

1 AN ACT concerning regulation.

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

4 Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by changing Sections 1-2, 1-4, 2-2, 2-3, 2-4, 2-6, 3-1,  
6 3-2, 3-4, 4-1, 4-2, 4-5, 4-8.3, and the heading of Article VII  
7 and by adding Sections 4-7, 4-8.1A, 4-9.1, 7-1A, 7-2, 7-3, 7-4,  
8 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-11, 7-12, 7-13, and 7-14 as  
9 follows:

10 (205 ILCS 635/1-2) (from Ch. 17, par. 2321-2)

11 Sec. 1-2. Purpose of Act and Policy Statement.

12 (a) The origination, funding, purchasing and brokering of  
13 residential mortgage loans and the type of entities involved in  
14 residential mortgage lending have undergone significant  
15 changes in recent years, due in part to developments in the  
16 general economy, specifically interest rate volatility, the  
17 sophistication of the national secondary market for mortgage  
18 loans and the market for mortgage backed securities. The recent  
19 trend toward deregulation in the financial services industry  
20 has accelerated the evolution of residential mortgage lending,  
21 dramatically increasing the types of mortgage loans offered and  
22 the manner in which they are advertised and marketed to  
23 consumers. Depository institutions, traditionally the major

1 source of residential mortgage financing for individuals, now  
2 compete for capital and customers with mortgage bankers and  
3 other financial service organizations. Residential mortgage  
4 lenders of every type have increasingly relied on nonfinancial  
5 intermediaries, such as mortgage brokers, to find customers.  
6 These developments have raised questions as to whether all  
7 entities engaging in this banking function operate under  
8 appropriate regulatory scrutiny and as to whether all  
9 residential mortgage lenders are conducting their business in  
10 the best interests of Illinois homeowners and potential  
11 homeowners.

12 (b) The activities of lenders and their offering of  
13 financing for residential real property have a direct and  
14 immediate impact upon the housing industry, the neighborhoods  
15 and communities of this State, its homeowners and potential  
16 homeowners. The General Assembly finds that it is essential for  
17 the protection of the citizens of this State and the stability  
18 of the State's economy that reasonable standards governing the  
19 business practices of residential mortgage lenders and their  
20 agents be imposed. The General Assembly further finds that the  
21 obligations of lenders and their agents to consumers in  
22 connection with making, soliciting, processing, placing or  
23 negotiating of residential mortgage loans are such as to  
24 warrant the uniform regulation of the residential mortgage  
25 lending process, including the application, solicitation,  
26 making and servicing of residential mortgage loans. The purpose

1 of this Act is to protect Illinois consumers seeking  
2 residential mortgage loans and to ensure that the residential  
3 mortgage lending industry is operating fairly, honestly and  
4 efficiently, free from deceptive and anti-competitive  
5 practices. The purpose of this Act is to regulate residential  
6 mortgage lending to benefit our citizens by ensuring  
7 availability of residential mortgage funding, to benefit  
8 responsible providers of residential mortgage loans and  
9 services, and to avoid requirements inconsistent with  
10 legitimate and responsible business practices in the  
11 residential mortgage lending industry.

12 (c) The General Assembly finds that the provisions of this  
13 amendatory Act of the 96th General Assembly that set forth the  
14 authority and framework for State participation in a Nationwide  
15 Mortgage Licensing System and Registry are consistent with the  
16 purposes of this Section and for the purpose of complying with  
17 the federal Secure and Fair Enforcement for Mortgage Licensing  
18 Act of 2008.

19 (Source: P.A. 85-735.)

20 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

21 Sec. 1-4. Definitions.

22 (a) "Residential real property" or "residential real  
23 estate" shall mean any real property located in Illinois, upon  
24 which is constructed or intended to be constructed a dwelling  
25 ~~real property located in this State improved by a one to four~~

1 ~~family dwelling used or occupied, wholly or partly, as the home~~  
2 ~~or residence of one or more persons and may refer, subject to~~  
3 ~~regulations of the Commissioner, to unimproved real property~~  
4 ~~upon which these kinds dwellings are to be constructed.~~

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

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

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

23 (1) (i) Any banking organization or foreign banking  
24 corporation licensed by the Illinois Commissioner of Banks  
25 and Real Estate or the United States Comptroller of the  
26 Currency to transact business in this State; (ii) any

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

1           (1.5) Any employee of a person or entity, or any  
2           registered mortgage loan originator when acting for an  
3           entity, mentioned in item (1) of this subsection.

4           (2) Any person or entity that does not originate  
5           mortgage loans in the ordinary course of business making or  
6           acquiring residential mortgage loans with his or her or its  
7           own funds for his or her or its own investment without  
8           intent to make, acquire, or resell more than 2 ~~10~~  
9           residential mortgage loans in any one calendar year.

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

13          (4) (Blank). ~~Any person licensed pursuant to the Real~~  
14          ~~Estate License Act of 2000, who engages only in the taking~~  
15          ~~of applications and credit and appraisal information to~~  
16          ~~forward to a licensee or an exempt entity under this Act~~  
17          ~~and who is compensated by either a licensee or an exempt~~  
18          ~~entity under this Act, but is not compensated by either the~~  
19          ~~buyer (applicant) or the seller.~~

20          (5) Any individual, corporation, partnership, or other  
21          entity that originates, services, or brokers residential  
22          mortgage loans, as these activities are defined in this  
23          Act, and who or which receives no compensation for those  
24          activities, subject to the Commissioner's regulations with  
25          regard to the nature and amount of compensation.

26          (6) (Blank). ~~A person who prepares supporting~~

1 ~~documentation for a residential mortgage loan application~~  
2 ~~taken by a licensee and performs ministerial functions~~  
3 ~~pursuant to specific instructions of the licensee who~~  
4 ~~neither requires nor permits the preparer to exercise his~~  
5 ~~or her discretion or judgment; provided that this activity~~  
6 ~~is engaged in pursuant to a binding, written agreement~~  
7 ~~between the licensee and the preparer that:~~

8 ~~(A) holds the licensee fully accountable for the~~  
9 ~~preparer's action; and~~

10 ~~(B) otherwise meets the requirements of this~~  
11 ~~Section and this Act, does not undermine the purposes~~  
12 ~~of this Act, and is approved by the Commissioner.~~

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

17 (f) "Mortgage loan" "residential mortgage loan" or "home  
18 mortgage loan" shall mean any loan primarily for personal,  
19 family, or household use that is secured by a mortgage, deed of  
20 trust, or other equivalent consensual security interest on a  
21 dwelling as defined in Section 103(v) of the federal Truth in  
22 Lending Act, or residential real estate upon which is  
23 constructed or intended to be constructed a dwelling ~~a loan to~~  
24 ~~or for the benefit of any natural person made primarily for~~  
25 ~~personal, family, or household use, primarily secured by either~~  
26 ~~a mortgage on residential real property or certificates of~~

1 ~~stock or other evidence of ownership interests in and~~  
2 ~~proprietary leases from, corporations, partnerships, or~~  
3 ~~limited liability companies formed for the purpose of~~  
4 ~~cooperative ownership of residential real property, all~~  
5 ~~located in Illinois.~~

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

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

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

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

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



1           (1) "Party to a residential mortgage financing  
2 transaction" shall mean a borrower, lender, or loan broker in a  
3 residential mortgage financing transaction.

4           (m) "Payments" shall mean payment of all or any of the  
5 following: principal, interest and escrow reserves for taxes,  
6 insurance and other related reserves, and reimbursement for  
7 lender advances.

8           (n) "Commissioner" shall mean the Commissioner of Banks and  
9 Real Estate, except that all references in this Act to the  
10 Commissioner of Banks and Real Estate are deemed, in  
11 appropriate contexts, to be references to the Secretary of  
12 Financial and Professional Regulation, or his or her designee,  
13 including the Director of the Division of Banking of the  
14 Department of Financial and Professional Regulation ~~or a person~~  
15 ~~authorized by the Commissioner, the Office of Banks and Real~~  
16 ~~Estate Act, or this Act to act in the Commissioner's stead.~~

17           (n-1) "Director" shall mean the Director of the Division of  
18 Banking of the Department of Financial and Professional  
19 Regulation, except that beginning on the effective date of this  
20 amendatory Act of the 96th General Assembly, all references in  
21 this Act to the Director are deemed, in appropriate contexts,  
22 to be the Secretary of Financial and Professional Regulation,  
23 or his or her designee, including the Director of the Division  
24 of Banking of the Department of Financial and Professional  
25 Regulation.

26           (o) "Loan brokering", "brokering", or "brokerage service"

1 shall mean the act of helping to obtain from another entity,  
2 for a borrower, a loan secured by residential real estate  
3 situated in Illinois or assisting a borrower in obtaining a  
4 loan secured by residential real estate situated in Illinois in  
5 return for consideration to be paid by either the borrower or  
6 the lender including, but not limited to, contracting for the  
7 delivery of residential mortgage loans to a third party lender  
8 and soliciting, processing, placing, or negotiating  
9 residential mortgage loans.

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

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

1           (r) "Full service office" shall mean an office, provided by  
2 the licensee and not subleased from the licensee's employees,  
3 and staff in Illinois reasonably adequate to handle efficiently  
4 communications, questions, and other matters relating to any  
5 application for, or an existing home mortgage secured by  
6 residential real estate situated in Illinois with respect to  
7 which the licensee is brokering, funding originating,  
8 purchasing, or servicing. The management and operation of each  
9 full service office must include observance of good business  
10 practices such as adequate, organized, and accurate books and  
11 records; ample phone lines, hours of business, staff training  
12 and supervision, and provision for a mechanism to resolve  
13 consumer inquiries, complaints, and problems. The Commissioner  
14 shall issue regulations with regard to these requirements and  
15 shall include an evaluation of compliance with this Section in  
16 his or her periodic examination of each licensee.

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

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

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

25           (v) "Loan brokerage agreement" shall mean a written  
26 agreement in which a broker or loan broker agrees to do either

1 of the following:

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

5 (2) consider making a residential mortgage loan to the  
6 borrower.

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

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

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

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

25 (aa) "Financial institution" shall mean a savings and loan  
26 association, savings bank, credit union, or a bank organized

1 under the laws of Illinois or a savings and loan association,  
2 savings bank, credit union or a bank organized under the laws  
3 of the United States and headquartered in Illinois.

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

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

11 (dd) "Affiliate" shall mean:

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

16 (2) any entity:

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

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

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

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

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

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

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

23 (gg) "Delinquency rate factor" means the factor set by rule  
24 of the Commissioner that is multiplied by the average gross  
25 delinquency rate of licensees, determined annually for the  
26 immediately preceding calendar year, for the purpose of

1 determining which licensees shall be examined by the  
2 Commissioner pursuant to subsection (b) of Section 4-8 of this  
3 Act.

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

9 (ii) "Confidential supervisory information" means any  
10 report of examination, visitation, or investigation prepared  
11 by the Commissioner under this Act, any report of examination  
12 visitation, or investigation prepared by the state regulatory  
13 authority of another state that examines a licensee, any  
14 document or record prepared or obtained in connection with or  
15 relating to any examination, visitation, or investigation, and  
16 any record prepared or obtained by the Commissioner to the  
17 extent that the record summarizes or contains information  
18 derived from any report, document, or record described in this  
19 subsection. "Confidential supervisory information" does not  
20 include any information or record routinely prepared by a  
21 licensee and maintained in the ordinary course of business or  
22 any information or record that is required to be made publicly  
23 available pursuant to State or federal law or rule.

24 (jj) "Mortgage loan originator" means an individual who for  
25 compensation or gain or in the expectation of compensation or  
26 gain:

1           (i) takes a residential mortgage loan application; or  
2           (ii) offers or negotiates terms of a residential  
3           mortgage loan.

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

8           "Mortgage loan originator" does not include a person or  
9           entity that only performs real estate brokerage activities and  
10          is licensed in accordance with the Real Estate License Act of  
11          2000, unless the person or entity is compensated by a lender, a  
12          mortgage broker, or other mortgage loan originator, or by any  
13          agent of that lender, mortgage broker, or other mortgage loan  
14          originator.

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

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

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

25          (mm) "Immediate family member" means a spouse, child,  
26          sibling, parent, grandparent, or grandchild, and includes



1 step-parents, step-children, step-siblings, or adoptive  
2 relationships.

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

4 (oo) "Loan processor or underwriter" means an individual  
5 who performs clerical or support duties as an employee at the  
6 direction of and subject to the supervision and instruction of  
7 a person licensed, or exempt from licensing, under this Act.

8 "Clerical or support duties" includes subsequent to the receipt  
9 of an application:

10 (i) the receipt, collection, distribution, and  
11 analysis of information common for the processing or  
12 underwriting of a residential mortgage loan; and

13 (ii) communicating with a consumer to obtain the  
14 information necessary for the processing or underwriting  
15 of a loan, to the extent that the communication does not  
16 include offering or negotiating loan rates or terms, or  
17 counseling consumers about residential mortgage loan rates  
18 or terms. An individual engaging solely in loan processor  
19 or underwriter activities shall not represent to the  
20 public, through advertising or other means of  
21 communicating or providing information, including the use  
22 of business cards, stationery, brochures, signs, rate  
23 lists, or other promotional items, that the individual can  
24 or will perform any of the activities of a mortgage loan  
25 originator.

26 (pp) "Nationwide Mortgage Licensing System and Registry"

1 means a mortgage licensing system developed and maintained by  
2 the Conference of State Bank Supervisors and the American  
3 Association of Residential Mortgage Regulators for the  
4 licensing and registration of licensed mortgage loan  
5 originators.

6 (qq) "Nontraditional mortgage product" means any mortgage  
7 product other than a 30-year fixed rate mortgage.

8 (rr) "Person" means a natural person, corporation,  
9 company, limited liability company, partnership, or  
10 association.

11 (ss) "Real estate brokerage activity" means any activity  
12 that involves offering or providing real estate brokerage  
13 services to the public, including:

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

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

18 (3) negotiating, on behalf of any party, any portion of  
19 a contract relating to the sale, purchase, lease, rental,  
20 or exchange of real property, other than in connection with  
21 providing financing with respect to any such transaction;

22 (4) engaging in any activity for which a person engaged  
23 in the activity is required to be registered or licensed as  
24 a real estate agent or real estate broker under any  
25 applicable law; or

26 (5) offering to engage in any activity, or act in any

1 capacity, described in this subsection (ss).

2 (tt) "Registered mortgage loan originator" means any  
3 individual that:

4 (1) meets the definition of mortgage loan originator  
5 and is an employee of:

6 (A) a depository institution;

7 (B) a subsidiary that is:

8 (i) owned and controlled by a depository  
9 institution; and

10 (ii) regulated by a federal banking agency; or

11 (C) an institution regulated by the Farm Credit  
12 Administration; and

13 (2) is registered with, and maintains a unique  
14 identifier through, the Nationwide Mortgage Licensing  
15 System and Registry.

16 (uu) "Unique identifier" means a number or other identifier  
17 assigned by protocols established by the Nationwide Mortgage  
18 Licensing System and Registry.

19 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

20 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

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

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

24 (1) The filing of an application for license with the  
25 Director or the Nationwide Mortgage Licensing System and

1       Registry as approved by the Director.

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

5           (3) The payment, in certified funds, of investigation  
6 and application fees, the total of which shall be in an  
7 amount equal to \$2,700 annually, however, the Commissioner  
8 may increase the investigation and application fees by rule  
9 as provided in Section 4-11. To comply with the common  
10 renewal date and requirements of the Nationwide Mortgage  
11 Licensing System and Registry, the term of initial licenses  
12 may be extended or shortened with applicable fees prorated  
13 or combined accordingly.

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

21           (5) The filing of proof satisfactory to the  
22 Commissioner that the applicant, the members thereof if the  
23 applicant is a partnership or association, the members or  
24 managers thereof that retain any authority or  
25 responsibility under the operating agreement if the  
26 applicant is a limited liability company, or the officers

1       thereof if the applicant is a corporation have 3 years  
2       experience preceding application in real estate finance.  
3       Instead of this requirement, the applicant and the  
4       applicant's officers or members, as applicable, may  
5       satisfactorily complete a program of education in real  
6       estate finance and fair lending, as approved by the  
7       Commissioner, prior to receiving the initial license. The  
8       Commissioner shall promulgate rules regarding proof of  
9       experience requirements and educational requirements and  
10      the satisfactory completion of those requirements. The  
11      Commissioner may establish by rule a list of duly licensed  
12      professionals and others who may be exempt from this  
13      requirement.

14           (6) An investigation of the averments required by  
15      Section 2-4, which investigation must allow the  
16      Commissioner to issue positive findings stating that the  
17      financial responsibility, experience, character, and  
18      general fitness of the license applicant and of the members  
19      thereof if the license applicant is a partnership or  
20      association, of the officers and directors thereof if the  
21      license applicant is a corporation, and of the managers and  
22      members that retain any authority or responsibility under  
23      the operating agreement if the license applicant is a  
24      limited liability company are such as to command the  
25      confidence of the community and to warrant belief that the  
26      business will be operated honestly, fairly and efficiently

1 within the purpose of this Act. If the Commissioner shall  
2 not so find, he or she shall not issue such license, and he  
3 or she shall notify the license applicant of the denial.

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

9 (b) All licenses shall be issued ~~in duplicate with one copy~~  
10 ~~being transmitted~~ to the license applicant ~~and the second being~~  
11 ~~retained with the Commissioner.~~

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

17 (Source: P.A. 93-32, eff. 7-1-03; 93-1018, eff. 1-1-05.)

18 (205 ILCS 635/2-3) (from Ch. 17, par. 2322-3)

19 Sec. 2-3. Application form.

20 (a) Application for a residential mortgage license must be  
21 made in accordance with Section 2-6 and, if applicable, in  
22 accordance with requirements of the Nationwide Mortgage  
23 Licensing System and Registry. The application shall be in  
24 writing, under oath, and on a form obtained from and prescribed  
25 by the Commissioner, or may be submitted electronically, with

1 attestation, to the Nationwide Mortgage Licensing System and  
2 Registry.

3 (b) The application shall contain the name and complete  
4 business and residential address or addresses of the license  
5 applicant. If the license applicant is a partnership,  
6 association, corporation or other form of business  
7 organization, the application shall contain the names and  
8 complete business and residential addresses of each member,  
9 director and principal officer thereof. Such application shall  
10 also include a description of the activities of the license  
11 applicant, in such detail and for such periods, as the  
12 Commissioner may require, including all of the following:

13 (1) An affirmation of financial solvency noting such  
14 capitalization requirements as may be required by the  
15 Commissioner, and access to such credit as may be required  
16 by the Commissioner.

17 (2) An affirmation that the license applicant or its  
18 members, directors or principals as may be appropriate, are  
19 at least 18 years of age.

20 (3) Information as to the character, fitness,  
21 financial and business responsibility, background,  
22 experience, and criminal record of any (i) person, entity,  
23 or ultimate equitable owner that owns or controls, directly  
24 or indirectly, 10% or more of any class of stock of the  
25 license applicant; (ii) person, entity, or ultimate  
26 equitable owner that is not a depository institution, as

1 defined in Section 1007.50 of the Savings Bank Act, that  
2 lends, provides, or infuses, directly or indirectly, in any  
3 way, funds to or into a license applicant, in an amount  
4 equal to or more than 10% of the license applicant's net  
5 worth; (iii) person, entity, or ultimate equitable owner  
6 that controls, directly or indirectly, the election of 25%  
7 or more of the members of the board of directors of a  
8 license applicant; or (iv) person, entity, or ultimate  
9 equitable owner that the Commissioner finds influences  
10 management of the license applicant.

11 (4) Upon written request by the licensee and  
12 notwithstanding the provisions of paragraphs (1), (2), and  
13 (3) of this subsection, the Commissioner may permit the  
14 licensee to omit all or part of the information required by  
15 those paragraphs if, in lieu of the omitted information,  
16 the licensee submits an affidavit stating that the  
17 information submitted on the licensee's previous renewal  
18 application is still true and accurate. The Commissioner  
19 may promulgate rules prescribing the form and content of  
20 the affidavit that are necessary to accomplish the purposes  
21 of this Section.

22 (5) Such other information as required by regulations  
23 of the Commissioner.

24 (Source: P.A. 89-355, eff. 8-17-95.)

25 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)



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

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

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

9           (c) Will keep and maintain for 36 months the same  
10 written records as required by the federal Equal Credit  
11 Opportunity Act, and any other information required by  
12 regulations of the Commissioner regarding any home  
13 mortgage in the course of the conduct of its residential  
14 mortgage business;

15           (d) Will file with the Commissioner or Nationwide  
16 Mortgage Licensing System and Registry as applicable, when  
17 due, any report or reports which it is required to file  
18 under any of the provisions of this Act;

19           (e) Will not engage, whether as principal or agent, in  
20 the practice of rejecting residential mortgage  
21 applications without reasonable cause, or varying terms or  
22 application procedures without reasonable cause, for home  
23 mortgages on real estate within any specific geographic  
24 area from the terms or procedures generally provided by the  
25 licensee within other geographic areas of the State;

26           (f) Will not engage in fraudulent home mortgage

1 underwriting practices;

2 (g) Will not make payment, whether directly or  
3 indirectly, of any kind to any in house or fee appraiser of  
4 any government or private money lending agency with which  
5 an application for a home mortgage has been filed for the  
6 purpose of influencing the independent judgment of the  
7 appraiser with respect to the value of any real estate  
8 which is to be covered by such home mortgage;

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

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

14 (j) Will not knowingly make any false promises likely  
15 to influence or persuade, or pursue a course of  
16 misrepresentation and false promises through agents,  
17 solicitors, advertising or otherwise;

18 (k) Will not knowingly misrepresent, circumvent or  
19 conceal, through whatever subterfuge or device, any of the  
20 material particulars or the nature thereof, regarding a  
21 transaction to which it is a party to the injury of another  
22 party thereto;

23 (l) Will disburse funds in accordance with its  
24 agreements;

25 (m) Has not committed a crime against the law of this  
26 State, any other state or of the United States, involving

1 moral turpitude, fraudulent or dishonest dealing, and that  
2 no final judgment has been entered against it in a civil  
3 action upon grounds of fraud, misrepresentation or deceit  
4 which has not been previously reported to the Commissioner;

5 (n) Will account or deliver to the owner upon request  
6 ~~any person~~ any personal property such as money, fund,  
7 deposit, check, draft, mortgage, other document or thing of  
8 value, ~~which has come into its possession, and which is not~~  
9 ~~its property, or~~ which it is not in law or equity entitled  
10 to retain under the circumstances, ~~at the time which has~~  
11 ~~been agreed upon or is required by law, or, in the absence~~  
12 ~~of a fixed time, upon demand of the person entitled to such~~  
13 ~~accounting and delivery;~~

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

16 (p) Has not become insolvent;

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

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

22 (s) Will advise the Commissioner in writing, or the  
23 Nationwide Mortgage Licensing System and Registry as  
24 applicable, of any changes to the information submitted on  
25 the most recent application for license within 30 days of  
26 said change. The written notice must be signed in the same

1 form as the application for license being amended;

2 (t) Will comply with the provisions of this Act, or  
3 with any lawful order, rule or regulation made or issued  
4 under the provisions of this Act;

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

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

10 (w) Will advise the Commissioner in writing within 30  
11 days of any request made to ~~when the license applicant~~  
12 ~~requests~~ a licensee under this Act to repurchase a loan in  
13 a manner that completely and clearly identifies to whom the  
14 request was made, the loans involved, and the reason, ~~and~~  
15 ~~the circumstances~~ therefor;

16 (x) Will advise the Commissioner in writing within 30  
17 days of any request from any entity ~~when the license~~  
18 ~~applicant is requested by another entity~~ to repurchase a  
19 loan in a manner that completely and clearly identifies to  
20 whom the request was made, the loans involved, and the  
21 reason for the request, ~~and the circumstances~~ therefor;

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

24 (z) Will not knowingly hire or employ a loan originator  
25 who is not registered, or mortgage loan originator who is  
26 not licensed, with the Commissioner as required under

1 Section 7-1 or Section 7-1A, as applicable, of this Act.

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

6 (Source: P.A. 95-331, eff. 8-21-07.)

7 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

9 (a) Beginning July 1, 2003, licenses shall be renewed every  
10 year on the anniversary of the date of issuance of the original  
11 license, or the common renewal date of the Nationwide Mortgage  
12 Licensing System and Registry as adopted by the Director. To  
13 comply with the common renewal date of the Nationwide Mortgage  
14 Licensing System and Registry, the term of existing licenses  
15 may be extended or shortened with applicable fees prorated  
16 accordingly. Properly completed renewal application forms and  
17 filing fees must be received by the Commissioner 60 days prior  
18 to the renewal date.

19 (b) It shall be the responsibility of each licensee to  
20 accomplish renewal of its license; failure of the licensee to  
21 receive renewal forms absent a request sent by certified mail  
22 for such forms will not waive said responsibility. Failure by a  
23 licensee to submit a properly completed renewal application  
24 form and fees in a timely fashion, absent a written extension  
25 from the Commissioner, will result in the assessment of

1 additional fees, as follows:

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

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

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

26 (d) A license which is not renewed within one year of

1 becoming inactive shall expire.

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

13 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,  
14 eff. 1-1-05.)

15 (205 ILCS 635/3-1) (from Ch. 17, par. 2323-1)

16 Sec. 3-1. Bonds of licensees.

17 (a) Every licensee, with respect to any person appointed or  
18 elected to any position requiring the receipt of payment,  
19 management, or use of money belonging to a residential mortgage  
20 licensee engaged in the activities of originating, servicing,  
21 or purchasing mortgage loans or whose duties permit him or her  
22 to have access to or custody of any of its money or securities  
23 or custody of any money or securities belonging to third  
24 parties or whose duties permit him or her regularly to make  
25 entries in the books or other records of a licensee, shall,

1 before assuming his or her duties, maintain a fidelity bond in  
2 the amount of \$100,000 by some fidelity insurance company  
3 licensed to do business in this State.

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

21 (c) All licensees shall maintain a bond in accordance with  
22 this subsection. Each bond shall be for the recovery of  
23 expenses, fines, or fees due to or levied by the Commissioner  
24 in accordance with this Act. The bond shall be payable when the  
25 licensee fails to comply with any provisions of this Act and  
26 shall be in the form of a surety or licensure bond in the



1 amount and form as prescribed by the Commissioner pursuant to  
2 rules and regulations. The bond shall be payable to the Office  
3 of Banks and Real Estate and shall be issued by some insurance  
4 company authorized to do business in this State. A copy of the  
5 bond, including any and all riders and endorsements executed  
6 subsequent to the effective date of the bond, shall be placed  
7 on file with the Office of Banks and Real Estate within 10 days  
8 of the execution thereof.

9 (d) The Commissioner may promulgate rules with respect to  
10 bonding requirements for residential mortgage licensees and  
11 their mortgage loan originators that are reasonable and  
12 necessary to accomplish the purposes of this Act.

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

14 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

15 Sec. 3-2. Annual audit.

16 (a) At the licensee's fiscal year-end, but in no case more  
17 than 12 months after the last audit conducted pursuant to this  
18 Section, except as otherwise provided in this Section, it shall  
19 be mandatory for each residential mortgage licensee to cause  
20 its books and accounts to be audited by a certified public  
21 accountant not connected with such licensee. The books and  
22 records of all licensees under this Act shall be maintained on  
23 an accrual basis. The audit must be sufficiently comprehensive  
24 in scope to permit the expression of an opinion on the  
25 financial statements, which must be prepared in accordance with

1 generally accepted accounting principles, and must be  
2 performed in accordance with generally accepted auditing  
3 standards. Notwithstanding the requirements of this  
4 subsection, a licensee that is a first tier subsidiary may  
5 submit audited consolidated financial statements of its parent  
6 as long as the consolidated statements are supported by  
7 consolidating statements. The licensee's chief financial  
8 officer shall attest to the licensee's financial statements  
9 disclosed in the consolidating statements.

10 (b) As used herein, the term "expression of opinion"  
11 includes either (1) an unqualified opinion, (2) a qualified  
12 opinion, (3) a disclaimer of opinion, or (4) an adverse  
13 opinion.

14 (c) If a qualified or adverse opinion is expressed or if an  
15 opinion is disclaimed, the reasons therefore must be fully  
16 explained. An opinion, qualified as to a scope limitation,  
17 shall not be acceptable.

18 (d) The most recent audit report shall be filed with the  
19 Commissioner within 90 days after the end of the licensee's  
20 fiscal year, or with the Nationwide Mortgage Licensing System  
21 and Registry, if applicable, pursuant to Mortgage Call Report  
22 requirements. The report filed with the Commissioner shall be  
23 certified by the certified public accountant conducting the  
24 audit. The Commissioner may promulgate rules regarding late  
25 audit reports.

26 (e) If any licensee required to make an audit shall fail to

1 cause an audit to be made, the Commissioner shall cause the  
2 same to be made by a certified public accountant at the  
3 licensee's expense. The Commissioner shall select such  
4 certified public accountant by advertising for bids or by such  
5 other fair and impartial means as he or she establishes by  
6 regulation.

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

12 (g) With respect to licensees who solely broker residential  
13 mortgage loans as defined in subsection (o) of Section 1-4,  
14 instead of the audit required by this Section, the Commissioner  
15 may accept compilation financial statements prepared at least  
16 every 12 months, and the compilation financial statement must  
17 be prepared by an independent certified public accountant  
18 licensed under the Illinois Public Accounting Act or by an  
19 equivalent state licensing law with full disclosure in  
20 accordance with generally accepted accounting principals and  
21 must be submitted within 90 days after the end of the  
22 licensee's fiscal year, or with the Nationwide Mortgage  
23 Licensing System and Registry, if applicable, pursuant to  
24 Mortgage Call Report requirements. If a licensee under this  
25 Section fails to file a compilation as required, the  
26 Commissioner shall cause an audit of the licensee's books and

1 accounts to be made by a certified public accountant at the  
2 licensee's expense. The Commissioner shall select the  
3 certified public accountant by advertising for bids or by such  
4 other fair and impartial means as he or she establishes by  
5 rule. A licensee who files false or misleading compilation  
6 financial statements is guilty of a business offense and shall  
7 be fined not less than \$5,000.

8 (h) The workpapers of the certified public accountants  
9 employed by each licensee for purposes of this Section are to  
10 be made available to the Commissioner or the Commissioner's  
11 designee upon request and may be reproduced by the Commissioner  
12 or the Commissioner's designee to enable to the Commissioner to  
13 carry out the purposes of this Act.

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

25 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

1 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

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

3 (a) A licensee whose principal place of business is located  
4 in the State of Illinois shall maintain at least one full  
5 service office with staff reasonably adequate to handle  
6 efficiently communications, questions, and all other matters  
7 relating to any application for a home mortgage or an existing  
8 home mortgage with respect to which such licensee is performing  
9 services, regardless of kind, for any borrower or lender, note  
10 owner or holder, or for himself or herself while engaged in the  
11 residential mortgage business. Offices shall not be located in  
12 any real estate, retail, or financial business establishment,  
13 unless separated from the other business by a separate and  
14 distinct area within the establishment. The location and  
15 operation of a full service office shall be in compliance with  
16 any applicable zoning laws or ordinances and home office or  
17 business regulations. The Director may require a licensee  
18 operating from a home or residentially zoned office to provide  
19 another approved location that is suitable to conduct an  
20 examination under Sections 4-2 and 4-7 of the Act. This  
21 subsection (a) does not limit the Director's authority to  
22 examine at any other office, facility or location of the  
23 licensee as permitted by the Act.

24 (b) In lieu of maintaining a full service office in the  
25 State of Illinois, and subject to the rules of the Department,  
26 a licensee whose principal place of business is located outside

1 the State of Illinois may comply with all of the following  
2 requirements:

3 (1) provide, upon the Director's request and notice, an  
4 approved location that is suitable to conduct an  
5 examination under Sections 4-2 and 4-7 of the Act. This  
6 subsection (b) does not limit the Director's authority to  
7 examine at any other office, facility or location of the  
8 licensee as permitted by the Act.

9 (2) ~~must~~ submit a certified audit as required in  
10 Section 3-2 of this Act evidencing a minimum net worth of  
11 \$150,000 ~~\$100,000~~, which must be maintained at all times,  
12 and shall submit and maintain a fidelity bond in the amount  
13 of \$100,000.

14 (Source: P.A. 93-1018, eff. 1-1-05.)

15 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)

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

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

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

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

25 (d) To receive, consider, investigate, and act upon

1 complaints made by any person in connection with any  
2 residential mortgage licensee in this State;

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

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

6 (1) applications for licenses; and

7 (2) all reports and all books and records required to  
8 be made by any licensee under this Act, including annual  
9 audited financial statements and annual reports of  
10 mortgage activity;

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

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

17 (h-1) To issue orders against any person, if the  
18 Commissioner has reasonable cause to believe that an unsafe,  
19 unsound, or unlawful practice has occurred, is occurring, or is  
20 about to occur, if any person has violated, is violating, or is  
21 about to violate any law, rule, or written agreement with the  
22 Commissioner, or for the purpose of administering the  
23 provisions of this Act and any rule adopted in accordance with  
24 the Act;

25 (h-2) To address any inquiries to any licensee, or the  
26 officers thereof, in relation to its activities and conditions,

1 or any other matter connected with its affairs, and it shall be  
2 the duty of any licensee or person so addressed, to promptly  
3 reply in writing to such inquiries. The Commissioner may also  
4 require reports from any licensee at any time the Commissioner  
5 may deem desirable;

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

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

18 (k) To enforce provisions of this Act;

19 (l) To levy fees, fines, and charges for services performed  
20 in administering this Act; the aggregate of all fees collected  
21 by the Commissioner on and after the effective date of this Act  
22 shall be paid promptly after receipt of the same, accompanied  
23 by a detailed statement thereof, into the Savings and  
24 Residential Finance Regulatory Fund; the amounts deposited  
25 into that Fund shall be used for the ordinary and contingent  
26 expenses of the Office of Banks and Real Estate. Nothing in



1 this Act shall prevent continuing the practice of paying  
2 expenses involving salaries, retirement, social security, and  
3 State-paid insurance of State officers by appropriation from  
4 the General Revenue Fund.

5 (m) To appoint examiners, supervisors, experts, and  
6 special assistants as needed to effectively and efficiently  
7 administer this Act;

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

9 (1) appeals of orders of the Commissioner;

10 (2) suspensions or revocations of licenses, or fining  
11 of licensees;

12 (3) investigating:

13 (i) complaints against licensees; or

14 (ii) annual gross delinquency rates; and

15 (4) carrying out the purposes of this Act;

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

21 (p) To enter into cooperative agreements with state  
22 regulatory authorities of other states to provide for  
23 examination of corporate offices or branches of those states  
24 and to accept reports of such examinations;

25 (q) To assign an examiner or examiners to monitor the  
26 affairs of a licensee with whatever frequency the Commissioner

1 determines appropriate and to charge the licensee for  
2 reasonable and necessary expenses of the Commissioner, if in  
3 the opinion of the Commissioner an emergency exists or appears  
4 likely to occur; and

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

8 (s) To enter into agreements in connection with the  
9 Nationwide Mortgage Licensing System and Registry.

10 (Source: P.A. 93-1018, eff. 1-1-05.)

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 its subsidiary, affiliate,  
21 or agent, and may examine any of the licensee's or its  
22 subsidiary's, affiliate's, or agent's officers, directors,  
23 employees and agents under oath. For purposes of this Section,  
24 "agent" includes service providers such as accountants,  
25 closing services providers, providers of outsourced services

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

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

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

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

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

1 presenting a lawful subpoena to the Office of the Commissioner.  
2 The Commissioner may immediately appeal to the court of  
3 jurisdiction the disclosure of such confidential supervisory  
4 information and seek a stay of the subpoena pending the outcome  
5 of the appeal. Reports required of licensees by the  
6 Commissioner under this Act and results of examinations  
7 performed by the Commissioner under this Act shall be the  
8 property of only the Commissioner, but may be shared with the  
9 licensee. Access under this Act to the books and records of  
10 each licensee shall be limited to the Commissioner and his  
11 agents as provided in this Act and to the licensee and its  
12 authorized agents and designees. No other person shall have  
13 access to the books and records of a licensee under this Act.  
14 Any person upon whom a demand for production of confidential  
15 supervisory information is made, whether by subpoena, order, or  
16 other judicial or administrative process, must withhold  
17 production of the confidential supervisory information and  
18 must notify the Commissioner of the demand, at which time the  
19 Commissioner is authorized to intervene for the purpose of  
20 enforcing the limitations of this Section or seeking the  
21 withdrawal or termination of the attempt to compel production  
22 of the confidential supervisory information. The Commissioner  
23 may impose any conditions and limitations on the disclosure of  
24 confidential supervisory information that are necessary to  
25 protect the confidentiality of such information. Except as  
26 authorized by the Commissioner, no person obtaining access to

1 confidential supervisory information may make a copy of the  
2 confidential supervisory information. The Commissioner may  
3 condition a decision to disclose confidential supervisory  
4 information on entry of a protective order by the court or  
5 administrative tribunal presiding in the particular case or on  
6 a written agreement of confidentiality. In a case in which a  
7 protective order or agreement has already been entered between  
8 parties other than the Commissioner, the Commissioner may  
9 nevertheless condition approval for release of confidential  
10 supervisory information upon the inclusion of additional or  
11 amended provisions in the protective order. The Commissioner  
12 may authorize a party who obtained the records for use in one  
13 case to provide them to another party in another case, subject  
14 to any conditions that the Commissioner may impose on either or  
15 both parties. The requestor shall promptly notify other parties  
16 to a case of the release of confidential supervisory  
17 information obtained and, upon entry of a protective order,  
18 shall provide copies of confidential supervisory information  
19 to the other parties.

20 (f) The Commissioner, deputy commissioners, and employees  
21 of the Office of Banks and Real Estate shall be subject to the  
22 restrictions provided in Section 2.5 of the Office of Banks and  
23 Real Estate Act including, without limitation, the  
24 restrictions on (i) owning shares of stock or holding any other  
25 equity interest in an entity regulated under this Act or in any  
26 corporation or company that owns or controls an entity

1 regulated under this Act; (ii) being an officer, director,  
2 employee, or agent of an entity regulated under this Act; and  
3 (iii) obtaining a loan or accepting a gratuity from an entity  
4 regulated under this Act.

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

12 (Source: P.A. 93-1018, eff. 1-1-05.)

13 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

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

24 (2) Any fact or condition exists which, if it had  
25 existed at the time of the original application for such

1 license would have warranted the Commissioner in refusing  
2 originally to issue such license.

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

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

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

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

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

1           (f) Every license issued under this Act shall remain in  
2 force and effect until the same shall have expired without  
3 renewal, have been surrendered, revoked or suspended in  
4 accordance with the provisions of this Act, but the  
5 Commissioner shall have authority to reinstate a suspended  
6 license or to issue a new license to a licensee whose license  
7 shall have been revoked if no fact or condition then exists  
8 which would have warranted the Commissioner in refusing  
9 originally to issue such license under this Act.

10           (g) Whenever the Commissioner shall revoke or suspend a  
11 license issued pursuant to this Act or fine a licensee under  
12 this Act, he or she shall forthwith execute in duplicate a  
13 written order to that effect. The Commissioner shall publish  
14 notice of such order in the Illinois Register and post notice  
15 of the order on an agency Internet site maintained by the  
16 Commissioner and shall forthwith serve a copy of such order  
17 upon the licensee. Any such order may be reviewed in the manner  
18 provided by Section 4-12 of this Act.

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

22               (1) Revocation of license;

23               (2) Suspension of a license subject to reinstatement  
24 upon satisfying all reasonable conditions the Commissioner  
25 may specify;

26               (3) Placement of the licensee or applicant on probation



1 for a period of time and subject to all reasonable  
2 conditions as the Commissioner may specify;

3 (4) Issuance of a reprimand;

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

6 (6) Denial of a license.

7 (i) The following acts shall constitute grounds for which  
8 the disciplinary actions specified in subsection (h) above may  
9 be taken:

10 (1) Being convicted or found guilty, regardless of  
11 pendency of an appeal, of a crime in any jurisdiction which  
12 involves fraud, dishonest dealing, or any other act of  
13 moral turpitude;

14 (2) Fraud, misrepresentation, deceit or negligence in  
15 any mortgage financing transaction;

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

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

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

22 (6) Failure to account or deliver to any person any  
23 property such as any money, fund, deposit, check, draft,  
24 mortgage, or other document or thing of value, which has  
25 come into his or her hands and which is not his or her  
26 property or which he or she is not in law or equity

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

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

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

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

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

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

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

26 (13) Failure to pay in a timely manner any fee, charge

1 or fine under this Act;

2 (14) Failure to maintain, preserve, and keep available  
3 for examination, all books, accounts or other documents  
4 required by the provisions of this Act and the rules of the  
5 Commissioner;

6 (15) Refusing, obstructing, evading, or unreasonably  
7 delaying an investigation, information request, or  
8 examination authorized under this Act, or refusing,  
9 obstructing, evading, or unreasonably delaying compliance  
10 with the Director's Refusal to permit an investigation or  
11 examination of the licensee's or its affiliates' books and  
12 records or refusal to comply with the Commissioner's  
13 subpoena or subpoena duces tecum;

14 (16) A pattern of substantially underestimating the  
15 maximum closing costs;

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

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

22 (k) Such licensee shall be subject to suspension or  
23 revocation for unauthorized employee actions only if there is a  
24 pattern of repeated violations by employees or the licensee has  
25 knowledge of the violations, or there is substantial harm to a  
26 consumer.

1 (1) Procedure for surrender of license:

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

11 (i) The licensee has failed to comply with any  
12 provision of this Act or any order, decision, finding,  
13 rule, regulation or direction of the Commissioner  
14 lawfully made pursuant to the authority of this Act; or

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

19 (2) Any licensee may submit application to surrender a  
20 license ~~by delivering to the Commissioner written notice~~  
21 ~~that he or she thereby surrenders such license,~~ but upon  
22 the Director approving the surrender, it shall not affect  
23 the licensee's civil or criminal liability for acts  
24 committed prior to surrender or entitle the licensee to a  
25 return of any part of the license fee.

26 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

1 (205 ILCS 635/4-7 new)

2 Sec. 4-7. Additional investigation and examination  
3 authority. In addition to any authority allowed under this Act,  
4 the Director shall have the authority to conduct investigations  
5 and examinations as follows:

6 (a) For purposes of initial licensing, license renewal,  
7 license suspension, license conditioning, license revocation  
8 or termination, or general or specific inquiry or investigation  
9 to determine compliance with this Act, the Commissioner shall  
10 have the authority to access, receive, and use any books,  
11 accounts, records, files, documents, information, or evidence  
12 including, but not limited to, the following:

13 (1) criminal, civil, and administrative history  
14 information, including nonconviction data as specified in  
15 the Criminal Code of 1961;

16 (2) personal history and experience information,  
17 including independent credit reports obtained from a  
18 consumer reporting agency described in Section 603(p) of  
19 the federal Fair Credit Reporting Act; and

20 (3) any other documents, information, or evidence the  
21 Commissioner deems relevant to the inquiry or  
22 investigation regardless of the location, possession,  
23 control, or custody of the documents, information, or  
24 evidence.

25 (b) For the purposes of investigating violations or

1 complaints arising under this Act, or for the purposes of  
2 examination, the Commissioner may review, investigate, or  
3 examine any licensee, individual, or person subject to this  
4 Act, as often as necessary in order to carry out the purposes  
5 of this Act. The Commissioner may direct, subpoena, or order  
6 the attendance of and examine under oath all persons whose  
7 testimony may be required about the loans or the business or  
8 subject matter of any such examination or investigation, and  
9 may direct, subpoena, or order the person to produce books,  
10 accounts, records, files, and any other documents the  
11 Commissioner deems relevant to the inquiry.

12 (c) Each licensee, individual, or person subject to this  
13 Act shall make available to the Commissioner upon request the  
14 books and records relating to the operations of such licensee,  
15 individual, or person subject to this Act. The Commissioner  
16 shall have access to such books and records and interview the  
17 officers, principals, mortgage loan originators, employees,  
18 independent contractors, agents, and customers of the  
19 licensee, individual, or person subject to this Act concerning  
20 their business.

21 (d) Each licensee, individual, or person subject to this  
22 Act shall make or compile reports or prepare other information  
23 as directed by the Commissioner in order to carry out the  
24 purposes of this Section including, but not limited to:

25 (1) accounting compilations;

26 (2) information lists and data concerning loan

1 transactions in a format prescribed by the Commissioner; or

2 (3) other information deemed necessary to carry out the  
3 purposes of this Section.

4 (e) In making any examination or investigation authorized  
5 by this Act, the Commissioner may control access to any  
6 documents and records of the licensee or person under  
7 examination or investigation. The Commissioner may take  
8 possession of the documents and records or place a person in  
9 exclusive charge of the documents and records in the place  
10 where they are usually kept. During the period of control, no  
11 individual or person shall remove or attempt to remove any of  
12 the documents and records except pursuant to a court order or  
13 with the consent of the Commissioner. Unless the Commissioner  
14 has reasonable grounds to believe the documents or records of  
15 the licensee have been, or are at risk of being altered or  
16 destroyed for purposes of concealing a violation of this Act,  
17 the licensee or owner of the documents and records shall have  
18 access to the documents or records as necessary to conduct its  
19 ordinary business affairs.

20 (f) In order to carry out the purposes of this Section, the  
21 Commissioner may:

22 (1) retain attorneys, accountants, or other  
23 professionals and specialists as examiners, auditors, or  
24 investigators to conduct or assist in the conduct of  
25 examinations or investigations;

26 (2) enter into agreements or relationships with other

1 government officials or regulatory associations in order  
2 to improve efficiencies and reduce regulatory burden by  
3 sharing resources, standardized or uniform methods or  
4 procedures, and documents, records, information or  
5 evidence obtained under this Section;

6 (3) use, hire, contract, or employ public or privately  
7 available analytical systems, methods, or software to  
8 examine or investigate the licensee, individual, or person  
9 subject to this Act;

10 (4) accept and rely on examination or investigation  
11 reports made by other government officials, within or  
12 without this State; or

13 (5) accept audit reports made by an independent  
14 certified public accountant for the licensee, individual,  
15 or person subject to this Act in the course of that part of  
16 the examination covering the same general subject matter as  
17 the audit and may incorporate the audit report in the  
18 report of the examination, report of investigation, or  
19 other writing of the Commissioner.

20 (g) The authority of this Section shall remain in effect,  
21 whether such a licensee, individual, or person subject to this  
22 Act acts or claims to act under any licensing or registration  
23 law of this State, or claims to act without the authority.

24 (h) No licensee, individual, or person subject to  
25 investigation or examination under this Section may knowingly  
26 withhold, abstract, remove, mutilate, destroy, or secrete any



1 books, records, computer records, or other information.

2 (205 ILCS 635/4-8.1A new)

3 Sec. 4-8.1A. Confidentiality.

4 (a) In order to promote more effective regulation and  
5 reduce regulatory burden through supervisory information  
6 sharing, except as otherwise provided in federal Public Law  
7 110-289, Section 1512, the requirements under any federal law  
8 or state law regarding the privacy or confidentiality of any  
9 information or material provided to the Nationwide Mortgage  
10 Licensing System and Registry, and any privilege arising under  
11 federal or state law, including the rules of any federal or  
12 state court, with respect to such information or material,  
13 shall continue to apply to information or material after the  
14 information or material has been disclosed to the Nationwide  
15 Mortgage Licensing System and Registry. The information and  
16 material may be shared with all state and federal regulatory  
17 officials with mortgage industry oversight authority without  
18 the loss of privilege or the loss of confidentiality  
19 protections provided by federal law or state law.

20 (b) In order to promote more effective regulation and  
21 reduce regulatory burden through supervisory information  
22 sharing, the Director is authorized to enter agreements or  
23 sharing arrangements with other governmental agencies, the  
24 Conference of State Bank Supervisors, the American Association  
25 of Residential Mortgage Regulators or other associations

1 representing governmental agencies as established by rule,  
2 regulation or order of the Director. The sharing of  
3 confidential supervisory information or any information or  
4 material described in subsection (a) of this Section pursuant  
5 to an agreement or sharing arrangement shall not result in the  
6 loss of privilege or the loss of confidentiality protections  
7 provided by federal law or state law.

8 (c) In order to promote more effective regulation and  
9 reduce regulatory burden through supervisory information  
10 sharing, information or material that is subject to a privilege  
11 or confidentiality under subsection (a) of this Section shall  
12 not be subject to the following:

13 (1) disclosure under any State law governing the  
14 disclosure to the public of information held by an officer  
15 or an agency of the State; or

16 (2) subpoena or discovery, or admission into evidence,  
17 in any private civil action or administrative process,  
18 unless with respect to any privilege held by the Nationwide  
19 Mortgage Licensing System and Registry with respect to the  
20 information or material, the person to whom such  
21 information or material pertains waives, in whole or in  
22 part, in the discretion of that person, that privilege.

23 (d) In order to promote more effective regulation and  
24 reduce regulatory burden through supervisory information  
25 sharing, other law relating to the disclosure of confidential  
26 supervisory information or any information or material

1 described in subsection (a) of this Section that is  
2 inconsistent with subsection (a) of this Section shall be  
3 superseded by the requirements of this Section to the extent  
4 the other law provides less confidentiality or a weaker  
5 privilege.

6 (e) In order to promote more effective regulation and  
7 reduce regulatory burden through supervisory information  
8 sharing, this Section shall not apply to the employment history  
9 of a mortgage loan originator, and the record of publicly  
10 adjudicated disciplinary and enforcement actions against a  
11 mortgage loan originator.

12 (205 ILCS 635/4-8.3)

13 Sec. 4-8.3. Annual report of mortgage brokering and  
14 servicing activity. On or before March 1 of each year or the  
15 date selected for Mortgage Call Reports under Section 4-9.1 of  
16 this Act, each licensee, ~~except residential mortgage brokers,~~  
17 shall file a report with the Commissioner that shall disclose  
18 such information as the Commissioner requires. Exempt entities  
19 as defined in subsection (d) of Section 1-4 shall not file the  
20 annual report of mortgage and servicing activity required by  
21 this Section.

22 (Source: P.A. 93-1018, eff. 1-1-05.)

23 (205 ILCS 635/4-9.1 new)

24 Sec. 4-9.1. Mortgage call reports. Each residential

1 mortgage licensee shall submit to the Nationwide Mortgage  
2 Licensing System and Registry reports of condition, which shall  
3 be in the form and shall contain the information that the  
4 Nationwide Mortgage Licensing System and Registry may require.

5 (205 ILCS 635/Art. VII heading)

6 ARTICLE VII.

7 MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED

8 REGISTRATION OF LOAN ORIGINATORS

9 (205 ILCS 635/7-1A new)

10 Sec. 7-1A. Mortgage loan originator license.

11 (a) It is unlawful for any individual to act or assume to  
12 act as a mortgage loan originator, as defined in subsection  
13 (jj) of Section 1-4 of this Act, without obtaining a license  
14 from the Director, unless the individual is exempt under  
15 subsection (c) of this Section. Each licensed mortgage loan  
16 originator must register with and maintain a valid unique  
17 identifier issued by the Nationwide Mortgage Licensing System  
18 and Registry.

19 (b) In order to facilitate an orderly transition to  
20 licensing and minimize disruption in the mortgage marketplace,  
21 the operability date for subsection (a) of this Section shall  
22 be as follows:

23 (1) For all individuals other than individuals  
24 described in item (2) of this subsection (b), the

1 operability date shall be July 31, 2010, or any later date  
2 approved by the Secretary of the U.S. Department of Housing  
3 and Urban Development, pursuant to the authority granted  
4 under federal Public Law 110-289, Section 1508(a).

5 (2) For all individuals registered as mortgage loan  
6 originators as of the effective date of this amendatory Act  
7 of the 96th General Assembly, the operability date shall be  
8 January 1, 2011, or any later date approved by the  
9 Secretary of the U.S. Department of Housing and Urban  
10 Development, pursuant to the authority granted under  
11 Public Law 110-289, Section 1508(a).

12 (3) For all individuals described in item (1) or (2) of  
13 this subsection (b) who are loss mitigation specialists  
14 employed by servicers, the operability date of July 31,  
15 2011, or any later date approved by the Secretary of the  
16 U.S. Department of Housing and Urban Development pursuant  
17 to authority granted under Public Law 110-289, Section  
18 1508(a).

19 (c) The following are exempt from this Act:

20 (1) Registered mortgage loan originators, when acting  
21 for an entity described in subsection (tt) of Section 1-4.

22 (2) Any individual who offers or negotiates terms of a  
23 residential mortgage loan with or on behalf of an immediate  
24 family member of the individual.

25 (3) Any individual who offers or negotiates terms of a  
26 residential mortgage loan secured by a dwelling that served

1 as the individual's residence.

2 (4) A licensed attorney who negotiates the terms of a  
3 residential mortgage loan on behalf of a client as an  
4 ancillary matter to the attorney's representation of the  
5 client, unless the attorney is compensated by a lender, a  
6 mortgage broker, or other mortgage loan originator or by  
7 any agent of a lender, mortgage broker, or other mortgage  
8 loan originator.

9 (d) A loan processor or underwriter who is an independent  
10 contractor may not engage in the activities of a loan processor  
11 or underwriter unless he or she obtains and maintains a license  
12 under subsection (a) of this Section. Each independent  
13 contractor loan processor or underwriter licensed as a mortgage  
14 loan originator must have and maintain a valid unique  
15 identifier issued by the Nationwide Mortgage Licensing System  
16 and Registry.

17 (e) For the purposes of implementing an orderly and  
18 efficient licensing process, the Director may establish  
19 licensing rules or regulations and interim procedures for  
20 licensing and acceptance of applications. For previously  
21 registered or licensed individuals, the Director may establish  
22 expedited review and licensing procedures.

23 (205 ILCS 635/7-2 new)

24 Sec. 7-2. State license application and issuance.

25 (a) Applicants for a license shall apply in a form

1 prescribed by the Director. Each form shall contain content as  
2 set forth by rule, regulation, instruction, or procedure of the  
3 Director and may be changed or updated as necessary by the  
4 Director in order to carry out the purposes of this Act.

5 (b) In order to fulfill the purposes of this Act, the  
6 Director is authorized to establish relationships or contracts  
7 with the Nationwide Mortgage Licensing System and Registry or  
8 other entities designated by the Nationwide Mortgage Licensing  
9 System and Registry to collect and maintain records and process  
10 transaction fees or other fees related to licensees or other  
11 persons subject to this Act.

12 (c) In connection with an application for licensing as a  
13 mortgage loan originator, the applicant shall, at a minimum,  
14 furnish to the Nationwide Mortgage Licensing System and  
15 Registry information concerning the applicant's identity,  
16 including the following:

17 (1) Fingerprints for submission to the Federal Bureau  
18 of Investigation, and any governmental agency or entity  
19 authorized to receive such information for a state,  
20 national and international criminal history background  
21 check.

22 (2) Personal history and experience in a form  
23 prescribed by the Nationwide Mortgage Licensing System and  
24 Registry, including the submission of authorization for  
25 the Nationwide Mortgage Licensing System and Registry and  
26 the Director to obtain:

1           (A) an independent credit report obtained from a  
2           consumer reporting agency described in Section 603(p)  
3           of the Fair Credit Reporting Act; and

4           (B) information related to any administrative,  
5           civil, or criminal findings by any governmental  
6           jurisdiction.

7           (d) For the purpose of this Section, and in order to reduce  
8           the points of contact which the Federal Bureau of Investigation  
9           may have to maintain for purposes of subsection (c) of this  
10           Section, the Director may use the Nationwide Mortgage Licensing  
11           System and Registry as a channeling agent for requesting  
12           information from and distributing information to the  
13           Department of Justice or any governmental agency.

14           (e) For the purposes of this Section and in order to reduce  
15           the points of contact which the Director may have to maintain  
16           for purposes of item (2) of subsection (c) of this Section, the  
17           Director may use the Nationwide Mortgage Licensing System and  
18           Registry as a channeling agent for requesting and distributing  
19           information to and from any source so directed by the Director.

20           (205 ILCS 635/7-3 new)

21           Sec. 7-3. Issuance of license. The Director shall not issue  
22           a mortgage loan originator license unless the Director makes at  
23           a minimum the following findings:

24           (1) The applicant has never had a mortgage loan originator  
25           license revoked in any governmental jurisdiction, except that a



1 subsequent formal vacation of such revocation shall not be  
2 deemed a revocation.

3 (2) The applicant has not been convicted of, or pled guilty  
4 or nolo contendere to, a felony in a domestic, foreign, or  
5 military court:

6 (A) during the 7-year period preceding the date of the  
7 application for licensing and registration; or

8 (B) at any time preceding such date of application, if  
9 such felony involved an act of fraud, dishonesty, or a  
10 breach of trust, or money laundering;

11 provided that any pardon of a conviction shall not be a  
12 conviction for purposes of this item (2).

13 (3) The applicant has demonstrated financial  
14 responsibility, character, and general fitness so as to command  
15 the confidence of the community and to warrant a determination  
16 that the mortgage loan originator will operate honestly,  
17 fairly, and efficiently within the purposes of this Act. For  
18 purposes of this item (3) a person has shown that he or she is  
19 not financially responsible when he or she has shown a  
20 disregard for the management of his or her own financial  
21 condition. A determination that an individual has not shown  
22 financial responsibility may include, but is not limited to,  
23 consideration of:

24 (A) current outstanding judgments, except judgments  
25 solely as a result of medical expenses;

26 (B) current outstanding tax liens or other government

1 liens and filings, educational loan defaults, and  
2 non-payment of child support;

3 (C) foreclosures within the past 3 years;

4 (D) a pattern of seriously delinquent accounts within  
5 the past 3 years; and

6 (E) an independent credit report obtained under  
7 Section 7-2(c)(2) of the Act; provided that, a credit score  
8 may not be the sole basis for determining that an  
9 individual has not shown financial responsibility;  
10 provided further that, the credit report may be the sole  
11 basis for determining that an individual has not shown  
12 financial responsibility.

13 (4) The applicant has completed the pre-licensing  
14 education requirement described in Section 7-4 of this Act.

15 (5) The applicant has passed a written test that meets the  
16 test requirement described in Section 7-5 of this Act.

17 (6) The applicant has met the surety bond requirement as  
18 required pursuant to Section 7-11 of this Act.

19 (205 ILCS 635/7-4 new)

20 Sec. 7-4. Pre-licensing and education of mortgage loan  
21 originators.

22 (a) In order to meet the pre-licensing education  
23 requirement referred to in item (4) of Section 7-3 of this Act  
24 an individual shall complete at least 20 hours of education  
25 approved in accordance with subsection (b) of this Section,

1 which shall include at least:

2 (1) 3 hours of Federal law and regulations;

3 (2) 3 hours of ethics, which shall include instruction  
4 on fraud, consumer protection, and fair lending issues; and

5 (3) 2 hours of training related to lending standards  
6 for the nontraditional mortgage product marketplace.

7 (b) For purposes of subsection (a) of this Section,  
8 pre-licensing education courses shall be reviewed and approved  
9 by the Nationwide Mortgage Licensing System and Registry based  
10 upon reasonable standards. Review and approval of a  
11 pre-licensing education course shall include review and  
12 approval of the course provider.

13 (c) Nothing in this Section shall preclude any  
14 pre-licensing education course, as approved by the Nationwide  
15 Mortgage Licensing System and Registry, that is provided by the  
16 employer of the applicant or an entity which is affiliated with  
17 the applicant by an agency contract, or any subsidiary or  
18 affiliate of such an employer or entity.

19 (d) Pre-licensing education may be offered in a classroom,  
20 online, or by any other means approved by the Nationwide  
21 Mortgage Licensing System and Registry.

22 (e) The pre-licensing education requirements approved by  
23 the Nationwide Mortgage Licensing System and Registry for the  
24 subjects listed in items (1) through (3) of subsection (a) for  
25 any state shall be accepted as credit towards completion of  
26 pre-licensing education requirements in Illinois.

1       (f) An individual previously registered under this Act who  
2       is applying to be licensed after the effective date of this  
3       amendatory Act of the 96th General Assembly must prove that he  
4       or she has completed all of the continuing education  
5       requirements for the year in which the registration or license  
6       was last held.

7           (205 ILCS 635/7-5 new)

8       Sec. 7-5. Testing of mortgage loan originators.

9       (a) In order to meet the written test requirement referred  
10      to in item (5) of Section 7-3, an individual shall pass, in  
11      accordance with the standards established under this  
12      subsection (a), a qualified written test developed by the  
13      Nationwide Mortgage Licensing System and Registry and  
14      administered by a test provider approved by the Nationwide  
15      Mortgage Licensing System and Registry based upon reasonable  
16      standards.

17      (b) A written test shall not be treated as a qualified  
18      written test for purposes of subsection (a) of this Section  
19      unless the test adequately measures the applicant's knowledge  
20      and comprehension in appropriate subject areas, including:

21           (1) ethics;

22           (2) federal law and regulation pertaining to mortgage  
23      origination;

24           (3) State law and regulation pertaining to mortgage  
25      origination; and

1           (4) federal and State law and regulation, including  
2           instruction on fraud, consumer protection, the  
3           nontraditional mortgage marketplace, and fair lending  
4           issues.

5           (c) Nothing in this Section shall prohibit a test provider  
6           approved by the Nationwide Mortgage Licensing System and  
7           Registry from providing a test at the location of the employer  
8           of the applicant or the location of any subsidiary or affiliate  
9           of the employer of the applicant, or the location of any entity  
10           with which the applicant holds an exclusive arrangement to  
11           conduct the business of a mortgage loan originator.

12           (d) An individual shall not be considered to have passed a  
13           qualified written test unless the individual achieves a test  
14           score of not less than 75% correct answers to questions.

15           An individual may retake a test 3 consecutive times with  
16           each consecutive taking occurring at least 30 days after the  
17           preceding test.

18           After failing 3 consecutive tests, an individual shall wait  
19           at least 6 months before taking the test again.

20           A licensed mortgage loan originator who fails to maintain a  
21           valid license for a period of 5 years or longer shall retake  
22           the test, not taking into account any time during which such  
23           individual is a registered mortgage loan originator.

24           (205 ILCS 635/7-6 new)

25           Sec. 7-6. Standards for license renewal.

1       (a) The minimum standards for license renewal for mortgage  
2 loan originators shall include the following:

3           (1) The mortgage loan originator continues to meet the  
4 minimum standards for license issuance under Section 7-3.

5           (2) The mortgage loan originator has satisfied the  
6 annual continuing education requirements described in  
7 Section 7-7.

8           (3) The mortgage loan originator has paid all required  
9 fees for renewal of the license.

10       (b) The license of a mortgage loan originator failing to  
11 satisfy the minimum standards for license renewal shall expire.  
12 The Director may adopt procedures for the reinstatement of  
13 expired licenses consistent with the standards established by  
14 the Nationwide Mortgage Licensing System and Registry.

15       (205 ILCS 635/7-7 new)

16       Sec. 7-7. Continuing education for mortgage loan  
17 originators.

18       (a) In order to meet the annual continuing education  
19 requirements referred to in Section 7-6, a licensed mortgage  
20 loan originator shall complete at least 8 hours of education  
21 approved in accordance with subsection (b) of this Section,  
22 which shall include at least:

23           (1) 3 hours of Federal law and regulations;

24           (2) 2 hours of ethics, which shall include instruction  
25 on fraud, consumer protection, and fair lending issues; and

1           (3) 2 hours of training related to lending standards  
2           for the nontraditional mortgage product marketplace.

3           (b) For purposes of this subsection (a), continuing  
4           education courses shall be reviewed and approved by the  
5           Nationwide Mortgage Licensing System and Registry based upon  
6           reasonable standards. Review and approval of a continuing  
7           education course shall include review and approval of the  
8           course provider.

9           (c) Nothing in this Section shall preclude any education  
10          course, as approved by the Nationwide Mortgage Licensing System  
11          and Registry, that is provided by the employer of the mortgage  
12          loan originator or an entity which is affiliated with the  
13          mortgage loan originator by an agency contract, or any  
14          subsidiary or affiliate of the employer or entity.

15          (d) Continuing education may be offered either in a  
16          classroom, online, or by any other means approved by the  
17          Nationwide Mortgage Licensing System and Registry.

18          (e) A licensed mortgage loan originator:

19               (1) Except as provided in Section 7-6 and subsection  
20               (i) of this Section, may only receive credit for a  
21               continuing education course in the year in which the course  
22               is taken; and

23               (2) May not take the same approved course in the same  
24               or successive years to meet the annual requirements for  
25               continuing education.

26          (f) A licensed mortgage loan originator who is an approved

1 instructor of an approved continuing education course may  
2 receive credit for the licensed mortgage loan originator's own  
3 annual continuing education requirement at the rate of 2 hours  
4 credit for every one hour taught.

5 (g) A person having successfully completed the education  
6 requirements approved by the Nationwide Mortgage Licensing  
7 System and Registry for the subjects listed in subsection (a)  
8 of this Section for any state shall be accepted as credit  
9 towards completion of continuing education requirements in  
10 this State.

11 (h) A licensed mortgage loan originator who subsequently  
12 becomes unlicensed must complete the continuing education  
13 requirements for the last year in which the license was held  
14 prior to issuance of a new or renewed license.

15 (i) A person meeting the requirements of Section 7-6 may  
16 make up any deficiency in continuing education as established  
17 by rule or regulation of the Director.

18 (205 ILCS 635/7-8 new)

19 Sec. 7-8. Authority to require license. In addition to any  
20 other duties imposed upon the Director by law, the Director  
21 shall require mortgage loan originators to be licensed and  
22 registered through the Nationwide Mortgage Licensing System  
23 and Registry. In order to carry out this requirement the  
24 Director is authorized to participate in the Nationwide  
25 Mortgage Licensing System and Registry. For this purpose, the



1 Director may establish by agreement, order or rule requirements  
2 as necessary, including, but not limited to, the following:

3 (1) Background checks for:

4 (A) criminal history through fingerprint or other  
5 databases;

6 (B) civil or administrative records;

7 (C) credit history; or

8 (D) any other information as deemed necessary by  
9 the Nationwide Mortgage Licensing System and Registry.

10 (2) The payment of fees to apply for or renew licenses  
11 through the Nationwide Mortgage Licensing System and  
12 Registry;

13 (3) The setting or resetting as necessary of renewal or  
14 reporting dates; and

15 (4) Requirements for amending or surrendering a  
16 license or any other such activities as the Director deems  
17 necessary for participation in the Nationwide Mortgage  
18 Licensing System and Registry.

19 (205 ILCS 635/7-9 new)

20 Sec. 7-9. Report to Nationwide Mortgage Licensing System  
21 and Registry. Subject to State privacy laws, the Director is  
22 required to report regularly violations of this Act, as well as  
23 enforcement actions and other relevant information, to the  
24 Nationwide Mortgage Licensing System and Registry subject to  
25 the provisions contained in Section 4-8.1A of this Act.

1 (205 ILCS 635/7-10 new)

2 Sec. 7-10. Nationwide Mortgage Licensing System and  
3 Registry information challenge process. The Director shall  
4 establish a process whereby mortgage loan originators may  
5 challenge information entered into the Nationwide Mortgage  
6 Licensing System and Registry by the Director.

7 (205 ILCS 635/7-11 new)

8 Sec. 7-11. Mortgage loan originator suspension or  
9 revocation of registration; refusal to renew; fines.

10 (a) In addition to any other action authorized by this Act  
11 or any other applicable law, rule or regulation, the Director  
12 may do the following:

13 (1) Suspend, revoke, or refuse to renew a license or  
14 reprimand, place on probation or otherwise discipline a  
15 licensee if the Director finds that the mortgage loan  
16 originator has violated this Act or any other applicable  
17 law or regulation or has been convicted of a criminal  
18 offense.

19 (2) Impose a fine of not more than \$1,000 for each day  
20 for each violation of this Act or any other applicable law  
21 or regulation that is committed. If the Mortgage Loan  
22 Originator engages in a pattern of repeated violations, the  
23 Director may impose a fine of not more than \$2,000 for each  
24 day for each violation committed. In determining the amount

1 of a fine to be imposed pursuant to this Act or any other  
2 applicable law or regulation, the Director shall consider  
3 all of the following:

4 (A) The seriousness of the violation;

5 (B) The mortgage loan originator's good faith  
6 efforts to prevent the violation; and

7 (C) The mortgage loan originator's history of  
8 violations and compliance with orders.

9 (b) In addition to any other action authorized by this Act  
10 or any other applicable law, rule or regulation, the Director  
11 may investigate alleged violations of the Act or any other  
12 applicable law, rule or regulation and complaints concerning  
13 any such violation. The Director may seek a court order to  
14 enjoin the violation.

15 (c) In addition to any other action authorized by this Act  
16 or any other applicable law, rule or regulation, if the  
17 Director determines that a mortgage loan originator is engaged  
18 in or is believed to be engaged in activities that may  
19 constitute a violation of this Act or any other applicable law,  
20 rule or regulation, the Director may issue a cease and desist  
21 order to compel the mortgage loan originator to comply with  
22 this Act or any other applicable law, rule or regulation or,  
23 upon a showing that an emergency exists, may suspend the  
24 mortgage loan originator's license for a period not exceeding  
25 180 calendar days, pending investigation.

1 (205 ILCS 635/7-12 new)

2 Sec. 7-12. Surety bond required.

3 (a) Each mortgage loan originator shall be covered by a  
4 surety bond in accordance with this Section. In the event that  
5 the mortgage loan originator is an employee or exclusive agent  
6 of a person subject to this Act, the surety bond of such person  
7 subject to this Act can be used in lieu of the mortgage loan  
8 originator's surety bond requirement. The surety bond shall  
9 provide coverage for each mortgage loan originator in an amount  
10 prescribed under subsection (b) of this Section. The surety  
11 bond shall be in a form prescribed by the Director. The  
12 Director may promulgate rules or regulations with respect to  
13 the requirements for such surety bonds as necessary to  
14 accomplish the purposes of this Act.

15 (b) The penal sum of the surety bond shall be maintained in  
16 an amount that reflects the dollar amount of loans originated  
17 as determined by the Director.

18 (c) When an action is commenced on a licensee's bond the  
19 Director may require the filing of a new bond.

20 (d) Immediately upon recovery upon any action on the bond  
21 the licensee shall file a new bond.

22 (205 ILCS 635/7-13 new)

23 Sec. 7-13. Prohibited acts and practices for mortgage loan  
24 originators. It is a violation of this Act for an individual  
25 subject to this Act to:

1           (1) Directly or indirectly employ any scheme, device,  
2           or artifice to defraud or mislead borrowers or lenders or  
3           to defraud any person.

4           (2) Engage in any unfair or deceptive practice toward  
5           any person.

6           (3) Obtain property by fraud or misrepresentation.

7           (4) Solicit or enter into a contract with a borrower  
8           that provides in substance that the person or individual  
9           subject to this Act may earn a fee or commission through  
10           "best efforts" to obtain a loan even though no loan is  
11           actually obtained for the borrower.

12           (5) Solicit, advertise, or enter into a contract for  
13           specific interest rates, points, or other financing terms  
14           unless the terms are actually available at the time of  
15           soliciting, advertising, or contracting.

16           (6) Conduct any business covered by this Act without  
17           holding a valid license as required under this Act, or  
18           assist or aid and abet any person in the conduct of  
19           business under this Act without a valid license as required  
20           under this Act.

21           (7) Fail to make disclosures as required by this Act  
22           and any other applicable State or federal law, including  
23           regulations thereunder.

24           (8) Fail to comply with this Act or rules or  
25           regulations promulgated under this Act, or fail to comply  
26           with any other state or federal law, including the rules

1 and regulations thereunder, applicable to any business  
2 authorized or conducted under this Act.

3 (9) Make, in any manner, any false or deceptive  
4 statement or representation of a material fact, or any  
5 omission of a material fact, required on any document or  
6 application subject to this Act.

7 (10) Negligently make any false statement or knowingly  
8 and willfully make any omission of material fact in  
9 connection with any information or report filed with a  
10 governmental agency or the Nationwide Mortgage Licensing  
11 System and Registry or in connection with any investigation  
12 conducted by the Director or another governmental agency.

13 (11) Make any payment, threat or promise, directly or  
14 indirectly, to any person for the purpose of influencing  
15 the independent judgment of the person in connection with a  
16 residential mortgage loan, or make any payment threat or  
17 promise, directly or indirectly, to any appraiser of a  
18 property, for the purpose of influencing the independent  
19 judgment of the appraiser with respect to the value of the  
20 property.

21 (12) Collect, charge, attempt to collect or charge, or  
22 use or propose any agreement purporting to collect or  
23 charge any fee prohibited by this Act.

24 (13) Cause or require a borrower to obtain property  
25 insurance coverage in an amount that exceeds the  
26 replacement cost of the improvements as established by the

1 property insurer.

2 (14) Fail to truthfully account for monies belonging to  
3 a party to a residential mortgage loan transaction.

4 (15) Engage in conduct that constitutes dishonest  
5 dealings.

6 (16) Knowingly instruct, solicit, propose, or cause a  
7 person other than the borrower to sign a borrower's  
8 signature on a mortgage related document, or solicit,  
9 accept or execute any contract or other document related to  
10 the residential mortgage transaction that contains any  
11 blanks to be filled in after signing or initialing the  
12 contract or other document, except for forms authorizing  
13 the verification of application information.

14 (17) Discourage any applicant from seeking or  
15 participating in housing or financial counseling either  
16 before or after the consummation of a loan transaction, or  
17 fail to provide information on counseling resources upon  
18 request.

19 (18) Charge for any ancillary products or services, not  
20 essential to the basic loan transaction for which the  
21 consumer has applied, without the applicant's knowledge  
22 and written authorization, or charge for any ancillary  
23 products or services not actually provided in the  
24 transaction.

25 (19) Fail to give reasonable consideration to a  
26 borrower's ability to repay the debt.

1           (20) Interfere or obstruct an investigation or  
2           examination conducted pursuant to this Act.

3           (205 ILCS 635/7-14 new)

4           Sec. 7-14. Unique identifier shown. The unique identifier  
5           of any person originating a residential mortgage loan shall be  
6           clearly shown on all residential mortgage loan application  
7           forms, solicitations, and advertisements, including business  
8           cards and websites, and any other documents as established by  
9           rule, regulation, or order of the Commissioner.

10           Section 97. Severability. The provisions of this Act are  
11           severable under Section 1.31 of the Statute on Statutes.

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