

Regulatory Guidance for Addressing the Mortgage Crisis

Recent Developments in Illinois

State Attorneys General
Foreclosure Prevention Task
Force

Illinois Mortgage Rescue Fraud Prevention Act

- What is Foreclosure Rescue Fraud?
 - Foreclosure rescuers
 - Convince property owners in foreclosure to sign over the deed to their property.
 - Many homeowners don't realize they are transferring title to their home and don't receive financial benefit from the "sale."
 - The rescuer strips the equity in the home from the homeowner in this transaction.
 - Homeowner usually is evicted or unable to repurchase home.

Illinois Mortgage Rescue Fraud Prevention Act

➤ **Foreclosure Consultants**

- Offer to help homeowners in foreclosure or distress by promising to “buy them time” or “save their home” by negotiating with the homeowners’ lenders.
- Charge a fee for this service, usually around \$1,000-\$2,500.
- The consultant often does nothing or virtually nothing in return for this fee.

Illinois Mortgage Rescue Fraud Prevention Act

➤ **What the Act does:**

- Make the deal clear to homebuyers and give them a chance to back out of the deal.
- Prior to the sale, the rescuer must determine that the homeowner has the ability to make rental payments and to buy back the home.
- The rescuer may buy the property for less than 82% fair market value, as long as the homeowner actually repurchases the home as promised.
- If the homeowner is ultimately unable to repurchase the home, the rescuer must pay the homeowner 82% of the home's FMV.

Illinois Mortgage Rescue Fraud Prevention Act

- Foreclosure consultants must provide homeowners with a written contract listing all services that will be provided.
- Consultants cannot receive any compensation until all services have been performed.

Mortgage Rescue Fraud Prevention Act

➤ **Implementation**

- Act became effective on January 1, 2007.
- Our office continues to receive complaints about foreclosure rescue and consultant fraud. We have seen violations of the Act.

Illinois Homeownership Protection Act

➤ Lending Provisions

- Applies to RMLA licensees (brokers and non-depository lenders).
- Verification of ability to repay
 - For adjustable rate loans, must verify ability to repay loan if it adjusts up (index at time of origination plus margin)
 - Verification must be by tax returns, payroll receipts, bank records or other reasonably reliable methods.

Illinois Homeownership Protection Act

- Broker duty: Creates an agency relationship between broker and borrower.
 - Broker must act in the borrower's best interests. Broker must look for best deal for the borrower within the confines of the broker's existing relationships with lenders.
 - Brokers must disclose any compensation/remuneration they receive and any material facts which might affect the borrower's rights and interests.

Illinois Homeownership Protection Act

➤ **Limits on Prepayment Penalties**

- Before including a prepayment penalty in the loan, lenders/brokers must provide loan option with and without a prepayment penalty.
- Prepayment penalties cannot be longer than 3 years, or the fixed rate term of the loan, whichever is shorter.
- The penalty that can be collected cannot be more than 3% of loan amount in the 1st year, 2% in the 2nd year and 1% in the 3rd year.
- Cannot collect prepayment penalties upon the sale or destruction of the property.
- Limits apply to all residential mortgage loans sold in Illinois.

Illinois Homeownership Protection Act

- Notice of Material Change in Terms of Loan
 - At least 24 hours prior to closing, brokers/lenders must provide notice of:
 - Change in type of loan being offered
 - Change in term of loan
 - Increase in interest rate of more than 0.15%
 - Increase in monthly payment of more than 5%
 - Change re: requirement or amount of escrow for taxes and insurance
 - Change re: requirement or payment of PMI

Illinois Homeownership Protection Act

- Must Include Taxes and Insurance in Monthly Payment Quote
- Must Provide Borrower a Copy of Any Appraisal

Illinois Homeownership Protection Act

➤ **Predatory lending Database Program**

- Cook County application

- Requires loan review by counselors if:

 - First-time homebuyer, or

 - Refinance, and loan contains:

 - Interest only

 - Negative amortization

 - Points and fees exceed 5%

 - Prepayment penalty; or

 - Loan adjusts during first 3 years.

Illinois Homeownership Preservation Summit