



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5968

by Rep. Margo McDermed

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. Provides that an entity engaged solely in independent loan processing or underwriting is exempted from certain licensing requirements. Provides that those entities engaged solely in independent loan processing or underwriting shall submit an annual application for registration as an exempt entity with the Department of Financial and Professional Regulation through the Nationwide Mortgage Licensing System and Registry and comply with specific requirements. Adds those entities to the definition of "exempt person or entity". Excludes independent loan processing or underwriting from the definition of "loan brokering", "brokering", or "brokerage services". Excludes independent loan processing or underwriting from the definition of "originating". Defines "independent loan processing or underwriting". Effective immediately.

LRB099 15950 SMS 40267 b

1 AN ACT concerning regulation.

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

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 1-3 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 Secretary in accordance with the licensing procedure provided
13 in this Article I and such regulations as may be promulgated by
14 the Secretary. The licensing provisions of this Section shall
15 not apply to any entity engaged solely in commercial mortgage
16 lending, any entity engaged solely in independent loan
17 processing or underwriting, or ~~to~~ any person, partnership,
18 association, corporation, or other entity exempted pursuant to
19 Section 1-4, subsection (d), of this Act or in accordance with
20 regulations promulgated by the Secretary hereunder. No
21 provision of this Act shall apply to an exempt person or entity
22 as defined in items (1) and (1.5) of subsection (d) of Section
23 1-4 of this Act. Notwithstanding anything to the contrary in

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

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

21 (a-1) A person who is exempt from licensure pursuant to
22 paragraph (ii) of item (1) of subsection (d) of Section 1-4 of
23 this Act as a federally chartered savings bank that is
24 registered with the Nationwide Mortgage Licensing System and
25 Registry may apply to the Secretary for an exempt company
26 registration for the purpose of sponsoring one or more

1 individuals subject to the mortgage loan originator licensing
2 requirements of Article VII of this Act. Registration with the
3 Division of Banking of the Department shall not affect the
4 exempt status of the applicant.

5 (1) A mortgage loan originator eligible for licensure
6 under this subsection shall (A) be covered under an
7 exclusive written contract with, and originate residential
8 mortgage loans solely on behalf of, that exempt person; and
9 (B) hold a current, valid insurance producer license under
10 Article XXXI of the Illinois Insurance Code.

11 (2) An exempt person shall: (A) fulfill any reporting
12 requirements required by the Nationwide Mortgage Licensing
13 System and Registry or the Secretary; (B) provide a blanket
14 surety bond pursuant to Section 7-12 of this Act covering
15 the activities of all its sponsored mortgage loan
16 originators; (C) reasonably supervise the activities of
17 all its sponsored mortgage loan originators; (D) comply
18 with all rules and orders (including the averments
19 contained in Section 2-4 of this Act as applicable to a
20 non-licensed exempt entity provided for in this Section)
21 that the Secretary deems necessary to ensure compliance
22 with the federal SAFE Act; and (E) pay an annual
23 registration fee established by the Director.

24 (3) The Secretary may deny an exempt company
25 registration to an exempt person or fine, suspend, or
26 revoke an exempt company registration if the Secretary

1 finds one of the following:

2 (A) that the exempt person is not a person of
3 honesty, truthfulness, or good character;

4 (B) that the exempt person violated any applicable
5 law, rule, or order;

6 (C) that the exempt person refused or failed to
7 furnish, within a reasonable time, any information or
8 make any report that may be required by the Secretary;

9 (D) that the exempt person had a final judgment
10 entered against him or her in a civil action on grounds
11 of fraud, deceit, or misrepresentation, and the
12 conduct on which the judgment is based indicates that
13 it would be contrary to the interest of the public to
14 permit the exempt person to manage a loan originator;

15 (E) that the exempt person had an order entered
16 against him or her involving fraud, deceit, or
17 misrepresentation by an administrative agency of this
18 State, the federal government, or any other state or
19 territory of the United States, and the facts relating
20 to the order indicate that it would be contrary to the
21 interest of the public to permit the exempt person to
22 manage a loan originator;

23 (F) that the exempt person made a material
24 misstatement or suppressed or withheld information on
25 the application for an exempt company registration or
26 any document required to be filed with the Secretary;

1 or

2 (G) that the exempt person violated Section 4-5 of
3 this Act.

4 (a-2) An entity engaged solely in independent loan
5 processing or underwriting shall submit an annual application
6 for registration as an exempt entity with the Department
7 through the Nationwide Mortgage Licensing System and Registry
8 and shall comply with the requirements of the federal Secure
9 and Fair Enforcement for Mortgage Licensing Act of 2008 and
10 those requirements as established by the Director under this
11 Act, including, but not limited to, providing surety bond
12 coverage.

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

20 (c) The Secretary may, through the Attorney General,
21 request the circuit court of either Cook or Sangamon County to
22 issue an injunction to restrain any person from violating or
23 continuing to violate any of the foregoing provisions of this
24 Section.

25 (d) When the Secretary has reasonable cause to believe that
26 any entity which has not submitted an application for licensure

1 is conducting any of the activities described in subsection (a)
2 hereof, the Secretary shall have the power to examine all books
3 and records of the entity and any additional documentation
4 necessary in order to determine whether such entity should
5 become licensed under this Act.

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

13 (e) Any person, partnership, association, corporation or
14 other entity who violates any provision of this Section commits
15 a business offense and shall be fined an amount not to exceed
16 \$25,000. A mortgage loan brokered, funded, originated,
17 serviced, or purchased by a party who is not licensed under
18 this Section shall not be held to be invalid solely on the
19 basis of a violation under this Section. The changes made to
20 this Section by this amendatory Act of the 99th General
21 Assembly are declarative of existing law.

22 (f) Each person, partnership, association, corporation or
23 other entity conducting activities regulated by this Act shall
24 be issued one license. Each office, place of business or
25 location at which a residential mortgage licensee conducts any
26 part of his or her business must be recorded with the Secretary

1 pursuant to Section 2-8 of this Act.

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

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

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

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

20 (Source: P.A. 98-492, eff. 8-16-13; 99-113, eff. 7-23-15.)

21 (205 ILCS 635/1-4)

22 Sec. 1-4. Definitions. The following words and phrases have
23 the meanings given to them in this Section:

24 (a) "Residential real property" or "residential real
25 estate" shall mean any real property located in Illinois,

1 upon which is constructed or intended to be constructed a
2 dwelling. Those terms include a manufactured home as
3 defined in subdivision (53) of Section 9-102 of the Uniform
4 Commercial Code which is real property as defined in
5 Section 5-35 of the Conveyance and Encumbrance of
6 Manufactured Homes as Real Property and Severance Act.

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

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

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

25 (1) (i) Any banking organization or foreign
26 banking corporation licensed by the Illinois

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

1 in this State, provided that the first tier subsidiary
2 is regularly examined by the Illinois Commissioner of
3 Banks and Real Estate or the Comptroller of the
4 Currency, or a consumer compliance examination is
5 regularly conducted by the Federal Reserve Board.

6 (1.5) Any employee of a person or entity mentioned
7 in item (1) of this subsection, when acting for such
8 person or entity, or any registered mortgage loan
9 originator when acting for an entity described in
10 subsection (tt) of this Section.

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

17 (2) (Blank).

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

22 (4) (Blank).

23 (5) Any individual, corporation, partnership, or
24 other entity that originates, services, or brokers
25 residential mortgage loans, as these activities are
26 defined in this Act, and who or which receives no

1 compensation for those activities, subject to the
2 Commissioner's regulations and the federal Secure and
3 Fair Enforcement for Mortgage Licensing Act of 2008 and
4 the rules promulgated under that Act with regard to the
5 nature and amount of compensation.

6 (6) (Blank).

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

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

20 (g) "Lender" shall mean any person, partnership,
21 association, corporation, or any other entity who either
22 lends 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
25 interest in a corporation, foreign corporation, alien
26 business organization, trust, or any other form of business

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

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

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

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

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

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

23 (n) "Commissioner" shall mean the Commissioner of
24 Banks and Real Estate, except that, beginning on April 6,
25 2009 (the effective date of Public Act 95-1047), all
26 references in this Act to the Commissioner of Banks and

1 Real Estate are deemed, in appropriate contexts, to be
2 references to the Secretary of Financial and Professional
3 Regulation, or his or her designee, including the Director
4 of the Division of Banking of the Department of Financial
5 and Professional Regulation.

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

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

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

9 (q) "Servicing" shall mean the collection or
10 remittance for or the right or obligation to collect or
11 remit for any lender, noteowner, noteholder, or for a
12 licensee's own account, of payments, interests, principal,
13 and trust items such as hazard insurance and taxes on a
14 residential mortgage loan in accordance with the terms of
15 the residential mortgage loan; and includes loan payment
16 follow-up, delinquency loan follow-up, loan analysis and
17 any notifications to the borrower that are necessary to
18 enable the borrower to keep the loan current and in good
19 standing. "Servicing" includes management of third-party
20 entities acting on behalf of a residential mortgage
21 licensee for the collection of delinquent payments and the
22 use by such third-party entities of said licensee's
23 servicing records or information, including their use in
24 foreclosure.

25 (r) "Full service office" shall mean an office,
26 provided by the licensee and not subleased from the

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

17 (s) "Purchasing" shall mean the purchase of
18 conventional or government-insured mortgage loans secured
19 by residential real estate situated in Illinois from either
20 the lender or from the secondary market.

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

23 (u) "Originating" shall mean the issuing of
24 commitments for and funding of residential mortgage loans,
25 but does not include independent loan processing or
26 underwriting as defined in this Section.

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

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

7 (2) consider making a residential mortgage loan to
8 the borrower.

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

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

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

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

1 and generally accepted auditing standards.

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

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

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

15 (dd) "Affiliate" shall mean:

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

21 (2) any entity:

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

1 that controls the licensee; or

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

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

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

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

26 (gg) "Delinquency rate factor" means the factor set by

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

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

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

1 information or record that is required to be made publicly
2 available pursuant to State or federal law or rule.

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

6 (i) takes a residential mortgage loan application;

7 or

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

10 "Mortgage loan originator" includes an individual
11 engaged in loan modification activities as defined in
12 subsection (yy) of this Section. A mortgage loan originator
13 engaged in loan modification activities shall report those
14 activities to the Department of Financial and Professional
15 Regulation in the manner provided by the Department;
16 however, the Department shall not impose a fee for
17 reporting, nor require any additional qualifications to
18 engage in those activities beyond those provided pursuant
19 to this Act for mortgage loan originators.

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

24 "Mortgage loan originator" does not include a person or
25 entity that only performs real estate brokerage activities
26 and is licensed in accordance with the Real Estate License

1 Act of 2000, unless the person or entity is compensated by
2 a lender, a mortgage broker, or other mortgage loan
3 originator, or by any agent of that lender, mortgage
4 broker, or other mortgage loan originator.

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

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

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

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

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

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

26 (i) the receipt, collection, distribution, and

1 analysis of information common for the processing or
2 underwriting of a residential mortgage loan; and

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

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

23 (qq) "Nontraditional mortgage product" means any
24 mortgage 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
3 activity that involves offering or providing real estate
4 brokerage services to the public, including:

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

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

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

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

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

22 (tt) "Registered mortgage loan originator" means any
23 individual that:

24 (1) meets the definition of mortgage loan
25 originator and is an employee of:

26 (A) a depository institution;

- 1 (B) a subsidiary that is:
- 2 (i) owned and controlled by a depository
- 3 institution; and
- 4 (ii) regulated by a federal banking
- 5 agency; or
- 6 (C) an institution regulated by the Farm
- 7 Credit Administration; and
- 8 (2) is registered with, and maintains a unique
- 9 identifier through, the Nationwide Mortgage Licensing
- 10 System and Registry.
- 11 (uu) "Unique identifier" means a number or other
- 12 identifier assigned by protocols established by the
- 13 Nationwide Mortgage Licensing System and Registry.
- 14 (vv) "Residential mortgage license" means a license
- 15 issued pursuant to Section 1-3, 2-2, or 2-6 of this Act.
- 16 (ww) "Mortgage loan originator license" means a
- 17 license issued pursuant to Section 7-1A, 7-3, or 7-6 of
- 18 this Act.
- 19 (xx) "Secretary" means the Secretary of the Department
- 20 of Financial and Professional Regulation, or a person
- 21 authorized by the Secretary or by this Act to act in the
- 22 Secretary's stead.
- 23 (yy) "Loan modification" means, for compensation or
- 24 gain, either directly or indirectly offering or
- 25 negotiating on behalf of a borrower or homeowner to adjust
- 26 the terms of a residential mortgage loan in a manner not

1 provided for in the original or previously modified
2 mortgage loan.

3 (zz) "Short sale facilitation" means, for compensation
4 or gain, either directly or indirectly offering or
5 negotiating on behalf of a borrower or homeowner to
6 facilitate the sale of residential real estate subject to
7 one or more residential mortgage loans or debts
8 constituting liens on the property in which the proceeds
9 from selling the residential real estate will fall short of
10 the amount owed and the lien holders are contacted to agree
11 to release their lien on the residential real estate and
12 accept less than the full amount owed on the debt.

13 (aaa) "Independent loan processing or underwriting"
14 means the activity or activities of an entity engaged in
15 solely for the purpose of sponsoring a licensed mortgage
16 loan originator independent loan processor or a licensed
17 mortgage loan originator independent loan underwriter
18 pursuant to Section 7-1A of this Act.

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

22 (Source: P.A. 98-749, eff. 7-16-14; 98-1081, eff. 1-1-15;
23 99-78, eff. 7-20-15.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.