

1 AN ACT concerning residential mortgage licensees.

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
5 is amended by changing Sections 1-3 and 4-5 as follows:

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

7 Sec. 1-3. Necessity for license; scope of Act.

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

20 (b) No person, partnership, association, corporation, or
21 other entity except a licensee under this Act or an entity
22 exempt from licensing pursuant to Section 1-4, subsection
23 (d), of this Act shall do any business under any name or
24 title, or circulate or use any advertising or make any
25 representation or give any information to any person, which
26 indicates or reasonably implies activity within the scope of
27 this Act.

28 (c) The Commissioner may, through the Attorney General,
29 request the circuit court of either Cook or Sangamon County
30 to issue an injunction to restrain any person from violating
31 or continuing to violate any of the foregoing provisions of

1 this Section.

2 (d) The Commissioner has the authority and power to
3 investigate any and all unlicensed activity. When--the
4 Commissioner-has-reasonable-cause-to-believe-that-any--entity
5 which--has--not--submitted--an--application--for-licensure-is
6 conducting-any-of-the-activities-described-in-subsection--(a)
7 hereof,--the-Commissioner-shall-have-the-power-to-examine-all
8 books--and--records--of--the--entity---and---any---additional
9 documentation--necessary--in--order-to-determine-whether-such
10 entity-should-become-licensed-under-this-Act.

11 (e) Any person, partnership, association, corporation or
12 other entity who violates any provision of this Section
13 commits--a--business--offense--and shall, in addition to any
14 other penalty provided by law, pay a civil fine to the
15 Commissioner in be-fined an amount not to exceed \$25,000 for
16 each offense as determined by the Commissioner. The civil
17 fine shall be assessed by the Commissioner after a hearing is
18 held in accordance with the provisions of Section 4-12 of
19 this Act \$5,000. The civil fine shall be paid within 60 days
20 after the effective date of the order imposing the civil
21 fine. The order shall constitute a judgment and may be filed
22 and execution had thereon in the same manner from any court
23 of record.

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

30 (g) Licensees under this Act shall solicit, broker,
31 fund, originate, service and purchase residential mortgage
32 loans only in conformity with the provisions of this Act and
33 such rules and regulations as may be promulgated by the
34 Commissioner.

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

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

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

15 (Source: P.A. 86-137; 87-642.)

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
19 may suspend or revoke any license issued pursuant to this Act
20 if he or she shall make a finding of one or more of the
21 following in 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
25 Commissioner or of any other law, rule or regulation of
26 this State or the United States.

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

31 (3) If a licensee is other than an individual, any
32 ultimate equitable owner, officer, director, or member of
33 the licensed partnership, association, corporation, or

1 other entity has so acted or failed to act as would be
2 cause for suspending or revoking a license to that party
3 as an individual.

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

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

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

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

23 (f) Every license issued under this Act shall remain in
24 force and effect until the same shall have expired without
25 renewal, have been surrendered, revoked or suspended in
26 accordance with the provisions of this Act, but the
27 Commissioner shall have authority to reinstate a suspended
28 license or to issue a new license to a licensee whose license
29 shall have been revoked if no fact or condition then exists
30 which would have warranted the Commissioner in refusing
31 originally to issue such license under this Act.

32 (g) Whenever the Commissioner shall revoke or suspend a
33 license issued pursuant to this Act or fine or place on
34 probation a licensee under this Act, he or she shall

1 forthwith execute in duplicate a written order to that
2 effect. The Commissioner shall publish notice of such order
3 after it has become final in the Illinois Register and a
4 newspaper of general circulation in the county in which the
5 license is located and shall forthwith serve a copy of such
6 order upon the licensee. Any such order may be reviewed in
7 the manner provided by Section 4-12 of this Act.

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

12 (1) Revocation of license;

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

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

19 (4) Issuance of a reprimand;

20 (5) Imposition of a fine not to exceed \$10,000 for
21 each count of separate offense; and

22 (6) Denial of a license.

23 (i) The following acts shall constitute grounds for
24 which the disciplinary actions specified in subsection (h)
25 above may be taken:

26 (1) Being convicted or found guilty, regardless of
27 pendency of an appeal, of a crime in any jurisdiction
28 which involves fraud, dishonest dealing, or any other act
29 of moral turpitude;

30 (2) Fraud, misrepresentation, deceit or negligence
31 in any mortgage financing transaction;

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

34 (4) Failure to follow the Commissioner's

1 regulations with respect to placement of funds in escrow
2 accounts;

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

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

14 (7) Failure to disburse funds in accordance with
15 agreements;

16 (8) Any misuse, misapplication, or misappropriation
17 of trust funds or escrow funds;

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

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

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

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

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

3 (14) Failure to maintain, preserve, and keep
4 available for examination, all books, accounts or other
5 documents required by the provisions of this Act and the
6 rules of the Commissioner;

7 (15) Refusal to permit an investigation or
8 examination of the licensee's or its affiliates' books
9 and records or refusal to comply with the Commissioner's
10 subpoena or subpoena duces tecum;

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

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

15 (j) A licensee shall be subject to the disciplinary
16 actions specified in this Act for violations of subsection
17 (i) by any officer, director, shareholder, joint venture,
18 partner, ultimate equitable owner, or employee of the
19 licensee.

20 (k) Such licensee shall be subject to suspension or
21 revocation for employee actions only if there is a pattern of
22 repeated violations by employees or the licensee has
23 knowledge of the violations.

24 (1) Procedure for surrender of license:

25 (1) The Commissioner may, after 10 days notice by
26 certified mail to the licensee at the address set forth
27 on the license, stating the contemplated action and in
28 general the grounds therefor and the date, time and place
29 of a hearing thereon, and after providing the licensee
30 with a reasonable opportunity to be heard prior to such
31 action, fine such licensee an amount not exceeding
32 \$10,000 per violation, or revoke or suspend any license
33 issued hereunder if he or she finds that:

34 (i) The licensee has failed to comply with any

1 provision of this Act or any order, decision,
2 finding, rule, regulation or direction of the
3 Commissioner lawfully made pursuant to the authority
4 of this Act; or

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

9 (2) Any licensee may surrender a license by
10 delivering to the Commissioner written notice that he or
11 she thereby surrenders such license, but surrender shall
12 not affect the licensee's civil or criminal liability for
13 acts committed prior to surrender or entitle the licensee
14 to a return of any part of the license fee.

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.