

AN ACT concerning regulation.

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

Section 5. The Residential Mortgage License Act of 1987 is amended by changing Sections 1-3 and 4-2 and adding Section 7-15 as follows:

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

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

(a) No person, partnership, association, corporation or other entity shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans without first obtaining a license from the Secretary ~~Commissioner~~ in accordance with the licensing procedure provided in this Article I and such regulations as may be promulgated by the Secretary ~~Commissioner~~. The licensing provisions of this Section shall not apply to any entity engaged solely in commercial mortgage lending or to any person, partnership association, corporation or other entity exempted pursuant to Section 1-4, subsection (d), of this Act or in accordance with regulations promulgated by the Secretary ~~Commissioner~~ hereunder. No provision of this Act shall apply to an exempt person or entity as defined in items (1) and (1.5) of subsection (d) of Section 1-4 of this Act. Notwithstanding

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

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

(a-1) A person who is exempt from licensure pursuant to paragraph (ii) of item (1) of subsection (d) of Section 1-4 of this Act as a federally chartered savings bank that is registered with the Nationwide Mortgage Licensing System and Registry may apply to the Secretary for an exempt company

registration for the purpose of sponsoring one or more individuals subject to the mortgage loan originator licensing requirements of Article VII of this Act. Registration with the Division of Banking of the Department shall not affect the exempt status of the applicant.

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

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

(3) The Secretary may deny an exempt company registration to an exempt person or fine, suspend, or

revoke an exempt company registration if the Secretary finds one of the following:

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

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

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

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

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

(F) that the exempt person made a material misstatement or suppressed or withheld information on the application for an exempt company registration or

any document required to be filed with the Secretary;

or

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

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

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

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

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

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

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

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

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

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

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

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

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

(Source: P.A. 96-112, eff. 7-31-09; 96-1216, eff. 1-1-11; 97-143, eff. 7-14-11.)

(205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

Sec. 4-2. Examination; prohibited activities.

(a) The business affairs of a licensee under this Act shall be examined for compliance with this Act as often as the Secretary ~~Commissioner~~ deems necessary and proper. The Secretary ~~Commissioner~~ shall promulgate rules with respect to the frequency and manner of examination. The Secretary ~~Commissioner~~ shall appoint a suitable person to perform such examination. The Secretary ~~Commissioner~~ and his appointees may examine the entire books, records, documents, and operations of each licensee and its subsidiary, affiliate, or agent, and may examine any of the licensee's or its subsidiary's, affiliate's, or agent's officers, directors, employees and agents under oath. For purposes of this Section, "agent" includes service providers such as accountants, closing services providers,

providers of outsourced services such as call centers, marketing consultants, and loan processors, even if exempt from licensure under this Act. This Section does not apply to an attorney's privileged work product or communications.

(b) The Secretary ~~Commissioner~~ shall prepare a sufficiently detailed report of each licensee's examination, shall issue a copy of such report to each licensee's principals, officers, or directors and shall take appropriate steps to ensure correction of violations of this Act.

(c) Affiliates of a licensee shall be subject to examination by the Secretary ~~Commissioner~~ on the same terms as the licensee, but only when reports from, or examination of a licensee provides for documented evidence of unlawful activity between a licensee and affiliate benefiting, affecting or deriving from the activities regulated by this Act.

(d) The expenses of any examination of the licensee and affiliates shall be borne by the licensee and assessed by the Secretary ~~Commissioner~~ as established by regulation.

(e) Upon completion of the examination, the Secretary ~~Commissioner~~ shall issue a report to the licensee. All confidential supervisory information, including the examination report and the work papers of the report, shall belong to the Secretary's ~~Commissioner's~~ office and may not be disclosed to anyone other than the licensee, law enforcement officials or other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary

~~Commissioner~~, or to a party presenting a lawful subpoena to the Office of the Secretary ~~Commissioner~~. The Secretary ~~Commissioner~~ may immediately appeal to the court of jurisdiction the disclosure of such confidential supervisory information and seek a stay of the subpoena pending the outcome of the appeal. Reports required of licensees by the Secretary ~~Commissioner~~ under this Act and results of examinations performed by the Secretary ~~Commissioner~~ under this Act shall be the property of only the Secretary ~~Commissioner~~, but may be shared with the licensee. Access under this Act to the books and records of each licensee shall be limited to the Secretary ~~Commissioner~~ and his agents as provided in this Act and to the licensee and its authorized agents and designees. No other person shall have access to the books and records of a licensee under this Act. Any person upon whom a demand for production of confidential supervisory information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential supervisory information and must notify the Secretary ~~Commissioner~~ of the demand, at which time the Secretary ~~Commissioner~~ is authorized to intervene for the purpose of enforcing the limitations of this Section or seeking the withdrawal or termination of the attempt to compel production of the confidential supervisory information. The Secretary ~~Commissioner~~ may impose any conditions and limitations on the disclosure of confidential supervisory information that are necessary to protect the

confidentiality of such information. Except as authorized by the Secretary ~~Commissioner~~, no person obtaining access to confidential supervisory information may make a copy of the confidential supervisory information. The Secretary ~~Commissioner~~ may condition a decision to disclose confidential supervisory information on entry of a protective order by the court or administrative tribunal presiding in the particular case or on a written agreement of confidentiality. In a case in which a protective order or agreement has already been entered between parties other than the Secretary ~~Commissioner~~, the Secretary ~~Commissioner~~ may nevertheless condition approval for release of confidential supervisory information upon the inclusion of additional or amended provisions in the protective order. The Secretary ~~Commissioner~~ may authorize a party who obtained the records for use in one case to provide them to another party in another case, subject to any conditions that the Secretary ~~Commissioner~~ may impose on either or both parties. The requestor shall promptly notify other parties to a case of the release of confidential supervisory information obtained and, upon entry of a protective order, shall provide copies of confidential supervisory information to the other parties.

(f) The Secretary ~~Commissioner~~, deputy commissioners, and employees of the Office of Banks and Real Estate shall be subject to the restrictions provided in Section 2.5 of the Division of Banking Act including, without limitation, the

restrictions on (i) owning shares of stock or holding any other equity interest in an entity regulated under this Act or in any corporation or company that owns or controls an entity regulated under this Act; (ii) being an officer, director, employee, or agent of an entity regulated under this Act; and (iii) obtaining a loan or accepting a gratuity from an entity regulated under this Act.

(g) After the initial examination for those licensees whose only mortgage activity is servicing fewer than 1,000 Illinois residential loans, the examination required in subsection (a) may be waived upon submission of a letter from the licensee's independent certified auditor that the licensee serviced fewer than 1,000 Illinois residential loans during the year in which the audit was performed.

(h) An exempt entity under subsection (a-1) of Section 1-3 of this Act shall cooperate with the Secretary in the examination and investigation of its sponsored and licensed mortgage loan originators at a frequency determined by the Secretary. The exempt entity under subsection (a-1) of Section 1-3 of this Act shall cooperate with the Secretary in providing mortgage loan originator documents and access to mortgage loan originator offices for the purposes of examination and investigation. The activities of the exempt entity shall not relieve a mortgage loan originator of his or her individual requirements under Section 7-15 of this Act. An exempt entity under subsection (a-1) of Section 1-3 of this Act shall pay to

the Department any examination fees invoiced by the Secretary for examination of its sponsored mortgage loan originators. The Secretary shall have the authority to make oral or written inquiries regarding the management of an exempt entity under subsection (a-1) of Section 1-3 of this Act and it shall be the duty of the exempt entity to promptly reply by telephone, in writing, or other means to the inquiry.

(Source: P.A. 96-112, eff. 7-31-09; 96-1365, eff. 7-28-10.)

(205 ILCS 635/7-15 new)

Sec. 7-15. Examination and investigation of certain mortgage loan originators. The activities requiring a licensee of a mortgage loan originator that are sponsored by an exempt entity under subsection (a-1) of Section 1-3 of this Act are subject to examination and investigation by the Secretary. Mortgage loan originators sponsored by an exempt entity shall keep and maintain records of his or her loan activities for a period of 36 months and shall produce records on demand by the Secretary. The records shall include a loan log or loan production log as approved by the Secretary and any loan application entered, prepared, or created through or from the mortgage loan originator's activities. Mortgage loan originators sponsored by an exempt entity shall provide access, upon the Secretary's demand, to his or her offices for the purposes of the Department's examination and investigation. The Secretary shall determine the manner and frequency at which

the Department shall conduct examinations of the mortgage loan originators. Mortgage loan originators sponsored by an exempt entity shall cooperate at all times with the Department pursuant to requirements of this Section and shall be subject to penalties under Section 7-11 of this Act for failure to comply.

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