

SB1603



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1603

Introduced 2/9/2011, by Sen. Michael W. Frerichs

SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-3
205 ILCS 635/1-4

from Ch. 17, par. 2321-3

Amends the Residential Mortgage License Act of 1987. In a provision concerning definitions, that an "exempt person or entity" shall also mean any person or entity that does not originate mortgage loans in the ordinary course of business, but makes or acquires residential mortgage loans with his or her own funds for his or her or its own investment without intent to make, acquire, or resell more than 3 residential mortgage loans in any one calendar year. Makes other changes. Effective immediately.

LRB097 09201 CEL 49336 b

A BILL FOR

1 AN ACT concerning regulation.

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

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

6 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

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

8 (a) No person, partnership, association, corporation or
9 other entity shall engage in the business of brokering,
10 funding, originating, servicing or purchasing of residential
11 mortgage loans without first obtaining a license from the
12 Commissioner in accordance with the licensing procedure
13 provided in this Article I and such regulations as may be
14 promulgated by the Commissioner. The licensing provisions of
15 this Section shall not apply to any entity engaged solely in
16 commercial mortgage lending or to any person, partnership
17 association, corporation or other entity exempted pursuant to
18 Section 1-4, subsection (d), of this Act or in accordance with
19 regulations promulgated by the Commissioner hereunder. No
20 provision of this Act shall apply to an exempt person or entity
21 as defined in ~~items (1) and (1.5)~~ of subsection (d) of Section
22 1-4 of this Act. Notwithstanding anything to the contrary in
23 the preceding sentence, an individual acting as a mortgage loan

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

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

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

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

24 (d-1) The Commissioner may issue orders against any person
25 if the Commissioner has reasonable cause to believe that an
26 unsafe, unsound, or unlawful practice has occurred, is

1 occurring, or is about to occur, if any person has violated, is
2 violating, or is about to violate any law, rule, or written
3 agreement with the Commissioner, or for the purposes of
4 administering the provisions of this Act and any rule adopted
5 in accordance with this Act.

6 (e) Any person, partnership, association, corporation or
7 other entity who violates any provision of this Section commits
8 a business offense and shall be fined an amount not to exceed
9 \$25,000.

10 (f) Each person, partnership, association, corporation or
11 other entity conducting activities regulated by this Act shall
12 be issued one license. Each office, place of business or
13 location at which a residential mortgage licensee conducts any
14 part of his or her business must be recorded with the
15 Commissioner pursuant to Section 2-8 of this Act.

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

21 (h) This Act applies to all entities doing business in
22 Illinois as residential mortgage bankers, as defined by "An Act
23 to provide for the regulation of mortgage bankers", approved
24 September 15, 1977, as amended, regardless of whether licensed
25 under that or any prior Act. Any existing residential mortgage
26 lender or residential mortgage broker in Illinois whether or

1 not previously licensed, must operate in accordance with this
2 Act.

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

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

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

10 (205 ILCS 635/1-4)

11 Sec. 1-4. Definitions.

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

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

20 (c) "Soliciting, processing, placing, or negotiating a
21 residential mortgage loan" shall mean for compensation or gain,
22 either directly or indirectly, accepting or offering to accept
23 an application for a residential mortgage loan, assisting or
24 offering to assist in the processing of an application for a
25 residential mortgage loan on behalf of a borrower, or

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

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

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

1 License Act of 2000; or (ix) any first tier subsidiary of a
2 bank, the charter of which is issued under the Illinois
3 Banking Act by the Illinois Commissioner of Banks and Real
4 Estate, or the first tier subsidiary of a bank chartered by
5 the United States Comptroller of the Currency and that has
6 its principal place of business in this State, provided
7 that the first tier subsidiary is regularly examined by the
8 Illinois Commissioner of Banks and Real Estate or the
9 Comptroller of the Currency, or a consumer compliance
10 examination is regularly conducted by the Federal Reserve
11 Board.

12 (1.5) Any employee of a person or entity mentioned in
13 item (1) of this subsection, when acting for such person or
14 entity, or any registered mortgage loan originator when
15 acting for an entity described in subsection (tt) of this
16 Section.

17 (1.8) Any person or entity that does not originate
18 mortgage loans in the ordinary course of business, but
19 makes or acquires residential mortgage loans with his or
20 her own funds for his or her or its own investment without
21 intent to make, acquire, or resell more than 3 residential
22 mortgage loans in any one calendar year.

23 (2) (Blank).

24 (3) Any person employed by a licensee to assist in the
25 performance of the residential mortgage licensee's
26 activities regulated by this Act who is compensated in any

1 manner by only one licensee.

2 (4) (Blank).

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

11 (6) (Blank).

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

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

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

26 (h) "Ultimate equitable owner" shall mean a person who,

1 directly or indirectly, owns or controls an ownership interest
2 in a corporation, foreign corporation, alien business
3 organization, trust, or any other form of business organization
4 regardless of whether the person owns or controls the ownership
5 interest through one or more persons or one or more proxies,
6 powers of attorney, nominees, corporations, associations,
7 partnerships, trusts, joint stock companies, or other entities
8 or devices, or any combination thereof.

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

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

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

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

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

25 (n) "Commissioner" shall mean the Commissioner of Banks and
26 Real Estate, except that, beginning on April 6, 2009 (the

1 effective date of Public Act 95-1047), all references in this
2 Act to the Commissioner of Banks and Real Estate are deemed, in
3 appropriate contexts, to be references to the Secretary of
4 Financial and Professional Regulation, or his or her designee,
5 including the Director of the Division of Banking of the
6 Department of Financial and Professional Regulation.

7 (n-1) "Director" shall mean the Director of the Division of
8 Banking of the Department of Financial and Professional
9 Regulation, except that, beginning on July 31, 2009 (the
10 effective date of Public Act 96-112), all references in this
11 Act to the Director are deemed, in appropriate contexts, to be
12 the Secretary of Financial and Professional Regulation, or his
13 or her designee, including the Director of the Division of
14 Banking of the Department of Financial and Professional
15 Regulation.

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

26 (p) "Loan broker" or "broker" shall mean a person,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (cc) "Net worth" shall have the meaning ascribed thereto in

1 Section 3-5 of this Act.

2 (dd) "Affiliate" shall mean:

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

7 (2) any entity:

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

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

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

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

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

1 of Banks and Real Estate.

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

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

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

26 (ii) "Confidential supervisory information" means any

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

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

18 (i) takes a residential mortgage loan application; or

19 (ii) offers or negotiates terms of a residential
20 mortgage loan.

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

25 "Mortgage loan originator" does not include a person or
26 entity that only performs real estate brokerage activities and

1 is licensed in accordance with the Real Estate License Act of
2 2000, unless the person or entity is compensated by a lender, a
3 mortgage broker, or other mortgage loan originator, or by any
4 agent of that lender, mortgage broker, or other mortgage loan
5 originator.

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

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

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

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

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

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

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

4 (ii) communicating with a consumer to obtain the
5 information necessary for the processing or underwriting
6 of a loan, to the extent that the communication does not
7 include offering or negotiating loan rates or terms, or
8 counseling consumers about residential mortgage loan rates
9 or terms. An individual engaging solely in loan processor
10 or underwriter activities shall not represent to the
11 public, through advertising or other means of
12 communicating or providing information, including the use
13 of business cards, stationery, brochures, signs, rate
14 lists, or other promotional items, that the individual can
15 or will perform any of the activities of a mortgage loan
16 originator.

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

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

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

1 association.

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

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

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

9 (3) negotiating, on behalf of any party, any portion of
10 a contract relating to the sale, purchase, lease, rental,
11 or exchange of real property, other than in connection with
12 providing financing with respect to any such transaction;

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

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

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

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

23 (A) a depository institution;

24 (B) a subsidiary that is:

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

1 (ii) regulated by a federal banking agency; or
2 (C) an institution regulated by the Farm Credit
3 Administration; and

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

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

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

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

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

18 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
19 96-1000, eff. 7-2-10; 96-1216, eff. 1-1-11.)

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