

1 AN ACT concerning residential mortgages.

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 1-4, 2-2, 2-4, 3-2, 4-5, 4-8.2,
6 7-1A, 7-11, and 7-13 and by adding Section 2-3A as follows:

7 (205 ILCS 635/1-4)

8 Sec. 1-4. Definitions.

9 (a) "Residential real property" or "residential real
10 estate" shall mean any real property located in Illinois, upon
11 which is constructed or intended to be constructed a dwelling.

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

17 (c) "Soliciting, processing, placing, or negotiating a
18 residential mortgage loan" shall mean for compensation or gain,
19 either directly or indirectly, accepting or offering to accept
20 an application for a residential mortgage loan, assisting or
21 offering to assist in the processing of an application for a
22 residential mortgage loan on behalf of a borrower, or
23 negotiating or offering to negotiate the terms or conditions of

1 a residential mortgage loan with a lender on behalf of a
2 borrower including, but not limited to, the submission of
3 credit packages for the approval of lenders, the preparation of
4 residential mortgage loan closing documents, including a
5 closing in the name of a broker.

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

7 (1) (i) Any banking organization or foreign banking
8 corporation licensed by the Illinois Commissioner of Banks
9 and Real Estate or the United States Comptroller of the
10 Currency to transact business in this State; (ii) any
11 national bank, federally chartered savings and loan
12 association, federal savings bank, federal credit union;
13 (iii) any pension trust, bank trust, or bank trust company;
14 (iv) any bank, savings and loan association, savings bank,
15 or credit union organized under the laws of this or any
16 other state; (v) any Illinois Consumer Installment Loan Act
17 licensee; (vi) any insurance company authorized to
18 transact business in this State; (vii) any entity engaged
19 solely in commercial mortgage lending; (viii) any service
20 corporation of a savings and loan association or savings
21 bank organized under the laws of this State or the service
22 corporation of a federally chartered savings and loan
23 association or savings bank having its principal place of
24 business in this State, other than a service corporation
25 licensed or entitled to reciprocity under the Real Estate
26 License Act of 2000; or (ix) any first tier subsidiary of a

1 bank, the charter of which is issued under the Illinois
2 Banking Act by the Illinois Commissioner of Banks and Real
3 Estate, or the first tier subsidiary of a bank chartered by
4 the United States Comptroller of the Currency and that has
5 its principal place of business in this State, provided
6 that the first tier subsidiary is regularly examined by the
7 Illinois Commissioner of Banks and Real Estate or the
8 Comptroller of the Currency, or a consumer compliance
9 examination is regularly conducted by the Federal Reserve
10 Board.

11 (1.5) Any employee of a person or entity mentioned in
12 item (1) of this subsection, when acting for such person or
13 entity, or any registered mortgage loan originator when
14 acting for an entity described in subsection (tt) of this
15 Section.

16 (1.8) Any person or entity that does not originate
17 mortgage loans in the ordinary course of business, but
18 makes or acquires residential mortgage loans with his or
19 her own funds for his or her or its own investment without
20 intent to make, acquire, or resell more than 3 residential
21 mortgage loans in any one calendar year.

22 (2) (Blank).

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

1 (4) (Blank).

2 (5) Any individual, corporation, partnership, or other
3 entity that originates, services, or brokers residential
4 mortgage loans, as these activities are defined in this
5 Act, and who or which receives no compensation for those
6 activities, subject to the Commissioner's regulations and
7 the federal Secure and Fair Enforcement for Mortgage
8 Licensing Act of 2008 and the rules promulgated under that
9 Act with regard to the nature and amount of compensation.

10 (6) (Blank).

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

15 (f) "Mortgage loan" "residential mortgage loan" or "home
16 mortgage loan" shall mean any loan primarily for personal,
17 family, or household use that is secured by a mortgage, deed of
18 trust, or other equivalent consensual security interest on a
19 dwelling as defined in Section 103(v) of the federal Truth in
20 Lending Act, or residential real estate upon which is
21 constructed or intended to be constructed a dwelling.

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

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

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

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

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

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

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

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

24 (n) "Commissioner" shall mean the Commissioner of Banks and
25 Real Estate, except that, beginning on April 6, 2009 (the
26 effective date of Public Act 95-1047), all references in this

1 Act to the Commissioner of Banks and Real Estate are deemed, in
2 appropriate contexts, to be references to the Secretary of
3 Financial and Professional Regulation, or his or her designee,
4 including the Director of the Division of Banking of the
5 Department of Financial and Professional Regulation.

6 (n-1) "Director" shall mean the Director of the Division of
7 Banking of the Department of Financial and Professional
8 Regulation, except that, beginning on July 31, 2009 (the
9 effective date of Public Act 96-112), all references in this
10 Act to the Director are deemed, in appropriate contexts, to be
11 the Secretary of Financial and Professional Regulation, or his
12 or her designee, including the Director of the Division of
13 Banking of the Department of Financial and Professional
14 Regulation.

15 (o) "Loan brokering", "brokering", or "brokerage service"
16 shall mean the act of helping to obtain from another entity,
17 for a borrower, a loan secured by residential real estate
18 situated in Illinois or assisting a borrower in obtaining a
19 loan secured by residential real estate situated in Illinois in
20 return for consideration to be paid by either the borrower or
21 the lender including, but not limited to, contracting for the
22 delivery of residential mortgage loans to a third party lender
23 and soliciting, processing, placing, or negotiating
24 residential mortgage loans.

25 (p) "Loan broker" or "broker" shall mean a person,
26 partnership, association, corporation, or limited liability

1 company, other than those persons, partnerships, associations,
2 corporations, or limited liability companies exempted from
3 licensing pursuant to Section 1-4, subsection (d), of this Act,
4 who performs the activities described in subsections (c), ~~and~~
5 (o), and (yy) of this Section.

6 (q) "Servicing" shall mean the collection or remittance for
7 or the right or obligation to collect or remit for any lender,
8 noteowner, noteholder, or for a licensee's own account, of
9 payments, interests, principal, and trust items such as hazard
10 insurance and taxes on a residential mortgage loan in
11 accordance with the terms of the residential mortgage loan; and
12 includes loan payment follow-up, delinquency loan follow-up,
13 loan analysis and any notifications to the borrower that are
14 necessary to enable the borrower to keep the loan current and
15 in good standing. "Servicing" includes management of
16 third-party entities acting on behalf of a residential mortgage
17 licensee for the collection of delinquent payments and the use
18 by such third-party entities of said licensee's servicing
19 records or information, including their use in foreclosure.

20 (r) "Full service office" shall mean an office, provided by
21 the licensee and not subleased from the licensee's employees,
22 and staff in Illinois reasonably adequate to handle efficiently
23 communications, questions, and other matters relating to any
24 application for, or an existing home mortgage secured by
25 residential real estate situated in Illinois with respect to
26 which the licensee is brokering, funding originating,

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

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

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

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

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

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

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

1 (w) "Advertisement" shall mean the attempt by publication,
2 dissemination, or circulation to induce, directly or
3 indirectly, any person to enter into a residential mortgage
4 loan agreement or residential mortgage loan brokerage
5 agreement relative to a mortgage secured by residential real
6 estate situated in Illinois.

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

9 (y) "Government-insured mortgage loan" shall mean any
10 mortgage loan made on the security of residential real estate
11 insured by the Department of Housing and Urban Development or
12 Farmers Home Loan Administration, or guaranteed by the Veterans
13 Administration.

14 (z) "Annual audit" shall mean a certified audit of the
15 licensee's books and records and systems of internal control
16 performed by a certified public accountant in accordance with
17 generally accepted accounting principles and generally
18 accepted auditing standards.

19 (aa) "Financial institution" shall mean a savings and loan
20 association, savings bank, credit union, or a bank organized
21 under the laws of Illinois or a savings and loan association,
22 savings bank, credit union or a bank organized under the laws
23 of the United States and headquartered in Illinois.

24 (bb) "Escrow agent" shall mean a third party, individual or
25 entity charged with the fiduciary obligation for holding escrow
26 funds on a residential mortgage loan pending final payout of

1 those funds in accordance with the terms of the residential
2 mortgage loan.

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

5 (dd) "Affiliate" shall mean:

6 (1) any entity that directly controls or is controlled
7 by the licensee and any other company that is directly
8 affecting activities regulated by this Act that is
9 controlled by the company that controls the licensee;

10 (2) any entity:

11 (A) that is controlled, directly or indirectly, by
12 a trust or otherwise, by or for the benefit of
13 shareholders who beneficially or otherwise control,
14 directly or indirectly, by trust or otherwise, the
15 licensee or any company that controls the licensee; or

16 (B) a majority of the directors or trustees of
17 which constitute a majority of the persons holding any
18 such office with the licensee or any company that
19 controls the licensee;

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

24 The Commissioner may define by rule and regulation any
25 terms used in this Act for the efficient and clear
26 administration of this Act.

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

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

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

24 (hh) "Loan originator" means any natural person who, for
25 compensation or in the expectation of compensation, either
26 directly or indirectly makes, offers to make, solicits, places,

1 or negotiates a residential mortgage loan. This definition
2 applies only to Section 7-1 of this Act.

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

18 (jj) "Mortgage loan originator" means an individual who for
19 compensation or gain or in the expectation of compensation or
20 gain:

21 (i) takes a residential mortgage loan application; or

22 (ii) offers or negotiates terms of a residential
23 mortgage loan.

24 "Mortgage loan originator" includes an individual engaged
25 in loan modification activities as defined in subsection (yy)
26 of this Section. A mortgage loan originator engaged in loan

1 modification activities shall report those activities to the
2 Department of Financial and Professional Regulation in the
3 manner provided by the Department; however, the Department
4 shall not impose a fee for reporting, nor require any
5 additional qualifications to engage in those activities beyond
6 those provided pursuant to this Act for mortgage loan
7 originators.

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

12 "Mortgage loan originator" does not include a person or
13 entity that only performs real estate brokerage activities and
14 is licensed in accordance with the Real Estate License Act of
15 2000, unless the person or entity is compensated by a lender, a
16 mortgage broker, or other mortgage loan originator, or by any
17 agent of that lender, mortgage broker, or other mortgage loan
18 originator.

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

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

26 (ll) "Dwelling" means a residential structure or mobile

1 home which contains one to 4 family housing units, or
2 individual units of condominiums or cooperatives.

3 (mm) "Immediate family member" means a spouse, child,
4 sibling, parent, grandparent, or grandchild, and includes
5 step-parents, step-children, step-siblings, or adoptive
6 relationships.

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

8 (oo) "Loan processor or underwriter" means an individual
9 who performs clerical or support duties as an employee at the
10 direction of and subject to the supervision and instruction of
11 a person licensed, or exempt from licensing, under this Act.
12 "Clerical or support duties" includes subsequent to the receipt
13 of an application:

14 (i) the receipt, collection, distribution, and
15 analysis of information common for the processing or
16 underwriting of a residential mortgage loan; and

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

1 lists, or other promotional items, that the individual can
2 or will perform any of the activities of a mortgage loan
3 originator.

4 (pp) "Nationwide Mortgage Licensing System and Registry"
5 means a mortgage licensing system developed and maintained by
6 the Conference of State Bank Supervisors and the American
7 Association of Residential Mortgage Regulators for the
8 licensing and registration of licensed mortgage loan
9 originators.

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

12 (rr) "Person" means a natural person, corporation,
13 company, limited liability company, partnership, or
14 association.

15 (ss) "Real estate brokerage activity" means any activity
16 that involves offering or providing real estate brokerage
17 services to the public, including:

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

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

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

26 (4) engaging in any activity for which a person engaged

1 in the activity is required to be registered or licensed as
2 a real estate agent or real estate broker under any
3 applicable law; or

4 (5) offering to engage in any activity, or act in any
5 capacity, described in this subsection (ss).

6 (tt) "Registered mortgage loan originator" means any
7 individual that:

8 (1) meets the definition of mortgage loan originator
9 and is an employee of:

10 (A) a depository institution;

11 (B) a subsidiary that is:

12 (i) owned and controlled by a depository
13 institution; and

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

15 (C) an institution regulated by the Farm Credit
16 Administration; and

17 (2) is registered with, and maintains a unique
18 identifier through, the Nationwide Mortgage Licensing
19 System and Registry.

20 (uu) "Unique identifier" means a number or other identifier
21 assigned by protocols established by the Nationwide Mortgage
22 Licensing System and Registry.

23 (vv) "Residential mortgage license" means a license issued
24 pursuant to Section 1-3, 2-2, or 2-6 of this Act.

25 (ww) "Mortgage loan originator license" means a license
26 issued pursuant to Section 7-1A, 7-3, or 7-6 of this Act.

1 (xx) "Secretary" means the Secretary of the Department of
2 Financial and Professional Regulation, or a person authorized
3 by the Secretary or by this Act to act in the Secretary's
4 stead.

5 (yy) "Loan modification" means, for compensation or gain,
6 either directly or indirectly offering or negotiating on behalf
7 of a borrower or homeowner to adjust the terms of a residential
8 mortgage loan in a manner not provided for in the original or
9 previously modified mortgage loan.

10 (zz) "Short sale facilitation" means, for compensation or
11 gain, either directly or indirectly offering or negotiating on
12 behalf of a borrower or homeowner to facilitate the sale of
13 residential real estate subject to one or more residential
14 mortgage loans or debts constituting liens on the property in
15 which the proceeds from selling the residential real estate
16 will fall short of the amount owed and the lien holders are
17 contacted to agree to release their lien on the residential
18 real estate and accept less than the full amount owed on the
19 debt.

20 (Source: P.A. 96-112, eff. 7-31-09; 96-1000, eff. 7-2-10;
21 96-1216, eff. 1-1-11; 97-143, eff. 7-14-11.)

22 (205 ILCS 635/2-2)

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

24 (a) The Secretary shall issue a license upon completion of
25 all of the following:

1 (1) The filing of an application for license with the
2 Director or the Nationwide Mortgage Licensing System and
3 Registry as approved by the Director.

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

7 (3) The payment, in certified funds, of investigation
8 and application fees, the total of which shall be in an
9 amount equal to \$2,700 ~~\$2,043~~ annually. To comply with the
10 common renewal date and requirements of the Nationwide
11 Mortgage Licensing System and Registry, the term of initial
12 licenses may be extended or shortened with applicable fees
13 prorated 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 to the license applicant.

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

15 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
16 96-1000, eff. 7-2-10.)

17 (205 ILCS 635/2-3A new)

18 Sec. 2-3A. Residential mortgage license application and
19 issuance.

20 (a) Applicants for a license shall apply in a form
21 prescribed by the Director. Each form shall contain content as
22 set forth by rule, regulation, instruction, or procedure of the
23 Director and may be changed or updated as necessary by the
24 Director in order to carry out the purposes of this Act.

25 (b) In order to fulfill the purposes of this Act, the

1 Director is authorized to establish relationships or contracts
2 with the Nationwide Mortgage Licensing System and Registry or
3 other entities designated by the Nationwide Mortgage Licensing
4 System and Registry to collect and maintain records and process
5 transaction fees or other fees related to licensees or other
6 persons subject to this Act.

7 (c) In connection with an application for licensing, the
8 applicant may be required, at a minimum, to furnish to the
9 Nationwide Mortgage Licensing System and Registry information
10 concerning the applicant's identity, including:

11 (1) fingerprints for submission to the Federal Bureau
12 of Investigation or any governmental agency or entity
13 authorized to receive such information for a State,
14 national, and international criminal history background
15 check; and

16 (2) personal history and experience in a form
17 prescribed by the Nationwide Mortgage Licensing System and
18 Registry, including the submission of authorization for
19 the Nationwide Mortgage Licensing System and Registry and
20 the Director to obtain:

21 (A) an independent credit report obtained from a
22 consumer reporting agency described in Section 603(p)
23 of the Fair Credit Reporting Act (15 U.S.C. 1681a(p));
24 and

25 (B) information related to any administrative,
26 civil, or criminal findings by any governmental

1 jurisdiction.

2 (d) For the purposes of this Section, and in order to
3 reduce the points of contact that the Federal Bureau of
4 Investigation may have to maintain for purposes of subsection
5 (c) of this Section, the Director may use the Nationwide
6 Mortgage Licensing System and Registry as a channeling agent
7 for requesting information from and distributing information
8 to the Department of Justice or any governmental agency.

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

16 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

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

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

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

25 (c) Will keep and maintain for 36 months the same

1 written records as required by the federal Equal Credit
2 Opportunity Act, and any other information required by
3 regulations of the Commissioner regarding any home
4 mortgage in the course of the conduct of its residential
5 mortgage business;

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

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

17 (f) Will not engage in fraudulent home mortgage
18 underwriting practices;

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

26 (h) Has filed tax returns (State and Federal) for the

1 past 3 years or filed with the Commissioner an accountant's
2 or attorney's statement as to why no return was filed;

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

5 (j) Will not knowingly make any false promises likely
6 to influence or persuade, or pursue a course of
7 misrepresentation and false promises through agents,
8 solicitors, advertising or otherwise;

9 (k) Will not knowingly misrepresent, circumvent or
10 conceal, through whatever subterfuge or device, any of the
11 material particulars or the nature thereof, regarding a
12 transaction to which it is a party to the injury of another
13 party thereto;

14 (l) Will disburse funds in accordance with its
15 agreements;

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

22 (n) Will account or deliver to the owner upon request
23 any personal property such as money, fund, deposit, check,
24 draft, mortgage, other document or thing of value which it
25 is not in law or equity entitled to retain under the
26 circumstances;

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

3 (p) Has not become insolvent;

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

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

9 (s) Will advise the Commissioner in writing, or the
10 Nationwide Mortgage Licensing System and Registry as
11 applicable, of any changes to the information submitted on
12 the most recent application for license within 30 days of
13 said change. The written notice must be signed in the same
14 form as the application for license being amended;

15 (t) Will comply with the provisions of this Act, or
16 with any lawful order, rule or regulation made or issued
17 under the provisions of this Act;

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

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

23 (w) Will advise the Commissioner in writing within 30
24 days of any request made to a licensee under this Act to
25 repurchase a loan in a manner that completely and clearly
26 identifies to whom the request was made, the loans

1 involved, and the reason therefor;

2 (x) Will advise the Commissioner in writing within 30
3 days of any request from any entity to repurchase a loan in
4 a manner that completely and clearly identifies to whom the
5 request was made, the loans involved, and the reason for
6 the request;

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

9 (z) Will not knowingly hire or employ a loan originator
10 who is not registered, or mortgage loan originator who is
11 not licensed, with the Commissioner as required under
12 Section 7-1 or Section 7-1A, as applicable, of this Act; ~~and~~

13 (aa) Will not charge or collect advance payments from
14 borrowers or homeowners for engaging in loan modification;
15 and

16 (bb) Will not structure activities or contracts to
17 evade provisions of this Act.

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

22 (Source: P.A. 95-331, eff. 8-21-07; 96-112, eff. 7-31-09.)

23 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

24 Sec. 3-2. Annual audit.

25 (a) At the licensee's fiscal year-end, but in no case more

1 than 12 months after the last audit conducted pursuant to this
2 Section, except as otherwise provided in this Section, it shall
3 be mandatory for each residential mortgage licensee to cause
4 its books and accounts to be audited by a certified public
5 accountant not connected with such licensee. The books and
6 records of all licensees under this Act shall be maintained on
7 an accrual basis. The audit must be sufficiently comprehensive
8 in scope to permit the expression of an opinion on the
9 financial statements, which must be prepared in accordance with
10 generally accepted accounting principles, and must be
11 performed in accordance with generally accepted auditing
12 standards. Notwithstanding the requirements of this
13 subsection, a licensee that is a first tier subsidiary may
14 submit audited consolidated financial statements of its parent
15 as long as the consolidated statements are supported by
16 consolidating statements. The licensee's chief financial
17 officer shall attest to the licensee's financial statements
18 disclosed in the consolidating statements.

19 (b) As used herein, the term "expression of opinion"
20 includes either (1) an unqualified opinion, (2) a qualified
21 opinion, (3) a disclaimer of opinion, or (4) an adverse
22 opinion.

23 (c) If a qualified or adverse opinion is expressed or if an
24 opinion is disclaimed, the reasons therefore must be fully
25 explained. An opinion, qualified as to a scope limitation,
26 shall not be acceptable.

1 (d) The most recent audit report shall be filed with the
2 Commissioner within 90 days after the end of the licensee's
3 fiscal year, or with the Nationwide Mortgage Licensing System
4 and Registry, if applicable, pursuant to Mortgage Call Report
5 requirements. The report filed with the Commissioner shall be
6 certified by the certified public accountant conducting the
7 audit. The Commissioner may promulgate rules regarding late
8 audit reports.

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

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

21 (g) With respect to licensees who solely broker residential
22 mortgage loans as defined in subsection (o) of Section 1-4,
23 instead of the audit required by this Section, the Commissioner
24 may accept compilation financial statements prepared at least
25 every 12 months, and the compilation financial statement must
26 be ~~prepared by an independent certified public accountant~~

1 ~~licensed under the Illinois Public Accounting Act or by an~~
2 ~~equivalent state licensing law with full disclosure in~~
3 ~~accordance with generally accepted accounting principals and~~
4 ~~must be~~ submitted within 90 days after the end of the
5 licensee's fiscal year, or with the Nationwide Mortgage
6 Licensing System and Registry, if applicable, pursuant to
7 Mortgage Call Report requirements. If a licensee under this
8 Section fails to file a compilation as required, the
9 Commissioner shall cause an audit of the licensee's books and
10 accounts to be made by a certified public accountant at the
11 licensee's expense. The Commissioner shall select the
12 certified public accountant by advertising for bids or by such
13 other fair and impartial means as he or she establishes by
14 rule. A licensee who files false or misleading compilation
15 financial statements is guilty of a business offense and shall
16 be fined not less than \$5,000.

17 (h) The workpapers of the certified public accountants
18 employed by each licensee for purposes of this Section are to
19 be made available to the Commissioner or the Commissioner's
20 designee upon request and may be reproduced by the Commissioner
21 or the Commissioner's designee to enable to the Commissioner to
22 carry out the purposes of this Act.

23 (i) Notwithstanding any other provision of this Section, if
24 a licensee relying on subsection (g) of this Section causes its
25 books to be audited at any other time or causes its financial
26 statements to be reviewed, a complete copy of the audited or

1 reviewed financial statements shall be delivered to the
2 Commissioner at the time of the annual license renewal payment
3 following receipt by the licensee of the audited or reviewed
4 financial statements. All workpapers shall be made available to
5 the Commissioner upon request. The financial statements and
6 workpapers may be reproduced by the Commissioner or the
7 Commissioner's designee to carry out the purposes of this Act.

8 (Source: P.A. 96-112, eff. 7-31-09; revised 11-18-11.)

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

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

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

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

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

24 (3) If a licensee is other than an individual, any
25 ultimate equitable owner, officer, director, or member of

1 the licensed partnership, association, corporation, or
2 other entity has so acted or failed to act as would be
3 cause for suspending or revoking a license to that party as
4 an individual.

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

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

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

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

23 (f) Every license issued under this Act shall remain in
24 force and effect until the same shall have expired without
25 renewal, have been surrendered, revoked or suspended in
26 accordance with the provisions of this Act, but the

1 Commissioner shall have authority to reinstate a suspended
2 license or to issue a new license to a licensee whose license
3 shall have been revoked if no fact or condition then exists
4 which would have warranted the Commissioner in refusing
5 originally to issue such license under this Act.

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

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

19 (1) Revocation of license;

20 (2) Suspension of a license subject to reinstatement
21 upon satisfying all reasonable conditions the Commissioner
22 may specify;

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

26 (4) Issuance of a reprimand;

1 (5) Imposition of a fine not to exceed \$25,000 for each
2 count of separate offense, provided that a fine may be
3 imposed not to exceed \$75,000 for each separate count of
4 offense of paragraph (2) of subsection (i) of this Section;
5 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 subpoena or subpoena duces tecum;

11 (16) A pattern of substantially underestimating the
12 maximum closing costs;

13 (17) Failure to comply with or violation of any
14 provision of this Act; ~~—~~

15 (18) Failure to comply with or violation of any
16 provision of Article 3 of the Residential Real Property
17 Disclosure 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, but upon the Director approving the surrender, it
21 shall not affect the licensee's civil or criminal liability
22 for acts committed prior to surrender or entitle the
23 licensee to a return of any part of the license fee.

24 (Source: P.A. 96-112, eff. 7-31-09.)

25 (205 ILCS 635/4-8.2)

1 Sec. 4-8.2. Reports of violations. Any person licensed
2 under this Act or any other person may report to the
3 Commissioner any information to show that a person subject to
4 this Act is or may be in violation of this Act. A licensee who
5 files a report with the Department of Financial and
6 Professional Regulation that another licensee is engaged in one
7 or more violations pursuant to this Act shall not be the
8 subject of disciplinary action by the Department, unless the
9 Department determines, by a preponderance of the evidence
10 available to the Department, that the reporting person
11 knowingly and willingly participated in the violation that was
12 reported.

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

14 (205 ILCS 635/7-1A)

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

16 (a) It is unlawful for any individual to act or assume to
17 act as a mortgage loan originator, as defined in subsection
18 (jj) of Section 1-4 of this Act, without obtaining a license
19 from the Director, unless the individual is exempt under
20 subsection (c) of this Section. It is unlawful for any
21 individual who holds a mortgage loan originator license to
22 provide short sale facilitation services unless he or she holds
23 a license under the Real Estate License Act of 2000. Each
24 licensed mortgage loan originator must register with and
25 maintain a valid unique identifier issued by the Nationwide

1 Mortgage Licensing System and Registry.

2 (b) In order to facilitate an orderly transition to
3 licensing and minimize disruption in the mortgage marketplace,
4 the operability date for subsection (a) of this Section shall
5 be as provided in this subsection (b). For this purpose, the
6 Director may require submission of licensing information to the
7 Nationwide Mortgage Licensing System and Registry prior to the
8 operability dates designated by the Director pursuant to items
9 (1) and (2) of this subsection (b).

10 (1) For all individuals other than individuals
11 described in item (2) of this subsection (b), the
12 operability date as designated by the Director shall be no
13 later than July 31, 2010, or any date approved by the
14 Secretary of the U.S. Department of Housing and Urban
15 Development, pursuant to the authority granted under
16 federal Public Law 110-289, Section 1508.

17 (2) For all individuals registered as loan originators
18 as of the effective date of this amendatory Act of the 96th
19 General Assembly, the operability date as designated by the
20 Director shall be no later than January 1, 2011, or any
21 date approved by the Secretary of the U.S. Department of
22 Housing and Urban Development, pursuant to the authority
23 granted under Public Law 110-289, Section 1508.

24 (3) For all individuals described in item (1) or (2) of
25 this subsection (b) who are loss mitigation specialists
26 employed by servicers, the operability date shall be July

1 31, 2011, or any date approved by the Secretary of the U.S.
2 Department of Housing and Urban Development pursuant to
3 authority granted under Public Law 110-289, Section 1508.

4 (c) The following, when engaged in the following
5 activities, are exempt from this Act:

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

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

11 (3) Any individual who offers or negotiates terms of a
12 residential mortgage loan secured by a dwelling that served
13 as the individual's residence.

14 (4) A licensed attorney who negotiates the terms of a
15 residential mortgage loan on behalf of a client as an
16 ancillary matter to the attorney's representation of the
17 client, unless the attorney is compensated by a lender, a
18 mortgage broker, or other mortgage loan originator or by
19 any agent of a lender, mortgage broker, or other mortgage
20 loan originator.

21 (d) A loan processor or underwriter who is an independent
22 contractor may not engage in the activities of a loan processor
23 or underwriter unless he or she obtains and maintains a license
24 under subsection (a) of this Section. Each independent
25 contractor loan processor or underwriter licensed as a mortgage
26 loan originator must have and maintain a valid unique

1 identifier issued by the Nationwide Mortgage Licensing System
2 and Registry.

3 (e) For the purposes of implementing an orderly and
4 efficient licensing process, the Director may establish
5 licensing rules or regulations and interim procedures for
6 licensing and acceptance of applications. For previously
7 registered or licensed individuals, the Director may establish
8 expedited review and licensing procedures.

9 (Source: P.A. 96-112, eff. 7-31-09.)

10 (205 ILCS 635/7-11)

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

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

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

22 (2) Impose a fine of not more than \$1,000 or, for
23 engaging in an act prohibited by item (1) of Section 7-13,
24 not more than \$3,000 for each day for each violation of
25 this Act or any other applicable law or regulation that is

1 committed. If the Mortgage Loan Originator engages in a
2 pattern of repeated violations, the Director may impose a
3 fine of not more than \$2,000 or, for engaging in an act
4 prohibited by item (1) of Section 7-13, not more than
5 \$6,000 for each day for each violation committed. In
6 determining the amount of a fine to be imposed pursuant to
7 this Act or any other applicable law or regulation, the
8 Director shall consider all of the following:

9 (A) The seriousness of the violation;

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

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

14 (b) In addition to any other action authorized by this Act
15 or any other applicable law, rule or regulation, the Director
16 may investigate alleged violations of the Act or any other
17 applicable law, rule or regulation and complaints concerning
18 any such violation. The Director may seek a court order to
19 enjoin the violation.

20 (c) In addition to any other action authorized by this Act
21 or any other applicable law, rule or regulation, if the
22 Director determines that a mortgage loan originator is engaged
23 in or is believed to be engaged in activities that may
24 constitute a violation of this Act or any other applicable law,
25 rule or regulation, the Director may issue a cease and desist
26 order to compel the mortgage loan originator to comply with

1 this Act or any other applicable law, rule or regulation or,
2 upon a showing that an emergency exists, may suspend the
3 mortgage loan originator's license for a period not exceeding
4 180 calendar days, pending investigation.

5 (Source: P.A. 96-112, eff. 7-31-09.)

6 (205 ILCS 635/7-13)

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

10 (1) Directly or indirectly employ any scheme, device,
11 or artifice to defraud or mislead borrowers or lenders or
12 to defraud any person.

13 (2) Engage in any unfair or deceptive practice toward
14 any person.

15 (3) Obtain property by fraud or misrepresentation.

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

21 (5) Solicit, advertise, or enter into a contract for
22 specific interest rates, points, or other financing terms
23 unless the terms are actually available at the time of
24 soliciting, advertising, or contracting.

25 (6) Conduct any business covered by this Act without

1 holding a valid license as required under this Act, or
2 assist or aid and abet any person in the conduct of
3 business under this Act without a valid license as required
4 under this Act.

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

8 (8) Fail to comply with this Act or rules or
9 regulations promulgated under this Act, or fail to comply
10 with any other state or federal law, including the rules
11 and regulations thereunder, applicable to any business
12 authorized or conducted under this Act.

13 (9) Make, in any manner, any false or deceptive
14 statement or representation of a material fact, or any
15 omission of a material fact, required on any document or
16 application subject to this Act.

17 (10) Negligently make any false statement or knowingly
18 and willfully make any omission of material fact in
19 connection with any information or report filed with a
20 governmental agency or the Nationwide Mortgage Licensing
21 System and Registry or in connection with any investigation
22 conducted by the Director or another governmental agency.

23 (11) Make any payment, threat or promise, directly or
24 indirectly, to any person for the purpose of influencing
25 the independent judgment of the person in connection with a
26 residential mortgage loan, or make any payment threat or

1 promise, directly or indirectly, to any appraiser of a
2 property, for the purpose of influencing the independent
3 judgment of the appraiser with respect to the value of the
4 property.

5 (12) Collect, charge, attempt to collect or charge, or
6 use or propose any agreement purporting to collect or
7 charge any fee prohibited by this Act, including advance
8 fees for loan modification.

9 (13) Cause or require a borrower to obtain property
10 insurance coverage in an amount that exceeds the
11 replacement cost of the improvements as established by the
12 property insurer.

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

15 (15) Engage in conduct that constitutes dishonest
16 dealings.

17 (16) Knowingly instruct, solicit, propose, or cause a
18 person other than the borrower to sign a borrower's
19 signature on a mortgage related document, or solicit,
20 accept or execute any contract or other document related to
21 the residential mortgage transaction that contains any
22 blanks to be filled in after signing or initialing the
23 contract or other document, except for forms authorizing
24 the verification of application information.

25 (17) Discourage any applicant from seeking or
26 participating in housing or financial counseling either

1 before or after the consummation of a loan transaction, or
2 fail to provide information on counseling resources upon
3 request.

4 (18) Charge for any ancillary products or services, not
5 essential to the basic loan transaction for which the
6 consumer has applied, without the applicant's knowledge
7 and written authorization, or charge for any ancillary
8 products or services not actually provided in the
9 transaction.

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

12 (20) Interfere or obstruct an investigation or
13 examination conducted pursuant to this Act.

14 (21) Structure activities or contracts to evade
15 provisions of this Act.

16 (Source: P.A. 96-112, eff. 7-31-09.)

17 Section 10. The Title Insurance Act is amended by changing
18 Section 23 as follows:

19 (215 ILCS 155/23) (from Ch. 73, par. 1423)

20 Sec. 23. Violation; penalties.

21 (a) Any violation of any of the provisions of this Act and,
22 beginning January 1, 2013, any violation of any of the
23 provisions of Article 3 of the Residential Real Property
24 Disclosure Act shall constitute a business offense and shall

1 subject the party violating the same to a penalty of \$1000 for
2 each offense.

3 (b) Nothing contained in this Section shall affect the
4 right of the Secretary to revoke or suspend a title insurance
5 company's or independent escrowee's certificate of authority
6 or a title insurance agent's registration under any other
7 Section of this Act.

8 (Source: P.A. 94-893, eff. 6-20-06.)

9 Section 15. The Residential Real Property Disclosure Act is
10 amended by changing Sections 70 and 72 as follows:

11 (765 ILCS 77/70)

12 Sec. 70. Predatory lending database program.

13 (a) As used in this Article:

14 "Adjustable rate mortgage" or "ARM" means a closed-end
15 mortgage transaction that allows adjustments of the loan
16 interest rate during the first 3 years of the loan term.

17 "Borrower" means a person seeking a mortgage loan.

18 "Broker" means a "broker" or "loan broker", as defined in
19 subsection (p) of Section 1-4 of the Residential Mortgage
20 License Act of 1987.

21 "Closing agent" means an individual assigned by a title
22 insurance company or a broker or originator to ensure that the
23 execution of documents related to the closing of a real estate
24 sale or the refinancing of a real estate loan and the

1 disbursement of closing funds are in conformity with the
2 instructions of the entity financing the transaction.

3 "Counseling" means in-person counseling provided by a
4 counselor employed by a HUD-certified counseling agency to all
5 borrowers, or documented telephone counseling where a hardship
6 would be imposed on one or more borrowers. A hardship shall
7 exist in instances in which the borrower is confined to his or
8 her home due to medical conditions, as verified in writing by a
9 physician, or the borrower resides 50 miles or more from the
10 nearest participating HUD-certified housing counseling agency.
11 In instances of telephone counseling, the borrower must supply
12 all necessary documents to the counselor at least 72 hours
13 prior to the scheduled telephone counseling session.

14 "Counselor" means a counselor employed by a HUD-certified
15 housing counseling agency.

16 "Credit score" means a credit risk score as defined by the
17 Fair Isaac Corporation, or its successor, and reported under
18 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
19 by one or more of the following credit reporting agencies or
20 their successors: Equifax, Inc., Experian Information
21 Solutions, Inc., and TransUnion LLC. If the borrower's credit
22 report contains credit scores from 2 reporting agencies, then
23 the broker or loan originator shall report the lower score. If
24 the borrower's credit report contains credit scores from 3
25 reporting agencies, then the broker or loan originator shall
26 report the middle score.

1 "Department" means the Department of Financial and
2 Professional Regulation.

3 "Exempt person" means that term as it is defined in
4 subsections (d) (1), ~~and~~ (d) (1.5), and (d) (1.8) of Section 1-4
5 of the Residential Mortgage License Act of 1987.

6 "First-time homebuyer" means a borrower who has not held an
7 ownership interest in residential property.

8 "HUD-certified counseling" or "counseling" means
9 counseling given to a borrower by a counselor employed by a
10 HUD-certified housing counseling agency.

11 "Interest only" means a closed-end loan that permits one or
12 more payments of interest without any reduction of the
13 principal balance of the loan, other than the first payment on
14 the loan.

15 "Lender" means that term as it is defined in subsection (g)
16 of Section 1-4 of the Residential Mortgage License Act of 1987.

17 "Licensee" means that term as it is defined in subsection
18 (e) of Section 1-4 of the Residential Mortgage License Act of
19 1987.

20 "Mortgage loan" means that term as it is defined in
21 subsection (f) of Section 1-4 of the Residential Mortgage
22 License Act of 1987.

23 "Negative amortization" means an amortization method under
24 which the outstanding balance may increase at any time over the
25 course of the loan because the regular periodic payment does
26 not cover the full amount of interest due.

1 "Originator" means a "loan originator" as defined in
2 subsection (hh) of Section 1-4 of the Residential Mortgage
3 License Act of 1987, except an exempt person, and means a
4 "mortgage loan originator" as defined in subsection (jj) of
5 Section 1-4 of the Residential Mortgage License Act of 1987,
6 except an exempt person.

7 "Points and fees" has the meaning ascribed to that term in
8 Section 10 of the High Risk Home Loan Act.

9 "Prepayment penalty" means a charge imposed by a lender
10 under a mortgage note or rider when the loan is paid before the
11 expiration of the term of the loan.

12 "Refinancing" means a loan secured by the borrower's or
13 borrowers' primary residence where the proceeds are not used as
14 purchase money for the residence.

15 "Title insurance company" means any domestic company
16 organized under the laws of this State for the purpose of
17 conducting the business of guaranteeing or insuring titles to
18 real estate and any title insurance company organized under the
19 laws of another State, the District of Columbia, or a foreign
20 government and authorized to transact the business of
21 guaranteeing or insuring titles to real estate in this State.

22 (a-5) A predatory lending database program shall be
23 established within Cook County. The program shall be
24 administered in accordance with this Article. The inception
25 date of the program shall be July 1, 2008. A predatory lending
26 database program shall be expanded to include Kane, Peoria, and

1 Will counties. The inception date of the expansion of the
2 program as it applies to Kane, Peoria, and Will counties shall
3 be July 1, 2010. Until the inception date, none of the duties,
4 obligations, contingencies, or consequences of or from the
5 program shall be imposed. The program shall apply to all
6 mortgage applications that are governed by this Article and
7 that are made or taken on or after the inception of the
8 program.

9 (b) The database created under this program shall be
10 maintained and administered by the Department. The database
11 shall be designed to allow brokers, originators, counselors,
12 title insurance companies, and closing agents to submit
13 information to the database online. The database shall not be
14 designed to allow those entities to retrieve information from
15 the database, except as otherwise provided in this Article.
16 Information submitted by the broker or originator to the
17 Department may be used to populate the online form submitted by
18 a counselor, title insurance company, or closing agent.

19 (c) Within 10 days after taking a mortgage application, the
20 broker or originator for any mortgage on residential property
21 within the program area must submit to the predatory lending
22 database all of the information required under Section 72 and
23 any other information required by the Department by rule.
24 Within 7 days after receipt of the information, the Department
25 shall compare that information to the housing counseling
26 standards in Section 73 and issue to the borrower and the

1 broker or originator a determination of whether counseling is
2 recommended for the borrower. The borrower may not waive
3 counseling. If at any time after submitting the information
4 required under Section 72 the broker or originator (i) changes
5 the terms of the loan or (ii) issues a new commitment to the
6 borrower, then, within 5 days thereafter, the broker or
7 originator shall re-submit all of the information required
8 under Section 72 and, within 4 days after receipt of the
9 information re-submitted by the broker or originator, the
10 Department shall compare that information to the housing
11 counseling standards in Section 73 and shall issue to the
12 borrower and the broker or originator a new determination of
13 whether re-counseling is recommended for the borrower based on
14 the information re-submitted by the broker or originator. The
15 Department shall require re-counseling if the loan terms have
16 been modified to meet another counseling standard in Section
17 73, or if the broker has increased the interest rate by more
18 than 200 basis points.

19 (d) If the Department recommends counseling for the
20 borrower under subsection (c), then the Department shall notify
21 the borrower of all participating HUD-certified counseling
22 agencies located within the State and direct the borrower to
23 interview with a counselor associated with one of those
24 agencies. Within 10 days after receipt of the notice of
25 HUD-certified counseling agencies, the borrower shall select
26 one of those agencies and shall engage in an interview with a

1 counselor associated with that agency. Within 7 days after
2 interviewing the borrower, the counselor must submit to the
3 predatory lending database all of the information required
4 under Section 74 and any other information required by the
5 Department by rule. Reasonable and customary costs not to
6 exceed \$300 associated with counseling provided under the
7 program shall be paid by the broker or originator. The
8 Department shall annually calculate to the nearest dollar an
9 adjusted rate for inflation. A counselor shall not recommend or
10 suggest that a borrower contact any specific mortgage
11 origination company, financial institution, or entity that
12 deals in mortgage finance to obtain a loan, another quote, or
13 for any other reason related to the specific mortgage
14 transaction; however, a counselor may suggest that the borrower
15 seek an opinion or a quote from another mortgage origination
16 company, financial institution, or entity that deals in
17 mortgage finance. A counselor or housing counseling agency that
18 in good faith provides counseling shall not be liable to a
19 broker or originator or borrower for civil damages, except for
20 willful or wanton misconduct on the part of the counselor in
21 providing the counseling.

22 (e) The broker or originator and the borrower may not take
23 any legally binding action concerning the loan transaction
24 until the later of the following:

- 25 (1) the Department issues a determination not to
26 recommend HUD-certified counseling for the borrower in

1 accordance with subsection (c); or

2 (2) the Department issues a determination that
3 HUD-certified counseling is recommended for the borrower
4 and the counselor submits all required information to the
5 database in accordance with subsection (d).

6 (f) Within 10 days after closing, the title insurance
7 company or closing agent must submit to the predatory lending
8 database all of the information required under Section 76 and
9 any other information required by the Department by rule.

10 (g) The title insurance company or closing agent shall
11 attach to the mortgage a certificate of compliance with the
12 requirements of this Article, as generated by the database. If
13 the title insurance company or closing agent fails to attach
14 the certificate of compliance, then the mortgage is not
15 recordable. In addition, if any lis pendens for a residential
16 mortgage foreclosure is recorded on the property within the
17 program area, a certificate of service must be simultaneously
18 recorded that affirms that a copy of the lis pendens was filed
19 with the Department. If the certificate of service is not
20 recorded, then the lis pendens pertaining to the residential
21 mortgage foreclosure in question is not recordable and is of no
22 force and effect.

23 (h) All information provided to the predatory lending
24 database under the program is confidential and is not subject
25 to disclosure under the Freedom of Information Act, except as
26 otherwise provided in this Article. Information or documents

1 obtained by employees of the Department in the course of
2 maintaining and administering the predatory lending database
3 are deemed confidential. Employees are prohibited from making
4 disclosure of such confidential information or documents. Any
5 request for production of information from the predatory
6 lending database, whether by subpoena, notice, or any other
7 source, shall be referred to the Department of Financial and
8 Professional Regulation. Any borrower may authorize in writing
9 the release of database information. The Department may use the
10 information in the database without the consent of the
11 borrower: (i) for the purposes of administering and enforcing
12 the program; (ii) to provide relevant information to a
13 counselor providing counseling to a borrower under the program;
14 or (iii) to the appropriate law enforcement agency or the
15 applicable administrative agency if the database information
16 demonstrates criminal, fraudulent, or otherwise illegal
17 activity.

18 (i) Nothing in this Article is intended to prevent a
19 borrower from making his or her own decision as to whether to
20 proceed with a transaction.

21 (j) Any person who violates any provision of this Article
22 commits an unlawful practice within the meaning of the Consumer
23 Fraud and Deceptive Business Practices Act.

24 (j-1) A violation of any provision of this Article by a
25 mortgage banking licensee or licensed mortgage loan originator
26 shall constitute a violation of the Residential Mortgage

1 License Act of 1987.

2 (j-2) A violation of any provision of this Article by a
3 title insurance company, title agent, or escrow agent shall
4 constitute a violation of the Title Insurance Act.

5 (j-3) A violation of any provision of this Article by a
6 housing counselor shall be referred to the Department of
7 Housing and Urban Development.

8 (k) During the existence of the program, the Department
9 shall submit semi-annual reports to the Governor and to the
10 General Assembly by May 1 and November 1 of each year detailing
11 its findings regarding the program. The report shall include,
12 by county, at least the following information for each
13 reporting period:

- 14 (1) the number of loans registered with the program;
- 15 (2) the number of borrowers receiving counseling;
- 16 (3) the number of loans closed;
- 17 (4) the number of loans requiring counseling for each
18 of the standards set forth in Section 73;
- 19 (5) the number of loans requiring counseling where the
20 mortgage originator changed the loan terms subsequent to
21 counseling;
- 22 (6) the number of licensed mortgage brokers and loan
23 originators entering information into the database;
- 24 (7) the number of investigations based on information
25 obtained from the database, including the number of
26 licensees fined, the number of licenses suspended, and the

1 number of licenses revoked;

2 (8) a summary of the types of non-traditional mortgage
3 products being offered; and

4 (9) a summary of how the Department is actively
5 utilizing the program to combat mortgage fraud.

6 (Source: P.A. 95-691, eff. 6-1-08; 96-328, eff. 8-11-09;
7 96-856, eff. 12-31-09.)

8 (765 ILCS 77/72)

9 Sec. 72. Originator; required information. As part of the
10 predatory lending database program, the broker or originator
11 must submit all of the following information for inclusion in
12 the predatory lending database for each loan for which the
13 originator takes an application:

14 (1) The borrower's name, address, social security
15 number or taxpayer identification number, date of birth,
16 and income and expense information, including total
17 monthly consumer debt, contained in the mortgage
18 application.

19 (2) The address, permanent index number, and a
20 description of the collateral and information about the
21 loan or loans being applied for and the loan terms,
22 including the amount of the loan, the rate and whether the
23 rate is fixed or adjustable, amortization or loan period
24 terms, and any other material terms.

25 (3) The borrower's credit score at the time of

1 application.

2 (4) Information about the originator and the company
3 the originator works for, including the originator's
4 license number and address, fees being charged, whether the
5 fees are being charged as points up front, the yield spread
6 premium payable outside closing, and other charges made or
7 remuneration required by the broker or originator or its
8 affiliates or the broker's or originator's employer or its
9 affiliates for the mortgage loans.

10 (5) Information about affiliated or third party
11 service providers, including the names and addresses of
12 appraisers, title insurance companies, closing agents,
13 attorneys, and realtors who are involved with the
14 transaction and the broker or originator and any moneys
15 received from the broker or originator in connection with
16 the transaction.

17 (6) All information indicated on the Good Faith
18 Estimate and Truth in Lending statement disclosures given
19 to the borrower by the broker or originator.

20 (7) Annual real estate taxes for the property, together
21 with any assessments payable in connection with the
22 property to be secured by the collateral and the proposed
23 monthly principal and interest charge of all loans to be
24 taken by the borrower and secured by the property of the
25 borrower.

26 (8) Information concerning how the broker or

1 originator obtained the client and the name of its referral
2 source, if any.

3 (9) Information concerning the notices provided by the
4 broker or originator to the borrower as required by law and
5 the date those notices were given.

6 (10) Information concerning whether a sale and
7 leaseback is contemplated and the names of the lessor and
8 lessee, seller, and purchaser.

9 (11) Any and all financing by the borrower for the
10 subject property within 12 months prior to the date of
11 application.

12 (12) Loan information, including interest rate, term,
13 purchase price, down payment, and closing costs.

14 (13) Whether the buyer is a first-time homebuyer or
15 refinancing a primary residence.

16 (14) Whether the loan permits interest only payments.

17 (15) Whether the loan may result in negative
18 amortization.

19 (16) Whether the total points and fees payable by the
20 borrowers at or before closing will exceed 5%.

21 (17) Whether the loan includes a prepayment penalty,
22 and, if so, the terms of the penalty.

23 (18) Whether the loan is an ARM.

24 (Source: P.A. 94-280, eff. 1-1-06; 95-691, eff. 6-1-08.)

25 Section 99. Effective date. This Act takes effect January
26 1, 2013.