

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

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

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

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

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

21 (e) Any person, partnership, association, corporation or
22 other entity who violates any provision of this Section commits
23 a business offense and shall be fined an amount not to exceed
24 \$25,000.

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

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

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

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

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

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

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

25 (205 ILCS 635/1-4)

1 Sec. 1-4. Definitions.

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

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

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

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

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

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

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

6 (1.8) Any person or entity that does not originate
7 mortgage loans in the ordinary course of business, but
8 makes or acquires residential mortgage loans with his or
9 her own funds for his or her or its own investment without
10 intent to make, acquire, or resell more than 3 residential
11 mortgage loans in any one calendar year.

12 (2) (Blank).

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

17 (4) (Blank).

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

26 (6) (Blank).

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

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

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

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

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

1 residential mortgage loan or residential mortgage loan
2 commitment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (dd) "Affiliate" shall mean:

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

22 (2) any entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (ii) offers or negotiates terms of a residential
9 mortgage loan.

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

14 "Mortgage loan originator" does not include a person or
15 entity that only performs real estate brokerage activities and
16 is licensed in accordance with the Real Estate License Act of
17 2000, unless the person or entity is compensated by a lender, a
18 mortgage broker, or other mortgage loan originator, or by any
19 agent of that lender, mortgage broker, or other mortgage loan
20 originator.

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

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

1 any credit union.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 providing financing with respect to any such transaction;

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

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

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

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

12 (A) a depository institution;

13 (B) a subsidiary that is:

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

16 (ii) regulated by a federal banking agency; or

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

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

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

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

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

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

7 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
8 96-1000, eff. 7-2-10; 96-1216, eff. 1-1-11.)

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