

AN ACT concerning regulation.

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

Section 5. The Residential Mortgage License Act of 1987 is amended by changing Sections 2-1, 2-2, 2-6, 4-5, and 4-8 as follows:

(205 ILCS 635/2-1) (from Ch. 17, par. 2322-1)

Sec. 2-1. Licensee Name.

(a) No person, partnership, association, corporation, limited liability company, or other entity engaged in the business regulated by this Act shall operate such business under a name other than the real names of the entity and individuals conducting such business. Such business may in addition operate under~~7~~ an assumed corporate name pursuant to the Business Corporation Act of 1983, an assumed limited liability company name pursuant to the Limited Liability Company Act, or an assumed business name pursuant to the Assumed Business Name Act.

(b) A knowing violation of this Section constitutes an unlawful practice within the meaning of this Act, and in addition to the administrative relief available under this Act, may be prosecuted for the commission of a Class A misdemeanor. A person who is convicted of a second or subsequent violation

of this Section is guilty of a Class 4 felony.

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

(205 ILCS 635/2-2)

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

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

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

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

(3) The payment, in certified funds, of investigation and application fees, the total of which shall be in an amount equal to \$2,700 annually. ~~To comply with the common renewal date and requirements of the Nationwide Mortgage Licensing System and Registry, the term of initial licenses may be extended or shortened with applicable fees prorated or combined accordingly.~~

(4) Except for a broker applying to renew a license, the filing of an audited balance sheet including all footnotes prepared by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards which evidences that the applicant meets the net worth requirements of

Section 3-5. Notwithstanding the requirements of this subsection, an applicant that is a subsidiary may submit audited consolidated financial statements of its parent, intermediary parent, or ultimate parent as long as the consolidated statements are supported by consolidating statements which include the applicant's financial statement. If the consolidating statements are unaudited, the applicant's chief financial officer shall attest to the applicant's financial statements disclosed in the consolidating statements.

(5) The filing of proof satisfactory to the Commissioner that the applicant, the members thereof if the applicant is a partnership or association, the members or managers thereof that retain any authority or responsibility under the operating agreement if the applicant is a limited liability company, or the officers thereof if the applicant is a corporation have 3 years experience preceding application in real estate finance. Instead of this requirement, the applicant and the applicant's officers or members, as applicable, may satisfactorily complete a program of education in real estate finance and fair lending, as approved by the Commissioner, prior to receiving the initial license. The Commissioner shall promulgate rules regarding proof of experience requirements and educational requirements and the satisfactory completion of those requirements. The

Commissioner may establish by rule a list of duly licensed professionals and others who may be exempt from this requirement.

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

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

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

Upon receipt of such license, a residential mortgage

licensee shall be authorized to engage in the business regulated by this Act. Such license shall remain in full force and effect until it expires without renewal, is surrendered by the licensee or revoked or suspended as hereinafter provided.

(Source: P.A. 97-891, eff. 8-3-12; 98-1081, eff. 1-1-15.)

(205 ILCS 635/2-6)

Sec. 2-6. License issuance and renewal; fee.

(a) Licenses ~~Beginning July 1, 2003, licenses~~ shall be renewed every year using ~~on the anniversary of the date of issuance of the original license, or~~ the common renewal date of the Nationwide Mortgage Licensing System and Registry as adopted by the Director. ~~To comply with the common renewal date of the Nationwide Mortgage Licensing System and Registry, the term of existing licenses may be extended or shortened with applicable fees prorated accordingly.~~ Properly completed renewal application forms and filing fees may ~~must~~ be received by the Secretary 60 days prior to the license expiration ~~renewal date, but, to be deemed timely, the completed renewal application forms and filing fees must be received by the Secretary no later than 30 days prior to the license expiration~~ date.

(b) It shall be the responsibility of each licensee to accomplish renewal of its license; ~~failure of the licensee to receive renewal forms absent a request sent by certified mail for such forms will not waive said responsibility.~~ Failure by a

licensee to submit a properly completed renewal application form and fees in a timely fashion, absent a written extension from the Secretary, will result in the license becoming inactive. ~~in the assessment of additional fees, as follows:~~

~~(1) A fee of \$567.50 will be assessed to the licensee 30 days after the proper renewal date and \$1,135 each month thereafter, until the license is either renewed or expires pursuant to Section 2-6, subsections (c) and (d), of this Act.~~

~~(2) Such fee will be assessed without prior notice to the licensee, but will be assessed only in cases wherein the Secretary has in his or her possession documentation of the licensee's continuing activity for which the unrenewed license was issued.~~

~~(c) A license which is not renewed by the date required in this Section shall automatically become inactive.~~ No activity regulated by this Act shall be conducted by the licensee when a license becomes inactive. The Commissioner may require the licensee to provide a plan for the disposition of any residential mortgage loans not closed or funded when the license becomes inactive. The Commissioner may allow a licensee with an inactive license to conduct activities regulated by this Act for the sole purpose of assisting borrowers in the closing or funding of loans for which the loan application was taken from a borrower while the license was active. An inactive license may be reactivated by the Commissioner upon payment of

the renewal fee, and payment of a reactivation fee equal to the renewal fee.

(d) (Blank) ~~A license which is not renewed within one year of becoming inactive shall expire.~~

(e) A licensee ceasing an activity or activities regulated by this Act and desiring to no longer be licensed shall so inform the Commissioner in writing and, at the same time, convey any ~~the~~ license issued and all other symbols or indicia of licensure. The licensee shall include a plan for the withdrawal from regulated business, including a timetable for the disposition of the business, and comply with the surrender guidelines or requirements of the Director. Upon receipt of such written notice, the Commissioner shall post the cancellation or issue a certified statement canceling the license.

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

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

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

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

(1) Through separate acts or an act or a course of conduct, the licensee has violated any provisions of this

Act, any rule or regulation promulgated by the Commissioner or of any other law, rule or regulation of this State or the United States.

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

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

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

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

(d) The provisions of subsection (e) of Section 2-6 of this

Act shall not affect a licensee's civil or criminal liability for acts committed prior to surrender of a license.

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

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

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

(h) When the Commissioner finds any person in violation of the grounds set forth in subsection (i), he or she may enter an

order imposing one or more of the following penalties:

(1) Revocation of license;

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

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

(4) Issuance of a reprimand;

(5) Imposition of a fine not to exceed \$25,000 for each count of separate offense, provided that a fine may be imposed not to exceed \$75,000 for each separate count of offense of paragraph (2) of subsection (i) of this Section; and

(6) Denial of a license.

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

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

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

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

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

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

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

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

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

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

(10) Failure to issue a satisfaction of mortgage when the residential mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when

the mortgagor has fully paid licensee's costs and commission;

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

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

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

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

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

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

(17) Failure to comply with or violation of any provision of this Act;

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

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

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

(l) Procedure for surrender of license:

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

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

(ii) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Commissioner

in refusing to issue the license.

(2) Any licensee may submit application to surrender a license, but upon the Director approving the surrender, it shall not affect the licensee's civil or criminal liability for acts committed prior to surrender or entitle the licensee to a return of any part of the license fee.

(Source: P.A. 96-112, eff. 7-31-09; 97-891, eff. 8-3-12.)

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

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

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

(b) The Commissioner shall conduct as part of an examination of each licensee a review of the licensee's loan delinquency data ~~having a default rate equal to or greater than 5%.~~

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

(c) The purpose of the examination under subsection (b) shall be to determine whether the loan delinquency data ~~default~~

~~rate~~ of the licensee has resulted from practices which deviate from sound and accepted mortgage underwriting practices, including but not limited to credit fraud, appraisal fraud and property inspection fraud. For the purpose of conducting this examination, the Commissioner may accept materials prepared for the U.S. Department of Housing and Urban Development. At the conclusion of the examination, the Commissioner shall make his or her findings available to the Residential Mortgage Board.

(d) The Commissioner, at his or her discretion, may hold public hearings, or at the direction of the Residential Mortgage Board, shall hold public hearings. Such testimony shall be by a homeowner or mortgagor or his agent, whose residential interest is affected by the activities of the residential mortgage licensee subject to such hearing. At such public hearing, a witness may present testimony on his or her behalf concerning only his or her home, or home mortgage or a witness may authorize a third party to appear on his or her behalf. The testimony shall be restricted to information and comments related to a specific residence or specific residential mortgage application or applications for a residential mortgage or residential loan transaction. The testimony must be preceded by either a letter of complaint or a completed consumer complaint form prescribed by the Commissioner.

(e) The Commissioner shall, at the conclusion of the public

hearings, release his or her findings and shall also make public any action taken with respect to the licensee. The Commissioner shall also give full consideration to the findings of this examination whenever reapplication is made by the licensee for a new license under this Act.

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

(g) Whenever the Commissioner finds that a licensee's loan delinquencies ~~default rate~~ on insured mortgages is unusually high within a particular geographic area, he or she shall require that licensee to submit such information as is necessary to determine whether that licensee's practices have constituted credit fraud, appraisal fraud or property inspection fraud. The Commissioner shall promulgate such rules as are necessary to determine whether any licensee's loan delinquencies are ~~default rate is~~ unusually high within a particular area.

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