

SB0776



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0776

Introduced 2/1/2017, by Sen. Chris Nybo

SYNOPSIS AS INTRODUCED:

765 ILCS 77/70
765 ILCS 77/72
765 ILCS 77/76

Amends the Predatory Lending Database Article of the Residential Real Property Disclosure Act. Changes the definition of "counseling" and "originator". Provides that each certificate of compliance with the Article 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. Makes changes concerning the information which must be collected and submitted by the broker or originator and by the title insurance company or closing agent. Effective immediately.

LRB100 05753 HEP 15776 b

A BILL FOR

1 AN ACT concerning civil law.

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

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

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

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

12 "Borrower" means a person seeking a mortgage loan.

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

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

22 "Counseling" means in-person or electronic face-to-face
23 counseling provided by a counselor employed by a HUD-approved

1 counseling agency to all borrowers, or documented telephone
2 counseling where a hardship would be imposed on one or more
3 borrowers. A hardship shall exist in instances in which the
4 borrower is confined to his or her home due to medical
5 conditions, as verified in writing by a physician, or the
6 borrower resides 50 miles or more from the nearest
7 participating HUD-approved housing counseling agency. In
8 instances of telephone counseling, the borrower must supply all
9 necessary documents to the counselor at least 72 hours prior to
10 the scheduled telephone counseling session.

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

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

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

26 "Exempt person or entity" means that term as it is defined

1 in subsections (d) (1), (d) (1.5), and (d) (1.8) of Section 1-4 of
2 the Residential Mortgage License Act of 1987.

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

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

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

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

14 "Licensee" means that term as it is defined in subsection
15 (e) of Section 1-4 of the Residential Mortgage License Act of
16 1987.

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

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

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

1 "mortgage loan originator" as defined in subsection (jj) of
2 Section 1-4 of the Residential Mortgage License Act of 1987,
3 except an exempt person.

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

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

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

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

19 (a-5) A predatory lending database program shall be
20 established within Cook County. The program shall be
21 administered in accordance with this Article. The inception
22 date of the program shall be July 1, 2008. A predatory lending
23 database program shall be expanded to include Kane, Peoria, and
24 Will counties. The inception date of the expansion of the
25 program as it applies to Kane, Peoria, and Will counties shall
26 be July 1, 2010. Until the inception date, none of the duties,

1 obligations, contingencies, or consequences of or from the
2 program shall be imposed. The program shall apply to all
3 mortgage applications that are governed by this Article and
4 that are made or taken on or after the inception of the
5 program.

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

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

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

16 (d) If the Department recommends counseling for the
17 borrower under subsection (c), then the Department shall notify
18 the borrower of all participating HUD-approved counseling
19 agencies located within the State and direct the borrower to
20 interview with a counselor associated with one of those
21 agencies. Within 10 business days after receipt of the notice
22 of HUD-approved counseling agencies, it is the borrower's
23 responsibility to select one of those agencies and shall engage
24 in an interview with a counselor associated with that agency.
25 The selection must take place and the appointment for the
26 interview must be set within 10 business days, although the

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

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

26 (1) the Department issues a determination not to

1 recommend HUD-approved counseling for the borrower in
2 accordance with subsection (c); or

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

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

12 (g) The title insurance company or closing agent shall
13 attach to the mortgage a certificate of compliance with the
14 requirements of this Article, as generated by the database. If
15 the transaction is exempt, the title insurance company or
16 closing agent shall attach to the mortgage a certificate of
17 exemption, as generated by the database. Each certificate of
18 compliance or certificate of exemption must contain, at a
19 minimum, one of the borrower's names on the mortgage loan and
20 the property index number for the subject property. If the
21 title insurance company or closing agent fails to attach the
22 certificate of compliance or exemption, whichever is required,
23 then the mortgage is not recordable. In addition, if any lis
24 pendens for a residential mortgage foreclosure is recorded on
25 the property within the program area, a certificate of service
26 must be simultaneously recorded that affirms that a copy of the

1 lis pendens was filed with the Department. A lis pendens filed
2 after July 1, 2016 shall be filed with the Department
3 electronically. If the certificate of service is not recorded,
4 then the lis pendens pertaining to the residential mortgage
5 foreclosure in question is not recordable and is of no force
6 and effect.

7 (h) All information provided to the predatory lending
8 database under the program is confidential and is not subject
9 to disclosure under the Freedom of Information Act, except as
10 otherwise provided in this Article. Information or documents
11 obtained by employees of the Department in the course of
12 maintaining and administering the predatory lending database
13 are deemed confidential. Employees are prohibited from making
14 disclosure of such confidential information or documents. Any
15 request for production of information from the predatory
16 lending database, whether by subpoena, notice, or any other
17 source, shall be referred to the Department of Financial and
18 Professional Regulation. Any borrower may authorize in writing
19 the release of database information. The Department may use the
20 information in the database without the consent of the
21 borrower: (i) for the purposes of administering and enforcing
22 the program; (ii) to provide relevant information to a
23 counselor providing counseling to a borrower under the program;
24 or (iii) to the appropriate law enforcement agency or the
25 applicable administrative agency if the database information
26 demonstrates criminal, fraudulent, or otherwise illegal

1 activity.

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

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

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

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

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

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

24 (1) the number of loans registered with the program;

25 (2) the number of borrowers receiving counseling;

26 (3) the number of loans closed;

1 (4) the number of loans requiring counseling for each
2 of the standards set forth in Section 73;

3 (5) the number of loans requiring counseling where the
4 mortgage originator changed the loan terms subsequent to
5 counseling;

6 (6) the number of licensed mortgage brokers and loan
7 originators entering information into the database;

8 (7) the number of investigations based on information
9 obtained from the database, including the number of
10 licensees fined, the number of licenses suspended, and the
11 number of licenses revoked;

12 (8) a summary of the types of non-traditional mortgage
13 products being offered; and

14 (9) a summary of how the Department is actively
15 utilizing the program to combat mortgage fraud.

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

17 (765 ILCS 77/72)

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

23 (1) The borrower's name, address, social security
24 number or taxpayer identification number, date of birth,
25 and income and expense information, including total

1 monthly consumer debt, contained in the mortgage
2 application.

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

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

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

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

26 (6) All information indicated in connection with the

1 TILA-RESPA Integrated Loan Estimate Disclosure or on the
2 Good Faith Estimate and Truth in Lending statement
3 disclosures given to the borrower by the broker or
4 originator.

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

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

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

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

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

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

25 (13) Whether the buyer is a first-time homebuyer or
26 refinancing a primary residence.

1 (14) Whether the loan permits interest only payments.

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

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

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

8 (18) Whether the loan is an ARM.

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

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

17 (765 ILCS 77/76)

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

23 (1) The borrower's name, address, social security
24 number or taxpayer identification number, date of birth,
25 and income and expense information contained in the

1 mortgage application.

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

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

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

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

24 (6) The names and addresses of all originators,
25 brokers, appraisers, sales persons, attorneys, and
26 surveyors that are present at the closing.

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

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

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