

AN ACT concerning civil law.

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

Section 5. The Residential Real Property Disclosure Act is amended by changing Sections 70, 72, and 76 as follows:

(765 ILCS 77/70)

Sec. 70. Predatory lending database program.

(a) As used in this Article:

"Adjustable rate mortgage" or "ARM" means a closed-end mortgage transaction that allows adjustments of the loan interest rate during the first 3 years of the loan term.

"Borrower" means a person seeking a mortgage loan.

"Broker" means a "broker" or "loan broker", as defined in subsection (p) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Closing agent" means an individual assigned by a title insurance company or a broker or originator to ensure that the execution of documents related to the closing of a real estate sale or the refinancing of a real estate loan and the disbursement of closing funds are in conformity with the instructions of the entity financing the transaction.

"Counseling" means in-person counseling provided by a counselor employed by a HUD-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 participating HUD-approved housing 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.~~

"Counselor" means a counselor employed by a HUD-approved housing counseling agency.

"Credit score" means a credit risk score as defined by the Fair Isaac Corporation, or its successor, and reported under such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE" by one or more of the following credit reporting agencies or their successors: Equifax, Inc., Experian Information Solutions, Inc., and TransUnion LLC. If the borrower's credit report contains credit scores from 2 reporting agencies, then the broker or loan originator shall report the lower score. If the borrower's credit report contains credit scores from 3 reporting agencies, then the broker or loan originator shall report the middle score.

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

"Exempt person or entity" means that term as it is defined in subsections (d) (1), (d) (1.5), and (d) (1.8) of Section 1-4 of

the Residential Mortgage License Act of 1987.

"First-time homebuyer" means a borrower who has not held an ownership interest in residential property.

"HUD-approved counseling" or "counseling" means counseling given to a borrower by a counselor employed by a HUD-approved housing counseling agency.

"Interest only" means a closed-end loan that permits one or more payments of interest without any reduction of the principal balance of the loan, other than the first payment on the loan.

"Lender" means that term as it is defined in subsection (g) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Licensee" means that term as it is defined in subsection (e) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Mortgage loan" means that term as it is defined in subsection (f) of Section 1-4 of the Residential Mortgage License Act of 1987.

"Negative amortization" means an amortization method under which the outstanding balance may increase at any time over the course of the loan because the regular periodic payment does not cover the full amount of interest due.

"Originator" means a ~~"loan originator" as defined in subsection (hh) of Section 1-4 of the Residential Mortgage License Act of 1987, except an exempt person, and means a~~ "mortgage loan originator" as defined in subsection (jj) of

Section 1-4 of the Residential Mortgage License Act of 1987, except an exempt person.

"Points and fees" has the meaning ascribed to that term in Section 10 of the High Risk Home Loan Act.

"Prepayment penalty" means a charge imposed by a lender under a mortgage note or rider when the loan is paid before the expiration of the term of the loan.

"Refinancing" means a loan secured by the borrower's or borrowers' primary residence where the proceeds are not used as purchase money for the residence.

"Title insurance company" means any domestic company organized under the laws of this State for the purpose of conducting the business of guaranteeing or insuring titles to real estate and any title insurance company organized under the laws of another State, the District of Columbia, or a foreign government and authorized to transact the business of guaranteeing or insuring titles to real estate in this State.

(a-5) A predatory lending database program shall be established within Cook County. The program shall be administered in accordance with this Article. The inception date of the program shall be July 1, 2008. A predatory lending database program shall be expanded to include Kane, Peoria, and Will counties. The inception date of the expansion of the program as it applies to Kane, Peoria, and Will counties shall be July 1, 2010. Until the inception date, none of the duties, obligations, contingencies, or consequences of or from the

program shall be imposed. The program shall apply to all mortgage applications that are governed by this Article and that are made or taken on or after the inception of the program.

(b) The database created under this program shall be maintained and administered by the Department. The database shall be designed to allow brokers, originators, counselors, title insurance companies, and closing agents to submit information to the database online. The database shall not be designed to allow those entities to retrieve information from the database, except as otherwise provided in this Article. Information submitted by the broker or originator to the Department may be used to populate the online form submitted by a counselor, title insurance company, or closing agent.

(c) Within 10 business days after taking a mortgage application, the broker or originator for any mortgage on residential property within the program area must submit to the predatory lending database all of the information required under Section 72 and any other information required by the Department by rule. Within 7 business days after receipt of the information, the Department shall compare that information to the housing counseling standards in Section 73 and issue to the borrower and the broker or originator a determination of whether counseling is recommended for the borrower. The borrower may not waive counseling. If at any time after submitting the information required under Section 72 the broker

or originator (i) changes the terms of the loan or (ii) issues a new commitment to the borrower, then, within 5 business days thereafter, the broker or originator shall re-submit all of the information required under Section 72 and, within 4 business days after receipt of the information re-submitted by the broker or originator, the Department shall compare that information to the housing counseling standards in Section 73 and shall issue to the borrower and the broker or originator a new determination of whether re-counseling is recommended for the borrower based on the information re-submitted by the broker or originator. The Department shall require re-counseling if the loan terms have been modified to meet another counseling standard in Section 73, or if the broker has increased the interest rate by more than 200 basis points.

(d) If the Department recommends counseling for the borrower under subsection (c), then the Department shall notify the borrower of all participating HUD-approved counseling agencies located within the State and direct the borrower to interview with a counselor associated with one of those agencies. Within 10 business days after receipt of the notice of HUD-approved counseling agencies, it is the borrower's responsibility to select one of those agencies and shall engage in an interview with a counselor associated with that agency. The borrower must supply all necessary documents, as set forth by the counselor, at least 72 hours before the scheduled interview. The selection must take place and the appointment

for the interview must be set within 10 business days, although the interview may take place beyond the 10 business day period. Within 7 business days after interviewing the borrower, the counselor must submit to the predatory lending database all of the information required under Section 74 and any other information required by the Department by rule. Reasonable and customary costs not to exceed \$300 associated with counseling provided under the program shall be paid by the broker or originator and shall not be charged back to, or recovered from, the borrower. The Department shall annually calculate to the nearest dollar an adjusted rate for inflation. A counselor shall not recommend or suggest that a borrower contact any specific mortgage origination company, financial institution, or entity that deals in mortgage finance to obtain a loan, another quote, or for any other reason related to the specific mortgage transaction; however, a counselor may suggest that the borrower seek an opinion or a quote from another mortgage origination company, financial institution, or entity that deals in mortgage finance. A counselor or housing counseling agency that in good faith provides counseling shall not be liable to a broker or originator or borrower for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling.

(e) The broker or originator and the borrower may not take any legally binding action concerning the loan transaction until the later of the following:

(1) the Department issues a determination not to recommend HUD-approved counseling for the borrower in accordance with subsection (c); or

(2) the Department issues a determination that HUD-approved counseling is recommended for the borrower and the counselor submits all required information to the database in accordance with subsection (d).

(f) Within 10 business days after closing, the title insurance company or closing agent must submit to the predatory lending database all of the information required under Section 76 and any other information required by the Department by rule.

(g) The title insurance company or closing agent shall attach to the mortgage a certificate of compliance with the requirements of this Article, as generated by the database. If the transaction is exempt, the title insurance company or closing agent shall attach to the mortgage a certificate of exemption, as generated by the database. Each certificate of compliance or certificate of exemption must contain, at a minimum, one of the borrower's names on the mortgage loan and the property index number for the subject property. If the title insurance company or closing agent fails to attach the certificate of compliance or exemption, whichever is required, then the mortgage is not recordable. In addition, if any lis pendens for a residential mortgage foreclosure is recorded on the property within the program area, a certificate of service

must be simultaneously recorded that affirms that a copy of the lis pendens was filed with the Department. A lis pendens filed after July 1, 2016 shall be filed with the Department electronically. If the certificate of service is not recorded, then the lis pendens pertaining to the residential mortgage foreclosure in question is not recordable and is of no force and effect.

(h) All information provided to the predatory lending database under the program is confidential and is not subject to disclosure under the Freedom of Information Act, except as otherwise provided in this Article. Information or documents obtained by employees of the Department in the course of maintaining and administering the predatory lending database are deemed confidential. Employees are prohibited from making disclosure of such confidential information or documents. Any request for production of information from the predatory lending database, whether by subpoena, notice, or any other source, shall be referred to the Department of Financial and Professional Regulation. Any borrower may authorize in writing the release of database information. The Department may use the information in the database without the consent of the borrower: (i) for the purposes of administering and enforcing the program; (ii) to provide relevant information to a counselor providing counseling to a borrower under the program; or (iii) to the appropriate law enforcement agency or the applicable administrative agency if the database information

demonstrates criminal, fraudulent, or otherwise illegal activity.

(i) Nothing in this Article is intended to prevent a borrower from making his or her own decision as to whether to proceed with a transaction.

(j) Any person who violates any provision of this Article commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act.

(j-1) A violation of any provision of this Article by a mortgage banking licensee or licensed mortgage loan originator shall constitute a violation of the Residential Mortgage License Act of 1987.

(j-2) A violation of any provision of this Article by a title insurance company, title agent, or escrow agent shall constitute a violation of the Title Insurance Act.

(j-3) A violation of any provision of this Article by a housing counselor shall be referred to the Department of Housing and Urban Development.

(k) During the existence of the program, the Department shall submit semi-annual reports to the Governor and to the General Assembly by May 1 and November 1 of each year detailing its findings regarding the program. The report shall include, by county, at least the following information for each reporting period:

- (1) the number of loans registered with the program;
- (2) the number of borrowers receiving counseling;

- (3) the number of loans closed;
- (4) the number of loans requiring counseling for each of the standards set forth in Section 73;
- (5) the number of loans requiring counseling where the mortgage originator changed the loan terms subsequent to counseling;
- (6) the number of licensed mortgage brokers and loan originators entering information into the database;
- (7) the number of investigations based on information obtained from the database, including the number of licensees fined, the number of licenses suspended, and the number of licenses revoked;
- (8) a summary of the types of non-traditional mortgage products being offered; and
- (9) a summary of how the Department is actively utilizing the program to combat mortgage fraud.

(Source: P.A. 98-1081, eff. 1-1-15; 99-660, eff. 7-28-16.)

(765 ILCS 77/72)

Sec. 72. Originator; required information. As part of the predatory lending database program, the broker or originator must submit all of the following information for inclusion in the predatory lending database for each loan for which the originator takes an application:

- (1) The borrower's name, address, social security number or taxpayer identification number, date of birth,

and income and expense information, including total monthly consumer debt, contained in the mortgage application.

(2) The address, ~~permanent index number,~~ and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.

(3) The borrower's credit score at the time of application.

(4) Information about the originator and the company the originator works for, including the originator's license number and address, fees being charged, whether the fees are being charged as points up front, the yield spread premium payable outside closing, and other charges made or remuneration required by the broker or originator or its affiliates or the broker's or originator's employer or its affiliates for the mortgage loans.

(5) (Blank). ~~Information about affiliated or third party service providers, including the names and addresses of appraisers, title insurance companies, closing agents, attorneys, and realtors who are involved with the transaction and the broker or originator and any moneys received from the broker or originator in connection with the transaction.~~

(6) All information indicated in connection with the TILA-RESPA Integrated Loan Estimate Disclosure or on the Good Faith Estimate and Truth in Lending statement disclosures given to the borrower by the broker or originator.

(7) Annual real estate taxes for the property, together with any assessments payable in connection with the property to be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower.

(8) Information concerning how the broker or originator obtained the client and the name of its referral source, if any.

(9) Information concerning the notices provided by the broker or originator to the borrower as required by law and the date those notices were given.

(10) Information concerning whether a sale and leaseback is contemplated and the names of the lessor and lessee, seller, and purchaser.

(11) Any and all financing by the borrower for the subject property within 12 months prior to the date of application.

(12) Loan information, including interest rate, term, purchase price, down payment, and closing costs.

(13) Whether the buyer is a first-time homebuyer or

refinancing a primary residence.

(14) Whether the loan permits interest only payments.

(15) Whether the loan may result in negative amortization.

(16) Whether the total points and fees payable by the borrowers at or before closing will exceed 5%.

(17) Whether the loan includes a prepayment penalty, and, if so, the terms of the penalty.

(18) Whether the loan is an ARM.

All information entered into the predatory lending database must be true and correct to the best of the originator's knowledge. The originator shall, prior to closing, correct, update, or amend the data as necessary. If any corrections become necessary after the file has been accessed by the closing agent or housing counselor, a new file must be entered.

(Source: P.A. 97-891, eff. 1-1-13; 98-1081, eff. 1-1-15.)

(765 ILCS 77/76)

Sec. 76. Title insurance company or closing agent; required information. As part of the predatory lending database program, a title insurance company or closing agent must submit all of the following information for inclusion in the predatory lending database:

(1) The borrower's name, address, social security number or taxpayer identification number, date of birth,

and income and expense information contained in the mortgage application.

(2) The address, permanent index number, and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.

(3) Annual real estate taxes for the property, together with any assessments payable in connection with the property to be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower as well as any required escrows and the amounts paid monthly for those escrows.

(4) All itemizations and descriptions set forth in or in connection with the TILA-RESPA Integrated Closing Disclosure or RESPA settlement statement, including items to be disbursed, payable outside closing "POC" items noted on the statement, and a list of payees and the amounts of their checks.

(5) The name and license number of the title insurance company or closing agent together with the name of the agent actually conducting the closing.

(6) The names and addresses of all originators, brokers, appraisers, sales persons, attorneys, and

surveyors that are present at the closing.

(7) The date of closing, a detailed list of all notices provided to the borrower at closing and the date of those notices, and all information indicated on or in connection with the TILA-RESPA Integrated Loan Estimate Disclosure or ~~on~~ the Truth in Lending statement and Good Faith Estimate disclosures.

(Source: P.A. 98-1081, eff. 1-1-15.)

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