



## 103RD GENERAL ASSEMBLY

### State of Illinois

### 2023 and 2024

#### HB5231

Introduced 2/9/2024, by Rep. Margaret Croke

#### SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-4  
205 ILCS 635/5-12.5 new  
765 ILCS 77/72  
765 ILCS 77/73

Amends the Residential Mortgage License Act of 1987. Provides that, prior to taking any legally binding action on a shared appreciation agreement, the borrower or borrowers shall be provided specified counseling regardless of the county in which the property is located. Provides that the borrower may not waive counseling. Provides that the Secretary of Financial and Professional Regulation may adopt rules relating to shared appreciation agreements. Defines "shared appreciation agreement", and includes shared appreciation agreements within the definition of "Mortgage loan", "residential mortgage loan", or "home mortgage loan". Amends the Residential Real Property Disclosure Act. Provides that, for each loan for which the originator takes an application, the broker or originator must submit for inclusion in the predatory lending database whether the borrower has entered into a shared appreciation agreement. Provides that a borrower or borrowers subject to specified provisions shall be recommended for counseling if the Department of Financial and Professional Regulation finds the borrower or borrowers are all first-time homebuyers or refinancing a primary residence and the loan is a mortgage that includes a shared appreciation agreement. Effective immediately.

LRB103 37487 RTM 67610 b

1 AN ACT concerning regulation.

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

4 Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by changing Section 1-4 and by adding Section 5-12.5  
6 as follows:

7 (205 ILCS 635/1-4)

8 Sec. 1-4. Definitions. The following words and phrases  
9 have the meanings given to them in this Section:

10 (a) "Residential real property" or "residential real  
11 estate" shall mean any real property located in Illinois, upon  
12 which is constructed or intended to be constructed a dwelling.  
13 Those terms include a manufactured home as defined in  
14 subdivision (53) of Section 9-102 of the Uniform Commercial  
15 Code which is real property as defined in Section 5-35 of the  
16 Conveyance and Encumbrance of Manufactured Homes as Real  
17 Property and Severance Act.

18 (b) "Making a residential mortgage loan" or "funding a  
19 residential mortgage loan" shall mean for compensation or  
20 gain, either directly or indirectly, advancing funds or making  
21 a commitment to advance funds to a loan applicant for a  
22 residential mortgage loan.

23 (c) "Soliciting, processing, placing, or negotiating a

1 residential mortgage loan" shall mean for compensation or  
2 gain, either directly or indirectly, accepting or offering to  
3 accept an application for a residential mortgage loan,  
4 assisting or offering to assist in the processing of an  
5 application for a residential mortgage loan on behalf of a  
6 borrower, or negotiating or offering to negotiate the terms or  
7 conditions of a residential mortgage loan with a lender on  
8 behalf of a borrower including, but not limited to, the  
9 submission of credit packages for the approval of lenders, the  
10 preparation of residential mortgage loan closing documents,  
11 including a closing in the name of a broker.

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

13 (1) (i) Any banking organization or foreign banking  
14 corporation licensed by the Illinois Commissioner of Banks  
15 and Real Estate or the United States Comptroller of the  
16 Currency to transact business in this State; (ii) any  
17 national bank, federally chartered savings and loan  
18 association, federal savings bank, federal credit union;  
19 (iii) (blank); (iv) any bank, savings and loan  
20 association, savings bank, or credit union organized under  
21 the laws of this or any other state; (v) any Illinois  
22 Consumer Installment Loan Act licensee; (vi) any insurance  
23 company authorized to transact business in this State;  
24 (vii) any entity engaged solely in commercial mortgage  
25 lending; (viii) any service corporation of a savings and  
26 loan association or savings bank organized under the laws

1 of this State or the service corporation of a federally  
2 chartered savings and loan association or savings bank  
3 having its principal place of business in this State,  
4 other than a service corporation licensed or entitled to  
5 reciprocity under the Real Estate License Act of 2000; or  
6 (ix) any first tier subsidiary of a bank, the charter of  
7 which is issued under the Illinois Banking Act by the  
8 Illinois Commissioner of Banks and Real Estate, or the  
9 first tier subsidiary of a bank chartered by the United  
10 States Comptroller of the Currency and that has its  
11 principal place of business in this State, provided that  
12 the first tier subsidiary is regularly examined by the  
13 Illinois Commissioner of Banks and Real Estate or the  
14 Comptroller of the Currency, or a consumer compliance  
15 examination is regularly conducted by the Federal Reserve  
16 Board.

17 (1.5) Any employee of a person or entity mentioned in  
18 item (1) of this subsection, when acting for such person  
19 or entity, or any registered mortgage loan originator when  
20 acting for an entity described in subsection (tt) of this  
21 Section.

22 (1.8) Any person or entity that does not originate  
23 mortgage loans in the ordinary course of business, but  
24 makes or acquires residential mortgage loans with his or  
25 her own funds for his or her or its own investment without  
26 intent to make, acquire, or resell more than 3 residential

1 mortgage loans in any one calendar year.

2 (2) (Blank).

3 (2.1) A bona fide nonprofit organization.

4 (2.2) An employee of a bona fide nonprofit  
5 organization when acting on behalf of that organization.

6 (3) Any person employed by a licensee to assist in the  
7 performance of the residential mortgage licensee's  
8 activities regulated by this Act who is compensated in any  
9 manner by only one licensee.

10 (4) (Blank).

11 (5) Any individual, corporation, partnership, or other  
12 entity that originates, services, or brokers residential  
13 mortgage loans, as these activities are defined in this  
14 Act, and who or which receives no compensation for those  
15 activities, subject to the Commissioner's regulations and  
16 the federal Secure and Fair Enforcement for Mortgage  
17 Licensing Act of 2008 and the rules promulgated under that  
18 Act with regard to the nature and amount of compensation.

19 (6) (Blank).

20 (7) Any entity engaged solely in providing loan  
21 processing services through the sponsoring of individuals  
22 acting pursuant to subsection (d) of Section 7-1A of this  
23 Act.

24 (e) "Licensee" or "residential mortgage licensee" shall  
25 mean a person, partnership, association, corporation, or any  
26 other entity who or which is licensed pursuant to this Act to

1 engage in the activities regulated by this Act.

2 (f) "Mortgage loan", "residential mortgage loan", or "home  
3 mortgage loan" shall mean any loan primarily for personal,  
4 family, or household use that is secured by a mortgage, deed of  
5 trust, or other equivalent consensual security interest on a  
6 dwelling as defined in Section 103(v) of the federal Truth in  
7 Lending Act, or residential real estate upon which is  
8 constructed or intended to be constructed a dwelling.  
9 "Mortgage loan", "residential mortgage loan", or "home  
10 mortgage loan" includes a loan in which funds are advanced  
11 through a shared appreciation agreement.

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

15 (h) "Ultimate equitable owner" shall mean a person who,  
16 directly or indirectly, owns or controls an ownership interest  
17 in a corporation, foreign corporation, alien business  
18 organization, trust, or any other form of business  
19 organization regardless of whether the person owns or controls  
20 the ownership interest through one or more persons or one or  
21 more proxies, powers of attorney, nominees, corporations,  
22 associations, partnerships, trusts, joint stock companies, or  
23 other entities or devices, or any combination thereof.

24 (i) "Residential mortgage financing transaction" shall  
25 mean the negotiation, acquisition, sale, or arrangement for or  
26 the offer to negotiate, acquire, sell, or arrange for, a

1 residential mortgage loan or residential mortgage loan  
2 commitment.

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

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

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

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

14 (n) "Commissioner" shall mean the Commissioner of Banks  
15 and Real Estate, except that, beginning on April 6, 2009 (the  
16 effective date of Public Act 95-1047), all references in this  
17 Act to the Commissioner of Banks and Real Estate are deemed, in  
18 appropriate contexts, to be references to the Secretary of  
19 Financial and Professional Regulation, or his or her designee,  
20 including the Director of the Division of Banking of the  
21 Department of Financial and Professional Regulation.

22 (n-1) "Director" shall mean the Director of the Division  
23 of Banking of the Department of Financial and Professional  
24 Regulation, except that, beginning on July 31, 2009 (the  
25 effective date of Public Act 96-112), all references in this  
26 Act to the Director are deemed, in appropriate contexts, to be

1 the Secretary of Financial and Professional Regulation, or his  
2 or her designee, including the Director of the Division of  
3 Banking of the Department of Financial and Professional  
4 Regulation.

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

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

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



1 loan in accordance with the terms of the residential mortgage  
2 loan; and includes loan payment follow-up, delinquency loan  
3 follow-up, loan analysis and any notifications to the borrower  
4 that are necessary to enable the borrower to keep the loan  
5 current and in good standing. "Servicing" includes management  
6 of third-party entities acting on behalf of a residential  
7 mortgage licensee for the collection of delinquent payments  
8 and the use by such third-party entities of said licensee's  
9 servicing records or information, including their use in  
10 foreclosure.

11 (r) "Full service office" shall mean an office, provided  
12 by the licensee and not subleased from the licensee's  
13 employees or independent contractors, and staff in Illinois  
14 reasonably adequate to handle efficiently communications,  
15 questions, and other matters relating to any application for,  
16 or an existing home mortgage secured by residential real  
17 estate situated in Illinois with respect to which the licensee  
18 is brokering, funding originating, purchasing, or servicing.  
19 The management and operation of each full service office must  
20 include observance of good business practices such as proper  
21 signage; adequate, organized, and accurate books and records;  
22 ample phone lines, hours of business, staff training and  
23 supervision, and provision for a mechanism to resolve consumer  
24 inquiries, complaints, and problems. The Commissioner shall  
25 issue regulations with regard to these requirements and shall  
26 include an evaluation of compliance with this Section in his

1 or her periodic examination of each licensee. "Full service  
2 office" does not include a remote location.

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

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

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

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

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

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

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

25 (x) (Blank).

26 (y) "Government-insured mortgage loan" shall mean any

1 mortgage loan made on the security of residential real estate  
2 insured by the Department of Housing and Urban Development or  
3 Farmers Home Loan Administration, or guaranteed by the  
4 Veterans Administration.

5 (z) "Annual audit" shall mean a certified audit of the  
6 licensee's books and records and systems of internal control  
7 performed by a certified public accountant in accordance with  
8 generally accepted accounting principles and generally  
9 accepted auditing standards.

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

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

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

22 (dd) "Affiliate" shall mean:

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

1 (2) any entity:

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

7 (B) a majority of the directors or trustees of  
8 which constitute a majority of the persons holding any  
9 such office with the licensee or any company that  
10 controls the licensee;

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

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

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

1 loans funded or purchased by the licensee in the preceding  
2 calendar year and (ii) the number of conventional residential  
3 mortgage loans funded or purchased by the licensee in the  
4 preceding calendar year.

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

12 (hh) (Blank).

13 (ii) "Confidential supervisory information" means any  
14 report of examination, visitation, or investigation prepared  
15 by the Commissioner under this Act, any report of examination  
16 visitation, or investigation prepared by the state regulatory  
17 authority of another state that examines a licensee, any  
18 document or record prepared or obtained in connection with or  
19 relating to any examination, visitation, or investigation, and  
20 any record prepared or obtained by the Commissioner to the  
21 extent that the record summarizes or contains information  
22 derived from any report, document, or record described in this  
23 subsection. "Confidential supervisory information" does not  
24 include any information or record routinely prepared by a  
25 licensee and maintained in the ordinary course of business or  
26 any information or record that is required to be made publicly

1 available pursuant to State or federal law or rule.

2 (jj) "Mortgage loan originator" means an individual who  
3 for compensation or gain or in the expectation of compensation  
4 or gain:

5 (i) takes a residential mortgage loan application; or

6 (ii) offers or negotiates terms of a residential  
7 mortgage loan.

8 "Mortgage loan originator" includes an individual engaged  
9 in loan modification activities as defined in subsection (yy)  
10 of this Section. A mortgage loan originator engaged in loan  
11 modification activities shall report those activities to the  
12 Department of Financial and Professional Regulation in the  
13 manner provided by the Department; however, the Department  
14 shall not impose a fee for reporting, nor require any  
15 additional qualifications to engage in those activities beyond  
16 those provided pursuant to this Act for mortgage loan  
17 originators.

18 "Mortgage loan originator" does not include an individual  
19 engaged solely as a loan processor or underwriter except as  
20 otherwise provided in subsection (d) of Section 7-1A of this  
21 Act.

22 "Mortgage loan originator" does not include a person or  
23 entity that only performs real estate brokerage activities and  
24 is licensed in accordance with the Real Estate License Act of  
25 2000, unless the person or entity is compensated by a lender, a  
26 mortgage broker, or other mortgage loan originator, or by any

1 agent of that lender, mortgage broker, or other mortgage loan  
2 originator.

3 "Mortgage loan originator" does not include a person or  
4 entity solely involved in extensions of credit relating to  
5 timeshare plans, as that term is defined in Section 101(53D)  
6 of Title 11, United States Code.

7 (kk) "Depository institution" has the same meaning as in  
8 Section 3 of the Federal Deposit Insurance Act, and includes  
9 any credit union.

10 (ll) "Dwelling" means a residential structure or mobile  
11 home which contains one to 4 family housing units, or  
12 individual units of condominiums or cooperatives.

13 (mm) "Immediate family member" means a spouse, child,  
14 sibling, parent, grandparent, or grandchild, and includes  
15 step-parents, step-children, step-siblings, or adoptive  
16 relationships.

17 (nn) "Individual" means a natural person.

18 (oo) "Loan processor or underwriter" means an individual  
19 who performs clerical or support duties as an employee at the  
20 direction of and subject to the supervision and instruction of  
21 a person licensed, or exempt from licensing, under this Act.  
22 "Clerical or support duties" includes subsequent to the  
23 receipt of an application:

24 (i) the receipt, collection, distribution, and  
25 analysis of information common for the processing or  
26 underwriting of a residential mortgage loan; and

1           (ii) communicating with a consumer to obtain the  
2 information necessary for the processing or underwriting  
3 of a loan, to the extent that the communication does not  
4 include offering or negotiating loan rates or terms, or  
5 counseling consumers about residential mortgage loan rates  
6 or terms. An individual engaging solely in loan processor  
7 or underwriter activities shall not represent to the  
8 public, through advertising or other means of  
9 communicating or providing information, including the use  
10 of business cards, stationery, brochures, signs, rate  
11 lists, or other promotional items, that the individual can  
12 or will perform any of the activities of a mortgage loan  
13 originator.

14           (pp) "Nationwide Multistate Licensing System and Registry"  
15 means a mortgage licensing system developed and maintained by  
16 the Conference of State Bank Supervisors and the American  
17 Association of Residential Mortgage Regulators for the  
18 licensing and registration of licensed mortgage loan  
19 originators.

20           (qq) "Nontraditional mortgage product" means any mortgage  
21 product other than a 30-year fixed rate mortgage.

22           (rr) "Person" means a natural person, corporation,  
23 company, limited liability company, partnership, or  
24 association.

25           (ss) "Real estate brokerage activity" means any activity  
26 that involves offering or providing real estate brokerage



1 services to the public, including:

2 (1) acting as a real estate agent or real estate  
3 broker for a buyer, seller, lessor, or lessee of real  
4 property;

5 (2) bringing together parties interested in the sale,  
6 purchase, lease, rental, or exchange of real property;

7 (3) negotiating, on behalf of any party, any portion  
8 of a contract relating to the sale, purchase, lease,  
9 rental, or exchange of real property, other than in  
10 connection with providing financing with respect to any  
11 such transaction;

12 (4) engaging in any activity for which a person  
13 engaged in the activity is required to be registered or  
14 licensed as a real estate agent or real estate broker  
15 under any applicable law; or

16 (5) offering to engage in any activity, or act in any  
17 capacity, described in this subsection (ss).

18 (tt) "Registered mortgage loan originator" means any  
19 individual that:

20 (1) meets the definition of mortgage loan originator  
21 and is an employee of:

22 (A) a depository institution;

23 (B) a subsidiary that is:

24 (i) owned and controlled by a depository  
25 institution; and

26 (ii) regulated by a federal banking agency; or

1 (C) an institution regulated by the Farm Credit  
2 Administration; and

3 (2) is registered with, and maintains a unique  
4 identifier through, the Nationwide Multistate Licensing  
5 System and Registry.

6 (uu) "Unique identifier" means a number or other  
7 identifier assigned by protocols established by the Nationwide  
8 Multistate Licensing System and Registry.

9 (vv) "Residential mortgage license" means a license issued  
10 pursuant to Section 1-3, 2-2, or 2-6 of this Act.

11 (ww) "Mortgage loan originator license" means a license  
12 issued pursuant to Section 7-1A, 7-3, or 7-6 of this Act.

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

17 (yy) "Loan modification" means, for compensation or gain,  
18 either directly or indirectly offering or negotiating on  
19 behalf of a borrower or homeowner to adjust the terms of a  
20 residential mortgage loan in a manner not provided for in the  
21 original or previously modified mortgage loan.

22 (zz) "Short sale facilitation" means, for compensation or  
23 gain, either directly or indirectly offering or negotiating on  
24 behalf of a borrower or homeowner to facilitate the sale of  
25 residential real estate subject to one or more residential  
26 mortgage loans or debts constituting liens on the property in

1 which the proceeds from selling the residential real estate  
2 will fall short of the amount owed and the lien holders are  
3 contacted to agree to release their lien on the residential  
4 real estate and accept less than the full amount owed on the  
5 debt.

6 (aaa) "Bona fide nonprofit organization" means an  
7 organization that is described in Section 501(c)(3) of the  
8 Internal Revenue Code, is exempt from federal income tax under  
9 Section 501(a) of the Internal Revenue Code, does not operate  
10 in a commercial context, and does all of the following:

11 (1) Promotes affordable housing or provides home  
12 ownership education or similar services.

13 (2) Conducts its activities in a manner that serves  
14 public or charitable purposes.

15 (3) Receives funding and revenue and charges fees in a  
16 manner that does not create an incentive for itself or its  
17 employees to act other than in the best interests of its  
18 clients.

19 (4) Compensates its employees in a manner that does  
20 not create an incentive for its employees to act other  
21 than in the best interests of its clients.

22 (5) Provides to, or identifies for, the borrower  
23 residential mortgage loans with terms favorable to the  
24 borrower and comparable to residential mortgage loans and  
25 housing assistance provided under government housing  
26 assistance programs.

1 (bbb) "Remote location" means a location other than a  
2 principal place of business or a full service office at which a  
3 mortgage loan originator of a licensee may conduct business.

4 (ccc) "Shared appreciation agreement" means a writing  
5 evidencing a transaction or any option, future, or any other  
6 derivative between a person and a consumer where the consumer  
7 receives money or any other item of value in exchange for an  
8 interest or future interest in a dwelling or residential real  
9 estate or a future obligation to repay a sum on the occurrence  
10 of an event, such as:

11 (1) the transfer of ownership;

12 (2) a repayment maturity date;

13 (3) the death of the consumer; or

14 (4) any other event contemplated by the writing.

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

18 (Source: P.A. 103-156, eff. 1-1-24.)

19 (205 ILCS 635/5-12.5 new)

20 Sec. 5-12.5. Shared appreciation agreement consumer  
21 counseling and disclosures.

22 (a) Notwithstanding any provision in this Act to the  
23 contrary, prior to taking any legally binding action on a  
24 shared appreciation agreement, the borrower or borrowers shall  
25 be provided counseling, as that term is defined in Section 70

1 of the Residential Real Property Disclosure Act, regardless of  
2 the county in which the property is located. The borrower may  
3 not waive counseling.

4 (b) The Secretary may adopt rules relating to shared  
5 appreciation agreements, including, but not limited to, rules  
6 defining statutory terms; relating to disclosures to help  
7 consumers understand the cost, duration, and fees of the  
8 agreement, as well as potential alternatives; on the limits on  
9 the interest or other fees that may be charged to a borrower;  
10 and relating to counseling under subsection (a).

11 Section 10. The Residential Real Property Disclosure Act  
12 is amended by changing Sections 72 and 73 as follows:

13 (765 ILCS 77/72)

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

19 (1) The borrower's name, address, social security  
20 number or taxpayer identification number, date of birth,  
21 and income and expense information, including total  
22 monthly consumer debt, contained in the mortgage  
23 application.

24 (2) The address and a description of the collateral

1 and information about the loan or loans being applied for  
2 and the loan terms, including the amount of the loan, the  
3 rate and whether the rate is fixed or adjustable,  
4 amortization or loan period terms, and any other material  
5 terms.

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

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

16 (5) (Blank).

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

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

1 property of the borrower.

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

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

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

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

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

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

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

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

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

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

25 (18) Whether the loan is an ARM.

26 (19) Whether the borrower has entered into a shared

1       appreciation agreement as defined in Section 1-4 of the  
2       Residential Mortgage License Act of 1987.

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

10      (Source: P.A. 100-509, eff. 9-15-17.)

11             (765 ILCS 77/73)

12             Sec. 73. Standards for counseling. A borrower or borrowers  
13             subject to this Article shall be recommended for counseling  
14             if, after reviewing the information in the predatory lending  
15             database submitted under Section 72, the Department finds the  
16             borrower or borrowers are all first-time homebuyers or  
17             refinancing a primary residence and the loan is a mortgage  
18             that includes one or more of the following:

19                     (1) the loan permits interest only payments;

20                     (2) the loan may result in negative amortization;

21                     (3) the total points and fees payable by the borrower  
22             at or before closing will exceed 5%;

23                     (4) the loan includes a prepayment penalty; ~~or~~

24                     (5) the loan is an ARM; or ~~or~~

25                     (6) the borrower has entered into a shared



1           appreciation agreement as defined in Section 1-4 of the  
2           Residential Mortgage License Act of 1987.

3           (Source: P.A. 95-691, eff. 6-1-08.)

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