

ILLINOIS LOAN BROKERS ACT OF 1995

(815 ILCS 175/15-1)
Effective January 1, 1996
(As amended through January 1, 2002)



Illinois Securities Department

JESSE WHITE
Secretary of State



A Message from the Secretary

This booklet contains the Illinois Loan Brokers Act of 1995, including recent amendments, effective Jan. 1, 2002. This Act provides an invaluable source of information for consumers and loan brokers doing business in the state of Illinois.

I urge members of the loan broker industry to review the most recent changes to the Act to ensure compliance with all provisions. Included is the expansion of the definition of a loan broker to include anyone who receives a commission or other compensation. Also, the definition of a "person" now includes a joint stock company or a limited liability partnership. If a loan broker's registration expires, it can now be renewed within 30 days of expiration.

The new amendments empower employees of the Secretary of State's office to administer oaths and subpoena witnesses and materials deemed relevant to an investigation. A certificate issued by this office shall be prima facie evidence of registration. It also now is fraudulent and prohibited practice to: act as a loan broker without a registration; fail to file applications, reports or answers required by the Act or rules; or fail to maintain files and records required by the Act or rules. The new amendments further eliminate the need to file a Service of Process form by appointing the Secretary of State for purposes of service of process. These modifications are important measures in furthering the goal of protecting Illinois consumers.

I sincerely thank those members of the General Assembly who assisted in the legislative process.

Sincerely,

A handwritten signature in cursive script that reads "Jesse White". The signature is written in black ink and is positioned below the word "Sincerely,".

JESSE WHITE
Secretary of State

Illinois Loan Brokers Act of 1995

Cite: 815 ILCS 175/15-1 et seq.

Title: An Act concerning business activity regulation.

Sec. 15-1. Short title. This Article may be cited as the Illinois Loan Brokers Act of 1995, and references in this Article to “this Act” mean this Article.

Sec. 15-5. Definitions. As used in this Act, the terms defined in the Sections following this Section and preceding Section 15-6 have the meanings ascribed therein.

Sec. 15-5.03. Borrower. “Borrower” means any person who has signed an agreement with a loan broker that provides for the services described in Section 15-5.15, for compensation.

Sec. 15-5.05. Creditor. “Creditor” means any person to whom a loan is initially payable on the face of the note or contract evidencing the loan.

Sec. 15-5.10. Loan. “Loan” means any agreement to advance money or property in return for the promise to make payments for the money or property.

Sec. 15-5.15. Loan broker.

- (a) “Loan Broker” means any person who, in return for a fee, commission, or other compensation from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person.
- (b) Loan broker does not include any of the following:
- (1) Any bank, savings bank, trust company, savings and loan association, credit union or any other financial institution regulated by any agency of the United States or authorized to do business in this State.
 - (2) Any person authorized to sell and service loans for the federal National Mortgage Association or the federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the federal Department of Housing and Urban Development, make loans guaranteed by the federal Veterans Administration, or act as a correspondent of loans insured by the federal Department of Housing and Urban Development or guaranteed by the federal Veterans Administration.

- (3) Any insurance producer or company authorized to do business in this State.
- (4) Any person arranging financing for the sale of the person's product.
- (5) Any person authorized to conduct business under the Residential Mortgage License Act of 1987.
- (6) Any person authorized to do business in this State and regulated by the Department of Financial Institutions, or the Office of Banks and Real Estate.

(As amended through January 1, 2002.)

Sec. 15-5.20. Person. "Person" means an individual, a corporation, trust, limited liability company, partnership, a joint stock company, limited liability partnership, incorporated or unincorporated association, or any other entity.

(As amended through January 1, 2002.)

Sec. 15-10. Registration required. It shall be unlawful for any person to engage in the business of loan brokering unless registered under this Act.

Sec. 15-15. Application for registration, contents, bond, issuance, effective date, and consent to Secretary of State as process agent.

- (a) In order to be registered under this Act a loan broker shall file an application for registration with the Secretary of State. The application for registration shall contain:
 - (1) the disclosure document required under subsection (b) of Section 15-30 of this Act and the form of disclosure statement proposed to be used under item (1) of subsection (b) of Section 15-30 of this Act;
 - (2) consent to service of process under subsection (e) of this Section;
 - (3) evidence of the bond required in subsection (b) of this Section;
 - (4) a fee in the amount as specified in subsection (a) of Section 15-25 of this Act, and shall not be returnable in any event.
- (b) A loan broker who engages in any loan brokerage transactions where the loan is subject to the Truth-in-Lending Act must maintain a bond satisfactory to the Secretary of State in the amount of \$25,000, which shall be in favor of the State.
- (c) Whenever the provisions of this Law have been complied with, the Secretary of State shall issue a certificate of registration to the applicant, authorizing the applicant to engage in the business of loan brokering.
- (d) An application for registration becomes effective 30 days after it is filed, unless a certificate of the Secretary of State establishes an earlier effective date. Every registration is effective until January 1 of the year after it goes into effect.

- (e) Every applicant for registration shall file with the Secretary of State, in such form as the Secretary of State may prescribe by rule or regulation, an irrevocable consent appointing the Secretary of State to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant arising from the violation of any provision of this Act.
- (f) An application shall be considered filed when all required documentation and fees are received by the Office of the Secretary of State.

Sec. 15-20. Renewal of registration.

- (a) A loan broker may not continue engaging in the business of loan brokering unless the broker's registration is renewed annually. A loan broker shall renew the registration by filing with the Secretary of State, at least 30 days before the expiration of the registration, an application containing any information the Secretary of State may require by rule or regulation or order to indicate any material change from the information contained in the applicant's original application or any previous application.
- (b) An application for renewal must be accompanied by a filing fee in the amount specified in subsection (a) of Section 15-25 of this Act. The application and fee is not returnable in any event.
- (c) Notwithstanding the foregoing, applications for renewal of registration of loan brokers may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or order. Any application filed within 30 days following the expiration of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

(As amended through January 1, 2002.)

Sec. 15-25. Fees and funds; accounting and deposit in Securities Audit and Enforcement Fund.

- (a) The Secretary of State shall by rule or regulation impose and shall collect fees necessary for the administration of this Act including, but not limited to, fees for the following purposes:
 - (1) filing an application pursuant to Section 15-15 of this Act;
 - (2) examining an application pursuant to Section 15-15 or Section 15-20 of this Act;
 - (3) registering a loan broker pursuant to Section 15-15 of this Act;

- (4) renewing registration of a loan broker pursuant to Section 15-20 of this Act; or
 - (5) failure to file or file timely any document or information required under this Act; or
 - (6) acceptance of service of process pursuant to Section 15-95;
 - (7) issuance of certification pursuant to Section 15-50; or
 - (8) late registration fee pursuant to Section 15-20 (c).
- (b) The Secretary of State may, by rule or regulation, raise or lower any fee imposed by this Act, and which he or she is authorized by law to collect under this Act.
 - (c) All fees and funds accruing for the administration of this Act shall be accounted for by the Secretary of State and shall be deposited with the State Treasurer who shall deposit them in the Securities Audit and Enforcement Fund.

(As amended through January 1, 2002.)

Sec. 15-30. Disclosure document to be provided by loan broker.

- (a) At the time any person signs a contract for the services of a loan broker, or at the time the loan broker receives any consideration upon the contract, whichever occurs first, the loan broker must provide to the contracting person a written disclosure document that meets the requirements set forth in subsection (b) of this Section.
- (b) A written disclosure statement shall contain the following information:
 - (1) A disclosure statement which shall be the cover sheet and shall be entitled in at least 10-point boldface capital letters "DISCLOSURES REQUIRED BY LAW". Under this title shall appear the statement in at least 10-point type that "THE SECRETARY OF STATE HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE OR SPONSOR ANY LOAN BROKERAGE CONTRACT. THE INFORMATION CONTAINED IN THIS DISCLOSURE HAS NOT BEEN VERIFIED BY THE SECRETARY OF STATE. IF YOU HAVE ANY QUESTIONS SEE AN ATTORNEY BEFORE YOU SIGN A CONTRACT OR AGREEMENT." Nothing except the title and the required statement shall appear on the cover sheet.
 - (2) The name and form of organization of the broker, the names under which the broker has done, is doing, or intends to do business, and the name of any parent organization or affiliate of the broker.
 - (3) The names, addresses and titles of the broker's officers, directors, trustees, general partners, general managers,

principal executives and any other person performing similar duties.

- (4) The length of time the broker has conducted business as a loan broker.
 - (5) A full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower.
 - (6) A specific statement of the circumstances under which the broker will be entitled to obtain or retain consideration from the party with whom the broker contracts.
 - (7) Any other information the Secretary of State may require by rule or regulation.
- (b-5) The information in subdivisions b(5) and b(6) of this Section need not be set out on the disclosure document if the loan broker's contract is provided with the disclosure document.
- (c) A loan broker shall amend the disclosure document required by subsection (b) of this Section whenever necessary to prevent it from containing any false or misleading statement of a material fact and shall deliver a copy of the amended disclosure document to the Secretary of State on or before the date of the amendment.
- (d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure document if the creditor is required to deliver to the person a disclosure document under the Truth-in-Lending Law, 15 U.S.C. 1601-1667e, for the transaction. The estimated disclosure document shall:
- (1) Be delivered to the person before the person becomes contractually obligated on the loan; or
 - (2) Be delivered or placed in the mail to the person not later than 3 business days after the person enters into an agreement with the loan broker whichever occurs first. The estimated disclosure document must contain all the information and be in the form required by the Truth-in-Lending Law, 15 U.S.C. 1601-1667e, and regulations under that Law. However, the annual percentage rate, finance charge, total of payments and other matters required under the Truth-in-Lending Law, 15 U.S.C. 1601-1667e, shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from an estimated disclosure document. The estimated disclosure document must state at the top in at least 10 point type: "THE FOLLOWING IS AN ESTIMATED DISCLOSURE DOCUMENT SHOWING YOUR LOAN TRANSACTION AS IF THE FEES AND CHARGES YOU ARE SCHEDULED TO PAY US WERE CHARGED TO YOU DIRECTLY BY THE

CREDITOR.” After the estimated disclosure document is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure document by more than 0.125%. Any required additional disclosure document shall be delivered or placed in the mail before consummation of the loan or no later than 3 days from when the information that requires redisclosure becomes available, whichever occurs first.

- (e) If none of the exemptions in Section 10-30.5 apply, then for a period of 7 days after the time the borrower signs a contract for the services, the borrower shall have the right to rescind the contract for services with the loan broker and receive all fees actually paid thereon; provided, however, that the client who has rescinded the contract may not use or disclose any confidential or non-public information provided to the client by the loan broker.

Sec. 15-30.5. Exemption from disclosure requirement. The disclosure requirement of Section 15-30 shall not apply where the borrower to be represented by the loan broker:

- (a) Is a natural person who has, or is reasonably believed by the loan broker relying upon this Section to have, a net worth or joint net worth with that person’s spouse in excess of \$1,000,000 at the time of the execution of the loan broker agreement;
- (b) Is a natural person who has, or is reasonably believed by the loan broker relying upon this Section to have, an income or joint income with that person’s spouse in excess of \$200,000 in the most recent applicable fiscal year;
- (c) Is a person who is not a natural person who has, or is reasonably believed by the loan broker relying upon this Section to have, total assets having a value of \$1,000,000 and has been in existence for at least nine months and was not formed for the purposes of the transaction;
- (d) Is a person who is not a natural person who has, or is reasonably believed by the loan broker relying upon this Section to have, gross revenue in excess of \$200,000 in the most recent applicable fiscal year and has been in existence for at least nine months and was not formed for the purposes of this transaction;
- (e) Is a person who is not a natural person in which at least 90% of the equity interest is owned, or is reasonably believed by the loan broker relying upon this Section to be owned, by persons who meet any of the tests set forth in this subsection; or

- (f) Has had an attorney review the loan broker's contact. A loan broker may rely upon a statement signed by the borrower that such borrower is any of the categories enumerated above.

Sec. 15-35. Contracts required to be in writing; retention of copy by borrowing party. To be enforceable, every contract for the services of a loan broker shall be in writing and signed by all contracting parties. The borrowing party and loan broker shall retain a copy of the signed contract at the time it is signed. The loan broker shall retain a copy of the contract for a period of 6 years.

Sec. 15-40. Denial, suspension or revocation of registration; orders and hearing.

- (a) The Secretary of State may deny, suspend or revoke the registration of a loan broker if the loan broker:
 - (1) Fails to maintain the bond required under subsection (b) of Section 15-15 of this Act.
 - (2) Is insolvent.
 - (3) Has violated any provision of this Act.
 - (4) Has filed with the Secretary of State any document or statement containing any false representation of a material fact or omitting to state a material fact.
 - (5) Has been convicted, within 10 years before the date of the application, renewal or review, of any crime involving fraud or deceit.
- (b) The Secretary of State may not enter a final order denying, suspending or revoking the registration of a loan broker without prior notice to all interested parties, opportunity for a hearing and written findings of fact and conclusions of law. The Secretary of State may by summary order deny, suspend or revoke a registration pending final determination of any proceeding under this Section. Upon the entry of a summary order, the Secretary of State shall promptly notify all interested parties that it has been entered, of the reasons for the summary order and, that upon receipt by the Secretary of State of a written request from a party, the matter will be set for hearing which shall be conducted in accordance with the provisions of the Illinois Administrative Procedure Act. If no hearing is requested within 30 days of the entry of the order and none is ordered by the Secretary of State, the order remains in effect until it is modified vacated, or superseded by a final order. A final order may be entered by the Secretary of State against any party who fails to request a hearing within 30 days of the entry of the summary order. If a hearing is requested or ordered, the

Secretary of State, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order, extend it until final determination, or issue a final order.

Sec. 15-45. Powers of Secretary of State; privilege against self-incrimination; admissibility into evidence.

- (a) The Secretary of State may do the following:
 - (1) Adopt rules and regulations to implement this Act.
 - (2) Make investigations and examinations:
 - (A) in connection with any application for registration of any loan broker or any registration already granted; or
 - (B) whenever it appears to the Secretary of State, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
 - (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of any employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination.
 - (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under item (2) of subsection (a) of this Section. The Secretary of State may also bring an action to prohibit a person from violating this Act. The Secretary of State shall notify the person that an order or notice has been issued, the reasons for it and that a hearing will be set in accordance with the provisions of the Illinois Administrative Procedure Act after the Secretary of State receives a written request from the person requesting a hearing.
 - (5) Sign all orders, official certifications, documents or papers issued under this Law or delegate the authority to sign any of those items to his or her designee.
 - (6) Hold and conduct hearings.
 - (7) Hear evidence.
 - (8) Conduct inquiries with or without hearings. Inquiries shall include oral and written requests for information. A failure to respond to a written request for information may be deemed a violation of this Act and the Secretary of State may issue notices and orders, including cease and desist notices and orders, against the violators.

- (9) Receive reports of investigators or other officers or employees of the State of Illinois or any municipal corporation or governmental subdivision within the State.
- (10) ~~(Blank). Administer oaths or cause them to be administered.~~
- (11) ~~(Blank). Subpoena witnesses and compel them to attend and testify.~~
- (12) ~~(Blank). Compel the production of books, records and other documents.~~
- (13) Order depositions to be taken of any witness residing within or without the State. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the Secretary of State.
- (14) For the purpose of all investigations, audits, examinations, or inspections that, in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State the production of any books and records, papers, or other documents that the Secretary of State or a person designated by him or her deems relevant or material to the inquiry.

- (b) If any person refuses to obey a subpoena issued under this Act, the Secretary of State may make application to any court of competent jurisdiction to order the person to appear before the Secretary of State and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.
- (c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (d) In any prosecution, action, suit or proceeding based upon or arising out of this Act, the Secretary of State may sign a certificate showing compliance or non-compliance with this Act by any loan broker. This shall constitute prima facie evidence of compliance or non-compliance with this Act and shall be admissible in evidence in any court.

- (e) Whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act, or of any rule or regulation prescribed under authority of this Act, the Secretary of State may at his or her discretion, through the Attorney General:
- (1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without a bond, to enforce this Act.
 - (2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any contract for loan brokerage services determined by the court to be unlawful under this Act.
- (f) The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution, damages or disgorgement of profits on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs and attorneys fees against the defendant for the use of the State.

(As amended through January 1, 2002.)

Sec. 15-50. Evidentiary matters.

- (a) Certified copies of documents or records admissible in actions or proceedings under this Act. Copies of any statement or document filed with the Secretary of State, and copies of any records of the Secretary of State, certified to by the Secretary of State are admissible in any prosecution, action, suit or proceeding based upon, or arising out of or under, the provisions of this Act to the same effect as the original of the statement, document or record would be if actually produced.
- (b) In any action, administrative, civil, or criminal, a certificate under the seal of the State of Illinois, signed by the Secretary of State, attesting to the filing of or the absence of the filing of any document or record with the Secretary of State under this Act, shall constitute prima facie evidence of the filing or of the absence of the filing, and shall be admissible in evidence in any administrative, criminal, or civil action.

- (c) Any certificate pursuant to subsection (a) or (b) of this Section shall be furnished by the Secretary of State upon application therefor in the form and in the manner prescribed by the Secretary of State by rule, and shall be accompanied by payment of a non-refundable certification fee in the amount specified by rule or order of the Secretary of State.

(As amended through January 1, 2002.)

Sec. 15-55. Violations; administrative fines; enforcement.

- (a) If the Secretary of State determines, after notice and opportunity for a hearing, that a person has violated this Act, the Secretary of State may in addition to all other remedies, impose an administrative fine upon the person in an amount not to exceed \$10,000 for each violation.
- (b) The Secretary of State may bring an action in the circuit court of Sangamon or Cook county to enforce payment of fines imposed under this Section.
- (c) If the Secretary of State shall find that any person has violated any provision of this Act, the Secretary of State may, by written order temporarily or permanently prohibit or suspend such person from acting as a loan broker.
- (d) If the Secretary of State shall find that any person is acting or has acted as a loan broker as defined in Section 15-5.15 of this Act, without prior thereto or at the time thereof having complied with the registration requirements of this Act, the Secretary of State may by written order prohibit such person from acting as a loan broker in this State.
- (e) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, any individual or entity acting as a loan broker or engaging in the business of providing loan brokerage services, without notice and prior hearing, if the Secretary of State shall in his or her opinion, based upon credible evidence, deems it necessary to prevent an imminent violation of this Act or to prevent losses to clients which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing to be held as soon as reasonably practicable, that the request for a hearing will not stop the effectiveness of the temporary order and that

respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order, shall constitute an admission of any facts alleged therein and shall constitute sufficient basis to make the temporary order final.

- (f) The Secretary of State may issue a temporary order suspending or delaying the effectiveness of any registration of a loan broker under this Act subsequent to and upon the basis of the issuance of any stop, suspension or similar order by any agency of the United States regulating loan brokers or any state or federal courts with respect to the person who is the subject of the registration under this Act, and such order shall become effective as of the date and time of effectiveness of the agency or court order and shall be vacated automatically at such time as the order of the agency or court order is no longer in effect.

Sec. 15-60. Violations; liability of loan broker to damaged parties; rights of prospective borrower. A person who violates this Act, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney fees. If a loan broker violates any provision of this Act, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker, with interest and any attorney's fee required to enforce this Section. Any provision of this Section to the contrary notwithstanding, the civil remedies of this Section shall not be available against any person by reason of failure to comply with Section 15-75 of this Act.

Sec. 15-65. Violation. Any person who willfully violates this Act commits a Class 4 felony.

Sec. 15-70. Rescission of contract under Truth-in-Lending Law; notice to creditor.

- (a) If a transaction for which a loan broker has charged any fee or collected any costs is rescinded by any person under the provisions of the Truth-in-Lending Law, 15 U.S.C. 1601-1667e, within 20 calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any money or property that has been given to the loan broker, including property or money the loan broker delivered or directed to third parties.
- (b) For purposes of calculating the time period during which a person may rescind a contract under this Section, a contract with a loan

broker shall be considered to be a sale of services that occurs on the date the person receives the disclosure document required by Section 15-30 of this Act.

Sec. 15-75. Account numbers required; retention and maintenance of records.

- (a) Each loan broker agreement shall be given an account number and all instruments taken in connection with that agreement must bear this number. Each loan broker shall keep and maintain the following records or their equivalent:
 - (1) A loan agreement register that consists of a chronological listing of all loan broker agreements that have been entered into. For each loan broker agreement the register shall contain the following:
 - (A) The account number.
 - (B) The date of the agreement.
 - (C) The name of the borrower or any proposed borrower.
 - (D) The amount of any fees charged.
 - (E) The cost and type of any insurance required.
 - (2) A file for each borrower or proposed borrower shall contain the following:
 - (A) The name and address of the borrower or any proposed borrower.
 - (B) A copy of the signed loan broker agreement.
 - (C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower, including a copy of the disclosure document required by Section 15-30 of this Act that contains an acknowledged receipt by the borrower or any proposed borrower.
 - (D) If a loan was obtained for the borrower, the name and address of the creditor.
 - (E) If a loan is accepted by the borrower, a copy of the loan agreement.
 - (F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.
 - (3) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

- (4) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within 30 days of the Secretary of State's request for the information.
- (5) A copy of:
 - (A) All advertisements, pamphlets, circulars, letters, articles or communications published in any newspaper, magazine or periodical.
 - (B) Scripts of any recording, radio or television announcement.
 - (C) Any sales kits or literature to be used in solicitation of borrowers.
- (b) The records listed in subsection (a) of this Section shall be kept for a period of 6 years in the loan broker's principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

Sec. 15-80. Persons exempt from registration and other duties; burden of proof thereof.

- (a) The following persons are exempt from the requirements of Sections 15-10, 15-15, 15-20, 15-25, 15-35, 15-40, and 15-75 of this Act: ~~registration and bonding requirements of this Act.~~
 - (1) Any attorney while engaging in the practice of law.
 - (2) Any certified public accountant licensed to practice in Illinois, while engaged in practice as a certified public accountant and whose service in relation to procurement of a loan is incidental to his or her practice.
 - (3) Any person licensed to engage in business as a real estate broker or salesperson in Illinois while rendering services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
 - (4) Any dealer, salesperson or investment adviser registered under the Illinois Securities Law of 1953, or an investment advisor, representative, or any person who is regularly engaged in the business of offering or selling securities in a transaction exempted under subsection C, H, M, R, Q, or S of Section 4 of the Illinois Securities Law of 1953 or subsection G of Section 4 of the Illinois Securities Law of 1953 provided that such person is registered under the federal securities law.
 - (4.1) An associated person described in subdivision (h)(2) of Section 15 of the Federal 1934 Act.
 - (4.2) An investment adviser registered pursuant to Section 203 of the Federal 1940 Investment Advisors Act.
 - (4.3) A person described in subdivision (a)(11) of Section 202 of

the Federal 1940 Investment Advisors Act.

- (5) Any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a bona fide third party fee, is paid before the procurement.
 - (6) Any person who is a creditor, or proposed to be a creditor, for any loan.
 - (7) Blank
 - (8) Any person regulated by the Department of Financial Institutions or the Office of Banks and Real Estate, or any insurance producer or company authorized to do business in this State.
- (b) As used in this Section, “bona fide third party fee” includes fees for:
- (1) Credit reports, appraisals and investigations.
 - (2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey and similar purposes.
- (c) As used in this Section, “successful procurement of a loan” means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.
- (d) The burden of proof of any exemption provided in this Act shall be on the party claiming the exemption.

Sec. 15-85. Fraudulent and prohibited acts.

- (a) A loan broker shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:
- (1) ~~(a)~~ Employ any device, scheme or artifice to defraud.
 - (2) ~~(b)~~ Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
 - (3) ~~(c)~~ Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.
- (b) A loan broker shall not either directly or indirectly do any of the following:
- (1) act as a loan broker without registration under this Act unless exempt under the Act;
 - (2) fail to file with the Secretary of State any application, report, document, or answer required to be filed under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act, or fail to comply with the terms of any order issued pursuant to this Act or any rules made by the Secretary of State;

- (3) fail to keep or maintain any records as required under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act.

(As amended through January 1, 2002.)

Sec. 15-90. Deposit of moneys. All moneys received under this Act shall be deposited into the Securities Audit and Enforcement Fund.

Sec. 15-95. Service of process.

- (a) A person acting as a loan broker, unless exempt from registration under this Act, shall constitute an appointment of the Secretary of State, or his or her successors in Office, by the person to be the true and lawful attorney for the person upon whom may be served all lawful process in any action or proceeding against the person, arising out of his or her activities as a loan broker.
- (b) Service of process under this Section shall be made by serving a copy upon the Secretary of State or any employee in his or her Office designated by the Secretary of State to accept such service for him or her, provided notice and a copy of the process are, within 10 days or receipt, sent by registered mail or certified mail, return receipt requested, by the plaintiff to the defendant, at the last known address of the defendant. The filing fee for service of process under this Section is non-refundable and is the amount established in Section 15-25 of this Act. The Secretary of State shall keep a record of all such processes that shall show the day of the service.

(As amended through January 1, 2002.)

Sec. 15-100. Immunity for official acts. In no case shall the Secretary of State or any of his or her employees or agents, in the administration of this Act, incur any official or personal liability while acting in accordance with their official duties or authority.

