



Sen. Jacqueline Y. Collins

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LRB096 20356 RPM 38922 a

1 AMENDMENT TO SENATE BILL 3781

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3781 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by changing Sections 1-3 and 1-4 as follows:

6 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

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

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

1 association, corporation or other entity exempted pursuant to  
2 Section 1-4, subsection (d), of this Act or in accordance with  
3 regulations promulgated by the Commissioner hereunder. No  
4 provision of this Act shall apply to an exempt person or entity  
5 as defined in items (1) and (1.5) of subsection (d) of Section  
6 1-4 of this Act, except that a person acting as a mortgage loan  
7 originator as defined in the federal Secure and Fair  
8 Enforcement for Mortgage Licensing Act of 2008 and the rules  
9 promulgated under that Act shall not be exempt from and shall  
10 comply with Article VII of this Act.

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

18 (c) The Commissioner may, through the Attorney General,  
19 request the circuit court of either Cook or Sangamon County to  
20 issue an injunction to restrain any person from violating or  
21 continuing to violate any of the foregoing provisions of this  
22 Section.

23 (d) When the Commissioner has reasonable cause to believe  
24 that any entity which has not submitted an application for  
25 licensure is conducting any of the activities described in  
26 subsection (a) hereof, the Commissioner shall have the power to

1 examine all books and records of the entity and any additional  
2 documentation necessary in order to determine whether such  
3 entity should become licensed under this Act.

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

12 (e) Any person, partnership, association, corporation or  
13 other entity who violates any provision of this Section commits  
14 a business offense and shall be fined an amount not to exceed  
15 \$25,000.

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

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

1           (h) This Act applies to all entities doing business in  
2 Illinois as residential mortgage bankers, as defined by "An Act  
3 to provide for the regulation of mortgage bankers", approved  
4 September 15, 1977, as amended, regardless of whether licensed  
5 under that or any prior Act. Any existing residential mortgage  
6 lender or residential mortgage broker in Illinois whether or  
7 not previously licensed, must operate in accordance with this  
8 Act.

9           (i) This Act is a successor Act to and a continuance of the  
10 regulation of residential mortgage bankers provided in, "An Act  
11 to provide for the regulation of mortgage bankers", approved  
12 September 15, 1977, as amended.

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

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

16           (205 ILCS 635/1-4)

17           Sec. 1-4. Definitions.

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

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

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

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

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

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

18 (1.5) Any employee of a person or entity mentioned in  
19 item (1) of this subsection, when acting for such person or  
20 entity, or any registered mortgage loan originator when  
21 acting for an entity described in subsection (tt) of this  
22 Section.

23 (2) (Blank) ~~Any person or entity that does not~~  
24 ~~originate mortgage loans in the ordinary course of business~~  
25 ~~making or acquiring residential mortgage loans with his or~~  
26 ~~her or its own funds for his or her or its own investment~~

1 ~~without intent to make, acquire, or resell more than 2~~  
2 ~~residential mortgage loans in any one calendar year.~~

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

7 (4) (Blank).

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

16 (6) (Blank).

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

21 (f) "Mortgage loan" "residential mortgage loan" or "home  
22 mortgage loan" shall mean any loan primarily for personal,  
23 family, or household use that is secured by a mortgage, deed of  
24 trust, or other equivalent consensual security interest on a  
25 dwelling as defined in Section 103(v) of the federal Truth in  
26 Lending Act, or residential real estate upon which is

1 constructed or intended to be constructed a dwelling.

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

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

14 (i) "Residential mortgage financing transaction" shall  
15 mean the negotiation, acquisition, sale, or arrangement for or  
16 the offer to negotiate, acquire, sell, or arrange for, a  
17 residential mortgage loan or residential mortgage loan  
18 commitment.

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

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

23 (l) "Party to a residential mortgage financing  
24 transaction" shall mean a borrower, lender, or loan broker in a  
25 residential mortgage financing transaction.

26 (m) "Payments" shall mean payment of all or any of the



1 following: principal, interest and escrow reserves for taxes,  
2 insurance and other related reserves, and reimbursement for  
3 lender advances.

4 (n) "Commissioner" shall mean the Commissioner of Banks and  
5 Real Estate, except that, beginning on April 6, 2009 (the  
6 effective date of Public Act 95-1047)~~this amendatory Act of the~~  
7 ~~95th General Assembly~~, all references in this Act to the  
8 Commissioner of Banks and Real Estate are deemed, in  
9 appropriate contexts, to be references to the Secretary of  
10 Financial and Professional Regulation, or his or her designee,  
11 including the Director of the Division of Banking of the  
12 Department of Financial and Professional Regulation.

13 (n-1) "Director" shall mean the Director of the Division of  
14 Banking of the Department of Financial and Professional  
15 Regulation, except that, beginning on July 31, 2009 (the  
16 effective date of Public Act 96-112)~~this amendatory Act of the~~  
17 ~~96th General Assembly~~, all references in this Act to the  
18 Director are deemed, in appropriate contexts, to be the  
19 Secretary of Financial and Professional Regulation, or his or  
20 her designee, including the Director of the Division of Banking  
21 of the Department of Financial and Professional Regulation.

22 (o) "Loan brokering", "brokering", or "brokerage service"  
23 shall mean the act of helping to obtain from another entity,  
24 for a borrower, a loan secured by residential real estate  
25 situated in Illinois or assisting a borrower in obtaining a  
26 loan secured by residential real estate situated in Illinois in

1 return for consideration to be paid by either the borrower or  
2 the lender including, but not limited to, contracting for the  
3 delivery of residential mortgage loans to a third party lender  
4 and soliciting, processing, placing, or negotiating  
5 residential mortgage loans.

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

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

23 (r) "Full service office" shall mean an office, provided by  
24 the licensee and not subleased from the licensee's employees,  
25 and staff in Illinois reasonably adequate to handle efficiently  
26 communications, questions, and other matters relating to any

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

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

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

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

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

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

1 loan; or

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

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

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

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

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

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

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

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

8           (dd) "Affiliate" shall mean:

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

13           (2) any entity:

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

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

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

1           The Commissioner may define by rule and regulation any  
2 terms used in this Act for the efficient and clear  
3 administration of this Act.

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

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

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

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

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

21           (jj) "Mortgage loan originator" means an individual who for  
22 compensation or gain or in the expectation of compensation or  
23 gain:

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

25                   (ii) offers or negotiates terms of a residential  
26 mortgage loan.

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

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

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

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

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

22 (mm) "Immediate family member" means a spouse, child,  
23 sibling, parent, grandparent, or grandchild, and includes  
24 step-parents, step-children, step-siblings, or adoptive  
25 relationships.

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



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

7           (i) the receipt, collection, distribution, and  
8 analysis of information common for the processing or  
9 underwriting of a residential mortgage loan; and

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

23           (pp) "Nationwide Mortgage Licensing System and Registry"  
24 means a mortgage licensing system developed and maintained by  
25 the Conference of State Bank Supervisors and the American  
26 Association of Residential Mortgage Regulators for the

1 licensing and registration of licensed mortgage loan  
2 originators.

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

5 (rr) "Person" means a natural person, corporation,  
6 company, limited liability company, partnership, or  
7 association.

8 (ss) "Real estate brokerage activity" means any activity  
9 that involves offering or providing real estate brokerage  
10 services to the public, including:

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

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

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

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

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

25 (tt) "Registered mortgage loan originator" means any  
26 individual that:

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

3 (A) a depository institution;

4 (B) a subsidiary that is:

5 (i) owned and controlled by a depository  
6 institution; and

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

8 (C) an institution regulated by the Farm Credit  
9 Administration; and

10 (2) is registered with, and maintains a unique  
11 identifier through, the Nationwide Mortgage Licensing  
12 System and Registry.

13 (uu) "Unique identifier" means a number or other identifier  
14 assigned by protocols established by the Nationwide Mortgage  
15 Licensing System and Registry.

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

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

20 ~~(xx)-(jj)~~ "Secretary" means the Secretary of the Department  
21 of Financial and Professional Regulation, or a person  
22 authorized by the Secretary or by this Act to act in the  
23 Secretary's stead.

24 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;  
25 revised 8-20-09.)".