

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 Sections 1-3, 1-4, 1-5, 2-2, 2-6, 3-2, 3-4,
6 4-1, 4-2, 4-5, and 6-2 and by adding Section 4-8.3 as follows:

7 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

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

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

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

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

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

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

16 (e) Any person, partnership, association, corporation or
17 other entity who violates any provision of this Section commits
18 a business offense and shall be fined an amount not to exceed
19 \$25,000 ~~\$5,000~~.

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

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

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

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

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

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

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

10 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

11 Sec. 1-4. Definitions.

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

19 (b) "Making a residential mortgage loan" or "funding a
20 residential mortgage loan" shall mean for compensation or gain,
21 either directly or indirectly, advancing funds or making a
22 commitment to advance funds to a loan applicant for a
23 residential mortgage loan.

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

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

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

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

34 (2) Any person or entity that does not originate
35 mortgage loans in the ordinary course of business making or
36 acquiring residential mortgage loans with his or her or its

1 own funds for his or her or its own investment without
2 intent to make, acquire, or resell more than 10 residential
3 mortgage loans in any one calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 lender advances.

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

6 (o) "Loan brokering", "brokering", or "brokerage service"
7 shall mean the act of helping to obtain from another entity,
8 for a borrower, a loan secured by residential real estate
9 situated in Illinois or assisting a borrower in obtaining a
10 loan secured by residential real estate situated in Illinois in
11 return for consideration to be paid by either the borrower or
12 the lender including, but not limited to, contracting for the
13 delivery of residential mortgage loans to a third party lender
14 and soliciting, processing, placing, or negotiating
15 residential mortgage loans.

16 (p) "Loan broker" or "broker" shall mean a person,
17 partnership, association, corporation, or limited liability
18 company, other than those persons, partnerships, associations,
19 corporations, or limited liability companies exempted from
20 licensing pursuant to Section 1-4, subsection (d), of this Act,
21 who performs the activities described in subsections (c) and
22 (o) of this Section.

23 (q) "Servicing" shall mean the collection or remittance for
24 or the right or obligation to collect or remit for any lender,
25 noteowner, noteholder, or for a licensee's own account, of
26 payments, interests, principal, and trust items such as hazard
27 insurance and taxes on a residential mortgage loan in
28 accordance with the terms of the residential mortgage loan; and
29 includes loan payment follow-up, delinquency loan follow-up,
30 loan analysis and any notifications to the borrower that are
31 necessary to enable the borrower to keep the loan current and
32 in good standing.

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

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

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

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

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

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

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

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

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

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

36 (y) "Government-insured mortgage loan" shall mean any

1 mortgage loan made on the security of residential real estate
2 insured by the Department of Housing and Urban Development or
3 Farmers Home Loan Administration, or guaranteed by the Veterans
4 Administration.

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

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

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

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

22 (dd) "Affiliate" shall mean:

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

27 (2) any entity:

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

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

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

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

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

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

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

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

35 (ii) "Confidential supervisory information" means any
36 report of examination, visitation, or investigation prepared

1 by the Commissioner under this Act, any report of examination
2 visitation, or investigation prepared by the state regulatory
3 authority of another state that examines a licensee, any
4 document or record prepared or obtained in connection with or
5 relating to any examination, visitation, or investigation, and
6 any record prepared or obtained by the Commissioner to the
7 extent that the record summarizes or contains information
8 derived from any report, document, or record described in this
9 subsection. "Confidential supervisory information" does not
10 include any information or record routinely prepared by a
11 licensee and maintained in the ordinary course of business or
12 any information or record that is required to be made publicly
13 available pursuant to State or federal law or rule.

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

15 (205 ILCS 635/1-5) (from Ch. 17, par. 2321-5)

16 Sec. 1-5. Residential Mortgage Board.

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

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

35 The Board shall meet at the call of the chairman, who along

1 with a Secretary, shall be selected by the Board from among its
2 members.

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

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

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

12 (2) performing other duties as are prescribed by the
13 Commissioner.

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

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

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

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

25 (a) The Commissioner shall issue a license upon completion
26 of all of the following:

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

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

31 (3) The payment, in certified funds, of investigation
32 and application fees, the total of which shall be in an
33 amount equal to \$2,700 annually, however, the Commissioner
34 may increase the investigation and application fees by rule
35 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
35 members that retain any authority or responsibility under
36 the operating agreement if the license applicant is a

1 limited liability company are such as to command the
2 confidence of the community and to warrant belief that the
3 business will be operated honestly, fairly and efficiently
4 within the purpose of this Act. If the Commissioner shall
5 not so find, he or she shall not issue such license, and he
6 or she shall notify the license applicant of the denial.

7 The Commissioner may impose conditions on a license if the
8 Commissioner determines that the conditions are necessary or
9 appropriate. These conditions shall be imposed in writing and
10 shall continue in effect for the period prescribed by the
11 Commissioner.

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

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

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

21 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

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

28 (b) It shall be the responsibility of each licensee to
29 accomplish renewal of its license; failure of the licensee to
30 receive renewal forms absent a request sent by certified mail
31 for such forms will not waive said responsibility. Failure by a
32 licensee to submit a properly completed renewal application
33 form and fees in a timely fashion, absent a written extension
34 from the Commissioner, will result in the assessment of
35 additional fees, as follows:

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

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

11 (c) A license which is not renewed by the date required in
12 this Section shall automatically become inactive. No activity
13 regulated by this Act shall be conducted by the licensee when a
14 license becomes inactive. The Commissioner may require the
15 licensee to provide a plan for the disposition of any
16 residential mortgage loans not closed or funded when the
17 license becomes inactive. The Commissioner may allow a licensee
18 with an inactive license to conduct activities regulated by
19 this Act for the sole purpose of assisting borrowers in the
20 closing or funding of loans for which the loan application was
21 taken from a borrower while the license was active. An inactive
22 license may be reactivated by ~~filing a completed reactivation~~
23 ~~application with~~ the Commissioner upon ~~7~~ payment of the renewal
24 fee, and payment of a reactivation fee equal to the renewal
25 fee.

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

28 (e) A licensee ceasing an activity or activities regulated
29 by this Act and desiring to no longer be licensed shall so
30 inform the Commissioner in writing and, at the same time,
31 convey the license and all other symbols or indicia of
32 licensure. The licensee shall include a plan for the withdrawal
33 from regulated business, including a timetable for the
34 disposition of the business. Upon receipt of such written
35 notice, the Commissioner shall issue a certified statement
36 canceling the license.

1 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; revised
2 9-23-03.)

3 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

4 Sec. 3-2. Annual audit.

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

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

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

32 (d) The most recent audit report shall be filed with the
33 Commissioner within 90 days after the end of the licensee's
34 fiscal year. The report filed with the Commissioner shall be
35 certified by the certified public accountant conducting the

1 audit. The Commissioner may promulgate rules regarding late
2 audit reports.

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

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

15 (g) With respect to licensees who solely broker residential
16 mortgage loans as defined in subsection (o) of Section 1-4,
17 instead of the audit required by this Section, the Commissioner
18 may accept compilation financial statements prepared at least
19 every 12 months, and the compilation financial statement must
20 be prepared by an independent certified public accountant
21 licensed under the Illinois Public Accounting Act or by an
22 equivalent state licensing law with full disclosure in
23 accordance with generally accepted accounting principals and
24 must be submitted within 90 days after the end of the
25 licensee's fiscal year. If a licensee under this Section fails
26 to file a compilation as required, the Commissioner shall cause
27 an audit of the licensee's books and accounts to be made by a
28 certified public accountant at the licensee's expense. The
29 Commissioner shall select the certified public accountant by
30 advertising for bids or by such other fair and impartial means
31 as he or she establishes by rule. A licensee who files false or
32 misleading compilation financial statements is guilty of a
33 business offense and shall be fined not less than \$5,000.

34 (h) The workpapers of the certified public accountants
35 employed by each licensee for purposes of this Section are to
36 be made available to the Commissioner or the Commissioner's

1 designee upon request and may be reproduced by the Commissioner
2 or the Commissioner's designee to enable to the Commissioner to
3 carry out the purposes of this Act.

4 (i) Notwithstanding any other provision of this Section, if
5 a licensee relying on subsection (g) of this Section causes its
6 books to be audited at any other time or causes its financial
7 statements to be reviewed, a complete copy of the audited or
8 reviewed financial statements shall be delivered to the
9 Commissioner at the time of the annual license renewal payment
10 following receipt by the licensee of the audited or reviewed
11 financial statements. All workpapers shall be made available to
12 the Commissioner upon request. The financial statements and
13 workpapers may be reproduced by the Commissioner or the
14 Commissioner's designee to carry out the purposes of this Act.
15 (Source: P.A. 93-561, eff. 1-1-04.)

16 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)
17 Sec. 3-4. Office and staff within the State.

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

30 (b) In lieu of maintaining a full service office in the
31 State of Illinois, a licensee whose principal place of business
32 is located outside the State of Illinois must submit a
33 certified audit as required in Section 3-2 of this Act
34 evidencing a minimum net worth of \$100,000, which must be
35 maintained at all times, and shall submit and maintain a

1 fidelity bond in the amount of \$100,000.

2 (Source: P.A. 89-355, eff. 8-17-95; 90-301, eff. 8-1-97;
3 90-772, eff. 1-1-99.)

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

5 Sec. 4-1. Commissioner of Banks and Real Estate; functions,
6 powers, and duties. The functions, powers, and duties of the
7 Commissioner of Banks and Real Estate shall include the
8 following:

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

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

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

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

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

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

20 (1) applications for licenses; and

21 (2) all reports and all books and records required to
22 be made by any licensee under this Act, including annual
23 audited financial statements and annual reports of
24 mortgage activity;

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

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

31 (h-1) To issue orders against any person, if the
32 Commissioner has reasonable cause to believe that an unsafe,
33 unsound, or unlawful practice has occurred, is occurring, or is
34 about to occur, if any person has violated, is violating, or is
35 about to violate any law, rule, or written agreement with the

1 Commissioner, or for the purpose of administering the
2 provisions of this Act and any rule adopted in accordance with
3 the Act;

4 (h-2) To address any inquiries to any licensee, or the
5 officers thereof, in relation to its activities and conditions,
6 or any other matter connected with its affairs, and it shall be
7 the duty of any licensee or person so addressed, to promptly
8 reply in writing to such inquiries. The Commissioner may also
9 require reports from any licensee at any time the Commissioner
10 may deem desirable;

11 (i) To require information with regard to any license
12 applicant as he or she may deem desirable, with due regard to
13 the paramount interests of the public as to the experience,
14 background, honesty, truthfulness, integrity, and competency
15 of the license applicant as to financial transactions involving
16 primary or subordinate mortgage financing, and where the
17 license applicant is an entity other than an individual, as to
18 the honesty, truthfulness, integrity, and competency of any
19 officer or director of the corporation, association, or other
20 entity, or the members of a partnership;

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

23 (k) To enforce provisions of this Act;

24 (l) To levy fees, fines, and charges for services performed
25 in administering this Act; the aggregate of all fees collected
26 by the Commissioner on and after the effective date of this Act
27 shall be paid promptly after receipt of the same, accompanied
28 by a detailed statement thereof, into the Savings and
29 Residential Finance Regulatory Fund; the amounts deposited
30 into that Fund shall be used for the ordinary and contingent
31 expenses of the Office of Banks and Real Estate. Nothing in
32 this Act shall prevent continuing the practice of paying
33 expenses involving salaries, retirement, social security, and
34 State-paid insurance of State officers by appropriation from
35 the General Revenue Fund.

36 (m) To appoint examiners, supervisors, experts, and

1 special assistants as needed to effectively and efficiently
2 administer this Act; ~~and~~

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

4 (1) appeals of orders of the Commissioner;

5 (2) suspensions or revocations of licenses, or fining
6 of licensees;

7 (3) investigating:

8 (i) complaints against licensees; or

9 (ii) annual gross delinquency rates; and

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

11 (o) To exercise exclusive visitorial power over a licensee
12 unless otherwise authorized by this Act or as vested in the
13 courts, or upon prior consultation with the Commissioner, a
14 foreign residential mortgage regulator with an appropriate
15 supervisory interest in the parent or affiliate of a licensee;

16 (p) To enter into cooperative agreements with state
17 regulatory authorities of other states to provide for
18 examination of corporate offices or branches of those states
19 and to accept reports of such examinations;

20 (q) To assign an examiner or examiners to monitor the
21 affairs of a licensee with whatever frequency the Commissioner
22 determines appropriate and to charge the licensee for
23 reasonable and necessary expenses of the Commissioner, if in
24 the opinion of the Commissioner an emergency exists or appears
25 likely to occur; and

26 (r) To impose civil penalties of up to \$50 per day against
27 a licensee for failing to respond to a regulatory request or
28 reporting requirement.

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

30 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

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

32 (a) The business affairs of a licensee under this Act shall
33 be examined for compliance with this Act as often as the
34 Commissioner deems necessary and proper. The Commissioner
35 shall promulgate rules with respect to the frequency and manner

1 of examination. The Commissioner shall appoint a suitable
2 person to perform such examination. The Commissioner and his
3 appointees may examine the entire books, records, documents,
4 and operations of each licensee and may examine any of the
5 licensee's officers, directors, employees and agents under
6 oath.

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

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

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

21 (e) Upon completion of the examination, the Commissioner
22 shall issue a report to the licensee. All confidential
23 supervisory information, including the ~~The examination report,~~
24 and the work papers of the report, shall belong to the
25 Commissioner's office and may not be disclosed to anyone other
26 than the licensee, law enforcement officials or other
27 regulatory agencies that have an appropriate regulatory
28 interest as determined by the Commissioner ~~shall be defined in~~
29 ~~rules promulgated by the Commissioner,~~ or to a party presenting
30 a lawful subpoena to the Office of the Commissioner. The
31 Commissioner may immediately appeal to the court of
32 jurisdiction the disclosure of such confidential supervisory
33 information and seek a stay of the subpoena pending the outcome
34 of the appeal. Reports required of licensees by the
35 Commissioner under this Act and results of examinations
36 performed by the Commissioner under this Act shall be the

1 property of only ~~the licensee and~~ the Commissioner, but may be
2 shared with the licensee. Access under this Act to the books
3 and records of each licensee shall be limited to the
4 Commissioner and his agents as provided in this Act and to the
5 licensee and its authorized agents and designees. No other
6 person shall have access to the books and records of a licensee
7 under this Act. Any person upon whom a demand for production of
8 confidential supervisory information is made, whether by
9 subpoena, order, or other judicial or administrative process,
10 must withhold production of the confidential supervisory
11 information and must notify the Commissioner of the demand, at
12 which time the Commissioner is authorized to intervene for the
13 purpose of enforcing the limitations of this Section or seeking
14 the withdrawal or termination of the attempt to compel
15 production of the confidential supervisory information. The
16 Commissioner may impose any conditions and limitations on the
17 disclosure of confidential supervisory information that are
18 necessary to protect the confidentiality of such information.
19 Except as authorized by the Commissioner, no person obtaining
20 access to confidential supervisory information may make a copy
21 of the confidential supervisory information. The Commissioner
22 may condition a decision to disclose confidential supervisory
23 information on entry of a protective order by the court or
24 administrative tribunal presiding in the particular case or on
25 a written agreement of confidentiality. In a case in which a
26 protective order or agreement has already been entered between
27 parties other than the Commissioner, the Commissioner may
28 nevertheless condition approval for release of confidential
29 supervisory information upon the inclusion of additional or
30 amended provisions in the protective order. The Commissioner
31 may authorize a party who obtained the records for use in one
32 case to provide them to another party in another case, subject
33 to any conditions that the Commissioner may impose on either or
34 both parties. The requestor shall promptly notify other parties
35 to a case of the release of confidential supervisory
36 information obtained and, upon entry of a protective order,

1 shall provide copies of confidential supervisory information
2 to the other parties.

3 (f) The Commissioner, deputy commissioners, and employees
4 of the Office of Banks and Real Estate shall be subject to the
5 restrictions provided in Section 2.5 of the Office of Banks and
6 Real Estate Act including, without limitation, the
7 restrictions on (i) owning shares of stock or holding any other
8 equity interest in an entity regulated under this Act or in any
9 corporation or company that owns or controls an entity
10 regulated under this Act; (ii) being an officer, director,
11 employee, or agent of an entity regulated under this Act; and
12 (iii) obtaining a loan or accepting a gratuity from an entity
13 regulated under this Act.

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

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

22 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

28 (1) Through separate acts or an act or a course of
29 conduct, the licensee has violated any provisions of this
30 Act, any rule or regulation promulgated by the Commissioner
31 or of any other law, rule or regulation of this State or
32 the United States.

33 (2) Any fact or condition exists which, if it had
34 existed at the time of the original application for such
35 license would have warranted the Commissioner in refusing

1 originally to issue such license.

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

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

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

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

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

26 (f) Every license issued under this Act shall remain in
27 force and effect until the same shall have expired without
28 renewal, have been surrendered, revoked or suspended in
29 accordance with the provisions of this Act, but the
30 Commissioner shall have authority to reinstate a suspended
31 license or to issue a new license to a licensee whose license
32 shall have been revoked if no fact or condition then exists
33 which would have warranted the Commissioner in refusing
34 originally to issue such license under this Act.

35 (g) Whenever the Commissioner shall revoke or suspend a
36 license issued pursuant to this Act or fine a licensee under

1 this Act, he or she shall forthwith execute in duplicate a
2 written order to that effect. The Commissioner shall publish
3 notice of such order in the Illinois Register and post notice
4 of the order on an agency Internet site maintained by the
5 Commissioner ~~a newspaper of general circulation in the county~~
6 ~~in which the license is located~~ and shall forthwith serve a
7 copy of such order upon the licensee. Any such order may be
8 reviewed in the manner provided by Section 4-12 of this Act.

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

12 (1) Revocation of license;

13 (2) Suspension of a license subject to reinstatement
14 upon satisfying all reasonable conditions the Commissioner
15 may specify;

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

19 (4) Issuance of a reprimand;

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

22 (6) Denial of a license.

23 (i) The following acts shall constitute grounds for which
24 the disciplinary actions specified in subsection (h) above may
25 be taken:

26 (1) Being convicted or found guilty, regardless of
27 pendency of an appeal, of a crime in any jurisdiction which
28 involves fraud, dishonest dealing, or any other act of
29 moral turpitude;

30 (2) Fraud, misrepresentation, deceit or negligence in
31 any mortgage financing transaction;

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

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

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

1 Bankruptcy Code as a debtor;

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

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

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

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

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

26 (11) Failure to comply with any order of the
27 Commissioner or rule made or issued under the provisions of
28 this Act;

29 (12) Engaging in activities regulated by this Act
30 without a current, active license unless specifically
31 exempted by this Act;

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

34 (14) Failure to maintain, preserve, and keep available
35 for examination, all books, accounts or other documents
36 required by the provisions of this Act and the rules of the

1 Commissioner;

2 (15) Refusal to permit an investigation or examination
3 of the licensee's or its affiliates' books and records or
4 refusal to comply with the Commissioner's subpoena or
5 subpoena duces tecum;

6 (16) A pattern of substantially underestimating the
7 maximum closing costs;

8 (17) Failure to comply with or violation of any
9 provision of this Act.

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

14 (k) Such licensee shall be subject to suspension or
15 revocation for employee actions only if there is a pattern of
16 repeated violations by employees or the licensee has knowledge
17 of the violations.

18 (l) Procedure for surrender of license:

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

28 (i) The licensee has failed to comply with any
29 provision of this Act or any order, decision, finding,
30 rule, regulation or direction of the Commissioner
31 lawfully made pursuant to the authority of this Act; or

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

36 (2) Any licensee may surrender a license by delivering

1 to the Commissioner written notice that he or she thereby
2 surrenders such license, but surrender shall not affect the
3 licensee's civil or criminal liability for acts committed
4 prior to surrender or entitle the licensee to a return of
5 any part of the license fee.

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

7 (205 ILCS 635/4-8.3 new)

8 Sec. 4-8.3. Annual report of mortgage and servicing
9 activity. On or before March 1 of each year, each licensee,
10 except residential mortgage brokers, shall file a report with
11 the Commissioner that shall disclose such information as the
12 Commissioner requires. Exempt entities as defined in
13 subsection (d) of Section 1-4 shall not file the annual report
14 of mortgage and servicing activity required by this Section.

15 (205 ILCS 635/6-2) (from Ch. 17, par. 2326-2)

16 Sec. 6-2. Removal and prohibition.

17 (a) Upon making any one or more of the following findings,
18 the Commissioner may issue a notice of intent to issue an order
19 of removal or prohibition, or an order of removal and
20 prohibition, which order may remove a named person, persons, or
21 entity or entities from participating in the affairs of one or
22 more licensees and may be permanent or for a specific shorter
23 period of time. The findings required under this Section may be
24 any one or more of the following:

25 (1) A finding that the party or entity subject to the
26 order has been convicted of a crime involving material
27 financial loss to a licensee, a federally insured
28 depository institution, a government sponsored enterprise,
29 a Federal Home Loan Bank, a Federal Reserve Bank, or any
30 other person.

31 (2) A finding that the person or entity subject to the
32 order has submitted or caused to be submitted any document
33 that contains multiple willful and material misstatements
34 of facts, and that includes the signature of the person or

1 entity specified in the Commissioner's order, or that is
2 notarized, certified, verified or is in any other way
3 attested to, as to its veracity. An application for
4 licensure or license renewal may be considered such a
5 document.

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

8 (4) A finding prepared by a hearing officer pursuant to
9 a hearing held under Section 4-1(n) of this Act that the
10 person subject to the order, while an employee of a
11 licensee, has knowingly submitted or caused to be submitted
12 any document that contains willful and material
13 misstatement of facts and which is used in connection with
14 any licensable activity as defined in Section 1-3(a) of
15 this Act.

16 (b) Whenever, in the opinion of the Commissioner, any
17 director, officer, or employee of a licensee shall have
18 violated any law, rule, or order relating to that licensee or
19 shall have obstructed or impeded any examination or
20 investigation by the Commissioner, shall have engaged in an
21 unsafe, unsound, or unlawful practice in conducting the
22 business of the licensee, or shall have violated any law or
23 engaged or participated in any unsafe, unsound or unlawful
24 practice in connection with any licensee or other business
25 entity such that the character and fitness of the director,
26 officer, or employee does not assure reasonable promise of
27 safe, sound, and lawful operation of the licensee, the
28 Commissioner may issue an order of removal. If, in the opinion
29 of the Commissioner, any former director, officer, or employee
30 of a licensee, prior to the termination of his or her service
31 with that licensee, violated any law, rule, or order relating
32 to that licensee, obstructed or impeded any examination or
33 investigation by the Commissioner, engaged in an unsafe or
34 unsound practice in conducting the business of that licensee or
35 any subsidiary or holding company of the licensee, or violated
36 any law or engaged or participated in any unsafe, unsound, or

1 unlawful practice in connection with any financial institution
2 or other business entity such that the character and fitness of
3 the director, officer, or employee would not have assured
4 reasonable promise of safe, sound, and lawful operation of the
5 licensee, the Commissioner may issue an order prohibiting that
6 person from further service with a licensee as a director,
7 officer, or employee. An order issued pursuant to this
8 subsection shall be served upon the director, officer, or
9 employee. A copy of the order shall be sent to each owner or
10 director of the licensee affected by registered mail. The
11 person affected by the action may make a request to the
12 Commissioner for a hearing pursuant to Section 4-1(n) within 10
13 days after receipt of the order. The hearing shall be held
14 before a hearing officer within 30 days after the request has
15 been received by the Commissioner. The hearing officer shall
16 prepare a finding and report the same to the Commissioner who
17 shall consider the finding in making his determination
18 approving, modifying, or disapproving his order as a final
19 administrative decision. If a hearing is held before a hearing
20 officer, the Commissioner shall make his determination within
21 60 days from the conclusion of the hearing. Any person affected
22 by a decision of the Commissioner under this subsection (b) may
23 have the decision reviewed only under and in accordance with
24 the Administrative Review Law and the rules adopted pursuant
25 thereto. A copy of the order shall also be served upon the
26 licensee of which he is a director, officer, or employee,
27 whereupon he shall cease to be a director, officer, or employee
28 of that licensee. The Commissioner may institute a civil action
29 against the director, officer, or employee of the licensee to
30 enforce compliance with or to enjoin any violation of the terms
31 of the order. Any person who has been the subject of an order
32 of removal or an order of prohibition issued by the
33 Commissioner under this subsection may not thereafter serve as
34 director, officer, or employee of any licensee, or of any other
35 entity that is subject to licensure or regulation by the
36 Commissioner unless the Commissioner has granted prior

1 approval in writing.

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