

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 State Finance Act is amended by adding
5 Sections 5.710 and 6z-73 as follows:

6 (30 ILCS 105/5.710 new)

7 Sec. 5.710. The Financial Institutions Settlement of 2008
8 Fund.

9 (30 ILCS 105/6z-73 new)

10 Sec. 6z-73. Financial Institutions Settlement of 2008
11 Fund. The Financial Institutions Settlement of 2008 Fund is
12 created as a nonappropriated trust fund to be held outside the
13 State treasury, with the State Treasurer as custodian. Moneys
14 in the Fund shall be used by the Comptroller solely for the
15 purpose of payment of outstanding vouchers as of the effective
16 date of this amendatory Act of the 95th General Assembly for
17 expenses related to medical assistance under the Illinois
18 Public Aid Code, the Children's Health Insurance Program Act,
19 the Covering ALL KIDS Health Insurance Act, and the Senior
20 Citizens and Disabled Persons Property Tax Relief and
21 Pharmaceutical Assistance Act. The Department of Healthcare
22 and Family Services must submit all necessary and proper

1 documentation to the Comptroller for administration of this
2 Fund.

3 Section 7. The Home Equity Assurance Act is amended by
4 changing Sections 3, 7, and 8 as follows:

5 (65 ILCS 95/3) (from Ch. 24, par. 1603)

6 Sec. 3. Definitions. For the purposes of this Act:

7 (a) "Bona fide offer" means an offer made in good faith and
8 for a valuable consideration to purchase a qualified residence
9 at a price that in the opinion of the governing commission is
10 reasonable given current market conditions.

11 (b) "Certificate of participation" means the duly
12 notarized document of membership in a program, signed by the
13 qualified applicant and by an authorized representative of the
14 governing commission, which specifies the location and
15 description of the guaranteed residence, its guaranteed value,
16 the registration date, and which has attached a program
17 appraisal for the guaranteed residence.

18 (c) "Community organization" means a not-for-profit
19 organization which has been registered with this State for at
20 least 5 years as a not-for-profit organization, which qualifies
21 for tax exempt status under Section 501 (c) (3) or 501 (c) (4)
22 of the United States Internal Revenue Code of 1986, as now or
23 hereafter amended, which continuously maintains an office or
24 business location within the territory of a program together

1 with a current listed telephone number, and whose members
2 reside within the territory of a program.

3 (d) "Eligible applicant" means a natural person who is the
4 owner of a qualified residence within the territory of a
5 program who continuously occupies or has a family member who
6 occupies such qualified residence as the principal place of
7 residence.

8 (e) "Family member" means a spouse, child, stepchild,
9 parent, grandparent, brother, sister, or any such relations of
10 the spouse of the member.

11 (f) "Governing commission" means the 9 member (or 18 member
12 in the case of a merged program) governing body which is
13 authorized by voter approval of the creation of a home equity
14 program (or merger of programs) as provided in this Act and
15 which is appointed by the mayor of the municipality in which
16 the program has been approved with the approval of the city
17 council, 7 (or 14 in the case of a merged program) of whom
18 shall be appointed from a list or lists of nominees submitted
19 by a community organization or community organizations as
20 defined in this Act.

21 (g) "Gross selling value" means the total consideration to
22 be paid for the purchase of a guaranteed residence, and shall
23 include any amount that the buyer or prospective buyer agrees
24 to assume on behalf of a member, including broker commissions,
25 points, legal fees, personal financing, or other items of value
26 involved in the sale.

1 (h) "Guarantee fund" means the funds collected under the
2 provisions of this Act for the purpose of guaranteeing the
3 property values of members within the territory of a program.

4 (i) "Guaranteed residence" means a qualified residence for
5 which a certificate of participation has been issued, which is
6 occupied continuously as the place of legal residence by the
7 member or a family member, which is described in the
8 certificate of participation, and which is entitled to coverage
9 under this Act.

10 (j) "Guaranteed value" means the appraised valuation based
11 upon a standard of current fair market value as of the
12 registration date on the qualified residence as determined by a
13 program appraiser pursuant to accepted professional appraisal
14 standards and which is authorized by the commission for the
15 registration date. The guaranteed value shall be used solely by
16 the commission for the purpose of administering the program and
17 shall remain confidential.

18 (k) "Member" means the owner of a guaranteed residence.

19 (l) "Owner" means a natural person who is the legal
20 titleholder or who is the beneficiary of a trust which is the
21 legal titleholder.

22 (m) "Physical perils" means physical occurrences such as,
23 but not limited to, fire, windstorm, hail, nuclear explosion or
24 seepage, war, insurrection, wear and tear, cracking, settling,
25 vermin, rodents, insects, vandalism, pollution or
26 contamination, and all such related occurrences or acts of God.

1 (n) "Program" means the guaranteed home equity program
2 governed by a specific home equity commission.

3 (o) "Program appraisal" means a real estate appraisal
4 conducted by a program appraiser for the purpose of
5 establishing the guaranteed value of a qualified residence
6 under a program and providing a general description of the
7 qualified residence. The program appraisal shall be used solely
8 by the governing commission for the purpose of administering
9 the program and shall remain confidential.

10 (p) "Program appraiser" means a real estate appraiser who
11 meets the professional standards established by the American
12 Institute of Real Estate Appraisers (AIREA), the National
13 Association of Independent Fee Appraisers (NAIFA), the
14 National Society of Real Estate Appraisers (NSREA) or the
15 American Society of Appraisers (ASA) and whose name is
16 submitted to the governing commission by the appraiser to
17 conduct program appraisals under the provisions of a program.

18 (q) "Program guidelines" means those policies, rules,
19 regulations, and bylaws established from time to time by the
20 governing commission to explain, clarify, or modify the program
21 in order to fulfill its goals and objectives.

22 (r) "Qualified residence" means a building: (1) located in
23 the territory of a program having at least one, but not more
24 than 6, dwelling units; (2) classified by county ordinance as
25 residential and assessed for property tax purposes; and (3)
26 with at least one dwelling unit continuously occupied as the

1 principal legal residence of a member or family member.

2 (s) "Registration date" means the date of receipt by the
3 governing commission of the registration fee and a completed
4 application of a qualified applicant for participation in a
5 program.

6 (t) "Registration fee" means the fee which is established
7 by the governing commission to defray the cost of a program
8 appraisal on a qualified residence.

9 (Source: P.A. 86-684.)

10 (65 ILCS 95/7) (from Ch. 24, par. 1607)

11 Sec. 7. Guarantee. A member or the estate of a member
12 participating in a program created under the provisions of this
13 Act shall be paid 100% of the difference between the guaranteed
14 value as determined by the program and the gross selling value
15 as determined in Section 8 of this Act if the guaranteed value
16 is greater than the gross selling value. The guarantee provided
17 by the program shall only apply to sales made 5 years or more
18 after the date of issuance of the certificate of participation
19 and shall be provided subject to all of the terms, conditions,
20 and stipulations of the program. The guarantee provided by the
21 program shall extend only to those who qualified as members at
22 the time of their application, or to the estates of members;
23 provided that the estate applies within 2 years of the member's
24 death or immediately upon completion of the fifth year after
25 the date of issuance of the certificate of participation,

1 whichever is later. A member shall receive the guarantee
2 provided by the program only if the member has accepted a bona
3 fide offer and the sale of the guaranteed residence has closed.

4 A member of a program agrees to abide by all conditions,
5 stipulations, and provisions of a program and shall not be
6 eligible for protection and shall not receive the guarantee
7 unless all such conditions, stipulations and provisions have
8 been met. Any member failing to abide by the conditions,
9 stipulations and provisions of a program or who engages in
10 fraud, misrepresentation, or concealment in any process
11 involving a program forfeits both the registration fee and any
12 claim to the guarantee.

13 (Source: P.A. 85-1044.)

14 (65 ILCS 95/8) (from Ch. 24, par. 1608)

15 Sec. 8. Procedures for obtaining benefits. (a) In order to
16 be eligible for payment under a program created pursuant to
17 this Act, a member must follow the program guidelines adopted
18 by the governing commission as well as the procedures set forth
19 in this Section.

20 (b) A member must file a "Notice of Intent to Sell" with
21 the governing commission in accordance with program guidelines
22 if and when the member intends to place the guaranteed
23 residence on the market for sale. Upon receipt of a "Notice of
24 Intent to Sell", the governing commission shall provide the
25 member with a copy of this Section and a written description of

1 the rights and responsibilities of both the member and the
2 governing commission and the procedures for obtaining
3 benefits; provided, however, that such information provided by
4 the governing commission shall not restrict or advise the
5 member with respect to the selection of a real estate broker or
6 agent. The information shall be delivered to the member either
7 in person or by registered mail. A member is not eligible to
8 file "Notice of Intent to Sell" until 5 years after the
9 member's registration date.

10 (c) A member is required to offer the guaranteed residence
11 for sale according to the program guidelines, including the
12 utilization of complete and proper methods for listing
13 residential property, listing the guaranteed residence at a
14 price which reasonably can be expected to attract buyers, and
15 providing reasonable access for potential buyers to see the
16 guaranteed residence.

17 (d) A member shall ~~may~~ list the guaranteed residence in
18 accordance with program guidelines with a real estate broker of
19 the member's choice, for up to 90 days following the date on
20 which the member listed the residence.

21 (e) Within 60 days of receipt of a "Notice of Intent to
22 Sell", the governing commission shall ~~has the right to~~ have the
23 guaranteed residence inspected by a program appraiser, at the
24 governing commission's expense, in order to determine if the
25 guaranteed residence is in substantially the same condition as
26 described by the program appraisal attached to the certificate

1 of participation. If the guaranteed residence fails to meet
2 this standard, the following procedures shall be followed:

3 (1) The program appraiser shall determine the percentage
4 depreciation of the guaranteed residence due to failure to
5 maintain the premises or due to physical perils or other causes
6 not covered by the program.

7 (2) This percentage figure shall be multiplied by the
8 guaranteed value to determine the dollar depreciation.

9 (3) This dollar depreciation shall be subtracted from the
10 guaranteed value to derive a lower guaranteed value to be used
11 for the purpose of determining the amount of payment under the
12 program.

13 (f) A member shall make the guaranteed residence available
14 to a program appraiser within a reasonable time within this 60
15 day period after receipt of notice from the commission that an
16 inspection under paragraph (e) of this Section is required, or
17 the member's coverage under the program shall be null, void and
18 of no further effect, and the member's registration fee shall
19 be forfeited.

20 (g) Ninety days after listing the guaranteed residence, a
21 member shall be eligible to file a "Notice of Intent to Claim"
22 with the governing commission, in accordance with guidelines
23 established by the governing commission, attesting to the fact
24 that the member has followed program guidelines in offering the
25 guaranteed residence for sale, that the member is unable to
26 obtain an offer for purchase of the guaranteed residence for at

1 least its guaranteed value, and that the member intends to file
2 a claim against the program. Such notice shall include
3 verifiable evidence of placement of the guaranteed residence on
4 the market, the dates such placement took place, and shall list
5 all reasonable offers to buy the property. Verifiable evidence
6 may include a copy of advertisements for sale, a contract with
7 a licensed real estate broker, or other evidence satisfactory
8 to a majority of the governing commission.

9 (h) Upon receipt of the "Notice of Intent to Claim", the
10 governing commission has 60 days during which it shall require
11 the member to list the guaranteed residence at a price that the
12 governing commission deems reasonable with a real estate broker
13 of the member's choosing. The real estate broker chosen by the
14 member shall advertise the guaranteed residence throughout the
15 municipality which encompasses the territory of the program.

16 (i) During the 60 day period described in paragraph (h) of
17 this Section, the member shall forward to the governing
18 commission all offers of purchase by either personal delivery
19 or registered mail. If the member receives an offer of purchase
20 which can reasonably be expected to be consummated if accepted
21 and whose gross selling value is greater than the guaranteed
22 value of the guaranteed residence, then no benefits may be
23 claimed under the program. If the member receives an offer to
24 purchase at a gross selling value that is less than the
25 guaranteed value, a majority of the Commission must determine
26 if it is a bona fide offer. If the governing commission

1 determines the offer is not bona fide, the offer shall be
2 deemed rejected by the governing commission. The member shall
3 have a right to request arbitration. If the offer is deemed
4 bona fide, the governing commission shall, within 7 ~~3~~ working
5 days of the receipt of such offer, either:

6 (1) approve the offer, in which case the governing
7 commission shall authorize the payment of the amount afforded
8 under this Act upon receipt of verifiable evidence of the sale
9 of the guaranteed residence subject to the following
10 conditions: (i) sales involving eminent domain shall be covered
11 as set forth in paragraph (1) of this Section; (ii) sales
12 subsequent to an insured property and casualty loss shall be
13 guaranteed for the guaranteed value as determined according to
14 paragraph (e) of this Section; (iii) contract sales shall be
15 guaranteed as determined by the guaranteed value in paragraph
16 (e) of this Section, however proceeds payable from the program
17 shall be disbursed in equal annual installments over the life
18 of the contract; or

19 (2) reject the offer, in which case the member shall
20 continue showing the guaranteed residence until the
21 termination of the 60 day period. Any offer that the
22 governing commission deems not to be a bona fide offer shall be
23 rejected by the governing commission.

24 Unless the member and the governing commission otherwise
25 agree, the governing commission's failure to act upon an offer
26 within 7 ~~3~~ working days shall be deemed to be a rejection of

1 the offer.

2 If the member does not receive a bona fide offer within the
3 60 day period described in subsection (h), the Commission may
4 order an appraisal, at the governing commission expense, of the
5 property to determine the current fair market value. If the
6 current fair market value is below the guaranteed value, the
7 Commission may require the member to list the guaranteed
8 residence at the fair market value price with a real estate
9 broker of the member's choosing. If the member does not receive
10 a bona fide offer within 90 days thereafter, the member may
11 further reduce the price with the consent of the Commission.
12 Every 90 days thereafter, the member may request, and the
13 Commission may consent to, a reduced listing price.

14 (j) No guarantee is afforded by the program unless the
15 member has accepted a bona fide offer and the sale of the
16 guaranteed property has closed, and until 60 days after a
17 member files a "Notice of Intent to Claim". The Furthermore,
18 ~~the~~ governing commission shall be required to make payments to
19 a member only upon receipt of verifiable evidence of the actual
20 sale of the guaranteed residence in accordance with the terms
21 agreed upon between the member and the governing commission at
22 the time the governing commission authorized payment. If a
23 member rejects an offer for purchase which has been submitted
24 to and approved by the governing commission, the governing
25 commission or program shall not be liable for any future
26 guarantee payment larger than that authorized for this proposed

1 sale.

2 (k) Except as otherwise provided in this Act, payments
3 under the program as provided in Section 7 of this Act shall
4 not be made until the sale of the guaranteed residence has
5 closed and title has passed or the beneficial interest has been
6 transferred.

7 (1) When a guaranteed residence is to be acquired through
8 the use of eminent domain by a condemning body, the following
9 procedures shall apply:

10 (1) If the member rejects an offer from the condemning body
11 equal to or greater than the guaranteed value, then no benefits
12 may be claimed under the program.

13 (2) If the condemning body offers less than the guaranteed
14 value, the governing commission may either: (i) pay 100% of the
15 difference between the guaranteed value and the offered price
16 if the member agrees to sell at the offered price; or (ii)
17 advise the member that the offer is inadequate and should be
18 refused. If the member refuses the offer and the final court
19 determination of the value of the property is less than the
20 guaranteed value, then the program shall pay 100% of the
21 difference between the judgment and the guaranteed value.

22 (Source: P.A. 86-684.)

23 Section 10. The Illinois Banking Act is amended by changing
24 Sections 2 and 48 and by adding Section 48.05 as follows:

1 (205 ILCS 5/2) (from Ch. 17, par. 302)

2 Sec. 2. General definitions. In this Act, unless the
3 context otherwise requires, the following words and phrases
4 shall have the following meanings:

5 "Accommodation party" shall have the meaning ascribed to
6 that term in Section 3-419 of the Uniform Commercial Code.

7 "Action" in the sense of a judicial proceeding includes
8 recoupments, counterclaims, set-off, and any other proceeding
9 in which rights are determined.

10 "Affiliate facility" of a bank means a main banking
11 premises or branch of another commonly owned bank. The main
12 banking premises or any branch of a bank may be an "affiliate
13 facility" with respect to one or more other commonly owned
14 banks.

15 "Appropriate federal banking agency" means the Federal
16 Deposit Insurance Corporation, the Federal Reserve Bank of
17 Chicago, or the Federal Reserve Bank of St. Louis, as
18 determined by federal law.

19 "Bank" means any person doing a banking business whether
20 subject to the laws of this or any other jurisdiction.

21 A "banking house", "branch", "branch bank" or "branch
22 office" shall mean any place of business of a bank at which
23 deposits are received, checks paid, or loans made, but shall
24 not include any place at which only records thereof are made,
25 posted, or kept. A place of business at which deposits are
26 received, checks paid, or loans made shall not be deemed to be

1 a branch, branch bank, or branch office if the place of
2 business is adjacent to and connected with the main banking
3 premises, or if it is separated from the main banking premises
4 by not more than an alley; provided always that (i) if the
5 place of business is separated by an alley from the main
6 banking premises there is a connection between the two by
7 public or private way or by subterranean or overhead passage,
8 and (ii) if the place of business is in a building not wholly
9 occupied by the bank, the place of business shall not be within
10 any office or room in which any other business or service of
11 any kind or nature other than the business of the bank is
12 conducted or carried on. A place of business at which deposits
13 are received, checks paid, or loans made shall not be deemed to
14 be a branch, branch bank, or branch office (i) of any bank if
15 the place is a terminal established and maintained in
16 accordance with paragraph (17) of Section 5 of this Act, or
17 (ii) of a commonly owned bank by virtue of transactions
18 conducted at that place on behalf of the other commonly owned
19 bank under paragraph (23) of Section 5 of this Act if the place
20 is an affiliate facility with respect to the other bank.

21 "Branch of an out-of-state bank" means a branch established
22 or maintained in Illinois by an out-of-state bank as a result
23 of a merger between an Illinois bank and the out-of-state bank
24 that occurs on or after May 31, 1997, or any branch established
25 by the out-of-state bank following the merger.

26 "Bylaws" means the bylaws of a bank that are adopted by the

1 bank's board of directors or shareholders for the regulation
2 and management of the bank's affairs. If the bank operates as a
3 limited liability company, however, "bylaws" means the
4 operating agreement of the bank.

5 "Call report fee" means the fee to be paid to the
6 Commissioner by each State bank pursuant to paragraph (a) of
7 subsection (3) of Section 48 of this Act.

8 "Capital" includes the aggregate of outstanding capital
9 stock and preferred stock.

10 "Cash flow reserve account" means the account within the
11 books and records of the Commissioner of Banks and Real Estate
12 used to record funds designated to maintain a reasonable Bank
13 and Trust Company Fund operating balance to meet agency
14 obligations on a timely basis.

15 "Charter" includes the original charter and all amendments
16 thereto and articles of merger or consolidation.

17 "Commissioner" means the Commissioner of Banks and Real
18 Estate, except that beginning on the effective date of this
19 amendatory Act of the 95th General Assembly, all references in
20 this Act to the Commissioner of Banks and Real Estate are
21 deemed, in appropriate contexts, to be references to the
22 Secretary of Financial and Professional Regulation ~~or a person~~
23 ~~authorized by the Commissioner, the Office of Banks and Real~~
24 ~~Estate Act, or this Act to act in the Commissioner's stead.~~

25 "Commonly owned banks" means 2 or more banks that each
26 qualify as a bank subsidiary of the same bank holding company

1 pursuant to Section 18 of the Federal Deposit Insurance Act;
2 "commonly owned bank" refers to one of a group of commonly
3 owned banks but only with respect to one or more of the other
4 banks in the same group.

5 "Community" means a city, village, or incorporated town and
6 also includes the area served by the banking offices of a bank,
7 but need not be limited or expanded to conform to the
8 geographic boundaries of units of local government.

9 "Company" means a corporation, limited liability company,
10 partnership, business trust, association, or similar
11 organization and, unless specifically excluded, includes a
12 "State bank" and a "bank".

13 "Consolidating bank" means a party to a consolidation.

14 "Consolidation" takes place when 2 or more banks, or a
15 trust company and a bank, are extinguished and by the same
16 process a new bank is created, taking over the assets and
17 assuming the liabilities of the banks or trust company passing
18 out of existence.

19 "Continuing bank" means a merging bank, the charter of
20 which becomes the charter of the resulting bank.

21 "Converting bank" means a State bank converting to become a
22 national bank, or a national bank converting to become a State
23 bank.

24 "Converting trust company" means a trust company
25 converting to become a State bank.

26 "Court" means a court of competent jurisdiction.

1 "Director" means a member of the board of directors of a
2 bank. In the case of a manager-managed limited liability
3 company, however, "director" means a manager of the bank and,
4 in the case of a member-managed limited liability company,
5 "director" means a member of the bank. The term "director" does
6 not include an advisory director, honorary director, director
7 emeritus, or similar person, unless the person is otherwise
8 performing functions similar to those of a member of the board
9 of directors.

10 "Eligible depository institution" means an insured savings
11 association that is in default, an insured savings association
12 that is in danger of default, a State or national bank that is
13 in default or a State or national bank that is in danger of
14 default, as those terms are defined in this Section, or a new
15 bank as that term defined in Section 11(m) of the Federal
16 Deposit Insurance Act or a bridge bank as that term is defined
17 in Section 11(n) of the Federal Deposit Insurance Act or a new
18 federal savings association authorized under Section
19 11(d) (2) (f) of the Federal Deposit Insurance Act.

20 "Fiduciary" means trustee, agent, executor, administrator,
21 committee, guardian for a minor or for a person under legal
22 disability, receiver, trustee in bankruptcy, assignee for
23 creditors, or any holder of similar position of trust.

24 "Financial institution" means a bank, savings and loan
25 association, credit union, or any licensee under the Consumer
26 Installment Loan Act or the Sales Finance Agency Act and, for

1 purposes of Section 48.3, any proprietary network, funds
2 transfer corporation, or other entity providing electronic
3 funds transfer services, or any corporate fiduciary, its
4 subsidiaries, affiliates, parent company, or contractual
5 service provider that is examined by the Commissioner.

6 "Foundation" means the Illinois Bank Examiners' Education
7 Foundation.

8 "General obligation" means a bond, note, debenture,
9 security, or other instrument evidencing an obligation of the
10 government entity that is the issuer that is supported by the
11 full available resources of the issuer, the principal and
12 interest of which is payable in whole or in part by taxation.

13 "Guarantee" means an undertaking or promise to answer for
14 payment of another's debt or performance of another's duty,
15 liability, or obligation whether "payment guaranteed" or
16 "collection guaranteed".

17 "In danger of default" means a State or national bank, a
18 federally chartered insured savings association or an Illinois
19 state chartered insured savings association with respect to
20 which the Commissioner or the appropriate federal banking
21 agency has advised the Federal Deposit Insurance Corporation
22 that:

23 (1) in the opinion of the Commissioner or the
24 appropriate federal banking agency,

25 (A) the State or national bank or insured savings
26 association is not likely to be able to meet the

1 demands of the State or national bank's or savings
2 association's obligations in the normal course of
3 business; and

4 (B) there is no reasonable prospect that the State
5 or national bank or insured savings association will be
6 able to meet those demands or pay those obligations
7 without federal assistance; or

8 (2) in the opinion of the Commissioner or the
9 appropriate federal banking agency,

10 (A) the State or national bank or insured savings
11 association has incurred or is likely to incur losses
12 that will deplete all or substantially all of its
13 capital; and

14 (B) there is no reasonable prospect that the
15 capital of the State or national bank or insured
16 savings association will be replenished without
17 federal assistance.

18 "In default" means, with respect to a State or national
19 bank or an insured savings association, any adjudication or
20 other official determination by any court of competent
21 jurisdiction, the Commissioner, the appropriate federal
22 banking agency, or other public authority pursuant to which a
23 conservator, receiver, or other legal custodian is appointed
24 for a State or national bank or an insured savings association.

25 "Insured savings association" means any federal savings
26 association chartered under Section 5 of the federal Home

1 Owners' Loan Act and any State savings association chartered
2 under the Illinois Savings and Loan Act of 1985 or a
3 predecessor Illinois statute, the deposits of which are insured
4 by the Federal Deposit Insurance Corporation. The term also
5 includes a savings bank organized or operating under the
6 Savings Bank Act.

7 "Insured savings association in recovery" means an insured
8 savings association that is not an eligible depository
9 institution and that does not meet the minimum capital
10 requirements applicable with respect to the insured savings
11 association.

12 "Issuer" means for purposes of Section 33 every person who
13 shall have issued or proposed to issue any security; except
14 that (1) with respect to certificates of deposit, voting trust
15 certificates, collateral-trust certificates, and certificates
16 of interest or shares in an unincorporated investment trust not
17 having a board of directors (or persons performing similar
18 functions), "issuer" means the person or persons performing the
19 acts and assuming the duties of depositor or manager pursuant
20 to the provisions of the trust, agreement, or instrument under
21 which the securities are issued; (2) with respect to trusts
22 other than those specified in clause (1) above, where the
23 trustee is a corporation authorized to accept and execute
24 trusts, "issuer" means the entrusters, depositors, or creators
25 of the trust and any manager or committee charged with the
26 general direction of the affairs of the trust pursuant to the

1 provisions of the agreement or instrument creating the trust;
2 and (3) with respect to equipment trust certificates or like
3 securities, "issuer" means the person to whom the equipment or
4 property is or is to be leased or conditionally sold.

5 "Letter of credit" and "customer" shall have the meanings
6 ascribed to those terms in Section 5-102 of the Uniform
7 Commercial Code.

8 "Main banking premises" means the location that is
9 designated in a bank's charter as its main office.

10 "Maker or obligor" means for purposes of Section 33 the
11 issuer of a security, the promisor in a debenture or other debt
12 security, or the mortgagor or grantor of a trust deed or
13 similar conveyance of a security interest in real or personal
14 property.

15 "Merged bank" means a merging bank that is not the
16 continuing, resulting, or surviving bank in a consolidation or
17 merger.

18 "Merger" includes consolidation.

19 "Merging bank" means a party to a bank merger.

20 "Merging trust company" means a trust company party to a
21 merger with a State bank.

22 "Mid-tier bank holding company" means a corporation that
23 (a) owns 100% of the issued and outstanding shares of each
24 class of stock of a State bank, (b) has no other subsidiaries,
25 and (c) 100% of the issued and outstanding shares of the
26 corporation are owned by a parent bank holding company.

1 "Municipality" means any municipality, political
2 subdivision, school district, taxing district, or agency.

3 "National bank" means a national banking association
4 located in this State and after May 31, 1997, means a national
5 banking association without regard to its location.

6 "Out-of-state bank" means a bank chartered under the laws
7 of a state other than Illinois, a territory of the United
8 States, or the District of Columbia.

9 "Parent bank holding company" means a corporation that is a
10 bank holding company as that term is defined in the Illinois
11 Bank Holding Company Act of 1957 and owns 100% of the issued
12 and outstanding shares of a mid-tier bank holding company.

13 "Person" means an individual, corporation, limited
14 liability company, partnership, joint venture, trust, estate,
15 or unincorporated association.

16 "Public agency" means the State of Illinois, the various
17 counties, townships, cities, towns, villages, school
18 districts, educational service regions, special road
19 districts, public water supply districts, fire protection
20 districts, drainage districts, levee districts, sewer
21 districts, housing authorities, the Illinois Bank Examiners'
22 Education Foundation, the Chicago Park District, and all other
23 political corporations or subdivisions of the State of
24 Illinois, whether now or hereafter created, whether herein
25 specifically mentioned or not, and shall also include any other
26 state or any political corporation or subdivision of another

1 state.

2 "Public funds" or "public money" means current operating
3 funds, special funds, interest and sinking funds, and funds of
4 any kind or character belonging to, in the custody of, or
5 subject to the control or regulation of the United States or a
6 public agency. "Public funds" or "public money" shall include
7 funds held by any of the officers, agents, or employees of the
8 United States or of a public agency in the course of their
9 official duties and, with respect to public money of the United
10 States, shall include Postal Savings funds.

11 "Published" means, unless the context requires otherwise,
12 the publishing of the notice or instrument referred to in some
13 newspaper of general circulation in the community in which the
14 bank is located at least once each week for 3 successive weeks.
15 Publishing shall be accomplished by, and at the expense of, the
16 bank required to publish. Where publishing is required, the
17 bank shall submit to the Commissioner that evidence of the
18 publication as the Commissioner shall deem appropriate.

19 "Qualified financial contract" means any security
20 contract, commodity contract, forward contract, including spot
21 and forward foreign exchange contracts, repurchase agreement,
22 swap agreement, and any similar agreement, any option to enter
23 into any such agreement, including any combination of the
24 foregoing, and any master agreement for such agreements. A
25 master agreement, together with all supplements thereto, shall
26 be treated as one qualified financial contract. The contract,

1 option, agreement, or combination of contracts, options, or
2 agreements shall be reflected upon the books, accounts, or
3 records of the bank, or a party to the contract shall provide
4 documentary evidence of such agreement.

5 "Recorded" means the filing or recording of the notice or
6 instrument referred to in the office of the Recorder of the
7 county wherein the bank is located.

8 "Resulting bank" means the bank resulting from a merger or
9 conversion.

10 "Secretary" means the Secretary of Financial and
11 Professional Regulation, or a person authorized by the
12 Secretary or by this Act to act in the Secretary's stead.

13 "Securities" means stocks, bonds, debentures, notes, or
14 other similar obligations.

15 "Stand-by letter of credit" means a letter of credit under
16 which drafts are payable upon the condition the customer has
17 defaulted in performance of a duty, liability, or obligation.

18 "State bank" means any banking corporation that has a
19 banking charter issued by the Commissioner under this Act.

20 "State Banking Board" means the State Banking Board of
21 Illinois.

22 "Subsidiary" with respect to a specified company means a
23 company that is controlled by the specified company. For
24 purposes of paragraphs (8) and (12) of Section 5 of this Act,
25 "control" means the exercise of operational or managerial
26 control of a corporation by the bank, either alone or together

1 with other affiliates of the bank.

2 "Surplus" means the aggregate of (i) amounts paid in excess
3 of the par value of capital stock and preferred stock; (ii)
4 amounts contributed other than for capital stock and preferred
5 stock and allocated to the surplus account; and (iii) amounts
6 transferred from undivided profits.

7 "Tier 1 Capital" and "Tier 2 Capital" have the meanings
8 assigned to those terms in regulations promulgated for the
9 appropriate federal banking agency of a state bank, as those
10 regulations are now or hereafter amended.

11 "Trust company" means a limited liability company or
12 corporation incorporated in this State for the purpose of
13 accepting and executing trusts.

14 "Undivided profits" means undistributed earnings less
15 discretionary transfers to surplus.

16 "Unimpaired capital and unimpaired surplus", for the
17 purposes of paragraph (21) of Section 5 and Sections 32, 33,
18 34, 35.1, 35.2, and 47 of this Act means the sum of the state
19 bank's Tier 1 Capital and Tier 2 Capital plus such other
20 shareholder equity as may be included by regulation of the
21 Commissioner. Unimpaired capital and unimpaired surplus shall
22 be calculated on the basis of the date of the last quarterly
23 call report filed with the Commissioner preceding the date of
24 the transaction for which the calculation is made, provided
25 that: (i) when a material event occurs after the date of the
26 last quarterly call report filed with the Commissioner that

1 reduces or increases the bank's unimpaired capital and
2 unimpaired surplus by 10% or more, then the unimpaired capital
3 and unimpaired surplus shall be calculated from the date of the
4 material event for a transaction conducted after the date of
5 the material event; and (ii) if the Commissioner determines for
6 safety and soundness reasons that a state bank should calculate
7 unimpaired capital and unimpaired surplus more frequently than
8 provided by this paragraph, the Commissioner may by written
9 notice direct the bank to calculate unimpaired capital and
10 unimpaired surplus at a more frequent interval. In the case of
11 a state bank newly chartered under Section 13 or a state bank
12 resulting from a merger, consolidation, or conversion under
13 Sections 21 through 26 for which no preceding quarterly call
14 report has been filed with the Commissioner, unimpaired capital
15 and unimpaired surplus shall be calculated for the first
16 calendar quarter on the basis of the effective date of the
17 charter, merger, consolidation, or conversion.

18 (Source: P.A. 92-483, eff. 8-23-01; 93-561, eff. 1-1-04.)

19 (205 ILCS 5/48) (from Ch. 17, par. 359)

20 Sec. 48. Secretary's ~~Commissioner's~~ powers; duties. The
21 Secretary ~~Commissioner~~ shall have the powers and authority, and
22 is charged with the duties and responsibilities designated in
23 this Act, and a State bank shall not be subject to any other
24 visitorial power other than as authorized by this Act, except
25 those vested in the courts, or upon prior consultation with the

1 Secretary ~~Commissioner~~, a foreign bank regulator with an
2 appropriate supervisory interest in the parent or affiliate of
3 a state bank. In the performance of the Secretary's
4 ~~Commissioner's~~ duties:

5 (1) The Commissioner shall call for statements from all
6 State banks as provided in Section 47 at least one time during
7 each calendar quarter.

8 (2) (a) The Commissioner, as often as the Commissioner
9 shall deem necessary or proper, and no less frequently than 18
10 months following the preceding examination, shall appoint a
11 suitable person or persons to make an examination of the
12 affairs of every State bank, except that for every eligible
13 State bank, as defined by regulation, the Commissioner in lieu
14 of the examination may accept on an alternating basis the
15 examination made by the eligible State bank's appropriate
16 federal banking agency pursuant to Section 111 of the Federal
17 Deposit Insurance Corporation Improvement Act of 1991,
18 provided the appropriate federal banking agency has made such
19 an examination. A person so appointed shall not be a
20 stockholder or officer or employee of any bank which that
21 person may be directed to examine, and shall have powers to
22 make a thorough examination into all the affairs of the bank
23 and in so doing to examine any of the officers or agents or
24 employees thereof on oath and shall make a full and detailed
25 report of the condition of the bank to the Commissioner. In
26 making the examination the examiners shall include an

1 examination of the affairs of all the affiliates of the bank,
2 as defined in subsection (b) of Section 35.2 of this Act, or
3 subsidiaries of the bank as shall be necessary to disclose
4 fully the conditions of the subsidiaries or affiliates, the
5 relations between the bank and the subsidiaries or affiliates
6 and the effect of those relations upon the affairs of the bank,
7 and in connection therewith shall have power to examine any of
8 the officers, directors, agents, or employees of the
9 subsidiaries or affiliates on oath. After May 31, 1997, the
10 Commissioner may enter into cooperative agreements with state
11 regulatory authorities of other states to provide for
12 examination of State bank branches in those states, and the
13 Commissioner may accept reports of examinations of State bank
14 branches from those state regulatory authorities. These
15 cooperative agreements may set forth the manner in which the
16 other state regulatory authorities may be compensated for
17 examinations prepared for and submitted to the Commissioner.

18 (b) After May 31, 1997, the Commissioner is authorized to
19 examine, as often as the Commissioner shall deem necessary or
20 proper, branches of out-of-state banks. The Commissioner may
21 establish and may assess fees to be paid to the Commissioner
22 for examinations under this subsection (b). The fees shall be
23 borne by the out-of-state bank, unless the fees are borne by
24 the state regulatory authority that chartered the out-of-state
25 bank, as determined by a cooperative agreement between the
26 Commissioner and the state regulatory authority that chartered

1 the out-of-state bank.

2 (2.5) Whenever any State bank, any subsidiary or affiliate
3 of a State bank, or after May 31, 1997, any branch of an
4 out-of-state bank causes to be performed, by contract or
5 otherwise, any bank services for itself, whether on or off its
6 premises:

7 (a) that performance shall be subject to examination by
8 the Commissioner to the same extent as if services were
9 being performed by the bank or, after May 31, 1997, branch
10 of the out-of-state bank itself on its own premises; and

11 (b) the bank or, after May 31, 1997, branch of the
12 out-of-state bank shall notify the Commissioner of the
13 existence of a service relationship. The notification
14 shall be submitted with the first statement of condition
15 (as required by Section 47 of this Act) due after the
16 making of the service contract or the performance of the
17 service, whichever occurs first. The Commissioner shall be
18 notified of each subsequent contract in the same manner.

19 For purposes of this subsection (2.5), the term "bank
20 services" means services such as sorting and posting of checks
21 and deposits, computation and posting of interest and other
22 credits and charges, preparation and mailing of checks,
23 statements, notices, and similar items, or any other clerical,
24 bookkeeping, accounting, statistical, or similar functions
25 performed for a State bank, including but not limited to
26 electronic data processing related to those bank services.

1 (3) The expense of administering this Act, including the
2 expense of the examinations of State banks as provided in this
3 Act, shall to the extent of the amounts resulting from the fees
4 provided for in paragraphs (a), (a-2), and (b) of this
5 subsection (3) be assessed against and borne by the State
6 banks:

7 (a) Each bank shall pay to the Secretary ~~Commissioner~~ a
8 Call Report Fee which shall be paid in quarterly
9 installments equal to one-fourth of the sum of the annual
10 fixed fee of \$800, plus a variable fee based on the assets
11 shown on the quarterly statement of condition delivered to
12 the Secretary ~~Commissioner~~ in accordance with Section 47
13 for the preceding quarter according to the following
14 schedule: 16¢ per \$1,000 of the first \$5,000,000 of total
15 assets, 15¢ per \$1,000 of the next \$20,000,000 of total
16 assets, 13¢ per \$1,000 of the next \$75,000,000 of total
17 assets, 9¢ per \$1,000 of the next \$400,000,000 of total
18 assets, 7¢ per \$1,000 of the next \$500,000,000 of total
19 assets, and 5¢ per \$1,000 of all assets in excess of
20 \$1,000,000,000, of the State bank. The Call Report Fee
21 shall be calculated by the Secretary ~~Commissioner~~ and
22 billed to the banks for remittance at the time of the
23 quarterly statements of condition provided for in Section
24 47. The Secretary ~~Commissioner~~ may require payment of the
25 fees provided in this Section by an electronic transfer of
26 funds or an automatic debit of an account of each of the

1 State banks. In case more than one examination of any bank
2 is deemed by the Secretary ~~Commissioner~~ to be necessary in
3 any examination frequency cycle specified in subsection
4 2(a) of this Section, and is performed at his direction,
5 the Secretary ~~Commissioner~~ may assess a reasonable
6 additional fee to recover the cost of the additional
7 examination; provided, however, that an examination
8 conducted at the request of the State Treasurer pursuant to
9 the Uniform Disposition of Unclaimed Property Act shall not
10 be deemed to be an additional examination under this
11 Section. In lieu of the method and amounts set forth in
12 this paragraph (a) for the calculation of the Call Report
13 Fee, the Secretary ~~Commissioner~~ may specify by rule that
14 the Call Report Fees provided by this Section may be
15 assessed semiannually or some other period and may provide
16 in the rule the formula to be used for calculating and
17 assessing the periodic Call Report Fees to be paid by State
18 banks.

19 (a-1) If in the opinion of the Commissioner an
20 emergency exists or appears likely, the Commissioner may
21 assign an examiner or examiners to monitor the affairs of a
22 State bank with whatever frequency he deems appropriate,
23 including but not limited to a daily basis. The reasonable
24 and necessary expenses of the Commissioner during the
25 period of the monitoring shall be borne by the subject
26 bank. The Commissioner shall furnish the State bank a

1 statement of time and expenses if requested to do so within
2 30 days of the conclusion of the monitoring period.

3 (a-2) On and after January 1, 1990, the reasonable and
4 necessary expenses of the Commissioner during examination
5 of the performance of electronic data processing services
6 under subsection (2.5) shall be borne by the banks for
7 which the services are provided. An amount, based upon a
8 fee structure prescribed by the Commissioner, shall be paid
9 by the banks or, after May 31, 1997, branches of
10 out-of-state banks receiving the electronic data
11 processing services along with the Call Report Fee assessed
12 under paragraph (a) of this subsection (3).

13 (a-3) After May 31, 1997, the reasonable and necessary
14 expenses of the Commissioner during examination of the
15 performance of electronic data processing services under
16 subsection (2.5) at or on behalf of branches of
17 out-of-state banks shall be borne by the out-of-state
18 banks, unless those expenses are borne by the state
19 regulatory authorities that chartered the out-of-state
20 banks, as determined by cooperative agreements between the
21 Commissioner and the state regulatory authorities that
22 chartered the out-of-state banks.

23 (b) "Fiscal year" for purposes of this Section 48 is
24 defined as a period beginning July 1 of any year and ending
25 June 30 of the next year. The Commissioner shall receive
26 for each fiscal year, commencing with the fiscal year

1 ending June 30, 1987, a contingent fee equal to the lesser
2 of the aggregate of the fees paid by all State banks under
3 paragraph (a) of subsection (3) for that year, or the
4 amount, if any, whereby the aggregate of the administration
5 expenses, as defined in paragraph (c), for that fiscal year
6 exceeds the sum of the aggregate of the fees payable by all
7 State banks for that year under paragraph (a) of subsection
8 (3), plus any amounts transferred into the Bank and Trust
9 Company Fund from the State Pensions Fund for that year,
10 plus all other amounts collected by the Commissioner for
11 that year under any other provision of this Act, plus the
12 aggregate of all fees collected for that year by the
13 Commissioner under the Corporate Fiduciary Act, excluding
14 the receivership fees provided for in Section 5-10 of the
15 Corporate Fiduciary Act, and the Foreign Banking Office
16 Act. The aggregate amount of the contingent fee thus
17 arrived at for any fiscal year shall be apportioned
18 amongst, assessed upon, and paid by the State banks and
19 foreign banking corporations, respectively, in the same
20 proportion that the fee of each under paragraph (a) of
21 subsection (3), respectively, for that year bears to the
22 aggregate for that year of the fees collected under
23 paragraph (a) of subsection (3). The aggregate amount of
24 the contingent fee, and the portion thereof to be assessed
25 upon each State bank and foreign banking corporation,
26 respectively, shall be determined by the Commissioner and

1 shall be paid by each, respectively, within 120 days of the
2 close of the period for which the contingent fee is
3 computed and is payable, and the Commissioner shall give 20
4 days advance notice of the amount of the contingent fee
5 payable by the State bank and of the date fixed by the
6 Commissioner for payment of the fee.

7 (c) The "administration expenses" for any fiscal year
8 shall mean the ordinary and contingent expenses for that
9 year incident to making the examinations provided for by,
10 and for otherwise administering, this Act, the Corporate
11 Fiduciary Act, excluding the expenses paid from the
12 Corporate Fiduciary Receivership account in the Bank and
13 Trust Company Fund, the Foreign Banking Office Act, the
14 Electronic Fund Transfer Act, and the Illinois Bank
15 Examiners' Education Foundation Act, including all
16 salaries and other compensation paid for personal services
17 rendered for the State by officers or employees of the
18 State, including the Commissioner and the Deputy
19 Commissioners, all expenditures for telephone and
20 telegraph charges, postage and postal charges, office
21 stationery, supplies and services, and office furniture
22 and equipment, including typewriters and copying and
23 duplicating machines and filing equipment, surety bond
24 premiums, and travel expenses of those officers and
25 employees, employees, expenditures or charges for the
26 acquisition, enlargement or improvement of, or for the use

1 of, any office space, building, or structure, or
2 expenditures for the maintenance thereof or for furnishing
3 heat, light, or power with respect thereto, all to the
4 extent that those expenditures are directly incidental to
5 such examinations or administration. The Commissioner
6 shall not be required by paragraphs (c) or (d-1) of this
7 subsection (3) to maintain in any fiscal year's budget
8 appropriated reserves for accrued vacation and accrued
9 sick leave that is required to be paid to employees of the
10 Commissioner upon termination of their service with the
11 Commissioner in an amount that is more than is reasonably
12 anticipated to be necessary for any anticipated turnover in
13 employees, whether due to normal attrition or due to
14 layoffs, terminations, or resignations.

15 (d) The aggregate of all fees collected by the
16 Secretary ~~Commissioner~~ under this Act, the Corporate
17 Fiduciary Act, or the Foreign Banking Office Act on and
18 after July 1, 1979, shall be paid promptly after receipt of
19 the same, accompanied by a detailed statement thereof, into
20 the State treasury and shall be set apart in a special fund
21 to be known as the "Bank and Trust Company Fund", except as
22 provided in paragraph (c) of subsection (11) of this
23 Section. All earnings received from investments of funds in
24 the Bank and Trust Company Fund shall be deposited in the
25 Bank and Trust Company Fund and may be used for the same
26 purposes as fees deposited in that Fund. The amount from

1 time to time deposited into the Bank and Trust Company Fund
2 shall be used: (i) to offset the ordinary administrative
3 expenses of the Secretary Commissioner of Banks and Real
4 Estate as defined in this Section or (ii) as a credit
5 against fees under paragraph (d-1) of this subsection (3).

6 Nothing in this amendatory Act of 1979 shall prevent
7 continuing the practice of paying expenses involving
8 salaries, retirement, social security, and State-paid
9 insurance premiums of State officers by appropriations
10 from the General Revenue Fund. However, the General Revenue
11 Fund shall be reimbursed for those payments made on and
12 after July 1, 1979, by an annual transfer of funds from the
13 Bank and Trust Company Fund. Moneys in the Bank and Trust
14 Company Fund may be transferred to the Professions Indirect
15 Cost Fund, as authorized under Section 2105-300 of the
16 Department of Professional Regulation Law of the Civil
17 Administrative Code of Illinois.

18 Notwithstanding provisions in the State Finance Act,
19 as now or hereafter amended, or any other law to the
20 contrary, the sum of \$18,788,847 shall be transferred from
21 the Bank and Trust Company Fund to the Financial
22 Institutions Settlement of 2008 Fund on the effective date
23 of this amendatory Act of the 95th General Assembly, or as
24 soon thereafter as practical.

25 Notwithstanding provisions in the State Finance Act,
26 as now or hereafter amended, or any other law to the

1 contrary, the Governor may, during any fiscal year through
2 January 10, 2011, from time to time direct the State
3 Treasurer and Comptroller to transfer a specified sum not
4 exceeding 10% of the revenues to be deposited into the Bank
5 and Trust Company Fund during that fiscal year from that
6 Fund to the General Revenue Fund in order to help defray
7 the State's operating costs for the fiscal year.
8 Notwithstanding provisions in the State Finance Act, as now
9 or hereafter amended, or any other law to the contrary, the
10 total sum transferred during any fiscal year through
11 January 10, 2011, from the Bank and Trust Company Fund to
12 the General Revenue Fund pursuant to this provision shall
13 not exceed during any fiscal year 10% of the revenues to be
14 deposited into the Bank and Trust Company Fund during that
15 fiscal year. The State Treasurer and Comptroller shall
16 transfer the amounts designated under this Section as soon
17 as may be practicable after receiving the direction to
18 transfer from the Governor.

19 (d-1) Adequate funds shall be available in the Bank and
20 Trust Company Fund to permit the timely payment of
21 administration expenses. In each fiscal year the total
22 administration expenses shall be deducted from the total
23 fees collected by the Commissioner and the remainder
24 transferred into the Cash Flow Reserve Account, unless the
25 balance of the Cash Flow Reserve Account prior to the
26 transfer equals or exceeds one-fourth of the total initial

1 appropriations from the Bank and Trust Company Fund for the
2 subsequent year, in which case the remainder shall be
3 credited to State banks and foreign banking corporations
4 and applied against their fees for the subsequent year. The
5 amount credited to each State bank and foreign banking
6 corporation shall be in the same proportion as the Call
7 Report Fees paid by each for the year bear to the total
8 Call Report Fees collected for the year. If, after a
9 transfer to the Cash Flow Reserve Account is made or if no
10 remainder is available for transfer, the balance of the
11 Cash Flow Reserve Account is less than one-fourth of the
12 total initial appropriations for the subsequent year and
13 the amount transferred is less than 5% of the total Call
14 Report Fees for the year, additional amounts needed to make
15 the transfer equal to 5% of the total Call Report Fees for
16 the year shall be apportioned amongst, assessed upon, and
17 paid by the State banks and foreign banking corporations in
18 the same proportion that the Call Report Fees of each,
19 respectively, for the year bear to the total Call Report
20 Fees collected for the year. The additional amounts
21 assessed shall be transferred into the Cash Flow Reserve
22 Account. For purposes of this paragraph (d-1), the
23 calculation of the fees collected by the Commissioner shall
24 exclude the receivership fees provided for in Section 5-10
25 of the Corporate Fiduciary Act.

26 (e) The Commissioner may upon request certify to any

1 public record in his keeping and shall have authority to
2 levy a reasonable charge for issuing certifications of any
3 public record in his keeping.

4 (f) In addition to fees authorized elsewhere in this
5 Act, the Commissioner may, in connection with a review,
6 approval, or provision of a service, levy a reasonable
7 charge to recover the cost of the review, approval, or
8 service.

9 (4) Nothing contained in this Act shall be construed to
10 limit the obligation relative to examinations and reports of
11 any State bank, deposits in which are to any extent insured by
12 the United States or any agency thereof, nor to limit in any
13 way the powers of the Commissioner with reference to
14 examinations and reports of that bank.

15 (5) The nature and condition of the assets in or investment
16 of any bonus, pension, or profit sharing plan for officers or
17 employees of every State bank or, after May 31, 1997, branch of
18 an out-of-state bank shall be deemed to be included in the
19 affairs of that State bank or branch of an out-of-state bank
20 subject to examination by the Commissioner under the provisions
21 of subsection (2) of this Section, and if the Commissioner
22 shall find from an examination that the condition of or
23 operation of the investments or assets of the plan is unlawful,
24 fraudulent, or unsafe, or that any trustee has abused his
25 trust, the Commissioner shall, if the situation so found by the
26 Commissioner shall not be corrected to his satisfaction within

1 60 days after the Commissioner has given notice to the board of
2 directors of the State bank or out-of-state bank of his
3 findings, report the facts to the Attorney General who shall
4 thereupon institute proceedings against the State bank or
5 out-of-state bank, the board of directors thereof, or the
6 trustees under such plan as the nature of the case may require.

7 (6) The Commissioner shall have the power:

8 (a) To promulgate reasonable rules for the purpose of
9 administering the provisions of this Act.

10 (a-5) To impose conditions on any approval issued by
11 the Commissioner if he determines that the conditions are
12 necessary or appropriate. These conditions shall be
13 imposed in writing and shall continue in effect for the
14 period prescribed by the Commissioner.

15 (b) To issue orders against any person, if the
16 Commissioner has reasonable cause to believe that an unsafe
17 or unsound banking practice has occurred, is occurring, or
18 is about to occur, if any person has violated, is
19 violating, or is about to violate any law, rule, or written
20 agreement with the Commissioner, or for the purpose of
21 administering the provisions of this Act and any rule
22 promulgated in accordance with this Act.

23 (b-1) To enter into agreements with a bank establishing
24 a program to correct the condition of the bank or its
25 practices.

26 (c) To appoint hearing officers to execute any of the

1 powers granted to the Commissioner under this Section for
2 the purpose of administering this Act and any rule
3 promulgated in accordance with this Act and otherwise to
4 authorize, in writing, an officer or employee of the Office
5 of Banks and Real Estate to exercise his powers under this
6 Act.

7 (d) To subpoena witnesses, to compel their attendance,
8 to administer an oath, to examine any person under oath,
9 and to require the production of any relevant books,
10 papers, accounts, and documents in the course of and
11 pursuant to any investigation being conducted, or any
12 action being taken, by the Commissioner in respect of any
13 matter relating to the duties imposed upon, or the powers
14 vested in, the Commissioner under the provisions of this
15 Act or any rule promulgated in accordance with this Act.

16 (e) To conduct hearings.

17 (7) Whenever, in the opinion of the Commissioner, any
18 director, officer, employee, or agent of a State bank or any
19 subsidiary or bank holding company of the bank or, after May
20 31, 1997, of any branch of an out-of-state bank or any
21 subsidiary or bank holding company of the bank shall have
22 violated any law, rule, or order relating to that bank or any
23 subsidiary or bank holding company of the bank, shall have
24 obstructed or impeded any examination or investigation by the
25 Commissioner, shall have engaged in an unsafe or unsound
26 practice in conducting the business of that bank or any

1 subsidiary or bank holding company of the bank, or shall have
2 violated any law or engaged or participated in any unsafe or
3 unsound practice in connection with any financial institution
4 or other business entity such that the character and fitness of
5 the director, officer, employee, or agent does not assure
6 reasonable promise of safe and sound operation of the State
7 bank, the Commissioner may issue an order of removal. If, in
8 the opinion of the Commissioner, any former director, officer,
9 employee, or agent of a State bank or any subsidiary or bank
10 holding company of the bank, prior to the termination of his or
11 her service with that bank or any subsidiary or bank holding
12 company of the bank, violated any law, rule, or order relating
13 to that State bank or any subsidiary or bank holding company of
14 the bank, obstructed or impeded any examination or
15 investigation by the Commissioner, engaged in an unsafe or
16 unsound practice in conducting the business of that bank or any
17 subsidiary or bank holding company of the bank, or violated any
18 law or engaged or participated in any unsafe or unsound
19 practice in connection with any financial institution or other
20 business entity such that the character and fitness of the
21 director, officer, employee, or agent would not have assured
22 reasonable promise of safe and sound operation of the State
23 bank, the Commissioner may issue an order prohibiting that
24 person from further service with a bank or any subsidiary or
25 bank holding company of the bank as a director, officer,
26 employee, or agent. An order issued pursuant to this subsection

1 shall be served upon the director, officer, employee, or agent.
2 A copy of the order shall be sent to each director of the bank
3 affected by registered mail. The person affected by the action
4 may request a hearing before the State Banking Board within 10
5 days after receipt of the order. The hearing shall be held by
6 the Board within 30 days after the request has been received by
7 the Board. The Board shall make a determination approving,
8 modifying, or disapproving the order of the Commissioner as its
9 final administrative decision. If a hearing is held by the
10 Board, the Board shall make its determination within 60 days
11 from the conclusion of the hearing. Any person affected by a
12 decision of the Board under this subsection (7) of Section 48
13 of this Act may have the decision reviewed only under and in
14 accordance with the Administrative Review Law and the rules
15 adopted pursuant thereto. A copy of the order shall also be
16 served upon the bank of which he is a director, officer,
17 employee, or agent, whereupon he shall cease to be a director,
18 officer, employee, or agent of that bank. The Commissioner may
19 institute a civil action against the director, officer, or
20 agent of the State bank or, after May 31, 1997, of the branch
21 of the out-of-state bank against whom any order provided for by
22 this subsection (7) of this Section 48 has been issued, and
23 against the State bank or, after May 31, 1997, out-of-state
24 bank, to enforce compliance with or to enjoin any violation of
25 the terms of the order. Any person who has been the subject of
26 an order of removal or an order of prohibition issued by the

1 Commissioner under this subsection or Section 5-6 of the
2 Corporate Fiduciary Act may not thereafter serve as director,
3 officer, employee, or agent of any State bank or of any branch
4 of any out-of-state bank, or of any corporate fiduciary, as
5 defined in Section 1-5.05 of the Corporate Fiduciary Act, or of
6 any other entity that is subject to licensure or regulation by
7 the Commissioner or the Office of Banks and Real Estate unless
8 the Commissioner has granted prior approval in writing.

9 For purposes of this paragraph (7), "bank holding company"
10 has the meaning prescribed in Section 2 of the Illinois Bank
11 Holding Company Act of 1957.

12 (8) The Commissioner may impose civil penalties of up to
13 \$10,000 against any person for each violation of any provision
14 of this Act, any rule promulgated in accordance with this Act,
15 any order of the Commissioner, or any other action which in the
16 Commissioner's discretion is an unsafe or unsound banking
17 practice.

18 (9) The Commissioner may impose civil penalties of up to
19 \$100 against any person for the first failure to comply with
20 reporting requirements set forth in the report of examination
21 of the bank and up to \$200 for the second and subsequent
22 failures to comply with those reporting requirements.

23 (10) All final administrative decisions of the
24 Commissioner hereunder shall be subject to judicial review
25 pursuant to the provisions of the Administrative Review Law.
26 For matters involving administrative review, venue shall be in

1 either Sangamon County or Cook County.

2 (11) The endowment fund for the Illinois Bank Examiners'
3 Education Foundation shall be administered as follows:

4 (a) (Blank).

5 (b) The Foundation is empowered to receive voluntary
6 contributions, gifts, grants, bequests, and donations on
7 behalf of the Illinois Bank Examiners' Education
8 Foundation from national banks and other persons for the
9 purpose of funding the endowment of the Illinois Bank
10 Examiners' Education Foundation.

11 (c) The aggregate of all special educational fees
12 collected by the Commissioner and property received by the
13 Commissioner on behalf of the Illinois Bank Examiners'
14 Education Foundation under this subsection (11) on or after
15 June 30, 1986, shall be either (i) promptly paid after
16 receipt of the same, accompanied by a detailed statement
17 thereof, into the State Treasury and shall be set apart in
18 a special fund to be known as "The Illinois Bank Examiners'
19 Education Fund" to be invested by either the Treasurer of
20 the State of Illinois in the Public Treasurers' Investment
21 Pool or in any other investment he is authorized to make or
22 by the Illinois State Board of Investment as the board of
23 trustees of the Illinois Bank Examiners' Education
24 Foundation may direct or (ii) deposited into an account
25 maintained in a commercial bank or corporate fiduciary in
26 the name of the Illinois Bank Examiners' Education

1 Foundation pursuant to the order and direction of the Board
2 of Trustees of the Illinois Bank Examiners' Education
3 Foundation.

4 (12) (Blank).

5 (Source: P.A. 94-91, eff. 7-1-05.)

6 (205 ILCS 5/48.05 new)

7 Sec. 48.05. Regulatory fees. For the fiscal year beginning
8 July 1, 2007 and every year thereafter, each state bank
9 regulated by the Department shall pay a regulatory fee to the
10 Department based upon its total assets as shown by its year-end
11 Call Report at the following rates:

12 19.295¢ per \$1,000 of the first \$5,000,000 of total
13 assets;

14 18.16¢ per \$1,000 of the next \$20,000,000 of total
15 assets;

16 15.89¢ per \$1,000 of the next \$75,000,000 of total
17 assets;

18 10.7825¢ per \$1,000 of the next \$400,000,000 of total
19 assets;

20 8.5125¢ per \$1,000 of the next \$500,000,000 of total
21 assets;

22 6.2425¢ per \$1,000 of the next \$19,000,000,000 of total
23 assets;

24 2.27¢ per \$1,000 of the next \$30,000,000,000 of total
25 assets;

1 1.135¢ per \$1,000 of the next \$50,000,000,000 of total
2 assets; and
3 0.5675¢ per \$1,000 of all assets in excess of
4 \$100,000,000,000 of the state bank.

5 Section 15. The Illinois Savings and Loan Act of 1985 is
6 amended by adding Sections 1-10.39 and 7-3.05 and by changing
7 Sections 7-3 and 7-19.1 as follows:

8 (205 ILCS 105/1-10.39 new)

9 Sec. 1-10.39. Secretary of the Department of Financial and
10 Professional Regulation. For purposes of this Act, "Secretary"
11 means the Secretary of the Department of Financial and
12 Professional Regulation, or a person authorized by the
13 Secretary or by this Act to act in the Secretary's stead.

14 (205 ILCS 105/7-3) (from Ch. 17, par. 3307-3)

15 Sec. 7-3. Personnel, records, files, actions and duties,
16 etc.

17 (a) The Secretary ~~Commissioner~~ shall appoint, subject to
18 applicable provisions of the Personnel Code, a supervisor, such
19 examiners, employees, experts and special assistants as may be
20 necessary to carry out effectively this Act. The Secretary
21 ~~Commissioner~~ shall require each supervisor, examiner, expert
22 and special assistant employed or appointed by him to give
23 bond, with security to be approved by the Secretary

1 ~~Commissioner~~, not less in any case than \$15,000, conditioned
2 for the faithful discharge of his duties. The premium on such
3 bond shall be paid by the Secretary ~~Commissioner~~ from funds
4 appropriated for that purpose. The bond, along with
5 verification of payment of the premium on such bond, shall be
6 filed in the office of the Secretary of State.

7 (b) The Secretary ~~Commissioner~~ shall have the following
8 duties and powers:

9 (1) To exercise the rights, powers and duties set forth in
10 this Act or in any other related Act;

11 (2) To establish such regulations as may be reasonable or
12 necessary to accomplish the purposes of this Act;

13 (3) To direct and supervise all the administrative and
14 technical activities of this office and create an Advisory
15 Committee which upon request will make recommendations to him;

16 (4) To make an annual report regarding the work of his
17 office as he may consider desirable to the Governor, or as the
18 Governor may request;

19 (5) To cause a suit to be filed in his name to enforce any
20 law of this State that applies to an association, subsidiary of
21 an association, or holding company operating under this Act and
22 shall include the enforcement of any obligation of the
23 officers, directors or employees of any association;

24 (6) To prescribe a uniform manner in which the books and
25 records of every association are to be maintained; and

26 (7) To establish reasonable and rationally based fee

1 structures for each association and holding company operating
2 under this Act and for their service corporations and
3 subsidiaries, which fees shall include but not be limited to
4 annual fees, application fees, regular and special examination
5 fees, and such other fees as the Secretary ~~Commissioner~~
6 establishes and demonstrates to be directly resultant from his
7 responsibilities under this Act and as are directly
8 attributable to individual entities operating under this Act.

9 (Source: P.A. 85-313.)

10 (205 ILCS 105/7-3.05 new)

11 Sec. 7-3.05. Regulatory fees.

12 (a) For the fiscal year beginning July 1, 2007 and every
13 year thereafter, each association and each service corporation
14 operating under the provisions of this Act shall pay a fixed
15 fee of \$520, plus a variable fee based on the total assets of
16 the association or service corporation at the following rates:

17 28.75¢ per \$1,000 of the first \$2,000,000 of total
18 assets;

19 24.97¢ per \$1,000 of the next \$3,000,000 of total
20 assets;

21 22.70¢ per \$1,000 of the next \$5,000,000 of total
22 assets;

23 19.295¢ per \$1,000 of the next \$15,000,000 of total
24 assets;

25 17.025¢ per \$1,000 of the next \$25,000,000 of total

1 assets;

2 13.62¢ per \$1,000 of the next \$50,000,000 of total

3 assets;

4 11.35¢ per \$1,000 of the next \$400,000,000 of total

5 assets;

6 7.945¢ per \$1,000 of the next \$500,000,000 of total

7 assets; and

8 5.675¢ per \$1,000 of all total assets in excess of

9 \$1,000,000,000 of such association or service corporation.

10 (b) The Secretary shall receive and there shall be paid to

11 the Secretary an additional fee as an adjustment to the

12 supervisory fee, based upon the difference between the total

13 assets of the association or service corporation as shown by

14 its financial report filed with the Secretary for the reporting

15 period of the calendar year ended December 31 on which the

16 supervisory fee was based and the total assets of the

17 association or service corporation as shown by its financial

18 report filed with the Secretary for the reporting period of the

19 calendar year ended December 31 in which the quarterly payments

20 are made according to the following schedule:

21 28.75¢ per \$1,000 of the first \$2,000,000 of total

22 assets;

23 24.97¢ per \$1,000 of the next \$3,000,000 of total

24 assets;

25 22.70¢ per \$1,000 of the next \$5,000,000 of total

26 assets;

1 19.295¢ per \$1,000 of the next \$15,000,000 of total
2 assets;

3 17.025¢ per \$1,000 of the next \$25,000,000 of total
4 assets;

5 13.62¢ per \$1,000 of the next \$50,000,000 of total
6 assets;

7 11.35¢ per \$1,000 of the next \$400,000,000 of total
8 assets;

9 7.945¢ per \$1,000 of the next \$500,000,000 of total
10 assets; and

11 5.675¢ per \$1,000 of all total assets in excess of
12 \$1,000,000,000 of such association or service corporation.

13 (c) The Secretary shall receive and there shall be paid to
14 the Secretary by each association and each service corporation
15 a fee of \$520 for each approved branch office or facility
16 office established under the Illinois Administrative Code. The
17 determination of the fees shall be made annually as of the
18 close of business of the prior calendar year ended December 31.

19 (205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

20 Sec. 7-19.1. Savings and Residential Finance Regulatory
21 Fund.

22 (a) The aggregate of all fees collected by the Secretary
23 ~~Commissioner~~ under this Act shall be paid promptly after
24 receipt of the same, accompanied by a detailed statement
25 thereof, into the State treasury and shall be set apart in the

1 Savings and Residential Finance Regulatory Fund, a special fund
2 hereby created in the State treasury. The amounts deposited
3 into the Fund shall be used for the ordinary and contingent
4 expenses of the Department of Financial and Professional
5 Regulation and the Division of Banking, or their successors, in
6 administering and enforcing the Illinois Savings and Loan Act
7 of 1985, the Savings Bank Act, and the Residential Mortgage
8 License Act of 1987 and other laws, rules, and regulations as
9 may apply to the administration and enforcement of the
10 foregoing laws, rules, and regulations as amended from time to
11 time ~~Office of Banks and Real Estate~~. Nothing in this Act shall
12 prevent continuing the practice of paying expenses involving
13 salaries, retirement, social security, and State-paid
14 insurance of State officers by appropriation from the General
15 Revenue Fund.

16 (b) Except as otherwise provided in subsection (b-5),
17 moneys in the Savings and Residential Finance Regulatory Fund
18 may not be appropriated, assigned, or transferred to another
19 State fund. The moneys in the Fund shall be for the sole
20 benefit of the institutions assessed.

21 (b-5) Moneys in the Savings and Residential Finance
22 Regulatory Fund may be transferred to the Professions Indirect
23 Cost Fund, as authorized under Section 2105-300 of the
24 Department of Professional Regulation Law of the Civil
25 Administrative Code of Illinois.

26 (b-10) Notwithstanding provisions in the State Finance

1 Act, as now or hereafter amended, or any other law to the
2 contrary, the sum of \$27,481,638 shall be transferred from the
3 Savings and Residential Finance Regulatory Fund to the
4 Financial Institutions Settlement of 2008 Fund on the effective
5 date of this amendatory Act of the 95th General Assembly, or as
6 soon thereafter as practical.

7 Notwithstanding provisions in the State Finance Act, as now
8 or hereafter amended, or any other law to the contrary, the
9 Governor may, during any fiscal year through January 10, 2011,
10 from time to time direct the State Treasurer and Comptroller to
11 transfer a specified sum not exceeding 10% of the revenues to
12 be deposited into the Savings and Residential Finance
13 Regulatory Fund during that fiscal year from that Fund to the
14 General Revenue Fund in order to help defray the State's
15 operating costs for the fiscal year. Notwithstanding
16 provisions in the State Finance Act, as now or hereafter
17 amended, or any other law to the contrary, the total sum
18 transferred during any fiscal year through January 10, 2011,
19 from the Savings and Residential Finance Regulatory Fund to the
20 General Revenue Fund pursuant to this provision shall not
21 exceed during any fiscal year 10% of the revenues to be
22 deposited into the Savings and Residential Finance Regulatory
23 Fund during that fiscal year. The State Treasurer and
24 Comptroller shall transfer the amounts designated under this
25 Section as soon as may be practicable after receiving the
26 direction to transfer from the Governor.

1 (c) All earnings received from investments of funds in the
2 Savings and Residential Finance Regulatory Fund shall be
3 deposited into the Savings and Residential Finance Regulatory
4 Fund and may be used for the same purposes as fees deposited
5 into that Fund.

6 (d) When the balance in the Savings and Residential Finance
7 Regulatory Fund at the end of a fiscal year apportioned to the
8 fees collected under the Illinois Savings and Loan Act of 1985
9 and the Savings Bank Act exceeds 25% of the total actual
10 administrative and operational expenses incurred by the State
11 for that fiscal year in administering and enforcing the
12 Illinois Savings and Loan Act of 1985 and the Savings Bank Act
13 and such other laws, rules, and regulations as may apply to the
14 administration and enforcement of the foregoing laws, rules,
15 and regulations, the excess shall be credited to the
16 appropriate institutions and entities and applied against
17 their regulatory fees for the subsequent fiscal year. The
18 amount credited to each institution or entity shall be in the
19 same proportion that the regulatory fees paid by the
20 institution or entity for the fiscal year in which the excess
21 is produced bear to the aggregate amount of all fees collected
22 by the Secretary under the Illinois Savings and Loan Act of
23 1985 and the Savings Bank Act for the same fiscal year. For the
24 purpose of this Section, "fiscal year" means the period
25 beginning July 1 of any year and ending June 30 of the next
26 calendar year.

1 (Source: P.A. 94-91, eff. 7-1-05.)

2 Section 20. The Savings Bank Act is amended by adding
3 Sections 1007.135 and 9002.5 and by changing Section 9002 as
4 follows:

5 (205 ILCS 205/1007.135 new)

6 Sec. 1007.135. Secretary of the Department of Financial and
7 Professional Regulation. "Secretary" means the Secretary of
8 the Department of Financial and Professional Regulation, or a
9 person authorized by the Secretary or by this Act to act in the
10 Secretary's stead.

11 (205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

12 Sec. 9002. Powers of Secretary ~~Commissioner~~. The Secretary
13 ~~Commissioner~~ shall have the following powers and duties:

14 (1) To exercise the rights, powers, and duties set forth in
15 this Act or in any related Act.

16 (2) To establish regulations as may be reasonable or
17 necessary to accomplish the purposes of this Act.

18 (3) To make an annual report regarding the work of his
19 office under this Act as he may consider desirable to the
20 Governor, or as the Governor may request.

21 (4) To cause a suit to be filed in his name to enforce any
22 law of this State that applies to savings banks, their service
23 corporations, subsidiaries, affiliates, or holding companies

1 operating under this Act, including the enforcement of any
2 obligation of the officers, directors, agents, or employees of
3 any savings bank.

4 (5) To prescribe a uniform manner in which the books and
5 records of every savings bank are to be maintained.

6 (6) To establish a reasonable fee structure for savings
7 banks and holding companies operating under this Act and for
8 their service corporations and subsidiaries. The fees shall
9 include, but not be limited to, annual fees, application fees,
10 regular and special examination fees, and other fees as the
11 Secretary ~~Commissioner~~ establishes and demonstrates to be
12 directly resultant from the Secretary's ~~Commissioner's~~
13 responsibilities under this Act and as are directly
14 attributable to individual entities operating under this Act.
15 The aggregate of all fees collected by the Secretary
16 ~~Commissioner~~ on and after the effective date of this Act shall
17 be paid promptly after receipt of the same, accompanied by a
18 detailed statement thereof, into the Savings and Residential
19 Finance Regulatory Fund subject to the provisions of Section
20 7-19.1 of the Illinois Savings and Loan Act of 1985 including
21 without limitation the provision for credits against
22 regulatory fees. The amounts deposited into the Fund shall be
23 used for the ordinary and contingent expenses of the Office of
24 Banks and Real Estate. Nothing in this Act shall prevent
25 continuing the practice of paying expenses involving salaries,
26 retirement, social security, and State-paid insurance of State

1 officers by appropriation from the General Revenue Fund.

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

3 (205 ILCS 205/9002.5 new)

4 Sec. 9002.5. Regulatory fees.

5 (a) For the fiscal year beginning July 1, 2007 and every
6 year thereafter, each savings bank and each service corporation
7 operating under this Act shall pay a fixed fee of \$520, plus a
8 variable fee based on the total assets of the savings bank or
9 service corporation at the following rates:

10 24.97¢ per \$1,000 of the first \$2,000,000 of total
11 assets;

12 22.70¢ per \$1,000 of the next \$3,000,000 of total
13 assets;

14 20.43¢ per \$1,000 of the next \$5,000,000 of total
15 assets;

16 17.025¢ per \$1,000 of the next \$15,000,000 of total
17 assets;

18 14.755¢ per \$1,000 of the next \$25,000,000 of total
19 assets;

20 12.485¢ per \$1,000 of the next \$50,000,000 of total
21 assets;

22 10.215¢ per \$1,000 of the next \$400,000,000 of total
23 assets;

24 6.81¢ per \$1,000 of the next \$500,000,000 of total
25 assets; and

1 4.54¢ per \$1,000 of all total assets in excess of
2 \$1,000,000,000 of such savings bank or service
3 corporation.

4 (b) The Secretary shall receive and there shall be paid to
5 the Secretary an additional fee as an adjustment to the
6 supervisory fee, based upon the difference between the total
7 assets of each savings bank and each service corporation as
8 shown by its financial report filed with the Secretary for the
9 reporting period of the calendar year ended December 31 on
10 which the supervisory fee was based and the total assets of
11 each savings bank and each service corporation as shown by its
12 financial report filed with the Secretary for the reporting
13 period of the calendar year ended December 31 in which the
14 quarterly payments are made according to the following
15 schedule:

16 24.97¢ per \$1,000 of the first \$2,000,000 of total
17 assets;

18 22.70¢ per \$1,000 of the next \$3,000,000 of total
19 assets;

20 20.43¢ per \$1,000 of the next \$5,000,000 of total
21 assets;

22 17.025¢ per \$1,000 of the next \$15,000,000 of total
23 assets;

24 14.755¢ per \$1,000 of the next \$25,000,000 of total
25 assets;

26 12.485¢ per \$1,000 of the next \$50,000,000 of total

1 assets;
2 10.215¢ per \$1,000 of the next \$400,000,000 of total
3 assets;
4 6.81¢ per \$1,000 of the next \$500,000,000 of total
5 assets; and
6 4.54¢ per \$1,000 of all total assets in excess of
7 \$1,000,000,000 of such savings bank or service
8 corporation.

9 (c) The Secretary shall receive and there shall be paid to
10 the Secretary by each savings bank and each service corporation
11 a fee of \$520 for each approved branch office or facility
12 office established under the Illinois Administrative Code. The
13 determination of the fees shall be made annually as of the
14 close of business of the prior calendar year ended December 31.

15 Section 25. The Illinois Credit Union Act is amended by
16 changing Sections 1.1 and 12 as follows:

17 (205 ILCS 305/1.1) (from Ch. 17, par. 4402)

18 Sec. 1.1. Definitions.

19 Credit Union - The term "credit union" means a cooperative,
20 non-profit association, incorporated under this Act, under the
21 laws of the United States of America or under the laws of
22 another state, for the purposes of encouraging thrift among its
23 members, creating a source of credit at a reasonable rate of
24 interest, and providing an opportunity for its members to use

1 and control their own money in order to improve their economic
2 and social conditions. The membership of a credit union shall
3 consist of a group or groups each having a common bond as set
4 forth in this Act.

5 Common Bond - The term "common bond" refers to groups of
6 people who meet one of the following qualifications:

7 (1) Persons belonging to a specific association, group
8 or organization, such as a church, labor union, club or
9 society and members of their immediate families which shall
10 include any relative by blood or marriage or foster and
11 adopted children.

12 (2) Persons who reside in a reasonably compact and well
13 defined neighborhood or community, and members of their
14 immediate families which shall include any relative by
15 blood or marriage or foster and adopted children.

16 (3) Persons who have a common employer or who are
17 members of an organized labor union or an organized
18 occupational or professional group within a defined
19 geographical area, and members of their immediate families
20 which shall include any relative by blood or marriage or
21 foster and adopted children.

22 Shares - The term "shares" or "share accounts" means any
23 form of shares issued by a credit union and established by a
24 member in accordance with standards specified by a credit
25 union, including but not limited to common shares, share draft
26 accounts, classes of shares, share certificates, special

1 purpose share accounts, shares issued in trust, custodial
2 accounts, and individual retirement accounts or other plans
3 established pursuant to Section 401(d) or (f) or Section 408(a)
4 of the Internal Revenue Code, as now or hereafter amended, or
5 similar provisions of any tax laws of the United States that
6 may hereafter exist.

7 Credit Union Organization - The term "credit union
8 organization" means any organization established to serve the
9 needs of credit unions, the business of which relates to the
10 daily operations of credit unions.

11 Department - The term "Department" means the Illinois
12 Department of Financial Institutions.

13 Director - The term "Director" means the Director of the
14 Illinois Department of Financial Institutions, except that
15 beginning on the effective date of this amendatory Act of the
16 95th General Assembly, all references in this Act to the
17 Director of the Department of Financial Institutions are
18 deemed, in appropriate contexts, to be references to the
19 Secretary of Financial and Professional Regulation.

20 NCUA - The term "NCUA" means the National Credit Union
21 Administration, an agency of the United States Government
22 charged with the supervision of credit unions chartered under
23 the laws of the United States of America.

24 Central Credit Union - The term "central credit union"
25 means a credit union incorporated primarily to receive shares
26 from and make loans to credit unions and Directors, Officers,

1 committee members and employees of credit unions. A central
2 credit union may also accept as members persons who were
3 members of credit unions which were liquidated and persons from
4 occupational groups not otherwise served by another credit
5 union.

6 Corporate Credit Union - The term "corporate credit union"
7 means a credit union which is a cooperative, non-profit
8 association, the membership of which is limited primarily to
9 other credit unions.

10 Insolvent - "Insolvent" means the condition that results
11 when the total of all liabilities and shares exceeds net assets
12 of the credit union.

13 Danger of insolvency - For purposes of Section 61, a credit
14 union is in "danger of insolvency" if its net worth to asset
15 ratio falls below 2%. In calculating the danger of insolvency
16 ratio, secondary capital shall be excluded. For purposes of
17 Section 61, a credit union is also in "danger of insolvency" if
18 the Department is unable to ascertain, upon examination, the
19 true financial condition of the credit union.

20 Net Worth - "Net worth" means the retained earnings balance
21 of the credit union, as determined under generally accepted
22 accounting principles, and forms of secondary capital approved
23 by the Director pursuant to rulemaking.

24 Secretary - The term "Secretary" means the Secretary of the
25 Department of Financial and Professional Regulation, or a
26 person authorized by the Secretary or this Act to act in the

1 Secretary's stead.

2 (Source: P.A. 92-608, eff. 7-1-02.)

3 (205 ILCS 305/12) (from Ch. 17, par. 4413)

4 Sec. 12. Regulatory fees.

5 (1) For the fiscal year beginning July 1, 2007, a ~~A~~ credit
6 union regulated by the Department shall pay a regulatory fee to
7 the Department based upon its total assets as shown by its
8 Year-end Call Report at the following rates or at a lesser rate
9 established by the Secretary in a manner proportionately
10 consistent with the following rates and sufficient to fund the
11 actual administrative and operational expenses of the Credit
12 Union Section pursuant to subsection (4) of this Section:

TOTAL ASSETS	REGULATORY FEE
\$25,000 or less	\$100
Over \$25,000 and not over	
\$100,000	\$100 plus \$4 per
	\$1,000 of assets in excess of
	\$25,000
Over \$100,000 and not over	
\$200,000	\$400 plus \$3 per
	\$1,000 of assets in excess of
	\$100,000
Over \$200,000 and not over	
\$500,000	\$700 plus \$2 per
	\$1,000 of assets in excess of

1 schedule in subsection (1) and the projected earnings on those
2 fees on an annual basis and adjust the fee schedule no more
3 than 5% annually if necessary to defray the estimated
4 administrative and operational expenses of the Credit Union
5 Section of the Department as defined in subsection (5).
6 However, the fee schedule shall not be increased if the amount
7 remaining in the Credit Union Fund at the end of any fiscal
8 year is greater than 25% of the total actual and operational
9 expenses incurred by the State in administering and enforcing
10 the Illinois Credit Union Act and other laws, rules, and
11 regulations as may apply to the administration and enforcement
12 of the foregoing laws, rules, and regulations as amended from
13 time to time for the preceding fiscal year. The regulatory fee
14 for the next fiscal year shall be calculated by the Secretary
15 based on the credit union's total assets as of December 31 of
16 the preceding calendar year. The Secretary ~~Director~~ shall
17 provide credit unions with written notice of any adjustment
18 made in the regulatory fee schedule.

19 (3) Beginning with the calendar quarter commencing on
20 January 1, 2009 ~~Not later than March 1 of each calendar year,~~ a
21 credit union shall pay to the Department a regulatory fee in
22 quarterly installments equal to one-fourth of the regulatory
23 fee due for that calendar year in accordance with the
24 regulatory fee schedule in subsection (1), on the basis of
25 assets as of the Year-end Call Report of the preceding calendar
26 year. The total annual regulatory fee shall not be less than

1 \$100 or more than \$141,875 ~~\$187,500~~, provided that the
2 regulatory fee cap of \$141,875 ~~\$187,500~~ shall be adjusted to
3 incorporate the same percentage increase as the Secretary
4 ~~Director~~ makes in the regulatory fee schedule from time to time
5 under subsection (2). No regulatory fee shall be collected from
6 a credit union until it has been in operation for one year. The
7 regulatory fee shall be billed to credit unions on a quarterly
8 basis commencing with the quarter ending March 31, 2009, and it
9 shall be payable by credit unions on the due date for the Call
10 Report for the subject quarter.

11 (4) The aggregate of all fees collected by the Department
12 under this Act shall be paid promptly after they are received,
13 accompanied by a detailed statement thereof, into the State
14 Treasury and shall be set apart in the Credit Union Fund, a
15 special fund hereby created in the State treasury. The amount
16 from time to time deposited in the Credit Union Fund and shall
17 be used to offset the ordinary administrative and operational
18 expenses of the Credit Union Section of the Department under
19 this Act. All earnings received from investments of funds in
20 the Credit Union Fund shall be deposited into the Credit Union
21 Fund and may be used for the same purposes as fees deposited
22 into that Fund. Moneys deposited in the Credit Union Fund may
23 be transferred to the Professions Indirect Cost Fund, as
24 authorized under Section 2105-300 of the Department of
25 Professional Regulation Law of the Civil Administrative Code of
26 Illinois.

1 Notwithstanding provisions in the State Finance Act, as now
2 or hereafter amended, or any other law to the contrary, the sum
3 of \$4,404,515 shall be transferred from the Credit Union Fund
4 to the Financial Institutions Settlement of 2008 Fund as of the
5 effective date of this amendatory Act of the 95th General
6 Assembly, or as soon thereafter as practical.

7 Notwithstanding provisions in the State Finance Act, as now
8 or hereafter amended, or any other law to the contrary, the
9 Governor may, during any fiscal year through January 10, 2011,
10 from time to time direct the State Treasurer and Comptroller to
11 transfer a specified sum not exceeding 10% of the revenues to
12 be deposited into the Credit Union Fund during that fiscal year
13 from that Fund to the General Revenue Fund in order to help
14 defray the State's operating costs for the fiscal year.

15 Notwithstanding provisions in the State Finance Act, as now or
16 hereafter amended, or any other law to the contrary, the total
17 sum transferred from the Credit Union Fund to the General
18 Revenue Fund pursuant to this provision shall not exceed during
19 any fiscal year 10% of the revenues to be deposited into the
20 Credit Union Fund during that fiscal year. The State Treasurer
21 and Comptroller shall transfer the amounts designated under
22 this Section as soon as may be practicable after receiving the
23 direction to transfer from the Governor.

24 (5) The administrative and operational expenses for any
25 fiscal ~~calendar~~ year shall mean the ordinary and contingent
26 expenses for that year incidental to making the examinations

1 provided for by, and for administering, this Act, including all
2 salaries and other compensation paid for personal services
3 rendered for the State by officers or employees of the State to
4 enforce this Act; all expenditures for telephone and telegraph
5 charges, postage and postal charges, office supplies and
6 services, furniture and equipment, office space and
7 maintenance thereof, travel expenses and other necessary
8 expenses; all to the extent that such expenditures are directly
9 incidental to such examination or administration.

10 (6) When the balance in the Credit Union Fund at the end of
11 a fiscal year exceeds 25% ~~aggregate of all fees collected by~~
12 ~~the Department under this Act and all earnings thereon for any~~
13 ~~calendar year exceeds 150%~~ of the total administrative and
14 operational expenses incurred by the State in administering and
15 enforcing the Illinois Credit Union Act and other laws, rules,
16 and regulations as may apply to the administration and
17 enforcement of the foregoing laws, rules, and regulations as
18 amended from time to time ~~under this Act~~ for that fiscal year,
19 such excess shall be credited to credit unions and applied
20 against their regulatory fees for the subsequent fiscal year.
21 The amount credited to each a credit union shall be in the same
22 proportion as the regulatory fee paid by such credit union for
23 the fiscal ~~calendar~~ year in which the excess is produced bears
24 to the aggregate amount of all ~~the~~ fees collected by the
25 Department under this Act for the same fiscal year.

26 (7) (Blank). ~~Examination fees for the year 2000 statutory~~

~~1 examinations paid pursuant to the examination fee schedule in
2 effect at that time shall be credited toward the regulatory fee
3 to be assessed the credit union in calendar year 2001.~~

4 (8) Nothing in this Act shall prohibit the General Assembly
5 from appropriating funds to the Department from the General
6 Revenue Fund for the purpose of administering this Act.

7 (9) For purposes of this Section, "fiscal year" means a
8 period beginning on July 1 of any calendar year and ending on
9 June 30 of the next calendar year.

10 (Source: P.A. 93-32, eff. 7-1-03; 93-652, eff. 1-8-04; 94-91,
11 eff. 7-1-05.)

12 Section 30. The Residential Mortgage License Act of 1987 is
13 amended by changing Sections 1-4, 2-2, 2-6, and 4-11 as
14 follows:

15 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

16 Sec. 1-4. Definitions.

17 (a) "Residential real property" or "residential real
18 estate" shall mean real property located in this State improved
19 by a one-to-four family dwelling used or occupied, wholly or
20 partly, as the home or residence of one or more persons and may
21 refer, subject to regulations of the Commissioner, to
22 unimproved real property upon which those kinds dwellings are
23 to be constructed.

24 (b) "Making a residential mortgage loan" or "funding a

1 residential mortgage loan" shall mean for compensation or gain,
2 either directly or indirectly, advancing funds or making a
3 commitment to advance funds to a loan applicant for a
4 residential mortgage loan.

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

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

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

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

22 (1.5) Any employee of a person or entity mentioned in
23 item (1) of this subsection.

24 (2) Any person or entity that does not originate
25 mortgage loans in the ordinary course of business making or
26 acquiring residential mortgage loans with his or her or its

1 own funds for his or her or its own investment without
2 intent to make, acquire, or resell more than 10 residential
3 mortgage loans in any one calendar year.

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

7 (4) Any person licensed pursuant to the Real Estate
8 License Act of 2000, who engages only in the taking of
9 applications and credit and appraisal information to
10 forward to a licensee or an exempt entity under this Act
11 and who is compensated by either a licensee or an exempt
12 entity under this Act, but is not compensated by either the
13 buyer (applicant) or the seller.

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

20 (6) A person who prepares supporting documentation for
21 a residential mortgage loan application taken by a licensee
22 and performs ministerial functions pursuant to specific
23 instructions of the licensee who neither requires nor
24 permits the preparer to exercise his or her discretion or
25 judgment; provided that this activity is engaged in
26 pursuant to a binding, written agreement between the

1 licensee and the preparer that:

2 (A) holds the licensee fully accountable for the
3 preparer's action; and

4 (B) otherwise meets the requirements of this
5 Section and this Act, does not undermine the purposes
6 of this Act, and is approved by the Commissioner.

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

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

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

23 (h) "Ultimate equitable owner" shall mean a person who,
24 directly or indirectly, owns or controls an ownership interest
25 in a corporation, foreign corporation, alien business
26 organization, trust, or any other form of business organization

1 regardless of whether the person owns or controls the ownership
2 interest through one or more persons or one or more proxies,
3 powers of attorney, nominees, corporations, associations,
4 partnerships, trusts, joint stock companies, or other entities
5 or devices, or any combination thereof.

6 (i) "Residential mortgage financing transaction" shall
7 mean the negotiation, acquisition, sale, or arrangement for or
8 the offer to negotiate, acquire, sell, or arrange for, a
9 residential mortgage loan or residential mortgage loan
10 commitment.

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

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

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

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

22 (n) "Commissioner" shall mean the Commissioner of Banks and
23 Real Estate, except that beginning on the effective date of
24 this amendatory Act of the 95th General Assembly, all
25 references in this Act to the Commissioner of Banks and Real
26 Estate are deemed, in appropriate contexts, to be references to

1 the Secretary of Financial and Professional Regulation ~~or a~~
2 ~~person authorized by the Commissioner, the Office of Banks and~~
3 ~~Real Estate Act, or this Act to act in the Commissioner's~~
4 ~~stead.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (z) "Annual audit" shall mean a certified audit of the
25 licensee's books and records and systems of internal control
26 performed by a certified public accountant in accordance with

1 generally accepted accounting principles and generally
2 accepted auditing standards.

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

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

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

15 (dd) "Affiliate" shall mean:

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

20 (2) any entity:

21 (A) that is controlled, directly or indirectly, by
22 a trust or otherwise, by or for the benefit of
23 shareholders who beneficially or otherwise control,
24 directly or indirectly, by trust or otherwise, the
25 licensee or any company that controls the licensee; or

26 (B) a majority of the directors or trustees of

1 which constitute a majority of the persons holding any
2 such office with the licensee or any company that
3 controls the licensee;

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

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

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

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

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

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

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

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

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

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

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

8 (a) The Secretary ~~Commissioner~~ shall issue a license upon
9 completion of all of the following:

10 (1) The filing of an application for license.

11 (2) The filing with the Secretary ~~Commissioner~~ of a
12 listing of judgments entered against, and bankruptcy
13 petitions by, the license applicant for the preceding 10
14 years.

15 (3) The payment, in certified funds, of investigation
16 and application fees, the total of which shall be in an
17 amount equal to \$2,043 ~~\$2,700~~ annually, ~~however, the~~
18 ~~Commissioner may increase the investigation and~~
19 ~~application fees by rule as provided in Section 4-11.~~

20 (4) Except for a broker applying to renew a license,
21 the filing of an audited balance sheet including all
22 footnotes prepared by a certified public accountant in
23 accordance with generally accepted accounting principles
24 and generally accepted auditing principles which evidences
25 that the applicant meets the net worth requirements of

1 Section 3-5.

2 (5) The filing of proof satisfactory to the
3 Commissioner that the applicant, the members thereof if the
4 applicant is a partnership or association, the members or
5 managers thereof that retain any authority or
6 responsibility under the operating agreement if the
7 applicant is a limited liability company, or the officers
8 thereof if the applicant is a corporation have 3 years
9 experience preceding application in real estate finance.
10 Instead of this requirement, the applicant and the
11 applicant's officers or members, as applicable, may
12 satisfactorily complete a program of education in real
13 estate finance and fair lending, as approved by the
14 Commissioner, prior to receiving the initial license. The
15 Commissioner shall promulgate rules regarding proof of
16 experience requirements and educational requirements and
17 the satisfactory completion of those requirements. The
18 Commissioner may establish by rule a list of duly licensed
19 professionals and others who may be exempt from this
20 requirement.

21 (6) An investigation of the averments required by
22 Section 2-4, which investigation must allow the
23 Commissioner to issue positive findings stating that the
24 financial responsibility, experience, character, and
25 general fitness of the license applicant and of the members
26 thereof if the license applicant is a partnership or

1 association, of the officers and directors thereof if the
2 license applicant is a corporation, and of the managers and
3 members that retain any authority or responsibility under
4 the operating agreement if the license applicant is a
5 limited liability company are such as to command the
6 confidence of the community and to warrant belief that the
7 business will be operated honestly, fairly and efficiently
8 within the purpose of this Act. If the Commissioner shall
9 not so find, he or she shall not issue such license, and he
10 or she shall notify the license applicant of the denial.

11 The Commissioner may impose conditions on a license if the
12 Commissioner determines that the conditions are necessary or
13 appropriate. These conditions shall be imposed in writing and
14 shall continue in effect for the period prescribed by the
15 Commissioner.

16 (b) All licenses shall be issued in duplicate with one copy
17 being transmitted to the license applicant and the second being
18 retained with the Commissioner.

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

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

25 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

2 (a) Beginning July 1, 2003, licenses shall be renewed every
3 year on the anniversary of the date of issuance of the original
4 license. Properly completed renewal application forms and
5 filing fees must be received by the Secretary ~~Commissioner~~ 60
6 days prior to the renewal date.

7 (b) It shall be the responsibility of each licensee to
8 accomplish renewal of its license; failure of the licensee to
9 receive renewal forms absent a request sent by certified mail
10 for such forms will not waive said responsibility. Failure by a
11 licensee to submit a properly completed renewal application
12 form and fees in a timely fashion, absent a written extension
13 from the Secretary ~~Commissioner~~, will result in the assessment
14 of additional fees, as follows:

15 (1) A fee of \$567.50 ~~\$750~~ will be assessed to the
16 licensee 30 days after the proper renewal date and \$1,135
17 ~~\$1,500~~ each month thereafter, until the license is either
18 renewed or expires pursuant to Section 2-6, subsections (c)
19 and (d), of this Act.

20 (2) Such fee will be assessed without prior notice to
21 the licensee, but will be assessed only in cases wherein
22 the Secretary ~~Commissioner~~ has in his or her possession
23 documentation of the licensee's continuing activity for
24 which the unrenewed license was issued.

25 (c) A license which is not renewed by the date required in
26 this Section shall automatically become inactive. No activity

1 regulated by this Act shall be conducted by the licensee when a
2 license becomes inactive. The Commissioner may require the
3 licensee to provide a plan for the disposition of any
4 residential mortgage loans not closed or funded when the
5 license becomes inactive. The Commissioner may allow a licensee
6 with an inactive license to conduct activities regulated by
7 this Act for the sole purpose of assisting borrowers in the
8 closing or funding of loans for which the loan application was
9 taken from a borrower while the license was active. An inactive
10 license may be reactivated by the Commissioner upon payment of
11 the renewal fee, and payment of a reactivation fee equal to the
12 renewal fee.

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

15 (e) A licensee ceasing an activity or activities regulated
16 by this Act and desiring to no longer be licensed shall so
17 inform the Commissioner in writing and, at the same time,
18 convey the license and all other symbols or indicia of
19 licensure. The licensee shall include a plan for the withdrawal
20 from regulated business, including a timetable for the
21 disposition of the business. Upon receipt of such written
22 notice, the Commissioner shall issue a certified statement
23 canceling the license.

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

1 (205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)
2 Sec. 4-11. Costs of Supervision; Examination and
3 Investigative Fees. The expenses of administering this Act,
4 including investigations and examinations provided for in this
5 Act shall be borne by and assessed against entities regulated
6 by this Act. Subject to the limitations set forth in Section
7 2-2 of this Act, the Secretary ~~The Commissioner~~ shall establish
8 fees by regulation in at least the following categories:

9 (1) application fees;

10 (2) investigation of license applicant fees;

11 (3) examination fees;

12 (4) contingent fees;

13 and such other categories as may be required to administer this
14 Act.

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

16 Section 35. The Code of Civil Procedure is amended by
17 adding Section 15-1502.5 as follows:

18 (735 ILCS 5/15-1502.5 new)

19 Sec. 15-1502.5. Homeowner protection.

20 (a) As used in this Section:

21 "Approved counseling agency" means a housing counseling
22 agency approved by the U.S. Department of Housing and Urban
23 Development.

24 "Approved Housing Counseling" means in-person counseling

1 provided by a counselor employed by an approved counseling
2 agency to all borrowers, or documented telephone counseling
3 where a hardship would be imposed on one or more borrowers. A
4 hardship shall exist in instances in which the borrower is
5 confined to his or her home due to medical conditions, as
6 verified in writing by a physician or the borrower resides 50
7 miles or more from the nearest approved counseling agency. In
8 instances of telephone counseling, the borrower must supply all
9 necessary documents to the counselor at least 72 hours prior to
10 the scheduled telephone counseling session.

11 "Delinquent" means past due with respect to a payment on a
12 mortgage secured by residential real estate.

13 "Department" means the Department of Financial and
14 Professional Regulation.

15 "Secretary" means the Secretary of Financial and
16 Professional Regulation or other person authorized to act in
17 the Secretary's stead.

18 "Sustainable loan workout plan" means a plan that the
19 mortgagor and approved counseling agency believe shall enable
20 the mortgagor to stay current on his or her mortgage payments
21 for the foreseeable future when taking into account the
22 mortgagor income and existing and foreseeable debts. A
23 sustainable loan workout plan may include, but is not limited
24 to, (1) a temporary suspension of payments, (2) a lengthened
25 loan term, (3) a lowered or frozen interest rate, (4) a
26 principal write down, (5) a repayment plan to pay the existing

1 loan in full, (6) deferred payments, or (7) refinancing into a
2 new affordable loan.

3 (b) Except in the circumstance in which a mortgagor has
4 filed a petition for relief under the United States Bankruptcy
5 Code, no mortgagee shall file a complaint to foreclose a
6 mortgage secured by residential real estate until the
7 requirements of this Section have been satisfied.

8 (c) Notwithstanding any other provision to the contrary,
9 with respect to a particular mortgage secured by residential
10 real estate, the procedures and forbearances described in this
11 Section apply only once per subject mortgage.

12 Except for mortgages secured by residential real estate in
13 which any mortgagor has filed for relief under the United
14 States Bankruptcy Code, if a mortgage secured by residential
15 real estate becomes delinquent by more than 30 days the
16 mortgagee shall send via U.S. mail a notice advising the
17 mortgagor that he or she may wish to seek approved housing
18 counseling. Notwithstanding anything to the contrary in this
19 Section, nothing shall preclude the mortgagor and mortgagee
20 from communicating with each other during the initial 30 days
21 of delinquency or reaching agreement on a sustainable loan
22 workout plan, or both.

23 No foreclosure action under Part 15 of Article XV of the
24 Code of Civil Procedure shall be instituted on a mortgage
25 secured by residential real estate before mailing the notice
26 described in this subsection (c).

1 The notice required in this subsection (c) shall state the
2 date on which the notice was mailed, shall be headed in bold
3 14-point type "GRACE PERIOD NOTICE", and shall state the
4 following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS
5 PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY
6 BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING.
7 YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE
8 TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD,
9 THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU.
10 YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU
11 OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING
12 AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED
13 FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL
14 REGULATION."

15 The notice shall also list the Department's current
16 consumer hotline, the Department's website, and the telephone
17 number, fax number, and mailing address of the mortgagee. No
18 language, other than language substantially similar to the
19 language prescribed in this subsection (c), shall be included
20 in the notice. Notwithstanding any other provision to the
21 contrary, the grace period notice required by this subsection
22 (c) may be combined with a counseling notification required
23 under federal law.

24 The sending of the notice required under this subsection
25 (c) means depositing or causing to be deposited into the United
26 States mail an envelope with first-class postage prepaid that

1 contains the document to be delivered. The envelope shall be
2 addressed to the mortgagor at the common address of the
3 residential real estate securing the mortgage.

4 (d) Until 30 days after mailing the notice provided for
5 under subsection (c) of this Section, no legal action shall be
6 instituted under Part 15 of Article XV of the Code of Civil
7 Procedure.

8 (e) If, within the 30-day period provided under subsection
9 (d) of this Section, an approved counseling agency provides
10 written notice to the mortgagee that the mortgagor is seeking
11 approved counseling services, then no legal action under Part
12 15 of Article XV of the Code of Civil Procedure shall be
13 instituted for 30 days after the date of that notice. The date
14 that such notice is sent shall be stated in the notice, and
15 shall be sent to the address or fax number contained in the
16 Grace Period Notice required under subsection (c) of this
17 Section. During the 30-day period provided under this
18 subsection (e), the mortgagor or counselor or both may prepare
19 and proffer to the mortgagee a proposed sustainable loan
20 workout plan. The mortgagee will then determine whether to
21 accept the proposed sustainable loan workout plan. If the
22 mortgagee and the mortgagor agree to a sustainable loan workout
23 plan, then no legal action under Part 15 of Article XV of the
24 Code of Civil Procedure shall be instituted for as long as the
25 sustainable loan workout plan is complied with by the
26 mortgagor.

1 The agreed sustainable loan workout plan and any
2 modifications thereto must be in writing and signed by the
3 mortgagee and the mortgagor.

4 Upon written notice to the mortgagee, the mortgagor may
5 change approved counseling agencies, but such a change does not
6 entitle the mortgagor to any additional period of forbearance.

7 (f) If the mortgagor fails to comply with the sustainable
8 loan workout plan, then nothing in this Section shall be
9 construed to impair the legal rights of the mortgagee to
10 enforce the contract.

11 (g) A counselor employed by a housing counseling agency or
12 the housing counseling agency that in good faith provides
13 counseling shall not be liable to a mortgagee or mortgagor for
14 civil damages, except for willful or wanton misconduct on the
15 part of the counselor in providing the counseling.

16 (h) There shall be no waiver of any provision of this
17 Section.

18 (i) It is the General Assembly's intent that compliance
19 with this Section shall not prejudice a mortgagee in ratings of
20 its bad debt collection or calculation standards or policies.

21 (j) This Section shall not apply, or shall cease to apply,
22 to residential real estate that is not occupied as a principal
23 residence by the mortgagor.

24 (k) This Section is repealed 2 years after the effective
25 date of this amendatory Act of the 95th General Assembly.

1 Section 40. The Mortgage Rescue Fraud Act is amended by
2 changing Sections 5 and 50 and by adding Sections 7 and 70 as
3 follows:

4 (765 ILCS 940/5)

5 Sec. 5. Definitions. As used in this Act:

6 "Distressed property" means residential real property
7 consisting of one to 6 family dwelling units that is in
8 foreclosure or at risk of loss due to nonpayment of taxes, or
9 whose owner is more than 30 ~~90~~ days delinquent on any loan that
10 is secured by the property.

11 "Distressed property consultant" means any person who,
12 directly or indirectly, for compensation from the owner, makes
13 any solicitation, representation, or offer to perform or who,
14 for compensation from the owner, performs any service that the
15 person represents will in any manner do any of the following:

16 (1) stop or postpone the foreclosure sale or stop or
17 postpone the loss of the home due to nonpayment of taxes;

18 (2) obtain any forbearance from any beneficiary or
19 mortgagee, or relief with respect to a tax sale of the
20 property;

21 (3) assist the owner to exercise any right of
22 reinstatement or right of redemption;

23 (4) obtain any extension of the period within which the
24 owner may reinstate the owner's rights with respect to the
25 property;

1 (5) obtain any waiver of an acceleration clause
2 contained in any promissory note or contract secured by a
3 mortgage on a distressed property or contained in the
4 mortgage;

5 (6) assist the owner in foreclosure, loan default, or
6 post-tax sale redemption period to obtain a loan or advance
7 of funds;

8 (7) avoid or ameliorate the impairment of the owner's
9 credit resulting from the recording of a notice of default
10 or the conduct of a foreclosure sale or tax sale; or

11 (8) save the owner's residence from foreclosure or save
12 the owner from loss of home due to nonpayment of taxes.

13 A "distressed property consultant" does not include any of
14 the following:

15 (1) a person or the person's authorized agent acting
16 under the express authority or written approval of the
17 Department of Housing and Urban Development;

18 (2) a person who holds or is owed an obligation secured
19 by a lien on any distressed property, or a person acting
20 under the express authorization or written approval of such
21 person, when the person performs services in connection
22 with the obligation or lien, if the obligation or lien did
23 not arise as the result of or as part of a proposed
24 distressed property conveyance;

25 (3) banks, savings banks, savings and loan
26 associations, credit unions, and insurance companies

1 organized, chartered, or holding a certificate of
2 authority to do business under the laws of this State or
3 any other state or under the laws of the United States;

4 (4) ~~licensed~~ attorneys licensed in Illinois engaged in
5 the practice of law;

6 (5) a Department of Housing and Urban Development
7 approved mortgagee and any subsidiary or affiliate of these
8 persons or entities, and any agent or employee of these
9 persons or entities, while engaged in the business of these
10 persons or entities;

11 (6) a 501(c)(3) nonprofit agency or organization,
12 doing business for no less than 5 years, that offers
13 counseling or advice to an owner of a distressed property,
14 if they do not contract for services with for-profit
15 lenders or distressed property purchasers, or any person
16 who structures or plans such a transaction;

17 (7) (blank) ~~licensees of the Residential Mortgage~~
18 ~~License Act of 1987;~~

19 (8) licensees of the Consumer Installment Loan Act who
20 are authorized to make loans secured by real property; or

21 (9) licensees of the Real Estate License Act of 2000
22 when providing licensed activities.

23 "Distressed property purchaser" means any person who
24 acquires any interest in fee in a distressed property or a
25 beneficial interest in a trust holding title to a distressed
26 property while allowing the owner to possess, occupy, or retain

1 any present or future interest in fee in the property, or any
2 person who participates in a joint venture or joint enterprise
3 involving a distressed property conveyance. "Distressed
4 property purchaser" does not mean any person who acquires
5 distressed property at a short sale or any person acting in
6 participation with any person who acquires distressed property
7 at a short sale, if that person does not promise to convey an
8 interest in fee back to the owner or does not give the owner an
9 option to purchase the property at a later date.

10 "Distressed property conveyance" means a transaction in
11 which an owner of a distressed property transfers an interest
12 in fee in the distressed property or in which the holder of all
13 or some part of the beneficial interest in a trust holding
14 title to a distressed property transfers that interest; the
15 acquirer of the property allows the owner of the distressed
16 property to occupy the property; and the acquirer of the
17 property or a person acting in participation with the acquirer
18 of the property conveys or promises to convey an interest in
19 fee back to the owner or gives the owner an option to purchase
20 the property at a later date.

21 "Person" means any individual, partnership, corporation,
22 limited liability company, association, or other group or
23 entity, however organized.

24 "Service" means, without limitation, any of the following:

25 (1) debt, budget, or financial counseling of any type;

26 (2) receiving money for the purpose of distributing it

1 to creditors in payment or partial payment of any
2 obligation secured by a lien on a distressed property;

3 (3) contacting creditors on behalf of an owner of a
4 residence that is distressed property;

5 (4) arranging or attempting to arrange for an extension
6 of the period within which the owner of a distressed
7 property may cure the owner's default and reinstate his or
8 her obligation;

9 (5) arranging or attempting to arrange for any delay or
10 postponement of the time of sale of the distressed
11 property;

12 (6) advising the filing of any document or assisting in
13 any manner in the preparation of any document for filing
14 with any court; or

15 (7) giving any advice, explanation, or instruction to
16 an owner of a distressed property that in any manner
17 relates to the cure of a default or forfeiture or to the
18 postponement or avoidance of sale of the distressed
19 property.

20 (Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08.)

21 (765 ILCS 940/7 new)

22 Sec. 7. Residential Mortgage License Act of 1987 licensees.
23 Licensees of the Residential Mortgage License Act of 1987 are
24 exempt from the requirements of Sections 10, 15, 20, 50(a)(4),
25 50(a)(5), 50(a)(6), and 50(a)(7). Licensees are also exempt

1 from the requirements of Section 50(a)(2) and Section 70 for
2 any transaction resulting in the origination of a new mortgage
3 loan extinguishing the existing mortgage loan.

4 (765 ILCS 940/50)

5 Sec. 50. Violations.

6 (a) It is a violation for a distressed property consultant
7 to:

8 (1) claim, demand, charge, collect, or receive any
9 compensation until after the distressed property
10 consultant has fully performed each service the distressed
11 property consultant contracted to perform or represented
12 he or she would perform;

13 (2) claim, demand, charge, collect, or receive any fee,
14 interest, or any other compensation ~~for any reason that~~
15 does not comport with Section 70 ~~exceeds 2 monthly mortgage~~
16 ~~payments of principal and interest or the most recent tax~~
17 ~~installment on the distressed property, whichever is less;~~

18 (3) take a wage assignment, a lien of any type on real
19 or personal property, or other security to secure the
20 payment of compensation. Any such security is void and
21 unenforceable;

22 (4) receive any consideration from any third party in
23 connection with services rendered to an owner unless the
24 consideration is first fully disclosed to the owner;

25 (5) acquire any interest, directly or indirectly, or by

1 means of a subsidiary or affiliate in a distressed property
2 from an owner with whom the distressed property consultant
3 has contracted;

4 (6) take any power of attorney from an owner for any
5 purpose, except to inspect documents as provided by law; or

6 (7) induce or attempt to induce an owner to enter a
7 contract that does not comply in all respects with Sections
8 10 and 15 of this Act.

9 (b) A distressed property purchaser, in the course of a
10 distressed property conveyance, shall not:

11 (1) enter into, or attempt to enter into, a distressed
12 property conveyance unless the distressed property
13 purchaser verifies and can demonstrate that the owner of
14 the distressed property has a reasonable ability to pay for
15 the subsequent conveyance of an interest back to the owner
16 of the distressed property and to make monthly or any other
17 required payments due prior to that time;

18 (2) fail to make a payment to the owner of the
19 distressed property at the time the title is conveyed so
20 that the owner of the distressed property has received
21 consideration in an amount of at least 82% of the
22 property's fair market value, or, in the alternative, fail
23 to pay the owner of the distressed property no more than
24 the costs necessary to extinguish all of the existing
25 obligations on the distressed property, as set forth in
26 subdivision (b)(10) of Section 45, provided that the

1 owner's costs to repurchase the distressed property
2 pursuant to the terms of the distressed property conveyance
3 contract do not exceed 125% of the distressed property
4 purchaser's costs to purchase the property. If an owner is
5 unable to repurchase the property pursuant to the terms of
6 the distressed property conveyance contract, the
7 distressed property purchaser shall not fail to make a
8 payment to the owner of the distressed property so that the
9 owner of the distressed property has received
10 consideration in an amount of at least 82% of the
11 property's fair market value at the time of conveyance or
12 at the expiration of the owner's option to repurchase.

13 (3) enter into repurchase or lease terms as part of the
14 subsequent conveyance that are unfair or commercially
15 unreasonable, or engage in any other unfair conduct;

16 (4) represent, directly or indirectly, that the
17 distressed property purchaser is acting as an advisor or a
18 consultant, or in any other manner represent that the
19 distressed property purchaser is acting on behalf of the
20 homeowner, or the distressed property purchaser is
21 assisting the owner of the distressed property to "save the
22 house", "buy time", or do anything couched in substantially
23 similar language;

24 (5) misrepresent the distressed property purchaser's
25 status as to licensure or certification;

26 (6) do any of the following until after the time during

1 which the owner of a distressed property may cancel the
2 transaction:

3 (A) accept from the owner of the distressed
4 property an execution of any instrument of conveyance
5 of any interest in the distressed property;

6 (B) induce the owner of the distressed property to
7 execute an instrument of conveyance of any interest in
8 the distressed property; or

9 (C) record with the county recorder of deeds any
10 document signed by the owner of the distressed
11 property, including but not limited to any instrument
12 of conveyance;

13 (7) fail to reconvey title to the distressed property
14 when the terms of the conveyance contract have been
15 fulfilled;

16 (8) induce the owner of the distressed property to
17 execute a quit claim deed when entering into a distressed
18 property conveyance;

19 (9) enter into a distressed property conveyance where
20 any party to the transaction is represented by power of
21 attorney;

22 (10) fail to extinguish all liens encumbering the
23 distressed property, immediately following the conveyance
24 of the distressed property, or fail to assume all liability
25 with respect to the lien in foreclosure and prior liens
26 that will not be extinguished by such foreclosure, which

1 assumption shall be accomplished without violations of the
2 terms and conditions of the lien being assumed. Nothing
3 herein shall preclude a lender from enforcing any provision
4 in a contract that is not otherwise prohibited by law;

5 (11) fail to complete a distressed property conveyance
6 before a notary in the offices of a title company licensed
7 by the Department of Financial and Professional
8 Regulation, before an agent of such a title company, a
9 notary in the office of a bank, or a licensed attorney
10 where the notary is employed; or

11 (12) cause the property to be conveyed or encumbered
12 without the knowledge or permission of the distressed
13 property owner, or in any way frustrate the ability of the
14 distressed property owner to complete the conveyance back
15 to the distressed property owner.

16 (c) There is a rebuttable presumption that an appraisal by
17 a person licensed or certified by an agency of this State or
18 the federal government is an accurate determination of the fair
19 market value of the property.

20 (d) "Consideration" in item (2) of subsection (b) means any
21 payment or thing of value provided to the owner of the
22 distressed property, including reasonable costs paid to
23 independent third parties necessary to complete the distressed
24 property conveyance or payment of money to satisfy a debt or
25 legal obligation of the owner of the distressed property.

26 "Consideration" shall not include amounts imputed as a

1 downpayment or fee to the distressed property purchaser, or a
2 person acting in participation with the distressed property
3 purchaser.

4 (e) An evaluation of "reasonable ability to pay" under
5 subsection (b)(1) of this Section 50 shall include debt to
6 income ratio, fair market value of the distressed property, and
7 the distressed property owner's payment history. There is a
8 rebuttable presumption that the distressed property purchaser
9 has not verified reasonable payment ability if the distressed
10 property purchaser has not obtained documents of assets,
11 liabilities, and income, other than a statement by the owner of
12 the distressed property.

13 (Source: P.A. 94-822, eff. 1-1-07.)

14 (765 ILCS 940/70 new)

15 Sec. 70. Distressed property consultant compensation. In
16 transactions that reduce the existing payment on a homeowner's
17 mortgage loan for a period of no less than 5 years, a
18 distressed property consultant shall not claim, demand,
19 charge, collect, or receive any fee, interest, or any other
20 compensation that exceeds the lesser of the homeowner's:

21 (1) existing monthly principal and interest mortgage
22 payment; or

23 (2) total net savings derived from the lowered monthly
24 principal and interest mortgage payment over the
25 succeeding 12 months.

1 For all other transactions, a distressed property
2 consultant shall not claim, demand, charge, collect, or receive
3 any fee, interest, or any other compensation for any reason
4 that exceeds 50% of the owner's existing monthly principal and
5 interest mortgage payments.

6 Section 97. Severability. The provisions of this Act are
7 severable under Section 1.31 of the Statute on Statutes.

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