ILLINOIS HOMEOWNERSHIP PROTECTION ACT

PUBLIC ACT 095-0691
EFFECTIVE JUNE 1, 2008

I. Home Borrower Protections

With foreclosure rates on track to hit record highs in 2007 and the subprime lending market in significant upheaval, the purpose of the Act is to preserve homeownership in Illinois. The most significant protections of the Act are:

- **Verify Ability to Repay:** Brokers and lenders (RMLA Licensees) must assess a borrower's ability to repay a loan. This includes the ability to repay both the initial monthly payment and the higher monthly payment when adjustable loans reset.

  - The provision also requires RMLA licensees to verify the borrower's income and financial resources by tax returns, payroll receipts, bank records, or other similarly reliable documents. Stated income may be accepted only if there are mitigating factors that minimize the need for direct verification of ability to repay.

- **Broker Duty:** Brokers must act with good faith toward borrowers and in borrowers' best interests. In practice, this means that a broker must provide a borrower the best loan options available for that borrower, within the confines of the broker's existing relationships with lenders and the disclosure of their fees.

- **Limits on Prepayment Penalties**: 1) Lenders and brokers must permit borrowers to make an informed choice by providing them loan options with and without prepayment penalties; 2) lenders and brokers must disclose the discount in rate the borrower will receive in exchange for choosing the prepayment penalty option; 3) if the borrower chooses a prepayment penalty option, the prepayment penalty period shall extend no longer than three years, or the first change date on a variable rate mortgage, whichever is earlier, and be calculated on a graduated basis: the licensee cannot receive an amount more than 3% of the total loan amount during the first year, 2% during the second, and 1% during the third.

- **Notice of Material Change in Terms of Loan**: RMLA licensees must give borrowers notice of any material change in the loan terms or fees at least 24 hours before closing, effectively prohibiting the practice of "bait and switch."

- **Include Taxes and Insurance in Monthly Payment Quote**: RMLA licensees must factor in the cost of taxes and insurance, if any, when quoting the borrower monthly payments on a proposed loan. This prohibits statements that lead borrowers to believe erroneously that a "low monthly payment" includes the costs of taxes and insurance.

- **Copy of Appraisal**: RMLA licensees must give borrowers a copy of any appraisal necessary in underwriting the loan prior to closing, so borrowers can see whether the home has been over-appraised

II. Predatory Lending Data Base Program

This Act includes several changes to the predatory lending database program to collect data regarding certain mortgage products and provide borrowers presented with these products with housing counseling. In response to concerns from realtors, mortgage brokers, community groups, and housing counselors, the Act revises several aspects of the program, including the area to be included in the program, the types of mortgage products that require counseling, the role of a housing counselor, and the length of the program.

The program is Cook County-wide. Whereas the original database program applied to an area of 10 zip codes designated by IDFPR, the program as amended will apply to all of Cook County.

The program is no longer a pilot program. Under the amendment, the program will remain in effect until the General Assembly deems otherwise.

The counseling requirement only applies to first-time borrowers and borrowers refinancing if the mortgage includes certain factors. Under the administrative rules, counseling was required if the borrower had a certain credit score. This bill amends the program to require counseling only if all borrowers are 1) first-time homebuyers or 2) refinancing and the mortgage includes one or more of the following:

1) Permits interest only payments;
2) May result in negative amortization (outstanding balance may increase at any time over the course of the loan because the regular periodic payment doesn't cover the full amount of interest due);
3) Total points and fees payable to the borrower at or before closing will exceed 5%;
4) Includes a pre-payment penalty; or
5) Loan is an adjustable rate, closed-end mortgage transaction that allows for the interest rate to adjust during the first 3 years of the loan term.

Prohibits a counselor from suggesting that a borrower contact a specific mortgage lender, provider, or broker. This provision ensures that counselors are not steering business toward specific brokers. All of the counselors are employees of HUD-certified agencies, and under HUD rules a counselor can suggest that a borrower seek another opinion or get a second quote. This provision clarifies that a counselor may suggest that a borrower get another opinion, but cannot provide the name of a specific broker/lender. A violation is considered a violation of the Illinois Consumer Fraud and Deceptive Practices Act.

Requires the Department to submit semi-annual reports to the Governor and the General Assembly detailing the findings of the program. The report must include specific data, such as the number of loans registered, number of borrowers receiving counseling, the number of loans closed, number of instances where the loan originator switched the terms of the loan after counseling.

III. Expansion of Home Equity Assurance Program

Under current law, Illinois voters have the option of establishing a Home Equity Assurance Program in their communities. The purpose of the program is to guarantee that the property value of each homeowner member of the program shall not fall below its fair market value established at the time the member registers in the program. The Home Equity Assurance Program is funded through local property taxes in the community. This bill allows a Commission of a local Home Equity Assurance Program, upon a successful referendum, to reserve a portion of its funds to create a Foreclosure Prevention loan fund for members who are at risk of losing their homes in foreclosure. The bill authorizes each Home Equity Assurance Program to use up to $3 million of its funds for this purpose.