

~~examinations paid pursuant to the examination fee schedule in effect at that time shall be credited toward the regulatory fee to be assessed the credit union in calendar year 2001.~~

(8) Nothing in this Act shall prohibit the General Assembly from appropriating funds to the Department from the General Revenue Fund for the purpose of administering this Act.

(9) For purposes of this Section, "fiscal year" means a period beginning on July 1 of any calendar year and ending on June 30 of the next calendar year.

(Source: P.A. 93-32, eff. 7-1-03; 93-652, eff. 1-8-04; 94-91, eff. 7-1-05.)

Section 30. The Residential Mortgage License Act of 1987 is amended by changing Sections 1-4, 2-2, 2-6, and 4-11 as follows:

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

Sec. 1-4. Definitions.

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

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

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

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

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

(1) (i) Any banking organization or foreign banking corporation licensed by the Illinois Commissioner of Banks and Real Estate or the United States Comptroller of the Currency to transact business in this State; (ii) any national bank, federally chartered savings and loan association, federal savings bank, federal credit union; (iii) any pension trust, bank trust, or bank trust company; (iv) any bank, savings and loan association, savings bank, or credit union organized under the laws of this or any

other state; (v) any Illinois Consumer Installment Loan Act licensee; (vi) any insurance company authorized to transact business in this State; (vii) any entity engaged solely in commercial mortgage lending; (viii) any service corporation of a savings and loan association or savings bank organized under the laws of this State or the service corporation of a federally chartered savings and loan association or savings bank having its principal place of business in this State, other than a service corporation licensed or entitled to reciprocity under the Real Estate License Act of 2000; or (ix) any first tier subsidiary of a bank, the charter of which is issued under the Illinois Banking Act by the Illinois Commissioner of Banks and Real Estate, or the first tier subsidiary of a bank chartered by the United States Comptroller of the Currency and that has its principal place of business in this State, provided that the first tier subsidiary is regularly examined by the Illinois Commissioner of Banks and Real Estate or the Comptroller of the Currency, or a consumer compliance examination is regularly conducted by the Federal Reserve Board.

(1.5) Any employee of a person or entity mentioned in item (1) of this subsection.

(2) Any person or entity that does not originate mortgage loans in the ordinary course of business making or acquiring residential mortgage loans with his or her or its

own funds for his or her or its own investment without intent to make, acquire, or resell more than 10 residential mortgage loans in any one calendar year.

(3) Any person employed by a licensee to assist in the performance of the activities regulated by this Act who is compensated in any manner by only one licensee.

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

(5) Any individual, corporation, partnership, or other entity that originates, services, or brokers residential mortgage loans, as these activities are defined in this Act, and who or which receives no compensation for those activities, subject to the Commissioner's regulations with regard to the nature and amount of compensation.

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

licensee and the preparer that:

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

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

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

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

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

(h) "Ultimate equitable owner" shall mean a person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust, or any other form of business organization

regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

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

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

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

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

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

(n) "Commissioner" shall mean the Commissioner of Banks and Real Estate, except that beginning on the effective date of this amendatory Act of the 95th General Assembly, all references in this Act to the Commissioner of Banks and Real Estate are deemed, in appropriate contexts, to be references to

~~the Secretary of Financial and Professional Regulation or a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead.~~

(o) "Loan brokering", "brokering", or "brokerage service" shall mean the act of helping to obtain from another entity, for a borrower, a loan secured by residential real estate situated in Illinois or assisting a borrower in obtaining a loan secured by residential real estate situated in Illinois in return for consideration to be paid by either the borrower or the lender including, but not limited to, contracting for the delivery of residential mortgage loans to a third party lender and soliciting, processing, placing, or negotiating residential mortgage loans.

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

(q) "Servicing" shall mean the collection or remittance for or the right or obligation to collect or remit for any lender, noteowner, noteholder, or for a licensee's own account, of payments, interests, principal, and trust items such as hazard insurance and taxes on a residential mortgage loan in

accordance with the terms of the residential mortgage loan; and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing.

(r) "Full service office" shall mean office and staff in Illinois reasonably adequate to handle efficiently communications, questions, and other matters relating to any application for, or an existing home mortgage secured by residential real estate situated in Illinois with respect to which the licensee is brokering, funding originating, purchasing, or servicing. The management and operation of each full service office must include observance of good business practices such as adequate, organized, and accurate books and records; ample phone lines, hours of business, staff training and supervision, and provision for a mechanism to resolve consumer inquiries, complaints, and problems. The Commissioner shall issue regulations with regard to these requirements and shall include an evaluation of compliance with this Section in his or her periodic examination of each licensee.

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

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

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

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

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

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

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

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

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

(z) "Annual audit" shall mean a certified audit of the licensee's books and records and systems of internal control performed by a certified public accountant in accordance with

generally accepted accounting principles and generally accepted auditing standards.

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

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

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

(dd) "Affiliate" shall mean:

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

(2) any entity:

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

(B) a majority of the directors or trustees of

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

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

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

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

(ff) "Gross delinquency rate" means the quotient determined by dividing (1) the sum of (i) the number of government-insured residential mortgage loans funded or purchased by a licensee in the preceding calendar year that are delinquent and (ii) the number of conventional residential mortgage loans funded or purchased by the licensee in the preceding calendar year that are delinquent by (2) the sum of (i) the number of government-insured residential mortgage loans funded or purchased by the licensee in the preceding calendar year and (ii) the number of conventional residential mortgage loans funded or purchased by the licensee in the preceding calendar year.

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

(hh) "Loan originator" means any natural person who, for compensation or in the expectation of compensation, either directly or indirectly makes, offers to make, solicits, places, or negotiates a residential mortgage loan.

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

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

(Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

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

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

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

(1) The filing of an application for license.

(2) The filing with the Secretary ~~Commissioner~~ 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 \$2,043 ~~\$2,700~~ annually, ~~however, the Commissioner may increase the investigation and application fees by rule as provided in Section 4-11.~~

(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 principles which evidences that the applicant meets the net worth requirements of

Section 3-5.

(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 in duplicate with one copy being transmitted to the license applicant and the second being retained with the Commissioner.

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. 93-32, eff. 7-1-03; 93-1018, eff. 1-1-05.)

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

(a) Beginning July 1, 2003, licenses shall be renewed every year on the anniversary of the date of issuance of the original license. Properly completed renewal application forms and filing fees must be received by the Secretary ~~Commissioner~~ 60 days prior to the renewal 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 ~~Commissioner~~, will result in the assessment of additional fees, as follows:

(1) A fee of \$567.50 ~~\$750~~ will be assessed to the licensee 30 days after the proper renewal date and \$1,135 ~~\$1,500~~ 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 ~~Commissioner~~ 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) 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 the license 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. Upon receipt of such written notice, the Commissioner shall issue a certified statement canceling the license.

(Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

(205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

Sec. 4-11. Costs of Supervision; Examination and Investigative Fees. The expenses of administering this Act, including investigations and examinations provided for in this Act shall be borne by and assessed against entities regulated by this Act. Subject to the limitations set forth in Section 2-2 of this Act, the Secretary ~~The Commissioner~~ shall establish fees by regulation in at least the following categories:

- (1) application fees;
- (2) investigation of license applicant fees;
- (3) examination fees;
- (4) contingent fees;

and such other categories as may be required to administer this Act.

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

Section 35. The Code of Civil Procedure is amended by adding Section 15-1502.5 as follows:

(735 ILCS 5/15-1502.5 new)

Sec. 15-1502.5. Homeowner protection.

(a) As used in this Section:

"Approved counseling agency" means a housing counseling agency approved by the U.S. Department of Housing and Urban Development.

"Approved Housing Counseling" means in-person counseling

provided by a counselor employed by an approved counseling agency to all borrowers, or documented telephone counseling where a hardship would be imposed on one or more borrowers. A hardship shall exist in instances in which the borrower is confined to his or her home due to medical conditions, as verified in writing by a physician or the borrower resides 50 miles or more from the nearest approved counseling agency. In instances of telephone counseling, the borrower must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"Delinquent" means past due with respect to a payment on a mortgage secured by residential real estate.

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

"Secretary" means the Secretary of Financial and Professional Regulation or other person authorized to act in the Secretary's stead.

"Sustainable loan workout plan" means a plan that the mortgagor and approved counseling agency believe shall enable the mortgagor to stay current on his or her mortgage payments for the foreseeable future when taking into account the mortgagor income and existing and foreseeable debts. A sustainable loan workout plan may include, but is not limited to, (1) a temporary suspension of payments, (2) a lengthened loan term, (3) a lowered or frozen interest rate, (4) a principal write down, (5) a repayment plan to pay the existing

loan in full, (6) deferred payments, or (7) refinancing into a new affordable loan.

(b) Except in the circumstance in which a mortgagor has filed a petition for relief under the United States Bankruptcy Code, no mortgagee shall file a complaint to foreclose a mortgage secured by residential real estate until the requirements of this Section have been satisfied.

(c) Notwithstanding any other provision to the contrary, with respect to a particular mortgage secured by residential real estate, the procedures and forbearances described in this Section apply only once per subject mortgage.

Except for mortgages secured by residential real estate in which any mortgagor has filed for relief under the United States Bankruptcy Code, if a mortgage secured by residential real estate becomes delinquent by more than 30 days the mortgagee shall send via U.S. mail a notice advising the mortgagor that he or she may wish to seek approved housing counseling. Notwithstanding anything to the contrary in this Section, nothing shall preclude the mortgagor and mortgagee from communicating with each other during the initial 30 days of delinquency or reaching agreement on a sustainable loan workout plan, or both.

No foreclosure action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted on a mortgage secured by residential real estate before mailing the notice described in this subsection (c).

The notice required in this subsection (c) shall state the date on which the notice was mailed, shall be headed in bold 14-point type "GRACE PERIOD NOTICE", and shall state the following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING. YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD, THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU. YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION."

The notice shall also list the Department's current consumer hotline, the Department's website, and the telephone number, fax number, and mailing address of the mortgagee. No language, other than language substantially similar to the language prescribed in this subsection (c), shall be included in the notice. Notwithstanding any other provision to the contrary, the grace period notice required by this subsection (c) may be combined with a counseling notification required under federal law.

The sending of the notice required under this subsection (c) means depositing or causing to be deposited into the United States mail an envelope with first-class postage prepaid that

contains the document to be delivered. The envelope shall be addressed to the mortgagor at the common address of the residential real estate securing the mortgage.

(d) Until 30 days after mailing the notice provided for under subsection (c) of this Section, no legal action shall be instituted under Part 15 of Article XV of the Code of Civil Procedure.

(e) If, within the 30-day period provided under subsection (d) of this Section, an approved counseling agency provides written notice to the mortgagee that the mortgagor is seeking approved counseling services, then no legal action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted for 30 days after the date of that notice. The date that such notice is sent shall be stated in the notice, and shall be sent to the address or fax number contained in the Grace Period Notice required under subsection (c) of this Section. During the 30-day period provided under this subsection (e), the mortgagor or counselor or both may prepare and proffer to the mortgagee a proposed sustainable loan workout plan. The mortgagee will then determine whether to accept the proposed sustainable loan workout plan. If the mortgagee and the mortgagor agree to a sustainable loan workout plan, then no legal action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted for as long as the sustainable loan workout plan is complied with by the mortgagor.

The agreed sustainable loan workout plan and any modifications thereto must be in writing and signed by the mortgagee and the mortgagor.

Upon written notice to the mortgagee, the mortgagor may change approved counseling agencies, but such a change does not entitle the mortgagor to any additional period of forbearance.

(f) If the mortgagor fails to comply with the sustainable loan workout plan, then nothing in this Section shall be construed to impair the legal rights of the mortgagee to enforce the contract.

(g) A counselor employed by a housing counseling agency or the housing counseling agency that in good faith provides counseling shall not be liable to a mortgagee or mortgagor for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling.

(h) There shall be no waiver of any provision of this Section.

(i) It is the General Assembly's intent that compliance with this Section shall not prejudice a mortgagee in ratings of its bad debt collection or calculation standards or policies.

(j) This Section shall not apply, or shall cease to apply, to residential real estate that is not occupied as a principal residence by the mortgagor.

(k) This Section is repealed 2 years after the effective date of this amendatory Act of the 95th General Assembly.

Section 40. The Mortgage Rescue Fraud Act is amended by changing Sections 5 and 50 and by adding Sections 7 and 70 as follows:

(765 ILCS 940/5)

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 30 ~~90~~ days delinquent on any loan that is secured by the property.

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

(1) stop or postpone the foreclosure sale or stop or postpone the loss of the home due to nonpayment of taxes;

(2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;

(3) assist the owner to exercise any right of reinstatement or right of redemption;

(4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;

(5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;

(6) assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;

(7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or

(8) save the owner's residence from foreclosure or save the owner from loss of home due to nonpayment of taxes.

A "distressed property consultant" does not include any of the following:

(1) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development;

(2) a person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;

(3) banks, savings banks, savings and loan associations, credit unions, and insurance companies

organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;

(4) ~~licensed~~ attorneys licensed in Illinois engaged in the practice of law;

(5) a Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;

(6) a 501(c)(3) nonprofit agency or organization, doing business for no less than 5 years, that offers counseling or advice to an owner of a distressed property, if they do not contract for services with for-profit lenders or distressed property purchasers, or any person who structures or plans such a transaction;

(7) (blank) ~~licensees of the Residential Mortgage License Act of 1987;~~

(8) licensees of the Consumer Installment Loan Act who are authorized to make loans secured by real property; or

(9) licensees of the Real Estate License Act of 2000 when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property while allowing the owner to possess, occupy, or retain

any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property or in which the holder of all or some part of the beneficial interest in a trust holding title to a distressed property transfers that interest; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

"Service" means, without limitation, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it

to creditors in payment or partial payment of any obligation secured by a lien on a distressed property;

(3) contacting creditors on behalf of an owner of a residence that is distressed property;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a distressed property may cure the owner's default and reinstate his or her obligation;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the distressed property;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or

(7) giving any advice, explanation, or instruction to an owner of a distressed property that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of sale of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08.)

(765 ILCS 940/7 new)

Sec. 7. Residential Mortgage License Act of 1987 licensees. Licensees of the Residential Mortgage License Act of 1987 are exempt from the requirements of Sections 10, 15, 20, 50(a)(4), 50(a)(5), 50(a)(6), and 50(a)(7). Licensees are also exempt

from the requirements of Section 50(a)(2) and Section 70 for any transaction resulting in the origination of a new mortgage loan extinguishing the existing mortgage loan.

(765 ILCS 940/50)

Sec. 50. Violations.

(a) It is a violation for a distressed property consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation ~~for any reason that does not comport with Section 70 exceeds 2 monthly mortgage payments of principal and interest or the most recent tax installment on the distressed property, whichever is less;~~

(3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

(5) acquire any interest, directly or indirectly, or by

means of a subsidiary or affiliate in a distressed property from an owner with whom the distressed property consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

(b) A distressed property purchaser, in the course of a distressed property conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that the owner of the distressed property has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner of the distressed property and to make monthly or any other required payments due prior to that time;

(2) fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in subdivision (b)(10) of Section 45, provided that the

owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed 125% of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase.

(3) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner, or the distressed property purchaser is assisting the owner of the distressed property to "save the house", "buy time", or do anything couched in substantially similar language;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during

which the owner of a distressed property may cancel the transaction:

(A) accept from the owner of the distressed property an execution of any instrument of conveyance of any interest in the distressed property;

(B) induce the owner of the distressed property to execute an instrument of conveyance of any interest in the distressed property; or

(C) record with the county recorder of deeds any document signed by the owner of the distressed property, including but not limited to any instrument of conveyance;

(7) fail to reconvey title to the distressed property when the terms of the conveyance contract have been fulfilled;

(8) induce the owner of the distressed property to execute a quit claim deed when entering into a distressed property conveyance;

(9) enter into a distressed property conveyance where any party to the transaction is represented by power of attorney;

(10) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by such foreclosure, which

assumption shall be accomplished without violations of the terms and conditions of the lien being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;

(11) fail to complete a distressed property conveyance before a notary in the offices of a title company licensed by the Department of Financial and Professional Regulation, before an agent of such a title company, a notary in the office of a bank, or a licensed attorney where the notary is employed; or

(12) cause the property to be conveyed or encumbered without the knowledge or permission of the distressed property owner, or in any way frustrate the ability of the distressed property owner to complete the conveyance back to the distressed property owner.

(c) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of this State or the federal government is an accurate determination of the fair market value of the property.

(d) "Consideration" in item (2) of subsection (b) means any payment or thing of value provided to the owner of the distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner of the distressed property.

"Consideration" shall not include amounts imputed as a

downpayment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

(e) An evaluation of "reasonable ability to pay" under subsection (b)(1) of this Section 50 shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner's payment history. There is a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/70 new)

Sec. 70. Distressed property consultant compensation. In transactions that reduce the existing payment on a homeowner's mortgage loan for a period of no less than 5 years, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation that exceeds the lesser of the homeowner's:

(1) existing monthly principal and interest mortgage payment; or

(2) total net savings derived from the lowered monthly principal and interest mortgage payment over the succeeding 12 months.

For all other transactions, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 50% of the owner's existing monthly principal and interest mortgage payments.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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