



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3177

Introduced 2/1/2012, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

See Index

Amends the Residential Mortgage License Act of 1987. Defines "loan modification" and "short sale facilitation". Authorizes the Director of the Division of Banking of the Department of Financial and Professional Regulation to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry. Provides that residential mortgage license applicants may be required to furnish information to the Nationwide Mortgage Licensing System and Registry. Provides that each application for a license or for the renewal of a license shall be accompanied by an averment stating that the applicant will not charge or collect advance payments from borrowers or homeowners for engaging in loan modification or short sale facilitation. Amends the Residential Real Property Disclosure Act. Provides that, for each loan, a broker or loan originator must submit information concerning the borrower's debt to income ratio for inclusion in the predatory lending database. Effective immediately, except that certain provisions take effect on January 1, 2013.

LRB097 19724 PJG 64983 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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, 4-5, 7-1A, 7-11,
6 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), (yy), and (zz) 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 and short sale facilitation activities as
26 defined in subsections (yy) and (zz) of this Section.

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

24 (yy) "Loan modification" means, for compensation or gain,
25 either directly or indirectly offering or negotiating on behalf
26 of a borrower or homeowner to adjust the terms of a residential

1 mortgage loan in a manner not provided for in the original or
2 previously modified mortgage loan.

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

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

15 (205 ILCS 635/2-2)

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

17 (a) The Secretary shall issue a license upon completion of
18 all of the following:

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

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

25 (3) The payment, in certified funds, of investigation

1 and application fees, the total of which shall be in an
2 amount equal to \$2,700 ~~\$2,043~~ annually. To comply with the
3 common renewal date and requirements of the Nationwide
4 Mortgage Licensing System and Registry, the term of initial
5 licenses may be extended or shortened with applicable fees
6 prorated or combined accordingly.

7 (4) Except for a broker applying to renew a license,
8 the filing of an audited balance sheet including all
9 footnotes prepared by a certified public accountant in
10 accordance with generally accepted accounting principles
11 and generally accepted auditing principles which evidences
12 that the applicant meets the net worth requirements of
13 Section 3-5.

14 (5) The filing of proof satisfactory to the
15 Commissioner that the applicant, the members thereof if the
16 applicant is a partnership or association, the members or
17 managers thereof that retain any authority or
18 responsibility under the operating agreement if the
19 applicant is a limited liability company, or the officers
20 thereof if the applicant is a corporation have 3 years
21 experience preceding application in real estate finance.
22 Instead of this requirement, the applicant and the
23 applicant's officers or members, as applicable, may
24 satisfactorily complete a program of education in real
25 estate finance and fair lending, as approved by the
26 Commissioner, prior to receiving the initial license. The

1 Commissioner shall promulgate rules regarding proof of
2 experience requirements and educational requirements and
3 the satisfactory completion of those requirements. The
4 Commissioner may establish by rule a list of duly licensed
5 professionals and others who may be exempt from this
6 requirement.

7 (6) An investigation of the averments required by
8 Section 2-4, which investigation must allow the
9 Commissioner to issue positive findings stating that the
10 financial responsibility, experience, character, and
11 general fitness of the license applicant and of the members
12 thereof if the license applicant is a partnership or
13 association, of the officers and directors thereof if the
14 license applicant is a corporation, and of the managers and
15 members that retain any authority or responsibility under
16 the operating agreement if the license applicant is a
17 limited liability company are such as to command the
18 confidence of the community and to warrant belief that the
19 business will be operated honestly, fairly and efficiently
20 within the purpose of this Act. If the Commissioner shall
21 not so find, he or she shall not issue such license, and he
22 or she shall notify the license applicant of the denial.

23 The Commissioner may impose conditions on a license if the
24 Commissioner determines that the conditions are necessary or
25 appropriate. These conditions shall be imposed in writing and
26 shall continue in effect for the period prescribed by the

1 Commissioner.

2 (b) All licenses shall be issued to the license applicant.

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

8 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
9 96-1000, eff. 7-2-10.)

10 (205 ILCS 635/2-3A new)

11 Sec. 2-3A. Residential mortgage license application and
12 issuance.

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

18 (b) In order to fulfill the purposes of this Act, the
19 Director is authorized to establish relationships or contracts
20 with the Nationwide Mortgage Licensing System and Registry or
21 other entities designated by the Nationwide Mortgage Licensing
22 System and Registry to collect and maintain records and process
23 transaction fees or other fees related to licensees or other
24 persons subject to this Act.

25 (c) In connection with an application for licensing, the

1 applicant may be required, at a minimum, to furnish to the
2 Nationwide Mortgage Licensing System and Registry information
3 concerning the applicant's identity, including:

4 (1) fingerprints for submission to the Federal Bureau
5 of Investigation or any governmental agency or entity
6 authorized to receive such information for a State,
7 national, and international criminal history background
8 check; and

9 (2) personal history and experience in a form
10 prescribed by the Nationwide Mortgage Licensing System and
11 Registry, including the submission of authorization for
12 the Nationwide Mortgage Licensing System and Registry and
13 the Director to obtain:

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

18 (B) information related to any administrative,
19 civil, or criminal findings by any governmental
20 jurisdiction.

21 (d) For the purposes of this Section, and in order to
22 reduce the points of contact that the Federal Bureau of
23 Investigation may have to maintain for purposes of subsection
24 (c) of this Section, the Director may use the Nationwide
25 Mortgage Licensing System and Registry as a channeling agent
26 for requesting information from and distributing information

1 to the Department of Justice or any governmental agency.

2 (e) For the purposes of this Section, and in order to
3 reduce the points of contact that the Director may have to
4 maintain for purposes of item (2) of subsection (c) of this
5 Section, the Director may use the Nationwide Mortgage Licensing
6 System and Registry as a channeling agent for requesting and
7 distributing information to and from any source so directed by
8 the Director.

9 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

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

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

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

18 (c) Will keep and maintain for 36 months the same
19 written records as required by the federal Equal Credit
20 Opportunity Act, and any other information required by
21 regulations of the Commissioner regarding any home
22 mortgage in the course of the conduct of its residential
23 mortgage business;

24 (d) Will file with the Commissioner or Nationwide
25 Mortgage Licensing System and Registry as applicable, when

1 due, any report or reports which it is required to file
2 under any of the provisions of this Act;

3 (e) Will not engage, whether as principal or agent, in
4 the practice of rejecting residential mortgage
5 applications without reasonable cause, or varying terms or
6 application procedures without reasonable cause, for home
7 mortgages on real estate within any specific geographic
8 area from the terms or procedures generally provided by the
9 licensee within other geographic areas of the State;

10 (f) Will not engage in fraudulent home mortgage
11 underwriting practices;

12 (g) Will not make payment, whether directly or
13 indirectly, of any kind to any in house or fee appraiser of
14 any government or private money lending agency with which
15 an application for a home mortgage has been filed for the
16 purpose of influencing the independent judgment of the
17 appraiser with respect to the value of any real estate
18 which is to be covered by such home mortgage;

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

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

24 (j) Will not knowingly make any false promises likely
25 to influence or persuade, or pursue a course of
26 misrepresentation and false promises through agents,

1 solicitors, advertising or otherwise;

2 (k) Will not knowingly misrepresent, circumvent or
3 conceal, through whatever subterfuge or device, any of the
4 material particulars or the nature thereof, regarding a
5 transaction to which it is a party to the injury of another
6 party thereto;

7 (l) Will disburse funds in accordance with its
8 agreements;

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

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

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

22 (p) Has not become insolvent;

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

25 (r) Has not demonstrated by course of conduct,
26 negligence or incompetence in performing any act for which

1 it is required to hold a license under this Act;

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

8 (t) Will comply with the provisions of this Act, or
9 with any lawful order, rule or regulation made or issued
10 under the provisions of this Act;

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

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

16 (w) Will advise the Commissioner in writing within 30
17 days of any request made to a licensee under this Act to
18 repurchase a loan in a manner that completely and clearly
19 identifies to whom the request was made, the loans
20 involved, and the reason therefor;

21 (x) Will advise the Commissioner in writing within 30
22 days of any request from any entity to repurchase a loan in
23 a manner that completely and clearly identifies to whom the
24 request was made, the loans involved, and the reason for
25 the request;

26 (y) Will at all times act in a manner consistent with

1 subsections (a) and (b) of Section 1-2 of this Act; ~~and~~
2 (z) Will not knowingly hire or employ a loan originator
3 who is not registered, or mortgage loan originator who is
4 not licensed, with the Commissioner as required under
5 Section 7-1 or Section 7-1A, as applicable, of this Act; ~~and~~
6 (aa) Will not charge or collect advance payments from
7 borrowers or homeowners for engaging in loan modification
8 or short sale facilitation; and
9 (bb) Will not structure activities or contracts to
10 evade provisions of this Act.

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

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

16 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

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

1 the United States.

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

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

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

16 (c) The Commissioner, on good cause shown that an emergency
17 exists, may suspend any license for a period not exceeding 180
18 days, pending investigation. Upon a showing that a licensee has
19 failed to meet the experience or educational requirements of
20 Section 2-2 or the requirements of subsection (g) of Section
21 3-2, the Commissioner shall suspend, prior to hearing as
22 provided in Section 4-12, the license until those requirements
23 have been met.

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

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

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

13 (g) Whenever the Commissioner shall revoke or suspend a
14 license issued pursuant to this Act or fine a licensee under
15 this Act, he or she shall forthwith execute a written order to
16 that effect. The Commissioner shall publish notice of such
17 order in the Illinois Register and post notice of the order on
18 an agency Internet site maintained by the Commissioner or on
19 the Nationwide Mortgage Licensing System and Registry and shall
20 forthwith serve a copy of such order upon the licensee. Any
21 such order may be reviewed in the manner provided by Section
22 4-12 of this Act.

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

26 (1) Revocation of license;

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

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

7 (4) Issuance of a reprimand;

8 (5) Imposition of a fine not to exceed \$25,000 for each
9 count of separate offense, provided that a fine may be
10 imposed not to exceed \$75,000 for each separate count of
11 offense in instances of mortgage fraud; and

12 (6) Denial of a license.

13 (i) The following acts shall constitute grounds for which
14 the disciplinary actions specified in subsection (h) above may
15 be taken:

16 (1) Being convicted or found guilty, regardless of
17 pendency of an appeal, of a crime in any jurisdiction which
18 involves fraud, dishonest dealing, or any other act of
19 moral turpitude;

20 (2) Fraud, misrepresentation, deceit or negligence in
21 any mortgage financing transaction;

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

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

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

1 Bankruptcy Code as a debtor;

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

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

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

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

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

26 (11) Failure to comply with any order of the

1 Commissioner or rule made or issued under the provisions of
2 this Act;

3 (12) Engaging in activities regulated by this Act
4 without a current, active license unless specifically
5 exempted by this Act;

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

8 (14) Failure to maintain, preserve, and keep available
9 for examination, all books, accounts or other documents
10 required by the provisions of this Act and the rules of the
11 Commissioner;

12 (15) Refusing, obstructing, evading, or unreasonably
13 delaying an investigation, information request, or
14 examination authorized under this Act, or refusing,
15 obstructing, evading, or unreasonably delaying compliance
16 with the Director's subpoena or subpoena duces tecum;

17 (16) A pattern of substantially underestimating the
18 maximum closing costs;

19 (17) Failure to comply with or violation of any
20 provision of this Act; ~~-~~

21 (18) Failure to comply with or violation of any
22 provision of Article 3 of the Residential Real Property
23 Disclosure Act.

24 (j) A licensee shall be subject to the disciplinary actions
25 specified in this Act for violations of subsection (i) by any
26 officer, director, shareholder, joint venture, partner,

1 ultimate equitable owner, or employee of the licensee.

2 (k) Such licensee shall be subject to suspension or
3 revocation for unauthorized employee actions only if there is a
4 pattern of repeated violations by employees or the licensee has
5 knowledge of the violations, or there is substantial harm to a
6 consumer.

7 (l) Procedure for surrender of license:

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

17 (i) The licensee has failed to comply with any
18 provision of this Act or any order, decision, finding,
19 rule, regulation or direction of the Commissioner
20 lawfully made pursuant to the authority of this Act; or

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

25 (2) Any licensee may submit application to surrender a
26 license, but upon the Director approving the surrender, it

1 shall not affect the licensee's civil or criminal liability
2 for acts committed prior to surrender or entitle the
3 licensee to a return of any part of the license fee.

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

5 (205 ILCS 635/7-1A)

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

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

15 (b) In order to facilitate an orderly transition to
16 licensing and minimize disruption in the mortgage marketplace,
17 the operability date for subsection (a) of this Section shall
18 be as provided in this subsection (b). For this purpose, the
19 Director may require submission of licensing information to the
20 Nationwide Mortgage Licensing System and Registry prior to the
21 operability dates designated by the Director pursuant to items
22 (1) and (2) of this subsection (b).

23 (1) For all individuals other than individuals
24 described in item (2) of this subsection (b), the
25 operability date as designated by the Director shall be no

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

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

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

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

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

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

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

1 as the individual's residence.

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

9 (5) A real estate licensee who facilitates a short sale
10 for and is the listing agent for a residential real
11 property.

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

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

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

1 (205 ILCS 635/7-11)

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

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

7 (1) Suspend, revoke, or refuse to renew a license or
8 reprimand, place on probation or otherwise discipline a
9 licensee if the Director finds that the mortgage loan
10 originator has violated this Act or any other applicable
11 law or regulation or has been convicted of a criminal
12 offense.

13 (2) Impose a fine of not more than \$1,000 or, in
14 instances of mortgage fraud, not more than \$3,000 for each
15 day for each violation of this Act or any other applicable
16 law or regulation that is committed. If the Mortgage Loan
17 Originator engages in a pattern of repeated violations, the
18 Director may impose a fine of not more than \$2,000 or, in
19 instances of mortgage fraud, not more than \$6,000 for each
20 day for each violation committed. In determining the amount
21 of a fine to be imposed pursuant to this Act or any other
22 applicable law or regulation, the Director shall consider
23 all of the following:

24 (A) The seriousness of the violation;

25 (B) The mortgage loan originator's good faith

1 efforts to prevent the violation; and

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

4 (b) In addition to any other action authorized by this Act
5 or any other applicable law, rule or regulation, the Director
6 may investigate alleged violations of the Act or any other
7 applicable law, rule or regulation and complaints concerning
8 any such violation. The Director may seek a court order to
9 enjoin the violation.

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

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

22 (205 ILCS 635/7-13)

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

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

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

6 (3) Obtain property by fraud or misrepresentation.

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

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

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

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

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

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

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

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

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

21 (12) Collect, charge, attempt to collect or charge, or
22 use or propose any agreement purporting to collect or
23 charge any fee prohibited by this Act, including advance
24 fees for loan modification or short sale facilitation.

25 (13) Cause or require a borrower to obtain property
26 insurance coverage in an amount that exceeds the

1 replacement cost of the improvements as established by the
2 property insurer.

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

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

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

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

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

26 (19) Fail to give reasonable consideration to a

1 borrower's ability to repay the debt.

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

4 (21) Structure activities or contracts to evade
5 provisions of this Act.

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

7 Section 10. The Title Insurance Act is amended by changing
8 Section 23

9 (215 ILCS 155/23) (from Ch. 73, par. 1423)

10 Sec. 23. Violation; penalties.

11 (a) Any violation of any of the provisions of this Act and,
12 beginning January 1, 2013, any violation of any of the
13 provisions of Article 3 of the Residential Real Property
14 Disclosure Act shall constitute a business offense and shall
15 subject the party violating the same to a penalty of \$1000 for
16 each offense.

17 (b) Nothing contained in this Section shall affect the
18 right of the Secretary to revoke or suspend a title insurance
19 company's or independent escrowee's certificate of authority
20 or a title insurance agent's registration under any other
21 Section of this Act.

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

23 Section 15. The Residential Real Property Disclosure Act is

1 amended by changing Sections 70, 72, 73, and 74 as follows:

2 (765 ILCS 77/70)

3 Sec. 70. Predatory lending database program.

4 (a) As used in this Article:

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

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

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

12 "Closing agent" means an individual assigned by a title
13 insurance company or a broker or originator to ensure that the
14 execution of documents related to the closing of a real estate
15 sale or the refinancing of a real estate loan and the
16 disbursement of closing funds are in conformity with the
17 instructions of the entity financing the transaction.

18 "Counseling" means in-person counseling provided by a
19 counselor employed by a HUD-certified counseling agency to all
20 borrowers, or documented telephone counseling where a hardship
21 would be imposed on one or more borrowers. A hardship shall
22 exist in instances in which the borrower is confined to his or
23 her home due to medical conditions, as verified in writing by a
24 physician, or the borrower resides 50 miles or more from the
25 nearest participating HUD-certified housing counseling agency.

1 In instances of telephone counseling, the borrower must supply
2 all necessary documents to the counselor at least 72 hours
3 prior to the scheduled telephone counseling session.

4 "Counselor" means a counselor employed by a HUD-certified
5 housing counseling agency.

6 "Credit score" means a credit risk score as defined by the
7 Fair Isaac Corporation, or its successor, and reported under
8 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
9 by one or more of the following credit reporting agencies or
10 their successors: Equifax, Inc., Experian Information
11 Solutions, Inc., and TransUnion LLC. If the borrower's credit
12 report contains credit scores from 2 reporting agencies, then
13 the broker or loan originator shall report the lower score. If
14 the borrower's credit report contains credit scores from 3
15 reporting agencies, then the broker or loan originator shall
16 report the middle score.

17 "Department" means the Department of Financial and
18 Professional Regulation.

19 "Exempt person" means that term as it is defined in
20 subsections (d)(1) and (d)(1.5) of Section 1-4 of the
21 Residential Mortgage License Act of 1987.

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

24 "HUD-certified counseling" or "counseling" means
25 counseling given to a borrower by a counselor employed by a
26 HUD-certified housing counseling agency.

1 "Interest only" means a closed-end loan that permits one or
2 more payments of interest without any reduction of the
3 principal balance of the loan, other than the first payment on
4 the loan.

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

7 "Licensee" means that term as it is defined in subsection
8 (e) of Section 1-4 of the Residential Mortgage License Act of
9 1987.

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

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

17 "Originator" means a "loan originator" as defined in
18 subsection (hh) of Section 1-4 of the Residential Mortgage
19 License Act of 1987, except an exempt person.

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

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

25 "Refinancing" means a loan secured by the borrower's or
26 borrowers' primary residence where the proceeds are not used as

1 purchase money for the residence.

2 "Title insurance company" means any domestic company
3 organized under the laws of this State for the purpose of
4 conducting the business of guaranteeing or insuring titles to
5 real estate and any title insurance company organized under the
6 laws of another State, the District of Columbia, or a foreign
7 government and authorized to transact the business of
8 guaranteeing or insuring titles to real estate in this State.

9 (a-5) A predatory lending database program shall be
10 established within Cook County. The program shall be
11 administered in accordance with this Article. The inception
12 date of the program shall be July 1, 2008. A predatory lending
13 database program shall be expanded to include Kane, Peoria, and
14 Will counties. The inception date of the expansion of the
15 program as it applies to Kane, Peoria, and Will counties shall
16 be July 1, 2010. Until the inception date, none of the duties,
17 obligations, contingencies, or consequences of or from the
18 program shall be imposed. The program shall apply to all
19 mortgage applications that are governed by this Article and
20 that are made or taken on or after the inception of the
21 program.

22 (b) The database created under this program shall be
23 maintained and administered by the Department. The database
24 shall be designed to allow brokers, originators, counselors,
25 title insurance companies, and closing agents to submit
26 information to the database online. The database shall not be

1 designed to allow those entities to retrieve information from
2 the database, except as otherwise provided in this Article.
3 Information submitted by the broker or originator to the
4 Department may be used to populate the online form submitted by
5 a counselor, title insurance company, or closing agent.

6 (c) Within 10 days after taking a mortgage application, the
7 broker or originator for any mortgage on residential property
8 within the program area must submit to the predatory lending
9 database all of the information required under Section 72 and
10 any other information required by the Department by rule.
11 Within 7 days after receipt of the information, the Department
12 shall compare that information to the housing counseling
13 standards in Section 73 and issue to the borrower and the
14 broker or originator a determination of whether counseling is
15 recommended for the borrower. The borrower may not waive
16 counseling. If at any time after submitting the information
17 required under Section 72 the broker or originator (i) changes
18 the terms of the loan or (ii) issues a new commitment to the
19 borrower, then, within 5 days thereafter, the broker or
20 originator shall re-submit all of the information required
21 under Section 72 and, within 4 days after receipt of the
22 information re-submitted by the broker or originator, the
23 Department shall compare that information to the housing
24 counseling standards in Section 73 and shall issue to the
25 borrower and the broker or originator a new determination of
26 whether re-counseling is recommended for the borrower based on

1 the information re-submitted by the broker or originator. The
2 Department shall require re-counseling if the loan terms have
3 been modified to meet another counseling standard in Section
4 73, or if the broker has increased the interest rate by more
5 than 200 basis points.

6 (d) If the Department recommends counseling for the
7 borrower under subsection (c), then the Department shall notify
8 the borrower of all participating HUD-certified counseling
9 agencies located within the State and direct the borrower to
10 interview with a counselor associated with one of those
11 agencies. Within 10 days after receipt of the notice of
12 HUD-certified counseling agencies, the borrower shall select
13 one of those agencies and shall engage in an interview with a
14 counselor associated with that agency. Within 7 days after
15 interviewing the borrower, the counselor must submit to the
16 predatory lending database all of the information required
17 under Section 74 and any other information required by the
18 Department by rule. Reasonable and customary costs not to
19 exceed \$300 associated with counseling provided under the
20 program shall be paid by the broker or originator. The
21 Department shall annually calculate to the nearest dollar an
22 adjusted rate for inflation. A counselor shall not recommend or
23 suggest that a borrower contact any specific mortgage
24 origination company, financial institution, or entity that
25 deals in mortgage finance to obtain a loan, another quote, or
26 for any other reason related to the specific mortgage

1 transaction; however, a counselor may suggest that the borrower
2 seek an opinion or a quote from another mortgage origination
3 company, financial institution, or entity that deals in
4 mortgage finance. A counselor or housing counseling agency that
5 in good faith provides counseling shall not be liable to a
6 broker or originator or borrower for civil damages, except for
7 willful or wanton misconduct on the part of the counselor in
8 providing the counseling.

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

12 (1) the Department issues a determination not to
13 recommend HUD-certified counseling for the borrower in
14 accordance with subsection (c); or

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

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

23 (g) The title insurance company or closing agent shall
24 attach to the mortgage a certificate of compliance with the
25 requirements of this Article, as generated by the database. If
26 the title insurance company or closing agent fails to attach

1 the certificate of compliance, then the mortgage is not
2 recordable. In addition, if any lis pendens for a residential
3 mortgage foreclosure is recorded on the property within the
4 program area, a certificate of service must be simultaneously
5 recorded that affirms that a copy of the lis pendens was filed
6 with the Department. If the certificate of service is not
7 recorded, then the lis pendens pertaining to the residential
8 mortgage foreclosure in question is not recordable and is of no
9 force and effect.

10 (h) All information provided to the predatory lending
11 database under the program is confidential and is not subject
12 to disclosure under the Freedom of Information Act, except as
13 otherwise provided in this Article. Information or documents
14 obtained by employees of the Department in the course of
15 maintaining and administering the predatory lending database
16 are deemed confidential. Employees are prohibited from making
17 disclosure of such confidential information or documents. Any
18 request for production of information from the predatory
19 lending database, whether by subpoena, notice, or any other
20 source, shall be referred to the Department of Financial and
21 Professional Regulation. Any borrower may authorize in writing
22 the release of database information. The Department may use the
23 information in the database without the consent of the
24 borrower: (i) for the purposes of administering and enforcing
25 the program; (ii) to provide relevant information to a
26 counselor providing counseling to a borrower under the program;

1 or (iii) to the appropriate law enforcement agency or the
2 applicable administrative agency if the database information
3 demonstrates criminal, fraudulent, or otherwise illegal
4 activity.

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

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

11 (j-1) A violation of any provision of this Article by a
12 mortgage banking licensee or licensed mortgage loan originator
13 shall constitute a violation of the Residential Mortgage
14 License Act of 1987.

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

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

21 (k) During the existence of the program, the Department
22 shall submit semi-annual reports to the Governor and to the
23 General Assembly by May 1 and November 1 of each year detailing
24 its findings regarding the program. The report shall include,
25 by county, at least the following information for each
26 reporting period:

- 1 (1) the number of loans registered with the program;
- 2 (2) the number of borrowers receiving counseling;
- 3 (3) the number of loans closed;
- 4 (4) the number of loans requiring counseling for each
5 of the standards set forth in Section 73;
- 6 (5) the number of loans requiring counseling where the
7 mortgage originator changed the loan terms subsequent to
8 counseling;
- 9 (6) the number of licensed mortgage brokers and loan
10 originators entering information into the database;
- 11 (7) the number of investigations based on information
12 obtained from the database, including the number of
13 licensees fined, the number of licenses suspended, and the
14 number of licenses revoked;
- 15 (8) a summary of the types of non-traditional mortgage
16 products being offered; and
- 17 (9) a summary of how the Department is actively
18 utilizing the program to combat mortgage fraud.

19 (Source: P.A. 95-691, eff. 6-1-08; 96-328, eff. 8-11-09;
20 96-856, eff. 12-31-09.)

21 (765 ILCS 77/72)

22 Sec. 72. Originator; required information. As part of the
23 predatory lending database program, the broker or originator
24 must submit all of the following information for inclusion in
25 the predatory lending database for each loan for which the

1 originator takes an application:

2 (1) The borrower's name, address, social security
3 number or taxpayer identification number, date of birth,
4 and income and expense information contained in the
5 mortgage application.

6 (2) The address, permanent index number, and a
7 description of the collateral and information about the
8 loan or loans being applied for and the loan terms,
9 including the amount of the loan, the rate and whether the
10 rate is fixed or adjustable, amortization or loan period
11 terms, and any other material terms.

12 (3) The borrower's credit score at the time of
13 application.

14 (4) Information about the originator and the company
15 the originator works for, including the originator's
16 license number and address, fees being charged, whether the
17 fees are being charged as points up front, the yield spread
18 premium payable outside closing, and other charges made or
19 remuneration required by the broker or originator or its
20 affiliates or the broker's or originator's employer or its
21 affiliates for the mortgage loans.

22 (5) Information about affiliated or third party
23 service providers, including the names and addresses of
24 appraisers, title insurance companies, closing agents,
25 attorneys, and realtors who are involved with the
26 transaction and the broker or originator and any moneys

1 received from the broker or originator in connection with
2 the transaction.

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

6 (7) Annual real estate taxes for the property, together
7 with any assessments payable in connection with the
8 property to be secured by the collateral and the proposed
9 monthly principal and interest charge of all loans to be
10 taken by the borrower and secured by the property of the
11 borrower.

12 (8) Information concerning how the broker or
13 originator obtained the client and the name of its referral
14 source, if any.

15 (9) Information concerning the notices provided by the
16 broker or originator to the borrower as required by law and
17 the date those notices were given.

18 (10) Information concerning whether a sale and
19 leaseback is contemplated and the names of the lessor and
20 lessee, seller, and purchaser.

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

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

26 (13) Whether the buyer is a first-time homebuyer or

1 refinancing a primary residence.

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

3 (15) Whether the loan may result in negative
4 amortization.

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

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

9 (18) Whether the loan is an ARM.

10 (19) Whether the borrower's debt-to-income ratio
11 exceeds 50%.

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

13 (765 ILCS 77/73)

14 Sec. 73. Standards for counseling. A borrower or borrowers
15 subject to this Article shall be recommended for counseling if,
16 after reviewing the information in the predatory lending
17 database submitted under Section 72, the Department finds the
18 borrower or borrowers are all first-time homebuyers or
19 refinancing a primary residence and the loan is a mortgage that
20 includes one or more of the following:

21 (1) the loan permits interest only payments;

22 (2) the loan may result in negative amortization;

23 (3) the total points and fees payable by the borrower
24 at or before closing will exceed 5%;

25 (4) the loan includes a prepayment penalty; ~~or~~

- 1 (5) the loan is an ARM; or ~~or~~
2 (6) the borrower's debt-to-income ratio exceeds 50%.

3 (Source: P.A. 95-691, eff. 6-1-08.)

4 (765 ILCS 77/74)

5 Sec. 74. Counselor; required information. As part of the
6 predatory lending database program, a counselor must submit all
7 of the following information for inclusion in the predatory
8 lending database:

9 (1) The information called for in items (1), (6), (9),
10 (11), (12), (13), (14), (15), (16), (17), ~~and~~ (18), and
11 (19) of Section 72.

12 (2) Any information from the borrower that confirms or
13 contradicts the information called for under item (1) of
14 this Section.

15 (3) The name of the counselor and address of the
16 HUD-certified ~~HUD-certified~~ housing counseling agency that
17 employs the counselor.

18 (4) Information pertaining to the borrower's monthly
19 expenses that assists the counselor in determining whether
20 the borrower can afford the loans or loans for which the
21 borrower is applying.

22 (5) A list of the disclosures furnished to the
23 borrower, as seen and reviewed by the counselor, and a
24 comparison of that list to all disclosures required by law.

25 (6) Whether the borrower provided tax returns to the

1 broker or originator or to the counselor, and, if so, who
2 prepared the tax returns.

3 (7) A statement of the recommendations of the counselor
4 that indicates the counselor's response to each of the
5 following statements:

6 (A) The loan should not be approved due to indicia
7 of fraud.

8 (B) The loan should be approved; no material
9 problems noted.

10 (C) The borrower cannot afford the loan.

11 (D) The borrower does not understand the
12 transaction.

13 (E) The borrower does not understand the costs
14 associated with the transaction.

15 (F) The borrower's monthly income and expenses
16 have been reviewed and disclosed.

17 (G) The rate of the loan is above market rate.

18 (H) The borrower should seek a competitive bid from
19 another broker or originator.

20 (I) There are discrepancies between the borrower's
21 verbal understanding and the originator's completed
22 form.

23 (J) The borrower is precipitously close to not
24 being able to afford the loan.

25 (K) The borrower understands the true cost of debt
26 consolidation and the need for credit card discipline.

1 (L) The information that the borrower provided the
2 originator has been amended by the originator.

3 (Source: P.A. 94-280, eff. 1-1-06; 95-691, eff. 6-1-08; revised
4 11-21-11.)

5 Section 99. Effective date. This Act takes effect January
6 1, 2013.

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