



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3369

by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

| | |
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| 205 ILCS 635/2-1 | from Ch. 17, par. 2322-1 |
| 205 ILCS 635/2-2 | |
| 205 ILCS 635/2-6 | |
| 205 ILCS 635/4-5 | from Ch. 17, par. 2324-5 |
| 205 ILCS 635/4-8 | from Ch. 17, par. 2324-8 |

Amends the Residential Mortgage Licensing Act of 1987. Provides that the Secretary of Financial and Professional Regulation shall conduct an examination of each licensee that engages in brokering and lending activities, the scope of which shall address the delinquency rate of the licensee's loan portfolio. Provides that licenses shall be renewed every year using the common renewal date of the Nationwide Mortgage Licensing System and Registry as adopted by the Director of the Division of Banking of the Department of Financial and Professional Regulation. Provides that properly completed renewal application forms and filing fees must be received by the Secretary 30 (was 60) days prior to the license expiration (was renewal) date to be timely received. Removes a provision providing that a license which was not renewed within one year of becoming inactive shall expire. Provides that the Secretary may share with the Residential Mortgage Board non-confidential delinquency rate related information, including any public disciplinary orders against licensees that result from the delinquency rate related examination findings. Removes a provision requiring the publication of a specified notice in the Illinois Register. Makes other changes in provisions concerning licensee names and the application process.

LRB099 10087 MGM 30310 b

1 AN ACT concerning regulation.

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

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 2-1, 2-2, 2-6, 4-5, and 4-8 as
6 follows:

7 (205 ILCS 635/2-1) (from Ch. 17, par. 2322-1)

8 Sec. 2-1. Licensee Name.

9 (a) No person, partnership, association, corporation,
10 limited liability company, or other entity engaged in the
11 business regulated by this Act shall operate such business
12 under a name other than the real names of the entity and
13 individuals conducting such business. Such business may in
14 addition operate under~~7~~ an assumed corporate name pursuant to
15 the Business Corporation Act of 1983, an assumed limited
16 liability company name pursuant to the Limited Liability
17 Company Act, or an assumed business name pursuant to the
18 Assumed Business Name Act.

19 (b) A knowing violation of this Section constitutes an
20 unlawful practice within the meaning of this Act, and in
21 addition to the administrative relief available under this Act,
22 may be prosecuted for the commission of a Class A misdemeanor.
23 A person who is convicted of a second or subsequent violation

1 of this Section is guilty of a Class 4 felony.

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

3 (205 ILCS 635/2-2)

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

5 (a) The Secretary shall issue a license upon completion of
6 all of the following:

7 (1) The filing of an application for license with the
8 Director or the Nationwide Mortgage Licensing System and
9 Registry as approved by the Director.

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

13 (3) The payment, in certified funds, of investigation
14 and application fees, the total of which shall be in an
15 amount equal to \$2,700 annually. ~~To comply with the common
16 renewal date and requirements of the Nationwide Mortgage
17 Licensing System and Registry, the term of initial licenses
18 may be extended or shortened with applicable fees prorated
19 or combined accordingly.~~

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 standards which evidences
25 that the applicant meets the net worth requirements of

1 Section 3-5. Notwithstanding the requirements of this
2 subsection, an applicant that is a subsidiary may submit
3 audited consolidated financial statements of its parent,
4 intermediary parent, or ultimate parent as long as the
5 consolidated statements are supported by consolidating
6 statements which include the applicant's financial
7 statement. If the consolidating statements are unaudited,
8 the applicant's chief financial officer shall attest to the
9 applicant's financial statements disclosed in the
10 consolidating statements.

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

1 Commissioner may establish by rule a list of duly licensed
2 professionals and others who may be exempt from this
3 requirement.

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

20 The Commissioner may impose conditions on a license if the
21 Commissioner determines that the conditions are necessary or
22 appropriate. These conditions shall be imposed in writing and
23 shall continue in effect for the period prescribed by the
24 Commissioner.

25 (b) All licenses shall be issued to the license applicant.

26 Upon receipt of such license, a residential mortgage

1 licensee shall be authorized to engage in the business
2 regulated by this Act. Such license shall remain in full force
3 and effect until it expires without renewal, is surrendered by
4 the licensee or revoked or suspended as hereinafter provided.

5 (Source: P.A. 97-891, eff. 8-3-12; 98-1081, eff. 1-1-15.)

6 (205 ILCS 635/2-6)

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

8 (a) Licenses ~~Beginning July 1, 2003, licenses~~ shall be
9 renewed every year using ~~on the anniversary of the date of~~
10 ~~issuance of the original license, or~~ the common renewal date of
11 the Nationwide Mortgage Licensing System and Registry as
12 adopted by the Director. ~~To comply with the common renewal date~~
13 ~~of the Nationwide Mortgage Licensing System and Registry, the~~
14 ~~term of existing licenses may be extended or shortened with~~
15 ~~applicable fees prorated accordingly.~~ Properly completed
16 renewal application forms and filing fees must be received by
17 the Secretary 30 ~~60~~ days prior to the license expiration
18 ~~renewal~~ date to be timely received.

19 (b) It shall be the responsibility of each licensee to
20 accomplish renewal of its license; ~~failure of the licensee to~~
21 ~~receive renewal forms absent a request sent by certified mail~~
22 ~~for such forms will not waive said responsibility.~~ Failure by a
23 licensee to submit a properly completed renewal application
24 form and fees in a timely fashion, absent a written extension
25 from the Secretary, will result in the license becoming

1 ~~inactive. in the assessment of additional fees, as follows:~~

2 ~~(1) A fee of \$567.50 will be assessed to the licensee~~
3 ~~30 days after the proper renewal date and \$1,135 each month~~
4 ~~thereafter, until the license is either renewed or expires~~
5 ~~pursuant to Section 2-6, subsections (c) and (d), of this~~
6 ~~Act.~~

7 ~~(2) Such fee will be assessed without prior notice to~~
8 ~~the licensee, but will be assessed only in cases wherein~~
9 ~~the Secretary has in his or her possession documentation of~~
10 ~~the licensee's continuing activity for which the unrenewed~~
11 ~~license was issued.~~

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

26 (d) (Blank) ~~A license which is not renewed within one year~~

1 ~~of becoming inactive shall expire.~~

2 (e) A licensee ceasing an activity or activities regulated
3 by this Act and desiring to no longer be licensed shall so
4 inform the Commissioner in writing and, at the same time,
5 convey any ~~the~~ license issued and all other symbols or indicia
6 of licensure. The licensee shall include a plan for the
7 withdrawal from regulated business, including a timetable for
8 the disposition of the business, and comply with the surrender
9 guidelines or requirements of the Director. Upon receipt of
10 such written notice, the Commissioner shall post the
11 cancellation or issue a certified statement canceling the
12 license.

13 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
14 96-1000, eff. 7-2-10.)

15 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

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

1 (2) Any fact or condition exists which, if it had
2 existed at the time of the original application for such
3 license would have warranted the Commissioner in refusing
4 originally to issue such license.

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

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

15 (c) The Commissioner, on good cause shown that an emergency
16 exists, may suspend any license for a period not exceeding 180
17 days, pending investigation. Upon a showing that a licensee has
18 failed to meet the experience or educational requirements of
19 Section 2-2 or the requirements of subsection (g) of Section
20 3-2, the Commissioner shall suspend, prior to hearing as
21 provided in Section 4-12, the license until those requirements
22 have been met.

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

26 (e) No revocation, suspension or surrender of any license

1 shall impair or affect the obligation of any pre-existing
2 lawful contract between the licensee and any person.

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

12 (g) Whenever the Commissioner shall revoke or suspend a
13 license issued pursuant to this Act or fine a licensee under
14 this Act, he or she shall forthwith execute a written order to
15 that effect. The Commissioner shall ~~publish notice of such~~
16 ~~order in the Illinois Register and~~ post notice of the order on
17 an agency Internet site maintained by the Commissioner or on
18 the Nationwide Mortgage Licensing System and Registry and shall
19 forthwith serve a copy of such order upon the licensee. Any
20 such order may be reviewed in the manner provided by Section
21 4-12 of this Act.

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

25 (1) Revocation of license;

26 (2) Suspension of a license subject to reinstatement

1 upon satisfying all reasonable conditions the Commissioner
2 may specify;

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

6 (4) Issuance of a reprimand;

7 (5) Imposition of a fine not to exceed \$25,000 for each
8 count of separate offense, provided that a fine may be
9 imposed not to exceed \$75,000 for each separate count of
10 offense of paragraph (2) of subsection (i) of this Section;
11 and

12 (6) Denial of a license.

13 (i) The following acts shall constitute grounds for which
14 the disciplinary actions specified in subsection (h) above may
15 be taken:

16 (1) Being convicted or found guilty, regardless of
17 pendency of an appeal, of a crime in any jurisdiction which
18 involves fraud, dishonest dealing, or any other act of
19 moral turpitude;

20 (2) Fraud, misrepresentation, deceit or negligence in
21 any mortgage financing transaction;

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

24 (4) Failure to follow the Commissioner's regulations
25 with respect to placement of funds in escrow accounts;

26 (5) Insolvency or filing under any provision of the

1 Bankruptcy Code as a debtor;

2 (6) Failure to account or deliver to any person any
3 property such as any money, fund, deposit, check, draft,
4 mortgage, or other document or thing of value, which has
5 come into his or her hands and which is not his or her
6 property or which he or she is not in law or equity
7 entitled to retain, under the circumstances and at the time
8 which has been agreed upon or is required by law or, in the
9 absence of a fixed time, upon demand of the person entitled
10 to such accounting and delivery;

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

13 (8) Any misuse, misapplication, or misappropriation of
14 trust funds or escrow funds;

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

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

26 (11) Failure to comply with any order of the

1 Commissioner or rule made or issued under the provisions of
2 this Act;

3 (12) Engaging in activities regulated by this Act
4 without a current, active license unless specifically
5 exempted by this Act;

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

8 (14) Failure to maintain, preserve, and keep available
9 for examination, all books, accounts or other documents
10 required by the provisions of this Act and the rules of the
11 Commissioner;

12 (15) Refusing, obstructing, evading, or unreasonably
13 delaying an investigation, information request, or
14 examination authorized under this Act, or refusing,
15 obstructing, evading, or unreasonably delaying compliance
16 with the Director's subpoena or subpoena duces tecum;

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

19 (17) Failure to comply with or violation of any
20 provision of this Act;

21 (18) Failure to comply with or violation of any
22 provision of Article 3 of the Residential Real Property
23 Disclosure Act.

24 (j) A licensee shall be subject to the disciplinary actions
25 specified in this Act for violations of subsection (i) by any
26 officer, director, shareholder, joint venture, partner,

1 ultimate equitable owner, or employee of the licensee.

2 (k) Such licensee shall be subject to suspension or
3 revocation for unauthorized employee actions only if there is a
4 pattern of repeated violations by employees or the licensee has
5 knowledge of the violations, or there is substantial harm to a
6 consumer.

7 (l) Procedure for surrender of license:

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

17 (i) The licensee has failed to comply with any
18 provision of this Act or any order, decision, finding,
19 rule, regulation or direction of the Commissioner
20 lawfully made pursuant to the authority of this Act; or

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

25 (2) Any licensee may submit application to surrender a
26 license, but upon the Director approving the surrender, it

1 shall not affect the licensee's civil or criminal liability
2 for acts committed prior to surrender or entitle the
3 licensee to a return of any part of the license fee.

4 (Source: P.A. 96-112, eff. 7-31-09; 97-891, eff. 8-3-12.)

5 (205 ILCS 635/4-8) (from Ch. 17, par. 2324-8)

6 Sec. 4-8. Delinquency ~~Default~~ rate; examination.

7 (a) The Secretary shall conduct an examination of each
8 licensee that engages in brokering and lending activities, the
9 scope of which shall address the delinquency rate of the
10 licensee's loan portfolio. The examination may assess any
11 relevant data and information pertaining to the licensee's
12 delinquency rate, which may include a review of the licensee's
13 compliance with ability to repay regulations, a review of the
14 internal loan performance reports and statistics from the
15 licensee, a review of loan servicing data, a review of the
16 Nationwide Mortgage Licensing System and Registry Mortgage
17 Call Report data, a review of the federal Department of Housing
18 and Urban Development Neighborhood Watch data, if available,
19 and a review of any other third-party data. In addition, for
20 brokers, the examination may assess the status of agreements
21 with lenders and reasons for any funding terminations. The
22 purpose of collecting the delinquency rate information is to
23 determine whether the licensee's practices deviate from sound
24 and accepted practices, including, but not limited to, credit
25 fraud, appraisal fraud, and inspection fraud. The licensee's

1 delinquency rate and related information shall be considered
2 accordingly in the component ratings and composite rating for
3 the examination. Upon receipt of a report of examination that
4 finds that the licensee has a delinquency rate deemed
5 unacceptable to the Secretary, the licensee shall submit a
6 written response setting forth the necessary corrective action
7 plan. The Secretary reserves the right to refer the examination
8 findings to the Supervision Unit or Legal Unit ~~The Commissioner~~
9 ~~shall obtain from the U.S. Department of Housing and Urban~~
10 ~~Development on a semi annual basis that Department's default~~
11 ~~claim rates for endorsements issued by that Department.~~

12 (b) The Secretary may share with the Residential Mortgage
13 Board non-confidential delinquency rate related information,
14 including any public disciplinary orders against licensees
15 that result from the delinquency rate related examination
16 findings ~~The Commissioner shall conduct an examination of each~~
17 ~~licensee having a default rate equal to or greater than 5%.~~

18 ~~This subsection shall not be construed as a limitation of~~
19 ~~the Commissioner's examination authority under Section 4 2 of~~
20 ~~this Act or as otherwise provided in this Act. The Commissioner~~
21 ~~may require a licensee to provide loan default data as the~~
22 ~~Commissioner deems necessary for the proper enforcement of the~~
23 ~~Act.~~

24 (c) (Blank). ~~The purpose of the examination under~~
25 ~~subsection (b) shall be to determine whether the default rate~~
26 ~~of the licensee has resulted from practices which deviate from~~

1 ~~sound and accepted mortgage underwriting practices, including~~
2 ~~but not limited to credit fraud, appraisal fraud and property~~
3 ~~inspection fraud. For the purpose of conducting this~~
4 ~~examination, the Commissioner may accept materials prepared~~
5 ~~for the U.S. Department of Housing and Urban Development. At~~
6 ~~the conclusion of the examination, the Commissioner shall make~~
7 ~~his or her findings available to the Residential Mortgage~~
8 ~~Board.~~

9 (d) The Secretary ~~Commissioner~~, at his or her discretion,
10 may hold public hearings involving a licensee's compliance with
11 ability to repay regulations on a specific residential mortgage
12 loan, as further described in this Section, ~~or at the direction~~
13 ~~of the Residential Mortgage Board, shall hold public hearings.~~
14 Such testimony shall be by a homeowner or mortgagor or his
15 agent, whose residential interest is affected by the activities
16 of the residential mortgage licensee subject to such hearing.
17 At such public hearing, a witness may present testimony on his
18 or her behalf concerning only his or her home, or home mortgage
19 or a witness may authorize a third party to appear on his or
20 her behalf. The testimony shall be restricted to information
21 and comments related to a specific residence or specific
22 residential mortgage application or applications for a
23 residential mortgage or residential loan transaction. The
24 testimony must be preceded by either a letter of complaint or a
25 completed consumer complaint form prescribed by the Secretary
26 Commissioner.

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

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

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

26 (h) This Section shall not be construed as a limitation of

1 the Secretary's authority to investigate or examine any and all
2 licensed activities of a licensee at any time deemed warranted
3 by the Secretary.

4 (Source: P.A. 89-355, eff. 1-1-96; 89-626, eff. 8-9-96; 90-301,
5 eff. 8-1-97.)