



Sen. William R. Haine

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09300SB2908sam001

LRB093 18470 WGH 48875 a

1 AMENDMENT TO SENATE BILL 2908

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2908 by replacing  
3 everything after the enacting clause with the following:

4 by replacing everything after the enacting clause with the  
5 following:

6 "Section 5. The Residential Mortgage License Act of 1987 is  
7 amended by changing Sections 1-3, 1-4, 1-5, 2-2, 2-4, 2-6, 3-1,  
8 3-2, 3-4, 3-5, 4-1, 4-2, 4-5, and 6-2 and by adding Section  
9 4-9.1 as follows:

10 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

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

12 (a) No person, partnership, association, corporation or  
13 other entity shall engage in the business of brokering,  
14 funding, originating, servicing or purchasing of residential  
15 mortgage loans without first obtaining a license from the  
16 Commissioner in accordance with the licensing procedure  
17 provided in this Article I and such regulations as may be  
18 promulgated by the Commissioner. The licensing provisions of  
19 this Section shall not apply to any entity engaged solely in  
20 commercial mortgage lending or to any person, partnership  
21 association, corporation or other entity exempted pursuant to  
22 Section 1-4, subsection (d), of this Act or in accordance with  
23 regulations promulgated by the Commissioner hereunder.

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

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

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

20 (d-1) The Commissioner shall have the power to issue orders  
21 against any person, if the Commissioner has reasonable cause to  
22 believe that an unsafe, unsound, or unlawful practice has  
23 occurred, is occurring, or is about to occur, if any person has  
24 violated, is violating, or is about to violate any law, rule,  
25 or written agreement with the Commissioner, or for the purpose  
26 of administering the provisions of this Act and any rule  
27 promulgated in accordance with this Act.

28 (e) Any person, partnership, association, corporation or  
29 other entity who violates any provision of this Section commits  
30 a business offense and shall be fined an amount not to exceed  
31 \$25,000 ~~\$5,000~~.

32 (f) Each person, partnership, association, corporation or  
33 other entity conducting activities regulated by this Act shall  
34 be issued one license. Each office, place of business or

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

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

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

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

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

23 (Source: P.A. 86-137; 87-642.)

24 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

25 Sec. 1-4. Definitions.

26 (a) "Residential real property" or "residential real  
27 estate" shall mean real property located in this State improved  
28 by a one-to-four family dwelling used or occupied, wholly or  
29 partly, as the home or residence of one or more persons and may  
30 refer, subject to regulations of the Commissioner, to  
31 unimproved real property upon which those kinds dwellings are  
32 to be constructed.

33 (b) "Making a residential mortgage loan" or "funding a

1 residential mortgage loan" shall mean for compensation or gain,  
2 either directly or indirectly, advancing funds or making a  
3 commitment to advance funds to a loan applicant for a  
4 residential mortgage loan.

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

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

18 (1) (i) Any banking organization or foreign banking  
19 corporation licensed by the Illinois Commissioner of Banks  
20 and Real Estate or the United States Comptroller of the  
21 Currency to transact business in this State; (ii) any  
22 national bank, federally chartered savings and loan  
23 association, federal savings bank, federal credit union;  
24 (iii) any pension trust, bank trust, or bank trust company;  
25 (iv) any bank, savings and loan association, savings bank,  
26 or credit union organized under the laws of this or any  
27 other state; (v) any Illinois Consumer Installment Loan Act  
28 licensee; (vi) any insurance company authorized to  
29 transact business in this State; (vii) any entity engaged  
30 solely in commercial mortgage lending; (viii) any service  
31 corporation of a savings and loan association or savings  
32 bank organized under the laws of this State or the service  
33 corporation of a federally chartered savings and loan  
34 association or savings bank having its principal place of

1 business in this State, other than a service corporation  
2 licensed or entitled to reciprocity under the Real Estate  
3 License Act of 2000; or (ix) any first tier subsidiary of a  
4 bank, the charter of which is issued under the Illinois  
5 Banking Act by the Illinois Commissioner of Banks and Real  
6 Estate, or the first tier subsidiary of a bank chartered by  
7 the United States Comptroller of the Currency and that has  
8 its principal place of business in this State, provided  
9 that the first tier subsidiary is regularly examined by the  
10 Illinois Commissioner of Banks and Real Estate or the  
11 Comptroller of the Currency, or a consumer compliance  
12 examination is regularly conducted by the Federal Reserve  
13 Board.

14 (1.5) Any employee of a person or entity mentioned in  
15 item (1) of this subsection.

16 (2) Any person or entity that does not originate  
17 mortgage loans in the ordinary course of business making or  
18 acquiring residential mortgage loans with his or her or its  
19 own funds for his or her or its own investment without  
20 intent to make, acquire, or resell more than 10 residential  
21 mortgage loans in any one calendar year.

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

25 (4) Any person licensed pursuant to the Real Estate  
26 License Act of 2000, who engages only in the taking of  
27 applications and credit and appraisal information to  
28 forward to a licensee or an exempt entity under this Act  
29 and who is compensated by either a licensee or an exempt  
30 entity under this Act, but is not compensated by either the  
31 buyer (applicant) or the seller.

32 (5) Any individual, corporation, partnership, or other  
33 entity that originates, services, or brokers residential  
34 mortgage loans, as these activities are defined in this

1 Act, and who or which receives no compensation for those  
2 activities, subject to the Commissioner's regulations with  
3 regard to the nature and amount of compensation.

4 (6) A person who prepares supporting documentation for  
5 a residential mortgage loan application taken by a licensee  
6 and performs ministerial functions pursuant to specific  
7 instructions of the licensee who neither requires nor  
8 permits the preparer to exercise his or her discretion or  
9 judgment; provided that this activity is engaged in  
10 pursuant to a binding, written agreement between the  
11 licensee and the preparer that:

12 (A) holds the licensee fully accountable for the  
13 preparer's action; and

14 (B) otherwise meets the requirements of this  
15 Section and this Act, does not undermine the purposes  
16 of this Act, and is approved by the Commissioner.

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

21 (f) "Mortgage loan" "residential mortgage loan" or "home  
22 mortgage loan" shall mean a loan to or for the benefit of any  
23 natural person made primarily for personal, family, or  
24 household use, primarily secured by either a mortgage on  
25 residential real property or certificates of stock or other  
26 evidence of ownership interests in and proprietary leases from,  
27 corporations, partnerships, or limited liability companies  
28 formed for the purpose of cooperative ownership of residential  
29 real property, all located in Illinois.

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

33 (h) "Ultimate equitable owner" shall mean a person who,  
34 directly or indirectly, owns or controls an ownership interest

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

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

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

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

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

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

24 (n) "Commissioner" shall mean the Commissioner of Banks and  
25 Real Estate or a person authorized by the Commissioner, the  
26 Office of Banks and Real Estate Act, or this Act to act in the  
27 Commissioner's stead.

28 (o) "Loan brokering", "brokering", or "brokerage service"  
29 shall mean the act of helping to obtain from another entity,  
30 for a borrower, a loan secured by residential real estate  
31 situated in Illinois or assisting a borrower in obtaining a  
32 loan secured by residential real estate situated in Illinois in  
33 return for consideration to be paid by either the borrower or  
34 the lender including, but not limited to, contracting for the

1 delivery of residential mortgage loans to a third party lender  
2 and soliciting, processing, placing, or negotiating  
3 residential mortgage loans.

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

11 (q) "Servicing" shall mean the collection or remittance for  
12 or the right or obligation to collect or remit for any lender,  
13 noteowner, noteholder, or for a licensee's own account, of  
14 payments, interests, principal, and trust items such as hazard  
15 insurance and taxes on a residential mortgage loan in  
16 accordance with the terms of the residential mortgage loan; and  
17 includes loan payment follow-up, delinquency loan follow-up,  
18 loan analysis and any notifications to the borrower that are  
19 necessary to enable the borrower to keep the loan current and  
20 in good standing.

21 (r) "Full service office" shall mean office and staff in  
22 Illinois reasonably adequate to handle efficiently  
23 communications, questions, and other matters relating to any  
24 application for, or an existing home mortgage secured by  
25 residential real estate situated in Illinois with respect to  
26 which the licensee is brokering, funding originating,  
27 purchasing, or servicing. The management and operation of each  
28 full service office must include observance of good business  
29 practices such as adequate, organized, and accurate books and  
30 records; ample phone lines, hours of business, staff training  
31 and supervision, and provision for a mechanism to resolve  
32 consumer inquiries, complaints, and problems. The Commissioner  
33 shall issue regulations with regard to these requirements and  
34 shall include an evaluation of compliance with this Section in



1 his or her periodic examination of each licensee.

2 (s) "Purchasing" shall mean the purchase of conventional or  
3 government-insured mortgage loans secured by residential real  
4 estate situated in Illinois from either the lender or from the  
5 secondary market.

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

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

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

13 (1) obtain a residential mortgage loan for the borrower  
14 or assist the borrower in obtaining a residential mortgage  
15 loan; or

16 (2) consider making a residential mortgage loan to the  
17 borrower.

18 (w) "Advertisement" shall mean the attempt by publication,  
19 dissemination, or circulation to induce, directly or  
20 indirectly, any person to enter into a residential mortgage  
21 loan agreement or residential mortgage loan brokerage  
22 agreement relative to a mortgage secured by residential real  
23 estate situated in Illinois.

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

26 (y) "Government-insured mortgage loan" shall mean any  
27 mortgage loan made on the security of residential real estate  
28 insured by the Department of Housing and Urban Development or  
29 Farmers Home Loan Administration, or guaranteed by the Veterans  
30 Administration.

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

1 accepted auditing standards.

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

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

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

14 (dd) "Affiliate" shall mean:

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

19 (2) any entity:

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

25 (B) a majority of the directors or trustees of  
26 which constitute a majority of the persons holding any  
27 such office with the licensee or any company that  
28 controls the licensee;

29 (3) any company, including a real estate investment  
30 trust, that is sponsored and advised on a contractual basis  
31 by the licensee or any subsidiary or affiliate of the  
32 licensee.

33 The Commissioner may define by rule and regulation any  
34 terms used in this Act for the efficient and clear

1 administration of this Act.

2 (ee) "First tier subsidiary" shall be defined by regulation  
3 incorporating the comparable definitions used by the Office of  
4 the Comptroller of the Currency and the Illinois Commissioner  
5 of Banks and Real Estate.

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

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

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

29 (ii) "Confidential supervisory information" means any  
30 report of examination, visitation, or investigation prepared  
31 by the Commissioner under this Act, any report of examination,  
32 visitation, or investigation prepared by the state regulatory  
33 authority of another state that examines a licensee, any  
34 document or record prepared or obtained in connection with or

1 relating to any examination, visitation, or investigation, and  
2 any record prepared or obtained by the Commissioner to the  
3 extent that the record summarizes or contains information  
4 derived from any report, document, or record described in this  
5 subdivision (ii). "Confidential supervisory information" does  
6 not include any information or record routinely prepared by a  
7 licensee and maintained in the ordinary course of business or  
8 any information or record that is required to be made publicly  
9 available pursuant to State or federal law or rule.

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

11 (205 ILCS 635/1-5) (from Ch. 17, par. 2321-5)

12 Sec. 1-5. Residential Mortgage Board.

13 (a) Board composition, compensation. There is created the  
14 Residential Mortgage Board composed of 5 members appointed by  
15 the Commissioner of Banks and Real Estate. The majority of  
16 persons on the Board shall have no financial interest in any  
17 residential mortgage business and one member shall be a  
18 representative of the Mortgage Banking Trade Association and  
19 one member shall be a representative of the Mortgage Broker  
20 Trade Association. Members of the Board serving on the  
21 effective date of this amendatory Act of 1996 shall continue to  
22 serve their unexpired terms as members of the Residential  
23 Mortgage Board. Thereafter, on or before January 15 of each  
24 year, the Commissioner shall appoint one or more board members,  
25 as shall be necessary to maintain a 5 member Board, whose terms  
26 shall be for 3 years commencing February 1 of the year in which  
27 they are respectively appointed.

28 If a vacancy occurs on the Residential Mortgage Board, the  
29 Commissioner shall within 60 days appoint a new member who  
30 shall hold office for the remainder of the vacated term.

31 The Board shall meet at the call of the chairman, who along  
32 with a Secretary, shall be selected by the Board from among its  
33 members.

1 ~~Members of the Board shall be entitled to receive a per~~  
2 ~~diem allowance of \$25 for each day or part of a day spent on~~  
3 ~~Board work and shall be entitled to their expenses actually and~~  
4 ~~necessarily incurred in the performance of their duties.~~ The  
5 members of the Board serve at the pleasure of the Commissioner.

6 (b) Duties of Board. The Residential Mortgage Board shall  
7 assist the Commissioner by:

8 (1) submitting recommendations to the Commissioner for  
9 the efficient administration of this Act; and

10 (2) performing other duties as are prescribed by the  
11 Commissioner.

12 (c) Conflict of interest declarations. Each member of the  
13 Residential Mortgage Board shall file annually, no later than  
14 February 1, with the Commissioner a statement of his or her  
15 current business transactions or other affiliations with any  
16 licensee under this Act. The Commissioner may adopt rules to  
17 avoid conflicts of interest on the part of members of the  
18 Residential Mortgage Board in connection with their position on  
19 the Board.

20 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

21 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

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

23 (a) The Commissioner shall issue a license upon completion  
24 of all of the following:

25 (1) The filing of an application for license.

26 (2) The filing with the Commissioner of a listing of  
27 judgments entered against, and bankruptcy petitions by,  
28 the license applicant for the preceding 10 years.

29 (3) The payment, in certified funds, of investigation  
30 and application fees, the total of which shall be in an  
31 amount equal to \$2,700 annually, however, the Commissioner  
32 may increase the investigation and application fees by rule  
33 as provided in Section 4-11.

1           (4) Except for a broker applying to renew a license,  
2 the filing of an audited balance sheet including all  
3 footnotes prepared by a certified public accountant in  
4 accordance with generally accepted accounting principles  
5 and generally accepted auditing principles which evidences  
6 that the applicant meets the net worth requirements of  
7 Section 3-5.

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

27           (6) An investigation of the averments required by  
28 Section 2-4, which investigation must allow the  
29 Commissioner to issue positive findings stating that the  
30 financial responsibility, experience, character, and  
31 general fitness of the license applicant and of the members  
32 thereof if the license applicant is a partnership or  
33 association, of the officers and directors thereof if the  
34 license applicant is a corporation, and of the managers and

1 members that retain any authority or responsibility under  
2 the operating agreement if the license applicant is a  
3 limited liability company are such as to command the  
4 confidence of the community and to warrant belief that the  
5 business will be operated honestly, fairly and efficiently  
6 within the purpose of this Act. If the Commissioner shall  
7 not so find, he or she shall not issue such license, and he  
8 or she shall notify the license applicant of the denial.

9 The Commissioner shall have the power to impose conditions  
10 on any approval issued by the Commissioner if the Commissioner  
11 determines that the conditions are necessary or appropriate.  
12 These conditions shall be imposed in writing and shall continue  
13 in effect for the period prescribed by the Commissioner.

14 (b) All licenses shall be issued in duplicate with one copy  
15 being transmitted to the license applicant and the second being  
16 retained with the Commissioner.

17 Upon receipt of such license, a residential mortgage  
18 licensee shall be authorized to engage in the business  
19 regulated by this Act. Such license shall remain in full force  
20 and effect until it expires without renewal, is surrendered by  
21 the licensee or revoked or suspended as hereinafter provided.

22 (Source: P.A. 93-32, eff. 7-1-03.)

23 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

24 Sec. 2-4. Averments of Licensee. Each application for  
25 license or for the renewal of a license shall be accompanied by  
26 the following averments stating that the applicant:

27 (a) Will maintain at least one full service office  
28 within the State of Illinois pursuant to Section 3-4 of  
29 this Act;

30 (b) Will maintain staff reasonably adequate to meet the  
31 requirements of Section 3-4 of this Act;

32 (c) Will keep and maintain for 36 months the same  
33 written records as required by the federal Equal Credit

1 Opportunity Act, and any other information required by  
2 regulations of the Commissioner regarding any home  
3 mortgage in the course of the conduct of its residential  
4 mortgage business;

5 (d) Will file with the Commissioner, when due, any  
6 report or reports which it is required to file under any of  
7 the provisions of this Act;

8 (e) Will not engage, whether as principal or agent, in  
9 the practice of rejecting residential mortgage  
10 applications without reasonable cause, or varying terms or  
11 application procedures without reasonable cause, for home  
12 mortgages on real estate within any specific geographic  
13 area from the terms or procedures generally provided by the  
14 licensee within other geographic areas of the State;

15 (f) Will not engage in fraudulent home mortgage  
16 underwriting practices;

17 (g) Will not make payment, whether directly or  
18 indirectly, of any kind to any in house or fee appraiser of  
19 any government or private money lending agency with which  
20 an application for a home mortgage has been filed for the  
21 purpose of influencing the independent judgment of the  
22 appraiser with respect to the value of any real estate  
23 which is to be covered by such home mortgage;

24 (h) Has filed tax returns (State and Federal) for the  
25 past 3 years or filed with the Commissioner an accountant's  
26 or attorney's statement as to why no return was filed;

27 (i) Will not engage in any discrimination or redlining  
28 activities prohibited by Section 3-8 of this Act;

29 (j) Will not knowingly make any false promises likely  
30 to influence or persuade, or pursue a course of  
31 misrepresentation and false promises through agents,  
32 solicitors, advertising or otherwise;

33 (k) Will not knowingly misrepresent, circumvent or  
34 conceal, through whatever subterfuge or device, any of the



1 material particulars or the nature thereof, regarding a  
2 transaction to which it is a party to the injury of another  
3 party thereto;

4 (l) Will disburse funds in accordance with its  
5 agreements;

6 (m) Has not committed a crime against the law of this  
7 State, any other state or of the United States, involving  
8 moral turpitude, fraudulent or dishonest dealing, and that  
9 no final judgment has been entered against it in a civil  
10 action upon grounds of fraud, misrepresentation or deceit  
11 which has not been previously reported to the Commissioner;

12 (n) Will account or deliver to any person any personal  
13 property such as money, fund, deposit, check, draft,  
14 mortgage, other document or thing of value, which has come  
15 into its possession, and which is not its property, or  
16 which it is not in law or equity entitled to retain under  
17 the circumstances, at the time which has been agreed upon  
18 or is required by law, or, in the absence of a fixed time,  
19 upon demand of the person entitled to such accounting and  
20 delivery;

21 (o) Has not engaged in any conduct which would be cause  
22 for denial of a license;

23 (p) Has not become insolvent;

24 (q) Has not submitted an application for a license  
25 under this Act which contains a material misstatement;

26 (r) Has not demonstrated by course of conduct,  
27 negligence or incompetence in performing any act for which  
28 it is required to hold a license under this Act;

29 (s) Will advise the Commissioner in writing of any  
30 changes to the information submitted on the most recent  
31 application for license within 30 days of said change. The  
32 written notice must be signed in the same form as the  
33 application for license being amended;

34 (t) Will comply with the provisions of this Act, or

1 with any lawful order, rule or regulation made or issued  
2 under the provisions of this Act;

3 (u) Will submit to periodic examination by the  
4 Commissioner as required by this Act;

5 (v) Will advise the Commissioner in writing of  
6 judgments entered against, and bankruptcy petitions by,  
7 the license applicant within 5 days of occurrence;

8 (w) Will advise the Commissioner in writing within 30  
9 days when the license applicant requests a licensee under  
10 this Act to repurchase a loan, and the circumstances  
11 therefor; ~~and~~

12 (x) Will advise the Commissioner in writing within 30  
13 days when the license applicant is requested by another  
14 entity to repurchase a loan, and the circumstances  
15 therefor; ~~and~~

16 (y) Will at all times act in a manner consistent with  
17 subsections (a) and (b) of Section 1-2 of this Act; ~~and~~

18 (z) ~~(x)~~ Will not knowingly hire or employ a loan  
19 originator who is not registered with the Commissioner as  
20 required under Section 7-1 of this Act; and

21 (z-1) Will not knowingly employ or otherwise permit,  
22 except with prior written consent of the Commissioner, an  
23 individual to serve as an officer, director, or employee  
24 for the licensee if the individual has been convicted of a  
25 felony or any criminal offense relating to dishonesty or  
26 breach of trust.

27 A licensee who fails to fulfill obligations of an averment,  
28 to comply with averments made, or otherwise violates any of the  
29 averments made under this Section shall be subject to the  
30 penalties in Section 4-5 of this Act.

31 (Source: P.A. 93-561, eff. 1-1-04; revised 10-9-03.)

32 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

1 (a) Beginning July 1, 2003, licenses shall be renewed every  
2 year on the anniversary of the date of issuance of the original  
3 license. Properly completed renewal application forms and  
4 filing fees must be received by the Commissioner 60 days prior  
5 to the renewal date.

6 (b) It shall be the responsibility of each licensee to  
7 accomplish renewal of its license; failure of the licensee to  
8 receive renewal forms absent a request sent by certified mail  
9 for such forms will not waive said responsibility. Failure by a  
10 licensee to submit a properly completed renewal application  
11 form and fees in a timely fashion, absent a written extension  
12 from the Commissioner, will result in the assessment of  
13 additional fees, as follows:

14 (1) A fee of \$750 will be assessed to the licensee 30  
15 days after the proper renewal date and \$1,500 each month  
16 thereafter, until the license is either renewed or expires  
17 pursuant to Section 2-6, subsections (c) and (d), of this  
18 Act.

19 (2) Such fee will be assessed without prior notice to  
20 the licensee, but will be assessed only in cases wherein  
21 the Commissioner has in his or her possession documentation  
22 of the licensee's continuing activity for which the  
23 unrenewed license was issued.

24 (c) A license which is not renewed by the date required in  
25 this Section shall automatically become inactive. No activity  
26 regulated by this Act shall be conducted by the licensee when a  
27 license becomes inactive. The Commissioner may require the  
28 licensee to provide a plan for the disposition of any  
29 residential mortgage loans not closed or funded when the  
30 license becomes inactive. The Commissioner may approve the  
31 licensee conducting activities regulated by this Act with an  
32 inactive license for the sole purpose of assisting borrowers in  
33 the closing or funding of loans for which the licensee had an  
34 active license at the time the loan application was taken from

1 a borrower. An inactive license may be reactivated by ~~filing a~~  
2 ~~completed reactivation application with~~ the Commissioner upon  
3 7 payment of the renewal fee, and payment of a reactivation fee  
4 equal to the renewal fee.

5 (d) A license which is not renewed within one year of  
6 becoming inactive shall expire.

7 (e) A licensee ceasing an activity or activities regulated  
8 by this Act and desiring to no longer be licensed shall so  
9 inform the Commissioner in writing and, at the same time,  
10 convey the license and all other symbols or indicia of  
11 licensure. The licensee shall include a plan for the withdrawal  
12 from regulated business, including a timetable for the  
13 disposition of the business. Upon receipt of such written  
14 notice, the Commissioner shall issue a certified statement  
15 canceling the license.

16 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; revised  
17 9-23-03.)

18 (205 ILCS 635/3-1) (from Ch. 17, par. 2323-1)

19 Sec. 3-1. Bonds of licensees.

20 (a) Every licensee, with respect to any person appointed or  
21 elected to any position requiring the receipt of payment,  
22 management, or use of money belonging to a residential mortgage  
23 licensee engaged in the activities of originating, servicing,  
24 or purchasing mortgage loans or whose duties permit him or her  
25 to have access to or custody of any of its money or securities  
26 or custody of any money or securities belonging to third  
27 parties or whose duties permit him or her regularly to make  
28 entries in the books or other records of a licensee, shall,  
29 before assuming his or her duties, maintain a fidelity bond in  
30 the amount of \$100,000 by some fidelity insurance company  
31 licensed to do business in this State.

32 (b) Each bond shall be for any loss the licensee may  
33 sustain in money or other property through the commission of

1 any dishonest or criminal act or omission by any person  
2 required to be bonded, whether committed alone or in concert  
3 with another. The bond shall be in the form and amount approved  
4 by the Commissioner who may at any time require one or more  
5 additional bonds. A true copy of every bond, including all  
6 riders and endorsements executed subsequent to the effective  
7 date of the bond, shall be filed at all times with the  
8 Commissioner. Each bond shall provide that a cancellation  
9 thereof shall not become effective unless and until 30 days  
10 notice in writing first shall have been given to the  
11 Commissioner unless he or she shall have approved the  
12 cancellation earlier. If the Commissioner believes the  
13 licensee's business is being conducted in an unsafe manner due  
14 to the lack of bonds or the inadequacy of bonds, he or she may  
15 proceed against the licensee as provided for in Section 4-5.

16 (c) All licensees shall maintain a bond in accordance with  
17 this subsection. Each bond shall be for the recovery of  
18 expenses, fines, or fees due to or levied by the Commissioner  
19 in accordance with this Act. The bond shall be payable when the  
20 licensee fails to comply with any provisions of this Act and  
21 shall be in the form of a surety or licensure bond in the  
22 amount and form as prescribed by the Commissioner pursuant to  
23 rules and regulations. The bond shall be payable to the Office  
24 of Banks and Real Estate and shall be issued by some insurance  
25 company authorized to do business in this State. A copy of the  
26 bond, including any and all riders and endorsements executed  
27 subsequent to the effective date of the bond, shall be placed  
28 on file with the Office of Banks and Real Estate within 10 days  
29 of the execution thereof.

30 (d) The Commissioner may promulgate rules with respect to  
31 bonding requirements for residential mortgage licensees that  
32 are reasonable and necessary to accomplish the purposes of this  
33 Act.

34 (e) The Commissioner may require licensees to maintain a

1 bond for errors and omissions in performing activities  
2 regulated by this Act.

3 (Source: P.A. 89-508, eff. 7-3-96.)

4 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)  
5 Sec. 3-2. Annual audit.

6 (a) At the licensee's fiscal year-end, but in no case more  
7 than 12 months after the last audit conducted pursuant to this  
8 Section, except as otherwise provided in this Section, it shall  
9 be mandatory for each residential mortgage licensee to cause  
10 its books and accounts to be audited by a certified public  
11 accountant not connected with such licensee. The books and  
12 records of all licensees under this Act shall be maintained on  
13 an accrual basis. The audit must be sufficiently comprehensive  
14 in scope to permit the expression of an opinion on the  
15 financial statements, which must be prepared in accordance with  
16 generally accepted accounting principles, and must be  
17 performed in accordance with generally accepted auditing  
18 standards. Notwithstanding the requirements of this  
19 subsection, a licensee that is a first tier subsidiary may  
20 submit audited consolidated financial statements of its parent  
21 as long as the consolidated statements are supported by  
22 consolidating statements. The licensee's chief financial  
23 officer shall attest to the licensee's financial statements  
24 disclosed in the consolidating statements.

25 (b) As used herein, the term "expression of opinion"  
26 includes either (1) an unqualified opinion, (2) a qualified  
27 opinion, (3) a disclaimer of opinion, or (4) an adverse  
28 opinion.

29 (c) If a qualified or adverse opinion is expressed or if an  
30 opinion is disclaimed, the reasons therefore must be fully  
31 explained. An opinion, qualified as to a scope limitation,  
32 shall not be acceptable.

33 (d) The most recent audit report shall be filed with the

1 Commissioner within 90 days after the end of the licensee's  
2 fiscal year. The report filed with the Commissioner shall be  
3 certified by the certified public accountant conducting the  
4 audit. The Commissioner may promulgate rules regarding late  
5 audit reports.

6 (e) If any licensee required to make an audit shall fail to  
7 cause an audit to be made, the Commissioner shall cause the  
8 same to be made by a certified public accountant at the  
9 licensee's expense. The Commissioner shall select such  
10 certified public accountant by advertising for bids or by such  
11 other fair and impartial means as he or she establishes by  
12 regulation.

13 (f) In lieu of the audit or compilation financial statement  
14 required by this Section, a licensee shall submit and the  
15 Commissioner may accept any audit made in conformance with the  
16 audit requirements of the U.S. Department of Housing and Urban  
17 Development.

18 (g) With respect to licensees who solely broker residential  
19 mortgage loans as defined in subsection (o) of Section 1-4,  
20 instead of the audit required by this Section, the Commissioner  
21 may accept compilation financial statements prepared at least  
22 every 12 months, and the compilation financial statement must  
23 be prepared by an independent certified public accountant  
24 licensed under the Illinois Public Accounting Act or by an  
25 equivalent state licensing law with full disclosure in  
26 accordance with generally accepted accounting principles  
27 ~~principals~~ and must be submitted within 90 days after the end  
28 of the licensee's fiscal year. If a licensee under this Section  
29 fails to file a compilation as required, the Commissioner shall  
30 cause an audit of the licensee's books and accounts to be made  
31 by a certified public accountant at the licensee's expense. The  
32 Commissioner shall select the certified public accountant by  
33 advertising for bids or by such other fair and impartial means  
34 as he or she establishes by rule. A licensee who files false or

1 misleading compilation financial statements is guilty of a  
2 business offense and shall be fined not less than \$5,000.

3 (h) The workpapers of the certified public accountants  
4 employed by each licensee for purposes of this Section are to  
5 be made available to the Commissioner or the Commissioner's  
6 designee upon request and may be reproduced by the Commissioner  
7 or the Commissioner's designee to enable to the Commissioner to  
8 carry out the purposes of this Act.

9 (i) Notwithstanding any other provision of this Section, if  
10 a licensee relying on subsection (g) of this Section causes its  
11 books to be audited at any other time or causes its financial  
12 statements to be reviewed, a complete copy of the audited or  
13 reviewed financial statements shall be delivered to the  
14 Commissioner at the time of the annual license renewal payment  
15 following receipt by the licensee of the audited or reviewed  
16 financial statements. All workpapers shall be made available to  
17 the Commissioner upon request. The financial statements and  
18 workpapers may be reproduced by the Commissioner or the  
19 Commissioner's designee to carry out the purposes of this Act.

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

21 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

22 Sec. 3-4. Office and staff within the State.

23 (a) A licensee whose principal place of business is located  
24 in the State of Illinois shall maintain at least one full  
25 service office with staff reasonably adequate to handle  
26 efficiently communications, questions, and all other matters  
27 relating to any application for a home mortgage or an existing  
28 home mortgage with respect to which such licensee is performing  
29 services, regardless of kind, for any borrower or lender, note  
30 owner or holder, or for himself or herself while engaged in the  
31 residential mortgage business. The location and operation of a  
32 full service office shall be in compliance with any applicable  
33 zoning laws or ordinances and home office or business



1 regulations.

2 (b) In lieu of maintaining a full service office in the  
3 State of Illinois, a licensee whose principal place of business  
4 is located outside the State of Illinois must submit a  
5 certified audit as required in Section 3-2 of this Act  
6 evidencing a minimum net worth of \$100,000, which must be  
7 maintained at all times, and shall submit and maintain a  
8 fidelity bond in the amount of \$100,000.

9 (Source: P.A. 89-355, eff. 8-17-95; 90-301, eff. 8-1-97;  
10 90-772, eff. 1-1-99.)

11 (205 ILCS 635/3-5) (from Ch. 17, par. 2323-5)

12 Sec. 3-5. Net worth requirement. A licensee that holds a  
13 license on the effective date of this amendatory Act of the  
14 93rd General Assembly shall have and maintain a net worth of  
15 not less than \$100,000; however, no later than 2 years after  
16 the effective date of this amendatory Act of the 93rd General  
17 Assembly, the licensee must maintain a net worth of not less  
18 than \$150,000. A licensee that first obtains a license after  
19 the effective date of this amendatory Act of the 93rd General  
20 Assembly must have and maintain a net worth of not less than  
21 \$150,000. Notwithstanding other requirements of this Section,  
22 the net worth requirement for a residential mortgage licensee  
23 whose only licensable activity is that of brokering residential  
24 mortgage loans and that holds a license on the effective date  
25 of this amendatory Act of the 93rd General Assembly shall be  
26 \$35,000; however, no later than 2 years after the effective  
27 date of this amendatory Act of the 93rd General Assembly, the  
28 licensee must maintain a net worth of not less than \$50,000.  
29 Such a licensee that first obtains a license after the  
30 effective date of this amendatory Act of the 93rd General  
31 Assembly must have and maintain a net worth of not less than  
32 \$50,000. Net worth shall be evidenced by a balance sheet  
33 prepared by a certified public accountant in accordance with

1 generally accepted accounting principles and generally  
2 accepted auditing standards or by the compilation financial  
3 statements authorized under subsection (g) of Section 3-2. The  
4 Commissioner may promulgate rules with respect to net worth  
5 definitions and requirements for residential mortgage  
6 licensees as necessary to accomplish the purposes of this Act.  
7 In promulgating such rules, the Commissioner may consider  
8 establishing separate net worth requirements for not for profit  
9 entities or their affiliates that are serving economically  
10 depressed or financially underserved areas. In lieu of the net  
11 worth requirement established by this Section, the  
12 Commissioner may accept evidence of conformance by the licensee  
13 with the net worth requirements of the United States Department  
14 of Housing and Urban Development.

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

16 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)

17 Sec. 4-1. Commissioner of Banks and Real Estate; functions,  
18 powers, and duties. The functions, powers, and duties of the  
19 Commissioner of Banks and Real Estate shall include the  
20 following:

21 (a) To issue or refuse to issue any license as provided by  
22 this Act;

23 (b) To revoke or suspend for cause any license issued under  
24 this Act;

25 (c) To keep records of all licenses issued under this Act;

26 (d) To receive, consider, investigate, and act upon  
27 complaints made by any person in connection with any  
28 residential mortgage licensee in this State;

29 (e) To consider and act upon any recommendations from the  
30 Residential Mortgage Board;

31 (f) To prescribe the forms of and receive:

32 (1) applications for licenses; and

33 (2) all reports and all books and records required to

1 be made by any licensee under this Act, including annual  
2 audited financial statements and annual reports of  
3 mortgage activity;

4 (g) To adopt rules and regulations necessary and proper for  
5 the administration of this Act;

6 (h) To subpoena documents and witnesses and compel their  
7 attendance and production, to administer oaths, and to require  
8 the production of any books, papers, or other materials  
9 relevant to any inquiry authorized by this Act;

10 (h-1) To issue orders against any person, if the  
11 Commissioner has reasonable cause to believe that an unsafe,  
12 unsound, or unlawful practice has occurred, is occurring, or is  
13 about to occur, if any person has violated, is violating, or is  
14 about to violate any law, rule, or written agreement with the  
15 Commissioner, or for the purpose of administering the  
16 provisions of this Act and any rule promulgated in accordance  
17 with this Act.

18 (h-2) To address any inquiries to any licensee, or the  
19 officers thereof, in relation to its activities and conditions,  
20 or any other matter connected with its affairs, and it shall be  
21 the duty of any licensee or person so addressed, to promptly  
22 reply in writing to such inquiries. The Commissioner may also  
23 require reports from any licensee at any time the Commissioner  
24 may deem desirable.

25 (i) To require information with regard to any license  
26 applicant as he or she may deem desirable, with due regard to  
27 the paramount interests of the public as to the experience,  
28 background, honesty, truthfulness, integrity, and competency  
29 of the license applicant as to financial transactions involving  
30 primary or subordinate mortgage financing, and where the  
31 license applicant is an entity other than an individual, as to  
32 the honesty, truthfulness, integrity, and competency of any  
33 officer or director of the corporation, association, or other  
34 entity, or the members of a partnership;

1 (j) To examine the books and records of every licensee  
2 under this Act at intervals as specified in Section 4-2;

3 (k) To enforce provisions of this Act;

4 (l) To levy fees, fines, and charges for services performed  
5 in administering this Act; the aggregate of all fees collected  
6 by the Commissioner on and after the effective date of this Act  
7 shall be paid promptly after receipt of the same, accompanied  
8 by a detailed statement thereof, into the Savings and  
9 Residential Finance Regulatory Fund; the amounts deposited  
10 into that Fund shall be used for the ordinary and contingent  
11 expenses of the Office of Banks and Real Estate. Nothing in  
12 this Act shall prevent continuing the practice of paying  
13 expenses involving salaries, retirement, social security, and  
14 State-paid insurance of State officers by appropriation from  
15 the General Revenue Fund.

16 (m) To appoint examiners, supervisors, experts, and  
17 special assistants as needed to effectively and efficiently  
18 administer this Act; ~~and~~

19 (n) To conduct hearings for the purpose of:

20 (1) appeals of orders of the Commissioner;

21 (2) suspensions or revocations of licenses, or fining  
22 of licensees;

23 (3) investigating:

24 (i) complaints against licensees; or

25 (ii) annual gross delinquency rates; and

26 (4) carrying out the purposes of this Act; ~~and~~

27 (o) To exercise exclusive visitorial power over a licensee  
28 and to permit a foreign residential mortgage regulator with an  
29 appropriate supervisory interest in the parent or affiliate of  
30 a licensee to exercise exclusive visitorial power over a  
31 licensee;

32 (p) To enter into cooperative agreements with state  
33 regulatory authorities of other states to provide for  
34 examination of corporate offices or branches of those states

1 and to accept reports of such examinations; and

2 (g) To assign an examiner or examiners to monitor the  
3 affairs of a licensee with whatever frequency the Commissioner  
4 determines appropriate and to charge the licensee for  
5 reasonable and necessary expenses of the Commissioner, if in  
6 the opinion of the Commissioner an emergency exists or appears  
7 likely to occur or if the licensee is engaged in unsafe,  
8 unsound, or unlawful activity or the interest of consumers  
9 appears to be in jeopardy.

10 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

11 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

12 Sec. 4-2. Examination; prohibited activities.

13 (a) The business affairs of a licensee under this Act shall  
14 be examined for compliance with this Act as often as the  
15 Commissioner deems necessary and proper. The Commissioner  
16 shall promulgate rules with respect to the frequency and manner  
17 of examination. The Commissioner shall appoint a suitable  
18 person to perform such examination. The Commissioner and his  
19 appointees may examine the entire books, records, documents,  
20 and operations of each licensee and may examine any of the  
21 licensee's officers, directors, employees and agents under  
22 oath.

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

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

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

4 (e) Upon completion of the examination, the Commissioner  
5 shall issue a report to the licensee. All confidential  
6 supervisory information, including the ~~The examination report,~~  
7 and the work papers of the report, shall belong to the  
8 Commissioner's office and may not be disclosed to anyone other  
9 than the licensee, law enforcement officials or other  
10 regulatory agencies that have an appropriate regulatory  
11 interest as determined by the Commissioner ~~shall be defined in~~  
12 ~~rules promulgated by the Commissioner,~~ or to a party presenting  
13 a lawful subpoena to the Office of the Commissioner. The  
14 Commissioner may immediately appeal to the court of  
15 jurisdiction the disclosure of such confidential supervisory  
16 information and seek a stay of the subpoena pending the outcome  
17 of the appeal. Reports required of licensees by the  
18 Commissioner under this Act and results of examinations  
19 performed by the Commissioner under this Act shall be the  
20 property of only ~~the licensee and the Commissioner,~~ but may be  
21 shared with the licensee. Access under this Act to the books  
22 and records of each licensee shall be limited to the  
23 Commissioner and his agents as provided in this Act and to the  
24 licensee and its authorized agents and designees. No other  
25 person shall have access to the books and records of a licensee  
26 under this Act. Any person upon whom a demand for production of  
27 confidential supervisory information is made, whether by  
28 subpoena, order, or other judicial or administrative process,  
29 must withhold production of the confidential supervisory  
30 information and must notify the Commissioner of the demand, at  
31 which time the Commissioner is authorized to intervene for the  
32 purpose of enforcing the limitations of this Section or seeking  
33 the withdrawal or termination of the attempt to compel  
34 production of the confidential information. The Commissioner

1 may impose any conditions and limitations on the disclosure of  
2 confidential supervisory information that are necessary to  
3 protect the confidentiality of such information. Except as  
4 authorized by the Commissioner, no person obtaining access to  
5 confidential supervisory information may make a copy of the  
6 confidential supervisory information. The Commissioner may  
7 condition a decision to disclose confidential supervisory  
8 information on entry of a protective order by the court or  
9 administrative tribunal presiding in the particular case or on  
10 a written agreement of confidentiality. In a case in which a  
11 protective order or agreement has already been entered between  
12 parties other than the Commissioner, the Commissioner may  
13 nevertheless condition approval for release of confidential  
14 supervisory information upon the inclusion of additional or  
15 amended provisions in the protective order. The Commissioner  
16 may authorize a party who obtained the records for use in one  
17 case to provide them to another party in another case, subject  
18 to any conditions that the Commissioner may impose on either or  
19 both parties. The requestor shall promptly notify other parties  
20 to a case of the release of confidential supervisory  
21 information obtained and, upon entry of a protective order,  
22 shall provide copies of confidential supervisory information  
23 to the other parties.

24 (f) The Commissioner, deputy commissioners, and employees  
25 of the Office of Banks and Real Estate shall be subject to the  
26 restrictions provided in Section 2.5 of the Office of Banks and  
27 Real Estate Act including, without limitation, the  
28 restrictions on (i) owning shares of stock or holding any other  
29 equity interest in an entity regulated under this Act or in any  
30 corporation or company that owns or controls an entity  
31 regulated under this Act; (ii) being an officer, director,  
32 employee, or agent of an entity regulated under this Act; and  
33 (iii) obtaining a loan or accepting a gratuity from an entity  
34 regulated under this Act.

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

8 (Source: P.A. 90-301, eff. 8-1-97; 91-586, eff. 8-14-99.)

9 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

15 (1) Through separate acts or an act or a course of  
16 conduct, the licensee has violated any provisions of this  
17 Act, any rule or regulation promulgated by the Commissioner  
18 or of any other law, rule or regulation of this State or  
19 the United States.

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

24 (3) If a licensee is other than an individual, any  
25 ultimate equitable owner, officer, director, or member of  
26 the licensed partnership, association, corporation, or  
27 other entity has so acted or failed to act as would be  
28 cause for suspending or revoking a license to that party as  
29 an individual.

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



1 (c) The Commissioner, on good cause shown that an emergency  
2 exists, may suspend any license for a period not exceeding 180  
3 days, pending investigation. Upon a showing that a licensee has  
4 failed to meet the experience or educational requirements of  
5 Section 2-2 or the requirements of subsection (g) of Section  
6 3-2, the Commissioner shall suspend, prior to hearing as  
7 provided in Section 4-12, the license until those requirements  
8 have been met.

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

12 (e) No revocation, suspension or surrender of any license  
13 shall impair or affect the obligation of any pre-existing  
14 lawful contract between the licensee and any person.

15 (f) Every license issued under this Act shall remain in  
16 force and effect until the same shall have expired without  
17 renewal, have been surrendered, revoked or suspended in  
18 accordance with the provisions of this Act, but the  
19 Commissioner shall have authority to reinstate a suspended  
20 license or to issue a new license to a licensee whose license  
21 shall have been revoked if no fact or condition then exists  
22 which would have warranted the Commissioner in refusing  
23 originally to issue such license under this Act.

24 (g) Whenever the Commissioner shall revoke or suspend a  
25 license issued pursuant to this Act or fine a licensee under  
26 this Act, he or she shall forthwith execute in duplicate a  
27 written order to that effect. The Commissioner shall publish  
28 notice of such order in the Illinois Register and post notice  
29 of such order on an agency Internet site maintained by the  
30 Commissioner ~~a newspaper of general circulation in the county~~  
31 ~~in which the license is located~~ and shall forthwith serve a  
32 copy of such order upon the licensee. Any such order may be  
33 reviewed in the manner provided by Section 4-12 of this Act.

34 (h) When the Commissioner finds any person in violation of

1 the grounds set forth in subsection (i), he or she may enter an  
2 order imposing one or more of the following penalties:

3 (1) Revocation of license;

4 (2) Suspension of a license subject to reinstatement  
5 upon satisfying all reasonable conditions the Commissioner  
6 may specify;

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

10 (4) Issuance of a reprimand;

11 (5) Imposition of a fine not to exceed \$25,000 for each  
12 count of separate offense; and

13 (6) Denial of a license.

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

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

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

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

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

27 (5) Insolvency or filing under any provision of the  
28 Bankruptcy Code as a debtor;

29 (6) Failure to account or deliver to any person any  
30 property such as any money, fund, deposit, check, draft,  
31 mortgage, or other document or thing of value, which has  
32 come into his or her hands and which is not his or her  
33 property or which he or she is not in law or equity  
34 entitled to retain, under the circumstances and at the time

1 which has been agreed upon or is required by law or, in the  
2 absence of a fixed time, upon demand of the person entitled  
3 to such accounting and delivery;

4 (7) Failure to disburse funds in accordance with  
5 agreements;

6 (8) Any misuse, misapplication, or misappropriation of  
7 trust funds or escrow funds;

8 (9) Having a license, or the equivalent, to practice  
9 any profession or occupation revoked, suspended, or  
10 otherwise acted against, including the denial of licensure  
11 by a licensing authority of this State or another state,  
12 territory or country for fraud, dishonest dealing or any  
13 other act of moral turpitude;

14 (10) Failure to issue a satisfaction of mortgage when  
15 the residential mortgage has been executed and proceeds  
16 were not disbursed to the benefit of the mortgagor and when  
17 the mortgagor has fully paid licensee's costs and  
18 commission;

19 (11) Failure to comply with any order of the  
20 Commissioner or rule made or issued under the provisions of  
21 this Act;

22 (12) Engaging in activities regulated by this Act  
23 without a current, active license unless specifically  
24 exempted by this Act;

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

27 (14) Failure to maintain, preserve, and keep available  
28 for examination, all books, accounts or other documents  
29 required by the provisions of this Act and the rules of the  
30 Commissioner;

31 (15) Refusal to permit an investigation or examination  
32 of the licensee's or its affiliates' books and records or  
33 refusal to comply with the Commissioner's subpoena or  
34 subpoena duces tecum;

1           (16) A pattern of substantially underestimating the  
2           maximum closing costs;

3           (17) Failure to comply with or violation of any  
4           provision of this Act.

5           (j) A licensee shall be subject to the disciplinary actions  
6           specified in this Act for violations of subsection (i) by any  
7           officer, director, shareholder, joint venture, partner,  
8           ultimate equitable owner, or employee of the licensee.

9           (k) Such licensee shall be subject to suspension or  
10          revocation for employee actions only if there is a pattern of  
11          repeated violations by employees or the licensee has knowledge  
12          of the violations.

13          (1) Procedure for surrender of license:

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

23                         (i) The licensee has failed to comply with any  
24                         provision of this Act or any order, decision, finding,  
25                         rule, regulation or direction of the Commissioner  
26                         lawfully made pursuant to the authority of this Act; or

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

31                 (2) Any licensee may surrender a license by delivering  
32                 to the Commissioner written notice that he or she thereby  
33                 surrenders such license, but surrender shall not affect the  
34                 licensee's civil or criminal liability for acts committed

1 prior to surrender or entitle the licensee to a return of  
2 any part of the license fee.

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

4 (205 ILCS 635/4-9.1 new)

5 Sec. 4-9.1. Annual report of mortgage and servicing  
6 activities. On or before March 1 of each year, each licensee,  
7 except residential mortgage loan brokers, shall file a report  
8 with the Commissioner that shall disclose information as the  
9 Commissioner deems required.

10 If the Commissioner finds that another report that the  
11 licensee is required to compile is equivalent to the Annual  
12 Report of Mortgage and Servicing Activities, then the  
13 Commissioner may accept that report as fulfilling the reporting  
14 requirements of this Section. The report required pursuant to  
15 the Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801 et  
16 seq. and Federal Reserve Board Regulation C, 12 C.F.R. Part  
17 203, is an example of a report that the Commissioner may find  
18 fulfills the requirements of this Section, if the Commissioner  
19 finds the report equivalent to the Annual Report of Mortgage  
20 and Servicing Activities.

21 (205 ILCS 635/6-2) (from Ch. 17, par. 2326-2)

22 Sec. 6-2. Removal and prohibition. Upon making any one or  
23 more of the following findings, the Commissioner may issue a  
24 notice of intent to issue an order of removal or prohibition,  
25 or an order of removal and prohibition, which order may remove  
26 a named person, persons, or entity or entities from  
27 participating in the affairs of one or more licensees and may  
28 be permanent or for a specific shorter period of time. The  
29 findings required under this Section may be any one or more of  
30 the following:

31 (1) A finding that the party or entity subject to the  
32 order has been convicted of a crime involving material

1 financial loss to a licensee, a federally insured  
2 depository institution, a government sponsored enterprise,  
3 a Federal Home Loan Bank, a Federal Reserve Bank, or any  
4 other person.

5 (2) A finding that the person or entity subject to the  
6 order has submitted or caused to be submitted any document  
7 that contains multiple willful and material misstatements  
8 of facts, and that includes the signature of the person or  
9 entity specified in the Commissioner's order, or that is  
10 notarized, certified, verified or is in any other way  
11 attested to, as to its veracity. An application for  
12 licensure or license renewal may be considered such a  
13 document.

14 (3) Conviction of a business offense under subsection  
15 (e) of Section 1-3 or subsection (g) of Section 3-2.

16 (4) A finding prepared by a hearing officer pursuant to  
17 a hearing held under Section 4-1(n) of this Act that the  
18 person subject to the order, while an employee of a  
19 licensee, has knowingly submitted or caused to be submitted  
20 any document that contains willful and material  
21 misstatement of facts and which is used in connection with  
22 any licensable activity as defined in Section 1-3(a) of  
23 this Act.

24 (5) Whenever, in the opinion of the Commissioner, any  
25 director, officer, or employee of a licensee has violated  
26 any law, rule, or order relating to that licensee, has  
27 obstructed or impeded any examination or investigation by  
28 the Commissioner, has engaged in an unsafe, unsound, or  
29 unlawful practice in conducting the business of the  
30 licensee, or has violated any law or engaged or  
31 participated in any unsafe, unsound, or unlawful practice  
32 in connection with any licensee or other business entity  
33 such that the character and fitness of the director,  
34 officer, or employee does not assure reasonable promise of

1 safe, sound, and lawful operation of the licensee, the  
2 Commissioner may issue an order of removal. If, in the  
3 opinion of the Commissioner, any former director, officer,  
4 or employee of a licensee, prior to the termination of his  
5 or her service with that licensee, violated any law, rule,  
6 or order relating to that licensee, obstructed or impeded  
7 any examination or investigation by the Commissioner,  
8 engaged in an unsafe or unsound practice in conducting the  
9 business of that licensee or any subsidiary or holding  
10 company of the licensee, or violated any law or engaged or  
11 participated in any unsafe, unsound, or unlawful practice  
12 in connection with any financial institution or other  
13 business entity such that the character and fitness of the  
14 director, officer, or employee would not have assured  
15 reasonable promise of safe, sound, and lawful operation of  
16 the licensee, the Commissioner may issue an order  
17 prohibiting that person from further service with a  
18 licensee as a director, officer, or employee. An order  
19 issued pursuant to this subdivision (5) shall be served  
20 upon the director, officer, or employee. A copy of the  
21 order shall be sent to each owner or director of the  
22 licensee affected by registered mail. The person affected  
23 by the action may make a request to the Commissioner for a  
24 hearing pursuant to subsection (n) of Section 4-1 within 10  
25 days after receipt of the order. The hearing shall be held  
26 before a hearing officer within 30 days after the request  
27 has been received by the Commissioner. The hearing officer  
28 shall prepare a finding and report the finding to the  
29 Commissioner who shall consider the finding in making his  
30 or her determination approving, modifying, or disapproving  
31 his or her order as a final administrative decision. If a  
32 hearing is held before a hearing officer, the Commissioner  
33 shall make his or her determination within 60 days from the  
34 conclusion of the hearing. Any person affected by a

1 decision of the Commissioner under this subdivision (5) may  
2 have the decision reviewed only under and in accordance  
3 with the Administrative Review Law and the rules adopted  
4 pursuant to the Administrative Review Law. A copy of the  
5 order shall also be served upon the licensee of which he or  
6 she is a director, officer, or employee, whereupon he or  
7 she shall cease to be a director, officer, or employee of  
8 that licensee. The Commissioner may institute a civil  
9 action against the director, officer, or employee of the  
10 licensee to enforce compliance with or to enjoin any  
11 violation of the terms of the order. Any person who has  
12 been the subject of an order of removal or an order of  
13 prohibition issued by the Commissioner under this  
14 subdivision (5) may not thereafter serve as director,  
15 officer, or employee of any licensee, or of any other  
16 entity that is subject to licensure or regulation by the  
17 Commissioner or the Office of Banks and Real Estate unless  
18 the Commissioner has granted prior approval in writing.

19 (Source: P.A. 89-355, eff. 8-17-95; 90-772, eff. 1-1-99.)".