

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 1-3 and 4-2 and adding Section  
6 7-15 as follows:

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

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

9 (a) No person, partnership, association, corporation or  
10 other entity shall engage in the business of brokering,  
11 funding, originating, servicing or purchasing of residential  
12 mortgage loans without first obtaining a license from the  
13 Secretary ~~Commissioner~~ in accordance with the licensing  
14 procedure provided in this Article I and such regulations as  
15 may be promulgated by the Secretary ~~Commissioner~~. The licensing  
16 provisions of this Section shall not apply to any entity  
17 engaged solely in commercial mortgage lending or to any person,  
18 partnership association, corporation or other entity exempted  
19 pursuant to Section 1-4, subsection (d), of this Act or in  
20 accordance with regulations promulgated by the Secretary  
21 ~~Commissioner~~ hereunder. No provision of this Act shall apply to  
22 an exempt person or entity as defined in items (1) and (1.5) of  
23 subsection (d) of Section 1-4 of this Act. Notwithstanding

1 anything to the contrary in the preceding sentence, an  
2 individual acting as a mortgage loan originator who is not  
3 employed by and acting for an entity described in item (1) of  
4 subsection (tt) of Section 1-4 of this Act shall be subject to  
5 the mortgage loan originator licensing requirements of Article  
6 VII of this Act.

7 Effective January 1, 2011, no provision of this Act shall  
8 apply to an exempt person or entity as defined in item (1.8) of  
9 subsection (d) of Section 1-4 of this Act. Notwithstanding  
10 anything to the contrary in the preceding sentence, an  
11 individual acting as a mortgage loan originator who is not  
12 employed by and acting for an entity described in item (1) of  
13 subsection (tt) of Section 1-4 of this Act shall be subject to  
14 the mortgage loan originator licensing requirements of Article  
15 VII of this Act, and provided that an individual acting as a  
16 mortgage loan originator under item (1.8) of subsection (d) of  
17 Section 1-4 of this Act shall be further subject to a  
18 determination by the U.S. Department of Housing and Urban  
19 Development through final rulemaking or other authorized  
20 agency determination under the federal Secure and Fair  
21 Enforcement for Mortgage Licensing Act of 2008.

22 (a-1) A person who is exempt from licensure pursuant to  
23 paragraph (ii) of item (1) of subsection (d) of Section 1-4 of  
24 this Act as a federally chartered savings bank that is  
25 registered with the Nationwide Mortgage Licensing System and  
26 Registry may apply to the Secretary for an exempt company

1 registration for the purpose of sponsoring one or more  
2 individuals subject to the mortgage loan originator licensing  
3 requirements of Article VII of this Act. Registration with the  
4 Division of Banking of the Department shall not affect the  
5 exempt status of the applicant.

6 (1) A mortgage loan originator eligible for licensure  
7 under this subsection shall (A) be covered under an  
8 exclusive written contract with, and originate residential  
9 mortgage loans solely on behalf of, that exempt person; and  
10 (B) hold a current, valid insurance producer license under  
11 Article XXXI of the Illinois Insurance Code.

12 (2) An exempt person shall: (A) fulfill any reporting  
13 requirements required by the Nationwide Mortgage Licensing  
14 System and Registry or the Secretary; (B) provide a blanket  
15 surety bond pursuant to Section 7-12 of this Act covering  
16 the activities of all its sponsored mortgage loan  
17 originators; (C) reasonably supervise the activities of  
18 all its sponsored mortgage loan originators; (D) comply  
19 with all rules and orders (including the averments  
20 contained in Section 2-4 of this Act as applicable to a  
21 non-licensed exempt entity provided for in this Section)  
22 that the Secretary deems necessary to ensure compliance  
23 with the federal SAFE Act; and (E) pay an annual  
24 registration fee established by the Director.

25 (3) The Secretary may deny an exempt company  
26 registration to an exempt person or fine, suspend, or

1 revoke an exempt company registration if the Secretary  
2 finds one of the following:

3 (A) that the exempt person is not a person of  
4 honesty, truthfulness, or good character;

5 (B) that the exempt person violated any applicable  
6 law, rule, or order;

7 (C) that the exempt person refused or failed to  
8 furnish, within a reasonable time, any information or  
9 make any report that may be required by the Secretary;

10 (D) that the exempt person had a final judgment  
11 entered against him or her in a civil action on grounds  
12 of fraud, deceit, or misrepresentation, and the  
13 conduct on which the judgment is based indicates that  
14 it would be contrary to the interest of the public to  
15 permit the exempt person to manage a loan originator;

16 (E) that the exempt person had an order entered  
17 against him or her involving fraud, deceit, or  
18 misrepresentation by an administrative agency of this  
19 State, the federal government, or any other state or  
20 territory of the United States, and the facts relating  
21 to the order indicate that it would be contrary to the  
22 interest of the public to permit the exempt person to  
23 manage a loan originator;

24 (F) that the exempt person made a material  
25 misstatement or suppressed or withheld information on  
26 the application for an exempt company registration or

1 any document required to be filed with the Secretary;

2 or

3 (G) that the exempt person violated Section 4-5 of  
4 this Act.

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

12 (c) The Secretary ~~Commissioner~~ may, through the Attorney  
13 General, request the circuit court of either Cook or Sangamon  
14 County to issue an injunction to restrain any person from  
15 violating or continuing to violate any of the foregoing  
16 provisions of this Section.

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

24 (d-1) The Secretary ~~Commissioner~~ may issue orders against  
25 any person if the Secretary ~~Commissioner~~ has reasonable cause  
26 to believe that an unsafe, unsound, or unlawful practice has

1 occurred, is occurring, or is about to occur, if any person has  
2 violated, is violating, or is about to violate any law, rule,  
3 or written agreement with the Secretary ~~Commissioner~~, or for  
4 the purposes of administering the provisions of this Act and  
5 any rule adopted in accordance with this Act.

6 (e) Any person, partnership, association, corporation or  
7 other entity who violates any provision of this Section commits  
8 a business offense and shall be fined an amount not to exceed  
9 \$25,000.

10 (f) Each person, partnership, association, corporation or  
11 other entity conducting activities regulated by this Act shall  
12 be issued one license. Each office, place of business or  
13 location at which a residential mortgage licensee conducts any  
14 part of his or her business must be recorded with the Secretary  
15 ~~Commissioner~~ pursuant to Section 2-8 of this Act.

16 (g) Licensees under this Act shall solicit, broker, fund,  
17 originate, service and purchase residential mortgage loans  
18 only in conformity with the provisions of this Act and such  
19 rules and regulations as may be promulgated by the Secretary  
20 ~~Commissioner~~.

21 (h) This Act applies to all entities doing business in  
22 Illinois as residential mortgage bankers, as defined by "An Act  
23 to provide for the regulation of mortgage bankers", approved  
24 September 15, 1977, as amended, regardless of whether licensed  
25 under that or any prior Act. Any existing residential mortgage  
26 lender or residential mortgage broker in Illinois whether or

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

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

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

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

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 Secretary ~~Commissioner~~ deems necessary and proper. The  
16 Secretary ~~Commissioner~~ shall promulgate rules with respect to  
17 the frequency and manner of examination. The Secretary  
18 ~~Commissioner~~ shall appoint a suitable person to perform such  
19 examination. The Secretary ~~Commissioner~~ and his appointees may  
20 examine the entire books, records, documents, and operations of  
21 each licensee and its subsidiary, affiliate, or agent, and may  
22 examine any of the licensee's or its subsidiary's, affiliate's,  
23 or agent's officers, directors, employees and agents under  
24 oath. For purposes of this Section, "agent" includes service  
25 providers such as accountants, closing services providers,

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

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

10 (c) Affiliates of a licensee shall be subject to  
11 examination by the Secretary ~~Commissioner~~ on the same terms as  
12 the 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 Secretary ~~Commissioner~~ as established by regulation.

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



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

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

23 (f) The Secretary ~~Commissioner~~, deputy commissioners, and  
24 employees of the Office of Banks and Real Estate shall be  
25 subject to the restrictions provided in Section 2.5 of the  
26 Division of Banking Act including, without limitation, the

1 restrictions on (i) owning shares of stock or holding any other  
2 equity interest in an entity regulated under this Act or in any  
3 corporation or company that owns or controls an entity  
4 regulated under this Act; (ii) being an officer, director,  
5 employee, or agent of an entity regulated under this Act; and  
6 (iii) obtaining a loan or accepting a gratuity from an entity  
7 regulated under this Act.

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

15 (h) An exempt entity under subsection (a-1) of Section 1-3  
16 of this Act shall cooperate with the Secretary in the  
17 examination and investigation of its sponsored and licensed  
18 mortgage loan originators at a frequency determined by the  
19 Secretary. The exempt entity under subsection (a-1) of Section  
20 1-3 of this Act shall cooperate with the Secretary in providing  
21 mortgage loan originator documents and access to mortgage loan  
22 originator offices for the purposes of examination and  
23 investigation. The activities of the exempt entity shall not  
24 relieve a mortgage loan originator of his or her individual  
25 requirements under Section 7-15 of this Act. An exempt entity  
26 under subsection (a-1) of Section 1-3 of this Act shall pay to

1 the Department any examination fees invoiced by the Secretary  
2 for examination of its sponsored mortgage loan originators. The  
3 Secretary shall have the authority to make oral or written  
4 inquiries regarding the management of an exempt entity under  
5 subsection (a-1) of Section 1-3 of this Act and it shall be the  
6 duty of the exempt entity to promptly reply by telephone, in  
7 writing, or other means to the inquiry.

8 (Source: P.A. 96-112, eff. 7-31-09; 96-1365, eff. 7-28-10.)

9 (205 ILCS 635/7-15 new)

10 Sec. 7-15. Examination and investigation of certain  
11 mortgage loan originators. The activities requiring a licensee  
12 of a mortgage loan originator that are sponsored by an exempt  
13 entity under subsection (a-1) of Section 1-3 of this Act are  
14 subject to examination and investigation by the Secretary.  
15 Mortgage loan originators sponsored by an exempt entity shall  
16 keep and maintain records of his or her loan activities for a  
17 period of 36 months and shall produce records on demand by the  
18 Secretary. The records shall include a loan log or loan  
19 production log as approved by the Secretary and any loan  
20 application entered, prepared, or created through or from the  
21 mortgage loan originator's activities. Mortgage loan  
22 originators sponsored by an exempt entity shall provide access,  
23 upon the Secretary's demand, to his or her offices for the  
24 purposes of the Department's examination and investigation.  
25 The Secretary shall determine the manner and frequency at which

1 the Department shall conduct examinations of the mortgage loan  
2 originators. Mortgage loan originators sponsored by an exempt  
3 entity shall cooperate at all times with the Department  
4 pursuant to requirements of this Section and shall be subject  
5 to penalties under Section 7-11 of this Act for failure to  
6 comply.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.