

# SB3495



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3495

Introduced 2/10/2010, by Sen. Pamela J. Althoff

#### SYNOPSIS AS INTRODUCED:

765 ILCS 77/70

Amends the Residential Real Property Disclosure Act. Provides that any contract awarded by the Department of Financial and Professional Regulation under the predatory lending database program must be procured using competitive sealed bidding. Effective immediately.

LRB096 19731 AJO 35147 b

A BILL FOR

1 AN ACT concerning property.

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 Section 70 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 counseling provided by a  
23 counselor employed by a HUD-certified counseling agency to all

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

10 "Counselor" means a counselor employed by a HUD-certified  
11 housing counseling agency.

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

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

25 "Exempt person" means that term as it is defined in  
26 subsections (d)(1) and (d)(1.5) of Section 1-4 of the

1 Residential Mortgage License Act of 1987.

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

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

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

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

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

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

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

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

26 "Points and fees" has the meaning ascribed to that term in

1 Section 10 of the High Risk Home Loan Act.

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

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

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

15 (a-5) A predatory lending database program shall be  
16 established within Cook County. The program shall be  
17 administered in accordance with this Article. The inception  
18 date of the program shall be July 1, 2008. A predatory lending  
19 database program shall be expanded to include Kane, Peoria, and  
20 Will counties. The inception date of the expansion of the  
21 program as it applies to Kane, Peoria, and Will counties shall  
22 be July 1, 2010. Until the inception date, none of the duties,  
23 obligations, contingencies, or consequences of or from the  
24 program shall be imposed. The program shall apply to all  
25 mortgage applications that are governed by this Article and  
26 that are made or taken on or after the inception of the

1 program.

2 (b) The database created under this program shall be  
3 maintained and administered by the Department. The database  
4 shall be designed to allow brokers, originators, counselors,  
5 title insurance companies, and closing agents to submit  
6 information to the database online. The database shall not be  
7 designed to allow those entities to retrieve information from  
8 the database, except as otherwise provided in this Article.  
9 Information submitted by the broker or originator to the  
10 Department may be used to populate the online form submitted by  
11 a counselor, title insurance company, or closing agent. Any  
12 contract awarded by the Department for the design, re-design,  
13 maintenance, or administration of the database must be awarded  
14 using the competitive sealed bidding method of procurement  
15 under the Illinois Procurement Code and may not be awarded  
16 using any other method of procurement permitted by that Code  
17 for a contract exempt from competitive sealed bidding,  
18 including but not limited to a sole source contract, emergency  
19 contract, small purchase contract, or professional or artistic  
20 services contract.

21 (c) Within 10 days after taking a mortgage application, the  
22 broker or originator for any mortgage on residential property  
23 within the program area must submit to the predatory lending  
24 database all of the information required under Section 72 and  
25 any other information required by the Department by rule.  
26 Within 7 days after receipt of the information, the Department

1 shall compare that information to the housing counseling  
2 standards in Section 73 and issue to the borrower and the  
3 broker or originator a determination of whether counseling is  
4 recommended for the borrower. The borrower may not waive  
5 counseling. If at any time after submitting the information  
6 required under Section 72 the broker or originator (i) changes  
7 the terms of the loan or (ii) issues a new commitment to the  
8 borrower, then, within 5 days thereafter, the broker or  
9 originator shall re-submit all of the information required  
10 under Section 72 and, within 4 days after receipt of the  
11 information re-submitted by the broker or originator, the  
12 Department shall compare that information to the housing  
13 counseling standards in Section 73 and shall issue to the  
14 borrower and the broker or originator a new determination of  
15 whether re-counseling is recommended for the borrower based on  
16 the information re-submitted by the broker or originator. The  
17 Department shall require re-counseling if the loan terms have  
18 been modified to meet another counseling standard in Section  
19 73, or if the broker has increased the interest rate by more  
20 than 200 basis points.

21 (d) If the Department recommends counseling for the  
22 borrower under subsection (c), then the Department shall notify  
23 the borrower of all participating HUD-certified counseling  
24 agencies located within the State and direct the borrower to  
25 interview with a counselor associated with one of those  
26 agencies. Within 10 days after receipt of the notice of

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

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



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

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

8           (f) Within 10 days after closing, the title insurance  
9 company or closing agent must submit to the predatory lending  
10 database all of the information required under Section 76 and  
11 any other information required by the Department by 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 title insurance company or closing agent fails to attach  
16 the certificate of compliance, then the mortgage is not  
17 recordable. In addition, if any lis pendens for a residential  
18 mortgage foreclosure is recorded on the property within the  
19 program area, a certificate of service must be simultaneously  
20 recorded that affirms that a copy of the lis pendens was filed  
21 with the Department. If the certificate of service is not  
22 recorded, then the lis pendens pertaining to the residential  
23 mortgage foreclosure in question is not recordable and is of no  
24 force and effect.

25           (h) All information provided to the predatory lending  
26 database under the program is confidential and is not subject

1 to disclosure under the Freedom of Information Act, except as  
2 otherwise provided in this Article. Information or documents  
3 obtained by employees of the Department in the course of  
4 maintaining and administering the predatory lending database  
5 are deemed confidential. Employees are prohibited from making  
6 disclosure of such confidential information or documents. Any  
7 request for production of information from the predatory  
8 lending database, whether by subpoena, notice, or any other  
9 source, shall be referred to the Department of Financial and  
10 Professional Regulation. Any borrower may authorize in writing  
11 the release of database information. The Department may use the  
12 information in the database without the consent of the  
13 borrower: (i) for the purposes of administering and enforcing  
14 the program; (ii) to provide relevant information to a  
15 counselor providing counseling to a borrower under the program;  
16 or (iii) to the appropriate law enforcement agency or the  
17 applicable administrative agency if the database information  
18 demonstrates criminal, fraudulent, or otherwise illegal  
19 activity.

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

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

26 (k) During the existence of the program, the Department

1 shall submit semi-annual reports to the Governor and to the  
2 General Assembly by May 1 and November 1 of each year detailing  
3 its findings regarding the program. The report shall include,  
4 by county, at least the following information for each  
5 reporting period:

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

7 (2) the number of borrowers receiving counseling;

8 (3) the number of loans closed;

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

11 (5) the number of loans requiring counseling where the  
12 mortgage originator changed the loan terms subsequent to  
13 counseling;

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

16 (7) the number of investigations based on information  
17 obtained from the database, including the number of  
18 licensees fined, the number of licenses suspended, and the  
19 number of licenses revoked;

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

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

24 (Source: P.A. 95-691, eff. 6-1-08; 96-328, eff. 8-11-09;  
25 96-856, eff. 12-31-09.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.