

1 AN ACT concerning lending practices.

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

4 Section 1. Short title. This Act may be cited as the
5 Home Loan Collateral Fund Act.

6 Section 5. Definitions. For purposes of this Act:

7 "Financial institution" means a bank, credit union,
8 insurance company, mortgage banking company, savings bank, or
9 savings and loan association, that operates or has a place of
10 business in this State.

11 "Fund" means, unless the context requires otherwise, the
12 Home Loan Collateral Fund established by this Act.

13 "Home loan" means a loan, other than an open-end credit
14 plan or a reverse mortgage transaction, for which (i) the
15 principal amount of the loan does not exceed 50% of the
16 conforming loan size limit for a single-family dwelling as
17 established from time to time by the Federal National
18 Mortgage Association, (ii) the borrower is a natural person,
19 (iii) the debt is incurred by the borrower primarily for
20 personal, family, or household purposes, and (iv) the loan is
21 secured by a mortgage or deed of trust on real estate upon
22 which there is located or there is to be located a dwelling
23 consisting of one to four family units or a dwelling
24 consisting of condominium or cooperative units.

25 Section 10. Home Loan Collateral Fund. The Home Loan
26 Collateral Fund is created as a special fund in the State
27 treasury. The Fund shall be administered by the State
28 Treasurer to provide collateral for Illinois citizens who
29 have applied for a home loan from a financial institution or
30 who have an existing home loan that requires additional

1 security to avoid foreclosure or other adverse action. All
2 interest earned from the investment or deposit of moneys
3 accumulated in the Fund shall, pursuant to Section 4.1 of the
4 State Finance Act, be deposited into the Fund. The State
5 Treasurer shall transfer from the General Revenue Fund to the
6 Fund an amount equal to the full amount of moneys
7 appropriated by the General Assembly for transfer to the
8 Fund.

9 Section 15. Administration.

10 (a) The State Treasurer shall administer the Fund as
11 follows:

12 (1) Upon application by a financial institution
13 extending a home loan to an Illinois citizen purchasing
14 a home in Illinois, the State Treasurer may pledge a
15 portion of the Fund to the financial institution. The
16 amount of the Fund pledged to secure a home loan shall
17 not exceed 10% of the appraised value of the home. In
18 order for a home loan to qualify for collateralization
19 from the Fund, the financial institution making the loan
20 must certify to the State Treasurer that the financial
21 institution would not offer the borrower a home loan
22 pursuant to the financial institution's prevailing
23 credit standards without the pledge of additional
24 collateral from the Fund.

25 (2) The State Treasurer shall give priority for
26 pledges made under this subsection (a) to borrowers
27 seeking to refinance loans that, in the sole opinion of
28 the State Treasurer, may have been made in violation of
29 item (2) of subsection (i) of Section 4-5 of the
30 Residential Mortgage License Act of 1987 or subsection
31 (e) of Section 3 of the Illinois Fairness in Lending Act.
32 This determination shall be made in the sole discretion
33 of the State Treasurer and shall not be construed to

1 grant to any person a private right of action under any
2 law, nor shall the determination or the application for
3 the determination be used as evidence in any judicial or
4 administrative proceeding.

5 (b) Upon application by a financial institution, the
6 State Treasurer may pledge a portion of the Fund to a
7 financial institution that has made a home loan to an
8 Illinois citizen who has failed to make payments on the home
9 loan as a result of a temporary layoff or disability. To
10 qualify under this subsection (b), the borrower must have
11 resumed making payments on the home loan and have made at
12 least 2 consecutive payments at the time of application. The
13 pledge from the Fund must be used to secure the payments on
14 the home loan that are past due. The amount of the Fund that
15 is pledged to a financial institution for a home loan shall
16 not exceed the amount of the mortgage payments that are past
17 due.

18 (c) No more than 3% of the Fund may be pledged to secure
19 home loans that are or would be outstanding from any one
20 financial institution at any point in time.

21 (d) The State Treasurer's costs to administer the Fund
22 may be paid from the Fund. The amount paid from the Fund for
23 this purpose may not exceed 5% of the amount of the Fund in
24 any one State fiscal year.

25 Section 20. Participation by financial institutions. A
26 financial institution may not be compelled in any instance to
27 apply for a pledge of collateral from the Fund or to modify
28 its credit standards with respect to any pending application
29 for a home loan as a result of its decision to apply or not
30 to apply for a pledge of collateral from the Fund. The
31 acceptance of a pledge of collateral from the Fund does not
32 prohibit the financial institution from exercising collection
33 actions or from taking other adverse action with respect to a

1 home loan if the status of the home loan deteriorates
2 subsequent to the acceptance of the pledge from the Fund.

3 Section 25. Rules and procedures. The State Treasurer
4 shall establish rules and procedures for the administration
5 of the Fund and this Act including, but not limited to, the
6 process by which a financial institution may apply for a
7 pledge of a portion of the Fund and the process or criteria
8 that the State Treasurer may employ in approving or denying
9 an application by a financial institution.

10 Section 90. The State Finance Act is amended by adding
11 Section 5.545 as follows:

12 (30 ILCS 105/5.545 new)

13 Sec. 5.545. The Home Loan Collateral Fund. This Fund is
14 not subject to the provisions of subsection (c) of Section 5.

15 Section 92. The Residential Mortgage License Act of 1987
16 is amended by changing Sections 1-4, 1-5, 4-1, 4-5, 4-6, 4-8,
17 and 6-2 and adding Sections 4-8.1, 4-8.2, 4-8.3, 4-8.4,
18 4-8.5, 4-8.6, 4-8.7, 4-8.8, 4-8.9, 4-8.10, 4-8.11, and 6-4
19 as follows:

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

21 Sec. 1-4. Definitions.

22 (a) "Residential real property" or "residential real
23 estate" shall mean real property located in this State
24 improved by a one-to-four family dwelling used or occupied,
25 wholly or partly, as the home or residence of one or more
26 persons and may refer, subject to regulations of the
27 Commissioner, to unimproved real property upon which those
28 kinds dwellings are to be constructed.

29 (b) "Making a residential mortgage loan" or "funding a

1 residential mortgage loan" shall mean for compensation or
2 gain, either directly or indirectly, advancing funds or
3 making a commitment to advance funds to a loan applicant for
4 a residential mortgage loan.

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

17 (d) "Exempt entity" shall mean the following:

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

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

14 (2) Any person or entity that ~~either-(i)-has-a~~
15 ~~physical-presence-in-Illinois-or-(ii)~~ does not originate
16 mortgage loans in the ordinary course of business making
17 or acquiring residential mortgage loans with his or her
18 or its own funds for his or her or its own investment
19 without intent to make, acquire, or resell more than 10
20 residential mortgage loans in any one calendar year.

21 (3) (Blank) ~~Any--person--employed-by-a-licensee-to~~
22 ~~assist-in-the-performance-of-the-activities-regulated--by~~
23 ~~this--Act--who--is--compensated-in-any-manner-by-only-one~~
24 ~~licensee.~~

25 (4) Any person licensed pursuant to the Real Estate
26 License Act of 2000, who engages only in the taking of
27 applications and credit and appraisal information to
28 forward to a licensee or an exempt entity under this Act
29 and who is compensated by either a licensee or an exempt
30 entity under this Act, but is not compensated by either
31 the buyer (applicant) or the seller.

32 (5) Any individual, corporation, partnership, or
33 other entity that originates, services, or brokers
34 residential mortgage loans, as these activities are

1 defined in this Act, and who or which receives no
2 compensation for those activities, subject to the
3 Commissioner's regulations with regard to the nature and
4 amount of compensation.

5 (6) A person who prepares supporting documentation
6 for a residential mortgage loan application taken by a
7 licensee and performs ministerial functions pursuant to
8 specific instructions of the licensee who neither
9 requires nor permits the preparer to exercise his or her
10 discretion or judgment; provided that this activity is
11 engaged in pursuant to a binding, written agreement
12 between the licensee and the preparer that:

13 (A) holds the licensee fully accountable for
14 the preparer's action; and

15 (B) otherwise meets the requirements of this
16 Section and this Act, does not undermine the
17 purposes of this Act, and is approved by the
18 Commissioner.

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

23 (f) "Mortgage loan", "residential mortgage loan", or
24 "home mortgage loan" shall mean a loan to or for the benefit
25 of any natural person made primarily for personal, family, or
26 household use, primarily secured by either a mortgage on
27 residential real property or certificates of stock or other
28 evidence of ownership interests in and proprietary leases
29 from, corporations, partnerships, or limited liability
30 companies formed for the purpose of cooperative ownership of
31 residential real property, all located in Illinois.

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

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

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

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

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

20 (l) "Party to a residential mortgage financing
21 transaction" shall mean a borrower, lender, or loan broker in
22 a residential mortgage financing transaction.

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

27 (n) "Commissioner" shall mean the Commissioner of Banks
28 and Real Estate or a person authorized by the Commissioner,
29 the Office of Banks and Real Estate Act, or this Act to act
30 in the Commissioner's stead.

31 (o) "Loan brokering", "brokering", or "brokerage
32 service" shall mean the act of helping to obtain from another
33 entity, for a borrower, a loan secured by residential real
34 estate situated in Illinois or assisting a borrower in

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

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

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

24 (r) "Full service office" shall mean office and staff in
25 Illinois reasonably adequate to handle efficiently
26 communications, questions, and other matters relating to any
27 application for, or an existing home mortgage secured by
28 residential real estate situated in Illinois with respect to
29 which the licensee is brokering, funding originating,
30 purchasing, or servicing. The management and operation of
31 each full service office must include observance of good
32 business practices such as adequate, organized, and accurate
33 books and records; ample phone lines, hours of business,
34 staff training and supervision, and provision for a mechanism

1 to resolve consumer inquiries, complaints, and problems. The
2 Commissioner shall issue regulations with regard to these
3 requirements and shall include an evaluation of compliance
4 with this Section in his or her periodic examination of each
5 licensee.

6 (s) "Purchasing" shall mean the purchase of conventional
7 or government-insured mortgage loans secured by residential
8 real estate situated in Illinois from either the lender or
9 from the secondary market.

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

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

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

17 (1) obtain a residential mortgage loan for the
18 borrower or assist the borrower in obtaining a
19 residential mortgage loan; or

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

22 (w) "Advertisement" shall mean the attempt by
23 publication, dissemination, or circulation to induce,
24 directly or indirectly, any person to enter into a
25 residential mortgage loan agreement or residential mortgage
26 loan brokerage agreement relative to a mortgage secured by
27 residential real estate situated in Illinois.

28 (x) "Board" means "Residential--Mortgage--Board"--shall
29 mean the Residential Mortgage Board renamed the Residential
30 Mortgage Administration and Disciplinary Board by this
31 amendatory Act of the 92nd General Assembly created--in
32 Section 1-5-of-this-Act.

33 (y) "Government-insured mortgage loan" shall mean any
34 mortgage loan made on the security of residential real estate

1 insured by the Department of Housing and Urban Development or
2 Farmers Home Loan Administration, or guaranteed by the
3 Veterans Administration.

4 (z) "Annual audit" shall mean a certified audit of the
5 licensee's books and records and systems of internal control
6 performed by a certified public accountant in accordance with
7 generally accepted accounting principles and generally
8 accepted auditing standards.

9 (aa) "Financial institution" shall mean a savings and
10 loan association, savings bank, credit union, or a bank
11 organized under the laws of Illinois or a savings and loan
12 association, savings bank, credit union or a bank organized
13 under the laws of the United States and headquartered in
14 Illinois.

15 (bb) "Escrow agent" shall mean a third party, individual
16 or entity charged with the fiduciary obligation for holding
17 escrow funds on a residential mortgage loan pending final
18 payout of those funds in accordance with the terms of the
19 residential mortgage loan.

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

22 (dd) "Affiliate" shall mean:

23 (1) any entity that directly controls or is
24 controlled by the licensee and any other company that is
25 directly affecting activities regulated by this Act that
26 is controlled by the company that controls the licensee;

27 (2) any entity:

28 (A) that is controlled, directly or
29 indirectly, by a trust or otherwise, by or for the
30 benefit of shareholders who beneficially or
31 otherwise control, directly or indirectly, by trust
32 or otherwise, the licensee or any company that
33 controls the licensee; or

34 (B) a majority of the directors or trustees of

1 which constitute a majority of the persons holding
2 any such office with the licensee or any company
3 that controls the licensee;

4 (3) any company, including a real estate investment
5 trust, that is sponsored and advised on a contractual
6 basis by the licensee or any subsidiary or affiliate of
7 the licensee.

8 The Commissioner may define by rule and regulation any
9 terms used in this Act for the efficient and clear
10 administration of this Act.

11 (ee) "First tier subsidiary" shall be defined by
12 regulation incorporating the comparable definitions used by
13 the Office of the Comptroller of the Currency and the
14 Illinois Commissioner of Banks and Real Estate.

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

27 (gg) "Delinquency rate factor" means the factor set by
28 rule of the Commissioner that is multiplied by the average
29 gross delinquency rate of licensees, determined annually for
30 the immediately preceding calendar year, for the purpose of
31 determining which licensees shall be examined by the
32 Commissioner pursuant to subsection (b) of Section 4-8 of
33 this Act.

34 (hh) "Equity stripping" means to assist a person in

1 obtaining a loan secured by the person's principal residence
2 for the primary purpose of receiving fees related to the
3 financing when:

4 (1) the loan decreases the person's equity in the
5 principal residence; and

6 (2) the licensee does not reasonably believe at the
7 time the loan is made that the person will be able to
8 make the scheduled payments to repay the loan.

9 "Equity stripping" does not include reverse mortgages as
10 defined in Section 5a of the Illinois Banking Act.

11 (ii) "Loan flipping" means to assist a person in
12 refinancing a loan secured by the person's principal
13 residence for the primary purpose of receiving fees related
14 to the refinancing when:

15 (1) the refinancing results in no tangible benefit
16 to the person; and

17 (2) the licensee does not reasonably believe at the
18 time the loan is made that the refinancing will result in
19 a tangible benefit to the person.

20 (jj) "Principal residence" means the borrower's primary
21 residence that is a dwelling consisting of one to 4 family
22 units or that is in a dwelling consisting of condominium or
23 cooperative units.

24 (Source: P.A. 90-772, eff. 1-1-99; 91-245, eff. 12-31-99.)

25 (205 ILCS 635/1-5) (from Ch. 17, par. 2321-5)

26 Sec. 1-5. Residential Mortgage Administration and
27 Disciplinary Board.

28 (a) Board composition, compensation. There is created
29 the Residential Mortgage Board composed of 5 members
30 appointed by the Commissioner of Banks and Real Estate. On
31 and after the effective date of this amendatory Act of the
32 92nd General Assembly, the Residential Mortgage Board shall
33 be known as the Residential Mortgage Administration and

1 Disciplinary Board and shall be composed of 7 members
2 appointed by the Governor with the advice and consent of the
3 Senate. The majority of persons on the Board shall have no
4 financial interest in any residential mortgage business, and
5 One member shall be a representative of the Mortgage Banking
6 Trade Association, and one member shall be a representative
7 of the Mortgage Broker Trade Association, and 2 members shall
8 be public members who clearly represent consumer interests.
9 Members of the Board serving on the effective date of this
10 amendatory Act of the 92nd General Assembly 1996 shall
11 continue to serve their unexpired terms as members of the
12 Residential Mortgage Administration and Disciplinary Board.
13 Thereafter, on or before January 15 of each year, the
14 Governor ~~Commissioner~~ shall appoint one or more board members
15 by and with the advice and consent of the Senate, as shall be
16 necessary to maintain a 7 5 member Board, whose terms shall
17 be for 3 years commencing February 1 of the year in which
18 they are respectively appointed.

19 If a vacancy occurs on the Residential Mortgage
20 Administration and Disciplinary Board, the Governor
21 ~~Commissioner~~ shall within 60 days appoint a new temporary
22 member who shall hold office for the remainder of the vacated
23 term.

24 The Board shall meet a minimum of 4 times each calendar
25 year and at the call of the chairman, who along with a
26 Secretary, shall be selected by the Board from among its
27 members.

28 Members of the Board shall be entitled to receive a per
29 diem allowance of \$25 for each day or part of a day spent on
30 Board work and shall be entitled to their expenses actually
31 and necessarily incurred in the performance of their duties.
32 ~~The members of the Board serve at the pleasure of the~~
33 ~~Commissioner.~~

34 (b) Duties of Board. The Residential Mortgage

1 Administration and Disciplinary Board shall assist the
2 Commissioner by:

3 (1) submitting recommendations to the Commissioner
4 for the efficient administration of this Act; and

5 (2) submitting recommendations to the Commissioner
6 for establishing guidelines for professional conduct of
7 licensees under this Act, for the conduct of formal
8 disciplinary proceedings brought under this Act, and for
9 establishing guidelines for qualifications of applicants
10 under this Act;

11 (3) participating in hearings conducted pursuant to
12 Section 4-8.3 of this Act; and

13 (4) ~~(2)~~ performing other duties as are prescribed
14 by the Commissioner.

15 (c) Notice of proposed rulemaking shall be transmitted
16 to the Board, and the Commissioner shall review the response
17 of the Board and any recommendations made in their response.
18 The Commissioner, at any time, may seek the expert advice and
19 knowledge of the Board on any matter relating to the
20 administration or enforcement of this Act.

21 (d) ~~(e)~~ Conflict of interest declarations. Each member
22 of the Residential Mortgage Administration and Disciplinary
23 Board shall file annually, no later than February 1, with the
24 Commissioner a statement of his or her current business
25 transactions or other affiliations with any licensee under
26 this Act. The Commissioner may adopt rules to avoid
27 conflicts of interest on the part of members of the
28 Residential Mortgage Administration and Disciplinary Board in
29 connection with their position on the Board.

30 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

31 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)
32 Sec. 4-1. Commissioner of Banks and Real Estate;
33 functions, powers, and duties. The functions, powers, and

1 duties of the Commissioner of Banks and Real Estate shall
2 include the following:

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

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

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

9 (d) To receive, consider, investigate, and act upon
10 complaints made by any person in connection with any
11 residential mortgage licensee in this State;

12 (e) To consider and act upon any recommendations from
13 the Residential-Mortgage Board;

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

15 (1) applications for licenses; and

16 (2) all reports and all books and records required
17 to be made by any licensee under this Act, including
18 annual audited financial statements and annual reports of
19 mortgage activity;

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

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

26 (i) To require information with regard to any license
27 applicant as he or she may deem desirable, with due regard to
28 the paramount interests of the public as to the experience,
29 background, honesty, truthfulness, integrity, and competency
30 of the license applicant as to financial transactions
31 involving primary or subordinate mortgage financing, and
32 where the license applicant is an entity other than an
33 individual, as to the honesty, truthfulness, integrity, and
34 competency of any officer or director of the corporation,

1 association, or other entity, or the members of a
2 partnership;

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

5 (k) To enforce provisions of this Act;

6 (l) To levy fees, fines, and charges for services
7 performed in administering this Act; the aggregate of all
8 fees collected by the Commissioner on and after the effective
9 date of this Act shall be paid promptly after receipt of the
10 same, accompanied by a detailed statement thereof, into the
11 Savings and Residential Finance Regulatory Fund; the amounts
12 deposited into that Fund shall be used for the ordinary and
13 contingent expenses of the Office of Banks and Real Estate.
14 Nothing in this Act shall prevent continuing the practice of
15 paying expenses involving salaries, retirement, social
16 security, and State-paid insurance of State officers by
17 appropriation from the General Revenue Fund.

18 (m) To appoint examiners, supervisors, experts, and
19 special assistants as needed to effectively and efficiently
20 administer this Act; and

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

- 22 (1) appeals of orders of the Commissioner;
- 23 (2) suspensions or revocations of licenses, or
24 fining of licensees;
- 25 (3) investigating:
 - 26 (i) complaints against licensees; or
 - 27 (ii) annual gross delinquency rates; and
- 28 (4) carrying out the purposes of this Act.

29 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

30 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)
31 Sec. 4-5. Suspension, revocation of licenses; fines.

32 (a) Upon written notice to a licensee, the Commissioner
33 may suspend or revoke any license issued pursuant to this Act

1 if he or she shall make a finding of one or more of the
2 following in the notice that:

3 (1) Through separate acts or an act or a course of
4 conduct, the licensee has violated any provisions of this
5 Act, any rule or regulation promulgated by the
6 Commissioner or of any other law, rule or regulation of
7 this State or the United States.

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

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

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

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

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

33 (e) No revocation, suspension or surrender of any
34 license shall impair or affect the obligation of any

1 pre-existing lawful contract between the licensee and any
2 person.

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

12 (g) Whenever the Commissioner shall revoke or suspend a
13 license issued pursuant to this Act or fine a licensee under
14 this Act, he or she shall forthwith execute in duplicate a
15 written order to that effect. The Commissioner shall publish
16 notice of such order in the Illinois Register and a newspaper
17 of general circulation in the county in which the license is
18 located and shall forthwith serve a copy of such order upon
19 the licensee. Any such order may be reviewed in the manner
20 provided by Section 4-12 of this Act.

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

- 25 (1) Revocation of license;
- 26 (2) Suspension of a license subject to
27 reinstatement upon satisfying all reasonable conditions
28 the Commissioner may specify;
- 29 (3) Placement of the licensee or applicant on
30 probation for a period of time and subject to all
31 reasonable conditions as the Commissioner may specify;
- 32 (4) Issuance of a reprimand;
- 33 (5) Imposition of a fine not to exceed \$10,000 for
34 each count of separate offense; and

1 (6) Denial of a license.

2 (i) The following acts shall constitute grounds for
3 which the disciplinary actions specified in subsection (h)
4 above may be taken:

5 (1) Being convicted or found guilty, regardless of
6 pendency of an appeal, of a crime in any jurisdiction
7 which involves fraud, dishonest dealing, or any other act
8 of moral turpitude;

9 (2) Fraud, misrepresentation, or deceit, including
10 equity stripping or loan flipping, or negligence in any
11 mortgage financing transaction;

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

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

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

19 (6) Failure to account or deliver to any person any
20 property such as any money, fund, deposit, check, draft,
21 mortgage, or other document or thing of value, which has
22 come into his or her hands and which is not his or her
23 property or which he or she is not in law or equity
24 entitled to retain, under the circumstances and at the
25 time which has been agreed upon or is required by law or,
26 in the absence of a fixed time, upon demand of the person
27 entitled to such accounting and delivery;

28 (7) Failure to disburse funds in accordance with
29 agreements;

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

32 (9) Having a license, or the equivalent, to
33 practice any profession or occupation revoked, suspended,
34 or otherwise acted against, including the denial of

1 licensure by a licensing authority of this State or
2 another state, territory or country for fraud, dishonest
3 dealing or any other act of moral turpitude;

4 (10) Failure to issue a satisfaction of mortgage
5 when the residential mortgage has been executed and
6 proceeds were not disbursed to the benefit of the
7 mortgagor and when the mortgagor has fully paid
8 licensee's costs and commission;

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

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

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

17 (14) Failure to maintain, preserve, and keep
18 available for examination, all books, accounts or other
19 documents required by the provisions of this Act and the
20 rules of the Commissioner;

21 (15) Refusal to permit an investigation or
22 examination of the licensee's or its affiliates' books
23 and records or refusal to comply with the Commissioner's
24 subpoena or subpoena duces tecum;

25 (16) A pattern of substantially underestimating the
26 maximum closing costs;

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

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

34 (k) Such licensee shall be subject to suspension or

1 revocation for employee actions only if there is a pattern of
2 repeated violations by employees or the licensee has
3 knowledge of the violations.

4 (1) Procedure for surrender of license:

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

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

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

23 (2) Any licensee may surrender a license by
24 delivering to the Commissioner written notice that he or
25 she thereby surrenders such license, but surrender shall
26 not affect the licensee's civil or criminal liability for
27 acts committed prior to surrender or entitle the licensee
28 to a return of any part of the license fee.

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

30 (205 ILCS 635/4-6) (from Ch. 17, par. 2324-6)

31 Sec. 4-6. Investigation of complaints. The Commissioner
32 shall at all times maintain staff and facilities adequate to
33 receive, record and investigate complaints and inquiries made

1 by any person concerning this Act and any licensees under
2 this Act or other persons subject to this Act. Each licensee
3 shall open its books, records, documents and offices wherever
4 situated to the Commissioner or his or her appointees as
5 needed to facilitate such investigations.

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

7 (205 ILCS 635/4-8) (from Ch. 17, par. 2324-8)

8 Sec. 4-8. Default rate; examination.

9 (a) The Commissioner shall obtain from the U.S.
10 Department of Housing and Urban Development on a semi-annual
11 basis that Department's default claim rates for endorsements
12 issued by that Department.

13 (b) The Commissioner shall conduct an examination of
14 each licensee having a default rate equal to or greater than
15 5%.

16 This subsection shall not be construed as a limitation of
17 the Commissioner's examination authority under Section 4-2 of
18 this Act or as otherwise provided in this Act. The
19 Commissioner may require a licensee to provide loan default
20 data as the Commissioner deems necessary for the proper
21 enforcement of the Act.

22 (c) The purpose of the examination under subsection (b)
23 shall be to determine whether the default rate of the
24 licensee has resulted from practices which deviate from sound
25 and accepted mortgage underwriting practices, including but
26 not limited to credit fraud, appraisal fraud, and property
27 inspection fraud, equity stripping, and loan flipping. For
28 the purpose of conducting this examination, the Commissioner
29 may accept materials prepared for the U.S. Department of
30 Housing and Urban Development. At the conclusion of the
31 examination, the Commissioner shall provide make his or her
32 findings available to the Residential Mortgage Board.

33 (d) The Commissioner, at his or her discretion, may hold

1 public hearings, or at the direction of the Residential
2 Mortgage Administration and Disciplinary Board, shall hold
3 public hearings. Such testimony shall be by a homeowner or
4 mortgagor or his agent, whose residential interest is
5 affected by the activities of the residential mortgage
6 licensee subject to such hearing. At such public hearing, a
7 witness may present testimony on his or her behalf concerning
8 only his or her home, or home mortgage or a witness may
9 authorize a third party to appear on his or her behalf. The
10 testimony shall be restricted to information and comments
11 related to a specific residence or specific residential
12 mortgage application or applications for a residential
13 mortgage or residential loan transaction. The testimony must
14 be preceded by either a letter of complaint or a completed
15 consumer complaint form prescribed by the Commissioner.

16 (e) The Commissioner shall, at the conclusion of the
17 public hearings, release his or her findings and shall also
18 make public any action taken with respect to the licensee.
19 The Commissioner shall also give full consideration to the
20 findings of this examination whenever reapplication is made
21 by the licensee for a new license under this Act.

22 (f) A licensee that is examined pursuant to subsection
23 (b) shall submit to the Commissioner a plan which shall be
24 designed to reduce that licensee's default rate to a figure
25 that is less than 5%. The plan shall be implemented by the
26 licensee as approved by the Commissioner. A licensee that is
27 examined pursuant to subsection (b) shall report monthly, for
28 a one year period, one, 2, and 3 month defaults.

29 (g) Whenever the Commissioner finds that a licensee's
30 default rate on insured mortgages is unusually high within a
31 particular geographic area, he or she shall require that
32 licensee to submit such information as is necessary to
33 determine whether that licensee's practices have constituted
34 credit fraud, appraisal fraud or property inspection fraud.

1 The Commissioner shall promulgate such rules as are necessary
2 to determine whether any licensee's default rate is unusually
3 high within a particular area.

4 (Source: P.A. 89-355, eff. 1-1-96; 89-626, eff. 8-9-96;
5 90-301, eff. 8-1-97.)

6 (205 ILCS 635/4-8.1 new)

7 Sec. 4-8.1. Investigations; notice of hearing. Upon the
8 motion of either the Commissioner or the Residential Mortgage
9 Administration and Disciplinary Board or upon the verified
10 complaint in writing of any person setting forth facts that,
11 if proven, would constitute grounds for refusal, suspension,
12 or revocation of license under this Act, the Commissioner
13 shall investigate the actions of any person, hereinafter
14 called the "licensee", who holds or represents that he or she
15 holds a license under this Act. The Commissioner shall,
16 before suspending, revoking, placing on probationary
17 status, or taking any other disciplinary action as the
18 Commissioner may deem proper with regard to any registration,
19 at least 30 days before the date set for the hearing,
20 notify the licensee in writing of any charges made and of the
21 time and place for a hearing on the charges. The Commissioner
22 shall also direct the licensee to file a written answer to
23 the charges under oath within 20 days after the service of
24 the notice upon the licensee and inform the licensee that if
25 he or she fails to file an answer, his or her certificate of
26 registration may be suspended, revoked, or placed on
27 probationary status or that other disciplinary action may be
28 taken with regard thereto, as the Commissioner may deem
29 proper. The written notice and any notice in the proceeding
30 may be served by delivery personally to the licensee or by
31 registered or certified mail to the address specified by the
32 licensee in his or her last notification to the
33 Commissioner. The Commissioner shall preserve a record of

1 all proceedings at the formal hearing of any case involving
2 the refusal to issue or renew a registration or discipline of
3 a licensee. The notice of hearing, the complaint, all other
4 documents in the nature of pleadings and written motions
5 filed in the proceedings, the transcript of testimony, the
6 report of the Board, and the orders of the Commissioner shall
7 be the record of the proceedings.

8 (205 ILCS 635/4-8.2 new)

9 Sec. 4-8.2. Disciplinary actions.

10 (a) If a licensee, after receiving notice, fails to file
11 an answer, his or her license may, in the discretion of the
12 Commissioner, having first received the recommendation of the
13 Residential Mortgage Administration and Disciplinary Board,
14 be suspended, revoked, or placed on probationary status,
15 or the Commissioner may take whatever disciplinary action he
16 or she may deem proper, including the imposition of a fine,
17 without a hearing, if the act or acts charged constitute
18 sufficient grounds for such action under this Act.

19 (b) The Commissioner may temporarily suspend the
20 registration of a licensee without a hearing, simultaneous to
21 the institution of proceedings for a hearing under this Act,
22 if the Commissioner finds that evidence in his possession
23 indicates that the person's continuation of use of the title
24 would constitute an immediate danger to the public. In the
25 event that the Commissioner temporarily suspends the
26 registration of a licensee without a hearing, a hearing
27 pursuant to Section 4-8.3 must be held within 15 days after
28 the suspension has occurred and must be concluded without
29 appreciable delay.

30 (205 ILCS 635/4-8.3 new)

31 Sec. 4-8.3. Hearings. At the time and place fixed in the
32 notice of hearing, the Commissioner shall proceed to hear the

1 charges before the Residential Mortgage Administration and
2 Disciplinary Board, and both the licensee and the complainant
3 shall be accorded ample opportunity to present in person, or
4 by counsel, such statements, testimony, evidence, and
5 arguments as may be pertinent to the charges or to their
6 defense. The Commissioner may continue the hearing from time
7 to time. If the Board is not sitting at the time and place
8 fixed in the notice or at the time and place to which the
9 hearing has been continued, the Commissioner shall continue
10 the hearing for a period not to exceed 30 days. The
11 Commissioner shall have power to subpoena and bring before
12 him or her any licensee under this Act and to take testimony
13 either orally or by deposition, or both, with the same fees
14 and mileage and in the same manner as prescribed for civil
15 actions in this State. The Commissioner shall have power to
16 administer oaths at any hearing at which the Commissioner is
17 authorized by law to conduct.

18 (205 ILCS 635/4-8.4 new)

19 Sec. 4-8.4. Attendance of witnesses; production of
20 documents. Any circuit court, upon the application of the
21 Commissioner, may order the attendance of witnesses and the
22 production of relevant books and papers in any hearing
23 relative to the application for a suspension of, revocation
24 of, or refusal to renew a registration of, or the discipline
25 of a licensee. The court may compel obedience to its order by
26 proceedings for contempt.

27 (205 ILCS 635/4-8.5 new)

28 Sec. 4-8.5. Recommendations for disciplinary action;
29 action by Commissioner. The Residential Mortgage
30 Administration and Disciplinary Board may advise the
31 Commissioner that probation be granted or that other
32 disciplinary action, including the limitation of the use of

1 license, be taken, as it deems proper. If disciplinary action
2 other than suspension or revocation is taken, the Board may
3 advise the Commissioner to impose reasonable limitations and
4 requirements upon the licensee to insure compliance with
5 the terms of the probation or other disciplinary action in
6 such manner as the Commissioner may require. The Board
7 shall present to the Commissioner a written report
8 of its findings and recommendations. A copy of the report
9 shall be served upon the licensee, either personally or by
10 registered or certified mail. Within 20 days after service
11 of the report upon the licensee, the licensee may present to
12 the Commissioner his motion in writing for a rehearing,
13 specifying the particular grounds for rehearing. If the
14 licensee orders and pays for a transcript of the record,
15 the time elapsing until the transcript is ready for delivery
16 to the licensee shall not be counted as part of the 20 days.
17 At the expiration of the time allowed for filing a motion for
18 rehearing, the Commissioner may take the action recommended
19 by the Board. Upon suspension, revocation, placement on
20 probationary status, or the taking of any other disciplinary
21 action, including the limiting of the use of the license,
22 deemed proper by the Commissioner, the licensee shall
23 surrender his or her license to the Commissioner if ordered
24 to do so by the Commissioner. Upon a failure or refusal to
25 do so, the Commissioner may seize the license. In all
26 instances in which the Board has rendered a recommendation to
27 the Commissioner with respect to a particular person, the
28 Commissioner shall, to the extent that he or she disagrees
29 with or takes action contrary to the recommendation of the
30 Board, file with the Board the specific written reasons of
31 disagreement. The reasons shall be filed within 30 days after
32 the Commissioner has taken the contrary position. Each order
33 of revocation, suspension, or other disciplinary action shall
34 contain a brief and concise statement of the ground or

1 grounds upon which the Commissioner's action is based, as
2 well as the specific terms and conditions of that action.
3 Whenever the Commissioner is satisfied that substantial
4 justice has not been done either in an examination or in the
5 revocation, suspension, or refusal to issue a license or
6 other disciplinary action, the Commissioner may order a
7 re-examination or rehearing.

8 (205 ILCS 635/4-8.6 new)

9 Sec. 4-8.6. Hearing officer. The Commissioner has the
10 authority to appoint any attorney duly licensed to practice
11 law in the State of Illinois to serve as the hearing officer
12 for any disciplinary action under this Act. The hearing
13 officer shall have full authority to conduct the hearing. The
14 hearing officer shall report his or her findings and
15 recommendations to the the Commissioner and the Residential
16 Mortgage Administration and Disciplinary Board. The Board
17 shall have 60 days from receipt of the report to review the
18 report of the hearing officer and present its findings of
19 fact, conclusions of law, and recommendations to the
20 Commissioner. If the Board fails to present its report within
21 the 60 day period, the Commissioner may issue an order based
22 on the report of the hearing officer. If the Commissioner
23 disagrees in any regard with the Board's report, he or she
24 may issue an order in contravention of the Board's report.

25 (205 ILCS 635/4-8.7 new)

26 Sec. 4-8.7. Restoration. At any time after suspension,
27 revocation, placement on probationary status, or the taking
28 of any other disciplinary action with regard to any license,
29 the Commissioner may restore the license, or take any other
30 action to reinstate the license without examination, for good
31 cause shown in the opinion of the Commissioner.

1 (205 ILCS 635/4-8.8 new)

2 Sec. 4-8.8. Administrative Review Law. All final
3 administrative decisions of the Commissioner are subject to
4 judicial review under the Administrative Review Law and its
5 rules. The term "administrative decision" is defined as in
6 Section 3-101 of the Code of Civil Procedure. Proceedings for
7 judicial review shall be commenced in the circuit court of
8 the county in which the party applying for review resides,
9 but if the party is not a resident of this State, the venue
10 shall be in Sangamon County or Cook County. The Commissioner
11 shall not be required to certify any record to the court or
12 file any answer in court or otherwise appear in any court in
13 a judicial review proceeding, unless there is filed in the
14 court with the complaint a receipt from the Commissioner
15 acknowledging payment of the costs of furnishing and
16 certifying the record. Exhibits shall be certified without
17 cost. Failure on the part of the plaintiff to file a receipt
18 in court shall be grounds for dismissal of the action. During
19 the pendency and hearing of any and all judicial proceedings
20 incident to a disciplinary action, any sanctions imposed upon
21 the licensee by the Commissioner shall remain in full force
22 and effect.

23 (205 ILCS 635/4-8.9 new)

24 Sec. 4-8.9. Revocation orders. An order of revocation,
25 suspension, placement on probationary status, or other formal
26 disciplinary action as the Commissioner may deem proper, or a
27 certified copy thereof, over the seal of the Commissioner and
28 purporting to be signed by the Commissioner, is prima facie
29 proof that:

30 (1) the signature is the genuine signature of the
31 Commissioner;

32 (2) the Commissioner is duly appointed and
33 qualified; and

1 (3) the Board and the members thereof are
2 qualified.

3 (205 ILCS 635/4-8.10 new)

4 Sec. 4-8.10. Confidential information; disclosure. In
5 hearings conducted under this Act, information presented into
6 evidence that was acquired by the licensee when serving any
7 individual in connection with a residential mortgage,
8 including all financial information of the individual, shall
9 be deemed strictly confidential and shall only be made
10 available either as part of the record of a hearing hereunder
11 or otherwise:

12 (1) when the record is required, in its
13 entirety, for purposes of judicial review; or

14 (2) upon the express written consent of the
15 individual served, or in the case of his or her death
16 or disability, the consent of his or her personal
17 representative.

18 (205 ILCS 635/4-8.11 new)

19 Sec. 4-8.11. Reports of violation. Any person licensed
20 under this Act, or any other person, may report to the
21 Commissioner any information that person may have that
22 appears to show that a person subject to this Act is or may
23 be in violation of this Act.

24 (205 ILCS 635/6-2) (from Ch. 17, par. 2326-2)

25 Sec. 6-2. Removal and prohibition. Upon making any one or
26 more of the following findings, the Commissioner may issue a
27 notice of intent to issue an order of removal or prohibition,
28 or an order of removal and prohibition, which order may
29 remove a named person, persons, or entity or entities from
30 participating in the affairs of one or more licensees and may
31 be permanent or for a specific shorter period of time. The

1 findings required under this Section may be any one or more
2 of the following:

3 (1) A finding that the party or entity subject to
4 the order has been convicted of a crime involving
5 material financial loss to a licensee, a federally
6 insured depository institution, a government sponsored
7 enterprise, a Federal Home Loan Bank, a Federal Reserve
8 Bank, or any other person.

9 (2) A finding that the person or entity subject to
10 the order has submitted or caused to be submitted any
11 document that contains multiple willful and material
12 misstatements of facts, and that includes the signature
13 of the person or entity specified in the Commissioner's
14 order, or that is notarized, certified, verified or is in
15 any other way attested to, as to its veracity. An
16 application for licensure or license renewal may be
17 considered such a document.

18 (3) Conviction of a business offense under
19 subsection (e) of Section 1-3 or subsection (g) of
20 Section 3-2.

21 (4) A finding prepared by a hearing officer
22 pursuant to a hearing held under ~~Section 4-1(n)~~ of this
23 Act that the person subject to the order, while an
24 employee of a licensee, has knowingly submitted or caused
25 to be submitted any document that contains willful and
26 material misstatement of facts and which is used in
27 connection with any licensable activity as defined in
28 Section 1-3(a) of this Act.

29 (5) A finding prepared by a hearing officer
30 pursuant to a hearing held under this Act that the person
31 or entity subject to the order has committed one or more
32 acts set forth in subsection (i) of Section 4-5 of this
33 Act.

34 (Source: P.A. 89-355, eff. 8-17-95; 90-772, eff. 1-1-99.)

1 (205 ILCS 635/6-4 new)

2 Sec. 6-4. Action by aggrieved person.

3 (a) Subject to the limitation imposed by subsection (b),
4 a person who has been aggrieved as a result of a violation of
5 item (2) of subsection (i) of Section 4-5 may bring an
6 individual action in the circuit court of the county in which
7 the particular licensee involved is located or doing
8 business. Upon a finding that a licensee has committed a
9 violation of item (2) of subsection (i) of Section 4-5, the
10 court may award actual damages, and may in its discretion
11 award court costs.

12 (b) If the same events or circumstances would constitute
13 the basis for an action under Section 6-4 of this Act or an
14 action under any other Act, the aggrieved person may elect
15 between the remedies proposed by the 2 Acts but may not bring
16 actions, either administrative or judicial, under more than
17 one of the 2 Acts in relation to those same events or
18 circumstances.

19 (c) An action to enjoin any person subject to this Act
20 from engaging in activity in violation of item (2) of
21 subsection (i) of Section 4-5 of this Act may be maintained
22 in the name of the people of the State of Illinois by the
23 Attorney General or by the State's Attorney of the county in
24 which the action is brought. This remedy shall be in
25 addition to other remedies provided for violation of this
26 Act.

27 (d) Except as otherwise expressly provided in this
28 Section, nothing in this Section shall be construed to grant
29 to any person a private right of action for damages or to
30 enforce the provisions of this Act.

31 Section 94. The Illinois Fairness in Lending Act is
32 amended by changing Sections 2, 3, and 5 as follows:

1 (815 ILCS 120/2) (from Ch. 17, par. 852)

2 Sec. 2. As used in this Act:

3 (a) "Financial Institution" means any bank, credit
4 union, insurance company, mortgage banking company or savings
5 and loan association which operates or has a place of
6 business in this State.

7 (b) "Person" means any natural person.

8 (c) "Varying the terms of a loan" includes, but is not
9 limited to the following practices:

10 (1) Requiring a greater than average down payment
11 than is usual for the particular type of a loan involved.

12 (2) Requiring a shorter period of amortization than
13 is usual for the particular type of loan involved.

14 (3) Charging a higher interest rate than is usual
15 for the particular type of loan involved.

16 (4) An underappraisal of real estate or other item
17 of property offered as security.

18 (d) "Equity stripping" means to assist a person in
19 obtaining a loan secured by the person's principal residence
20 for the primary purpose of receiving fees related to the
21 financing when:

22 (1) the loan decreases the person's equity in the
23 principal residence; and

24 (2) the financial institution does not reasonably
25 believe at the time the loan is made that the person will
26 be able to make the scheduled payments to repay the loan.

27 "Equity stripping" does not include reverse mortgages as
28 defined in Section 5a of the Illinois Banking Act.

29 (e) "Loan flipping" means to assist a person in
30 refinancing a loan secured by the person's principal
31 residence for the primary purpose of receiving fees related
32 to the refinancing when:

33 (1) the refinancing results in no tangible benefit
34 to the person; and

1 (2) the financial institution does not reasonably
2 believe at the time the loan is made that the refinancing
3 will result in a tangible benefit to the person.

4 (f) "Principal residence" means the borrower's primary
5 residence that is a dwelling consisting of one to four family
6 units or that is in a dwelling consisting of condominium or
7 cooperative units.

8 (Source: P.A. 81-1391.)

9 (815 ILCS 120/3) (from Ch. 17, par. 853)

10 Sec. 3. No financial institution, in connection with or
11 in contemplation of any loan to any person, may:

12 (a) Deny or vary the terms of a loan on the basis that a
13 specific parcel of real estate offered as security is located
14 in a specific geographical area.

15 (b) Deny or vary the terms of a loan without having
16 considered all of the regular and dependable income of each
17 person who would be liable for repayment of the loan.

18 (c) Deny or vary the terms of a loan on the sole basis
19 of the childbearing capacity of an applicant or an
20 applicant's spouse.

21 (d) Utilize lending standards that have no economic
22 basis and which are discriminatory in effect.

23 (e) Engage in equity stripping or loan flipping.

24 (Source: P.A. 81-1391.)

25 (815 ILCS 120/5) (from Ch. 17, par. 855)

26 Sec. 5. (a) Subject to the limitation imposed by
27 subsection (b), any person who has been aggrieved as a result
28 of a violation of this Act may bring an individual action in
29 the circuit court of the county in which the particular
30 financial institution involved is located or doing business.

31 Upon a finding that a financial institution has committed
32 a violation of this Act, the court may award actual damages,

1 and may in its discretion award court costs.

2 (b) If the same events or circumstances would constitute
3 the basis for an action under this Act or an action under any
4 other Act, the aggrieved person may elect between the
5 remedies proposed by the two Acts but may not bring actions,
6 either administrative or judicial, under more than one of the
7 two Acts in relation to those same events or circumstances.

8 (c) An action to enjoin any person subject to this Act
9 from engaging in activity in violation of this Act may be
10 maintained in the name of the people of the State of Illinois
11 by the Attorney General or by the State's Attorney of the
12 county in which the action is brought. This remedy shall be
13 in addition to other remedies provided for violation of this
14 Act.

15 (d) Except as otherwise expressly provided in this Act,
16 nothing in this Act shall be construed to grant to any person
17 a private right of action for damages or to enforce the
18 provisions of this Act.

19 (Source: P.A. 81-1391.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.

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Statutes amended in order of appearance

New Act

- 30 ILCS 105/5.545 new
- 205 ILCS 635/1-4 from Ch. 17, par. 2321-4
- 205 ILCS 635/1-5 from Ch. 17, par. 2321-5
- 205 ILCS 635/4-1 from Ch. 17, par. 2324-1
- 205 ILCS 635/4-5 from Ch. 17, par. 2324-5
- 205 ILCS 635/4-6 from Ch. 17, par. 2324-6
- 205 ILCS 635/4-8 from Ch. 17, par. 2324-8
- 205 ILCS 635/4-8.1 new
- 205 ILCS 635/4-8.2 new
- 205 ILCS 635/4-8.3 new
- 205 ILCS 635/4-8.4 new
- 205 ILCS 635/4-8.5 new
- 205 ILCS 635/4-8.6 new
- 205 ILCS 635/4-8.7 new
- 205 ILCS 635/4-8.8 new
- 205 ILCS 635/4-8.9 new
- 205 ILCS 635/4-8.10 new
- 205 ILCS 635/4-8.11 new
- 205 ILCS 635/6-2 from Ch. 17, par. 2326-2
- 205 ILCS 635/6-4 new
- 815 ILCS 120/2 from Ch. 17, par. 852
- 815 ILCS 120/3 from Ch. 17, par. 853
- 815 ILCS 120/5 from Ch. 17, par. 855