



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**  
**HB4570**

Introduced 02/04/04, by Angelo Saviano

**SYNOPSIS AS INTRODUCED:**

205 ILCS 635/1-4

from Ch. 17, par. 2321-4

Amends the Residential Mortgage License Act of 1987. Makes a technical change in a Section concerning the definitions.

LRB093 19923 SAS 45667 b

1 AN ACT concerning financial 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 Section 1-4 as follows:

6 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

7 Sec. 1-4. Definitions.

8 (a) "Residential real property" or "residential real  
9 estate" means ~~shall mean~~ real property located in this State  
10 improved by a one-to-four family dwelling used or occupied,  
11 wholly or partly, as the home or residence of one or more  
12 persons and may refer, subject to regulations of the  
13 Commissioner, to unimproved real property upon which those  
14 kinds dwellings are to be constructed.

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

20 (c) "Soliciting, processing, placing, or negotiating a  
21 residential mortgage loan" shall mean for compensation or gain,  
22 either directly or indirectly, accepting or offering to accept  
23 an application for a residential mortgage loan, assisting or  
24 offering to assist in the processing of an application for a  
25 residential mortgage loan on behalf of a borrower, or  
26 negotiating or offering to negotiate the terms or conditions of  
27 a residential mortgage loan with a lender on behalf of a  
28 borrower including, but not limited to, the submission of  
29 credit packages for the approval of lenders, the preparation of  
30 residential mortgage loan closing documents, including a  
31 closing in the name of a broker.

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

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

31           (1.5) Any employee of a person or entity mentioned in  
32 item (1) of this subsection.

33           (2) Any person or entity that does not originate  
34 mortgage loans in the ordinary course of business making or  
35 acquiring residential mortgage loans with his or her or its  
36 own funds for his or her or its own investment without

1 intent to make, acquire, or resell more than 10 residential  
2 mortgage loans in any one calendar year.

3 (3) Any person employed by a licensee to assist in the  
4 performance of the activities regulated by this Act who is  
5 compensated in any manner by only one licensee.

6 (4) Any person licensed pursuant to the Real Estate  
7 License Act of 2000, who engages only in the taking of  
8 applications and credit and appraisal information to  
9 forward to a licensee or an exempt entity under this Act  
10 and who is compensated by either a licensee or an exempt  
11 entity under this Act, but is not compensated by either the  
12 buyer (applicant) or the seller.

13 (5) Any individual, corporation, partnership, or other  
14 entity that originates, services, or brokers residential  
15 mortgage loans, as these activities are defined in this  
16 Act, and who or which receives no compensation for those  
17 activities, subject to the Commissioner's regulations with  
18 regard to the nature and amount of compensation.

19 (6) A person who prepares supporting documentation for  
20 a residential mortgage loan application taken by a licensee  
21 and performs ministerial functions pursuant to specific  
22 instructions of the licensee who neither requires nor  
23 permits the preparer to exercise his or her discretion or  
24 judgment; provided that this activity is engaged in  
25 pursuant to a binding, written agreement between the  
26 licensee and the preparer that:

27 (A) holds the licensee fully accountable for the  
28 preparer's action; and

29 (B) otherwise meets the requirements of this  
30 Section and this Act, does not undermine the purposes  
31 of this Act, and is approved by the Commissioner.

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

36 (f) "Mortgage loan" "residential mortgage loan" or "home

1 mortgage loan" shall mean a loan to or for the benefit of any  
2 natural person made primarily for personal, family, or  
3 household use, primarily secured by either a mortgage on  
4 residential real property or certificates of stock or other  
5 evidence of ownership interests in and proprietary leases from,  
6 corporations, partnerships, or limited liability companies  
7 formed for the purpose of cooperative ownership of residential  
8 real property, all located in Illinois.

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

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

21 (i) "Residential mortgage financing transaction" shall  
22 mean the negotiation, acquisition, sale, or arrangement for or  
23 the offer to negotiate, acquire, sell, or arrange for, a  
24 residential mortgage loan or residential mortgage loan  
25 commitment.

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

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

30 (l) "Party to a residential mortgage financing  
31 transaction" shall mean a borrower, lender, or loan broker in a  
32 residential mortgage financing transaction.

33 (m) "Payments" shall mean payment of all or any of the  
34 following: principal, interest and escrow reserves for taxes,  
35 insurance and other related reserves, and reimbursement for  
36 lender advances.

1           (n) "Commissioner" shall mean the Commissioner of Banks and  
2 Real Estate or a person authorized by the Commissioner, the  
3 Office of Banks and Real Estate Act, or this Act to act in the  
4 Commissioner's stead.

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  
27 accordance with the terms of the residential mortgage loan; and  
28 includes loan payment follow-up, delinquency loan follow-up,  
29 loan analysis and any notifications to the borrower that are  
30 necessary to enable the borrower to keep the loan current and  
31 in good standing.

32           (r) "Full service office" shall mean office and staff in  
33 Illinois reasonably adequate to handle efficiently  
34 communications, questions, and other matters relating to any  
35 application for, or an existing home mortgage secured by  
36 residential real estate situated in Illinois with respect to

1 which the licensee is brokering, funding originating,  
2 purchasing, or servicing. The management and operation of each  
3 full service office must include observance of good business  
4 practices such as adequate, organized, and accurate books and  
5 records; ample phone lines, hours of business, staff training  
6 and supervision, and provision for a mechanism to resolve  
7 consumer inquiries, complaints, and problems. The Commissioner  
8 shall issue regulations with regard to these requirements and  
9 shall include an evaluation of compliance with this Section in  
10 his or her periodic examination of each licensee.

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

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

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

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

22 (1) obtain a residential mortgage loan for the borrower  
23 or assist the borrower in obtaining a residential mortgage  
24 loan; or

25 (2) consider making a residential mortgage loan to the  
26 borrower.

27 (w) "Advertisement" shall mean the attempt by publication,  
28 dissemination, or circulation to induce, directly or  
29 indirectly, any person to enter into a residential mortgage  
30 loan agreement or residential mortgage loan brokerage  
31 agreement relative to a mortgage secured by residential real  
32 estate situated in Illinois.

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

35 (y) "Government-insured mortgage loan" shall mean any  
36 mortgage loan made on the security of residential real estate

1 insured by the Department of Housing and Urban Development or  
2 Farmers Home Loan Administration, or guaranteed by the Veterans  
3 Administration.

4 (z) "Annual audit" shall mean a certified audit of the  
5 licensee's books and records and systems of internal control  
6 performed by a certified public accountant in accordance with  
7 generally accepted accounting principles and generally  
8 accepted auditing standards.

9 (aa) "Financial institution" shall mean a savings and loan  
10 association, savings bank, credit union, or a bank organized  
11 under the laws of Illinois or a savings and loan association,  
12 savings bank, credit union or a bank organized under the laws  
13 of the United States and headquartered in Illinois.

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

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

21 (dd) "Affiliate" shall mean:

22 (1) any entity that directly controls or is controlled  
23 by the licensee and any other company that is directly  
24 affecting activities regulated by this Act that is  
25 controlled by the company that controls the licensee;

26 (2) any entity:

27 (A) that is controlled, directly or indirectly, by  
28 a trust or otherwise, by or for the benefit of  
29 shareholders who beneficially or otherwise control,  
30 directly or indirectly, by trust or otherwise, the  
31 licensee or any company that controls the licensee; or

32 (B) a majority of the directors or trustees of  
33 which constitute a majority of the persons holding any  
34 such office with the licensee or any company that  
35 controls the licensee;

36 (3) any company, including a real estate investment



1 trust, that is sponsored and advised on a contractual basis  
2 by the licensee or any subsidiary or affiliate of the  
3 licensee.

4 The Commissioner may define by rule and regulation any  
5 terms used in this Act for the efficient and clear  
6 administration of this Act.

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

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

23 (gg) "Delinquency rate factor" means the factor set by rule  
24 of the Commissioner that is multiplied by the average gross  
25 delinquency rate of licensees, determined annually for the  
26 immediately preceding calendar year, for the purpose of  
27 determining which licensees shall be examined by the  
28 Commissioner pursuant to subsection (b) of Section 4-8 of this  
29 Act.

30 (hh) "Loan originator" means any natural person who, for  
31 compensation or in the expectation of compensation, either  
32 directly or indirectly makes, offers to make, solicits, places,  
33 or negotiates a residential mortgage loan.

34 (Source: P.A. 93-561, eff. 1-1-04.)