January  
8 1, 2009.

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