



Illinois Department of Financial and Professional Regulation

Division of Banking

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Governor

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Secretary

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Director

Statement Regarding Attorneys Performing Mortgage Loan Modifications

The Department has received inquiries about whether attorneys who perform loan modifications need to obtain a license from the Department. While the Department neither issues “advisory opinions” nor dispenses legal advice, the public’s interest in this topic merits this statement from the Department. Parties seeking a legal opinion should consult their own attorney.

The Residential Mortgage Licensing Act (RMLA) contains new licensing requirements for “mortgage loan originators.” These new requirements are mandated by the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (commonly referred to as the “SAFE Act”). Under the RMLA, “it is unlawful for any individual to act or assume to act as a mortgage loan originator, as defined in subsection (jj) of Section 1-4 of the Act, without obtaining a license from the [Director of the Division of Banking], unless the individual is exempt under subsection (c) of this Section....” 205 ILCS 635/7-1A(a). Attorneys do not automatically qualify for an exemption simply because they are attorneys. The exemption applies only to attorneys licensed in Illinois not principally engaged in the business of negotiating residential mortgage loans. A lawyer who “negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client” is exempt. 205 ILCS 635/7-1A(c)(4). However, if the attorney is paid by a lender, mortgage broker, or other mortgage loan originator (or by any agent of such lender, mortgage broker, or other mortgage loan originator), then the attorney is not exempt. Moreover, although an attorney is exempt from licensing in the aforementioned limited circumstance, persons associated with or employed by an attorney (including, but not limited to, paralegals, law clerks, and legal assistants), who are not licensed as attorneys, are required to be licensed if they meet the definition of mortgage loan originator. Finally, a company that performs loan modifications that hires or is hired by an attorney does not automatically qualify for an exemption and may have to obtain a license under the RMLA.