

West's Smith-Hurd Illinois Compiled Statutes Annotated [Currentness](#)

Chapter 765. Property

Real Property

▣ [Act 77. Residential Real Property Disclosure Act \(Refs & Annos\)](#)

→ [Article 1. Short Title](#)

→ **77/1. Short title**

§ 1. Short title. This Act may be cited as the Residential Real Property Disclosure Act.

77/5. Definitions

§ 5. Definitions. As used in this Act, unless the context otherwise requires the following terms have the meaning given in this Section.

“Residential real property” means real property improved with not less than one nor more than 4 residential dwelling units; units in residential cooperatives; or, condominium units, including the limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit.

“Seller” means every person or entity who is an owner, beneficiary of a trust, contract purchaser or lessee of a ground lease, who has an interest (legal or equitable) in residential real property. However, “seller” shall not include any person who has both (i) never occupied the residential real property and (ii) never had the management responsibility for the residential real property nor delegated such responsibility for the residential real property to another person or entity.

“Prospective buyer” means any person or entity negotiating or offering to become an owner or lessee of residential real property by means of a transfer for value to which this Act applies.

77/10. Applicability

§ 10. Except as provided in Section 15, this Act applies to any transfer by sale, exchange, installment land sale contract, assignment of beneficial interest, lease with an option to purchase, ground lease, or assignment of ground lease of residential real property.

77/15. Applicability; exceptions

§ 15. The provisions of this Act do not apply to the following:

- (1) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers between spouses resulting from a judgment of dissolution of marriage or legal separation, transfers pursuant to an order of possession, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
- (2) Transfers from a mortgagor to a mortgagee by deed in lieu of foreclosure or consent judgment, transfer by judicial deed issued pursuant to a foreclosure sale to the successful bidder or the assignee of a certificate of sale, transfer by a collateral assignment of a beneficial interest of a land trust, or a transfer by a mortgagee or a successor in interest to the mortgagee's secured position or a beneficiary under a deed in trust who has acquired the real property by deed in lieu of foreclosure, consent judgment or judicial deed issued pursuant to a foreclosure sale.
- (3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (4) Transfers from one co-owner to one or more other co-owners.
- (5) Transfers pursuant to testate or intestate succession.
- (6) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the sellers.
- (7) Transfers from an entity that has taken title to residential real property from a seller for the purpose of assisting in the relocation of the seller, so long as the entity makes available to all prospective buyers a copy of the disclosure form furnished to the entity by the seller.
- (8) Transfers to or from any governmental entity.
- (9) Transfers of newly constructed residential real property that has not been occupied.

77/20. Disclosure report; completion; time of delivery

§ 20. A seller of residential real property shall complete all applicable items in the disclosure document described in Section 35 of this Act. The seller shall deliver to the prospective buyer the written disclosure statement required by this Act before the signing of a written agreement by the seller and prospective buyer that would, subject to the satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property.

77/25. Liability of seller

§ 25. Liability of seller.

(a) The seller is not liable for any error, inaccuracy, or omission of any information delivered pursuant to this Act if (i) the seller had no knowledge of the error, inaccuracy, or omission, (ii) the error, inaccuracy, or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected, or (iii) the error, inaccuracy, or omission was based on information provided by a public agency or by a licensed engineer, land surveyor, structural pest control operator, or by a contractor about matters within the scope of the contractor's occupation and the seller had no knowledge of the error, inaccuracy, or omission.

(b) The seller shall disclose material defects of which the seller has actual knowledge.

(c) The seller is not obligated by this Act to make any specific investigation or inquiry in an effort to complete the disclosure statement.

77/30. Disclosure supplement

§ 30. Disclosure supplement. If, prior to closing, any seller has actual knowledge of an error, inaccuracy, or omission in any prior disclosure document after delivery of that disclosure document to a prospective buyer, that seller shall supplement the prior disclosure document with a written supplemental disclosure.

77/35. Disclosure report form

§ 35. Disclosure report form. The disclosures required of a seller by this Act shall be made in the following form:

RESIDENTIAL REAL PROPERTY DISCLOSURE REPORT

NOTICE: THE PURPOSE OF THIS REPORT IS TO PROVIDE PROSPECTIVE BUYERS WITH INFORMATION ABOUT MATERIAL DEFECTS IN THE RESIDENTIAL REAL PROPERTY. THIS REPORT DOES NOT LIMIT THE PARTIES' RIGHT TO CONTRACT FOR THE SALE OF RESIDENTIAL REAL PROPERTY IN "AS IS" CONDITION. UNDER COMMON LAW, SELLERS WHO DISCLOSE MATERIAL DEFECTS MAY BE UNDER A CONTINUING OBLIGATION TO ADVISE THE PROSPECTIVE BUYERS ABOUT THE CONDITION OF THE RESIDENTIAL REAL PROPERTY EVEN AFTER THE REPORT IS DELIVERED TO THE PROSPECTIVE BUYER. COMPLETION OF THIS REPORT BY THE SELLER CREATES LEGAL OBLIGATIONS ON THE SELLER; THEREFORE THE SELLER MAY WISH TO CONSULT AN ATTORNEY PRIOR TO COMPLETION OF THIS REPORT.

Property Address:

City, State & Zip Code:

Seller's Name:

This Report is a disclosure of certain conditions of the residential real property listed above in compliance with the Residential Real Property Disclosure Act. [FN1] This information is provided as of ...(month) ...(day) ...(year), and does not reflect any changes made or occurring after that date or information that becomes known to the seller after that date. The disclosures herein shall not be deemed warranties of any kind by the seller or any person representing any party in this transaction.

In this form, “am aware” means to have actual notice or actual knowledge without any specific investigation or inquiry. In this form, a “material defect” means a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants of the residential real property unless the seller reasonably believes that the condition has been corrected.

The seller discloses the following information with the knowledge that even though the statements herein are not deemed to be warranties, prospective buyers may choose to rely on this information in deciding whether or not and on what terms to purchase the residential real property.

The seller represents that to the best of his or her actual knowledge, the following statements have been accurately noted as “yes” (correct), “no” (incorrect), or “not applicable” to the property being sold. If the seller indicates that the response to any statement, except number 1, is yes or not applicable, the seller shall provide an explanation, in the additional information area of this form.

YES	NO	N/A
		1. Seller has occupied the property within the last 12 months. (No explanation is needed.)
		2. I am aware of flooding or recurring leakage problems in the crawl space or basement.
		3. I am aware that the property is located in a flood plain or that I currently have flood hazard insurance on the property.
		4. I am aware of material defects in the basement or foundation (including cracks and bulges).
		5. I am aware of leaks or material defects in the roof, ceilings, or chimney.
		6. I am aware of material defects in the walls or floors.
		7. I am aware of material defects in the electrical system.
		8. I am aware of material defects in the plumbing system (includes such things as water heater, sump pump, water treatment system, sprinkler system, and swimming pool).
		9. I am aware of material defects in the well or well equipment.

- 10. I am aware of unsafe conditions in the drinking water.
- 11. I am aware of material defects in the heating, air conditioning, or ventilating systems.
- 12. I am aware of material defects in the fireplace or woodburning stove.
- 13. I am aware of material defects in the septic, sanitary sewer, or other disposal system.
- 14. I am aware of unsafe concentrations of radon on the premises.
- 15. I am aware of unsafe concentrations of or unsafe conditions relating to asbestos on the premises.
- 16. I am aware of unsafe concentrations of or unsafe conditions relating to lead paint, lead water pipes, lead plumbing pipes or lead in the soil on the premises.
- 17. I am aware of mine subsidence, underground pits, settlement, sliding, upheaval, or other earth stability defects on the premises.
- 18. I am aware of current infestations of termites or other wood boring insects.
- 19. I am aware of a structural defect caused by previous infestations of termites or other wood boring insects.
- 20. I am aware of underground fuel storage tanks on the property.
- 21. I am aware of boundary or lot line disputes.
- 22. I have received notice of violation of local, state or federal laws or regulations relating to this property, which violation has not been corrected.

Note: These disclosures are not intended to cover the common elements of a condominium, but only the actual residential real property including limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit.

Note: These disclosures are intended to reflect the current condition of the premises and do not include previous problems, if any, that the seller reasonably believes have been corrected.

If any of the above are marked “not applicable” or “yes”, please explain here or use additional pages, if necessary:

Check here if additional pages used:

Seller certifies that seller has prepared this statement and certifies that the information provided is based on the actual notice or actual knowledge of the seller without any specific investigation or inquiry on the part of the seller. The seller hereby authorizes any person representing any principal in this transaction to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

Seller:	Date:
Seller:	Date:

THE PROSPECTIVE BUYER IS AWARE THAT THE PARTIES MAY CHOOSE TO NEGOTIATE AN AGREE-

MENT FOR THE SALE OF THE PROPERTY SUBJECT TO ANY OR ALL MATERIAL DEFECTS DISCLOSED IN THIS REPORT (“AS IS”). THIS DISCLOSURE IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PROSPECTIVE BUYER OR SELLER MAY WISH TO OBTAIN OR NEGOTIATE. THE FACT THAT THE SELLER IS NOT AWARE OF A PARTICULAR CONDITION OR PROBLEM IS NO GUARANTEE THAT IT DOES NOT EXIST. THE PROSPECTIVE BUYER IS AWARE THAT HE MAY REQUEST AN INSPECTION OF THE PREMISES PERFORMED BY A QUALIFIED PROFESSIONAL.

Prospective Buyer:	Date:	Time:
Prospective Buyer: [FN1] 765 ILCS 77/1 et seq.	Date:	Time:

77/40. Material defect

§ 40. Material defect. If a material defect is disclosed in the Residential Real Property Disclosure Report, after acceptance by the prospective buyer of an offer or counter-offer made by a seller or after the execution of an offer made by a prospective buyer that is accepted by the seller for the conveyance of the residential real property, then the prospective buyer may, within 3 business days after receipt of that report by the prospective buyer, terminate the contract or other agreement without any liability or recourse except for the return to prospective buyer of all earnest money deposits or down payments paid by prospective buyer in the transaction. If a material defect is disclosed in a supplement to this disclosure document, the prospective buyer shall not have a right to terminate unless the material defect results from an error, inaccuracy, or omission of which the seller had actual knowledge at the time the prior disclosure document was completed and signed by the seller. The right to terminate the contract, however, shall no longer exist after the conveyance of the residential real property. For purposes of this Act the termination shall be deemed to be made when written notice of termination is personally delivered to at least one of the sellers identified in the contract or other agreement or when deposited, certified or registered mail, with the United States Postal Service, addressed to one of the sellers at the address indicated in the contract or agreement, or, if there is not an address contained therein, then at the address indicated for the residential real property on the report.

77/45. Effect of act on other statutes or common law

§ 45. This Act is not intended to limit or modify any obligation to disclose created by any other statute or that may exist in common law in order to avoid fraud, misrepresentation, or deceit in the transaction.

77/50. Disclosure report; method of delivery

§ 50. Delivery of the Residential Real Property Disclosure Report provided by this Act shall be by:

(1) personal or facsimile delivery to the prospective buyer;

(2) depositing the report with the United States Postal Service, postage prepaid, first class mail, addressed to the prospective buyer at the address provided by the prospective buyer or indicated on the contract or other agreement; or

(3) depositing the report with an alternative delivery service such as Federal Express, UPS, or Airborne, delivery charges prepaid, addressed to the prospective buyer at the address provided by the prospective buyer or indicated on the contract or other agreement.

For purposes of this Act, delivery to one prospective buyer is deemed delivery to all prospective buyers. Delivery to an authorized individual acting on behalf of a prospective buyer constitutes delivery to all prospective buyers. Delivery of the report is effective upon receipt by the prospective buyer. Receipt may be acknowledged on the report, acknowledged in an agreement for the conveyance of the residential real property, or shown in any other verifiable manner.

77/55. Violations and damages

§ 55. Violations and damages. If the seller fails or refuses to provide the disclosure document prior to the conveyance of the residential real property, the buyer shall have the right to terminate the contract. A person who knowingly violates or fails to perform any duty prescribed by any provision of this Act or who discloses any information on the Residential Real Property Disclosure Report that he knows to be false shall be liable in the amount of actual damages and court costs, and the court may award reasonable attorney fees incurred by the prevailing party.

77/60. Limitation of action

§ 60. No action for violation of this Act may be commenced later than one year from the earlier of the date of possession, date of occupancy, or date of recording of an instrument of conveyance of the residential real property.

77/65. Disclosure report form; contents; copy of act

§ 65. A copy of this Act, excluding Section 35, must be printed on or as a part of the Residential Real Property Disclosure Report form.

77/70. Predatory lending database pilot program

§ 70. Predatory lending database program.

(a) As used in this Article:

“Adjustable rate mortgage” or “ARM” means a closed-end mortgage transaction that allows adjustments of the loan in-

terest rate during the first 3 years of the loan term.

“Borrower” means a person seeking a mortgage loan.

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

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

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

“Counselor” means a counselor employed by a HUD-certified housing counseling agency.

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

“Department” means the Department of Financial and Professional Regulation.

“Exempt person” means that term as it is defined in subsections (d)(1) and (d)(1.5) of Section 1-4 of the Residential Mortgage License Act of 1987.

“First-time homebuyer” means a borrower who has not held an ownership interest in residential property.

“HUD-certified counseling” or “counseling” means counseling given to a borrower by a counselor employed by a HUD-certified housing counseling agency.

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

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

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

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

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

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

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

“Prepayment penalty” means a charge imposed by a lender under a mortgage note or rider when the loan is paid before the expiration of the term of the loan.

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

“Title insurance company” means any domestic company organized under the laws of this State for the purpose of conducting the business of guaranteeing or insuring titles to real estate and any title insurance company organized under the laws of another State, the District of Columbia, or a foreign government and authorized to transact the business of guaranteeing or insuring titles to real estate in this State.

(a-5) A predatory lending database program shall be established within Cook County. The program shall be administered in accordance with this Article. The inception date of the program shall be July 1, 2008. Until the inception date, none of the duties, obligations, contingencies, or consequences of or from the program shall be imposed. The program shall apply to all mortgage applications that are governed by this Article and that are made or taken on or after the inception of the program.

(b) The database created under this program shall be maintained and administered by the Department. The database

shall be designed to allow brokers, originators, counselors, title insurance companies, and closing agents to submit information to the database online. The database shall not be designed to allow those entities to retrieve information from the database, except as otherwise provided in this Article. Information submitted by the broker or originator to the Department may be used to populate the online form submitted by a counselor, title insurance company, or closing agent.

(c) Within 10 days after taking a mortgage application, the broker or originator for any mortgage on residential property within the program area must submit to the predatory lending database all of the information required under Section 72 and any other information required by the Department by rule. Within 7 days after receipt of the information, the Department shall compare that information to the housing counseling standards in Section 73 and issue to the borrower and the broker or originator a determination of whether counseling is recommended for the borrower. The borrower may not waive counseling. If at any time after submitting the information required under Section 72 the broker or originator (i) changes the terms of the loan or (ii) issues a new commitment to the borrower, then, within 5 days thereafter, the broker or originator shall re-submit all of the information required under Section 72 and, within 4 days after receipt of the information re-submitted by the broker or originator, the Department shall compare that information to the housing counseling standards in Section 73 and shall issue to the borrower and the broker or originator a new determination of whether re-counseling is recommended for the borrower based on the information re-submitted by the broker or originator. The Department shall require re-counseling if the loan terms have been modified to meet another counseling standard in Section 73, or if the broker has increased the interest rate by more than 200 basis points.

(d) If the Department recommends counseling for the borrower under subsection (c), then the Department shall notify the borrower of all participating HUD-certified counseling agencies located within the State and direct the borrower to interview with a counselor associated with one of those agencies. Within 10 days after receipt of the notice of HUD-certified counseling agencies, the borrower shall select one of those agencies and shall engage in an interview with a counselor associated with that agency. Within 7 days after interviewing the borrower, the counselor must submit to the predatory lending database all of the information required under Section 74 and any other information required by the Department by rule. Reasonable and customary costs not to exceed \$300 associated with counseling provided under the program shall be paid by the broker or originator. The Department shall annually calculate to the nearest dollar an adjusted rate for inflation. A counselor shall not recommend or suggest that a borrower contact any specific mortgage origination company, financial institution, or entity that deals in mortgage finance to obtain a loan, another quote, or for any other reason related to the specific mortgage transaction; however, a counselor may suggest that the borrower seek an opinion or a quote from another mortgage origination company, financial institution, or entity that deals in mortgage finance. A counselor or housing counseling agency that in good faith provides counseling shall not be liable to a broker or originator or borrower for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling.

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

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

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

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

(g) The title insurance company or closing agent shall attach to the mortgage a certificate of compliance with the requirements of this Article, as generated by the database. If the title insurance company or closing agent fails to attach the certificate of compliance, then the mortgage is not recordable. In addition, if any lis pendens for a residential mortgage foreclosure is recorded on the property within the program area, a certificate of service must be simultaneously recorded that affirms that a copy of the lis pendens was filed with the Department. If the certificate of service is not recorded, then the lis pendens pertaining to the residential mortgage foreclosure in question is not recordable and is of no force and effect.

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

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

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

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

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

- (2) the number of borrowers receiving counseling;
- (3) the number of loans closed;
- (4) the number of loans requiring counseling for each of the standards set forth in Section 73;
- (5) the number of loans requiring counseling where the mortgage originator changed the loan terms subsequent to counseling.

77/72. Originator; required information

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

- (1) The borrower's name, address, social security number or taxpayer identification number, date of birth, and income and expense information contained in the mortgage application.
- (2) The address, permanent index number, and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.
- (3) The borrower's credit score at the time of application.
- (4) Information about the originator and the company the originator works for, including the originator's license number and address, fees being charged, whether the fees are being charged as points up front, the yield spread premium payable outside closing, and other charges made or remuneration required by the broker or originator or its affiliates or the broker's or originator's employer or its affiliates for the mortgage loans.
- (5) Information about affiliated or third party service providers, including the names and addresses of appraisers, title insurance companies, closing agents, attorneys, and realtors who are involved with the transaction and the broker or originator and any moneys received from the broker or originator in connection with the transaction.
- (6) All information indicated on the Good Faith Estimate and Truth in Lending statement disclosures given to the borrower by the broker or originator.
- (7) Annual real estate taxes for the property, together with any assessments payable in connection with the property to

be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower.

- (8) Information concerning how the broker or originator obtained the client and the name of its referral source, if any.
- (9) Information concerning the notices provided by the broker or originator to the borrower as required by law and the date those notices were given.
- (10) Information concerning whether a sale and leaseback is contemplated and the names of the lessor and lessee, seller, and purchaser.
- (11) Any and all financing by the borrower for the subject property within 12 months prior to the date of application.
- (12) Loan information, including interest rate, term, purchase price, down payment, and closing costs.
- (13) Whether the buyer is a first-time homebuyer or refinancing a primary residence.
- (14) Whether the loan permits interest only payments.
- (15) Whether the loan may result in negative amortization.
- (16) Whether the total points and fees payable by the borrowers at or before closing will exceed 5%.
- (17) Whether the loan includes a prepayment penalty, and, if so, the terms of the penalty.
- (18) Whether the loan is an ARM.

77/73. Standards for counseling

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

- (1) the loan permits interest only payments;

- (2) the loan may result in negative amortization;
- (3) the total points and fees payable by the borrower at or before closing will exceed 5%;
- (4) the loan includes a prepayment penalty; or
- (5) the loan is an ARM.

77/74. Counselor; required information

§ 74. Counselor; required information. As part of the predatory lending database program, a counselor must submit all of the following information for inclusion in the predatory lending database:

- (1) The information called for in items (1), (6), (9), (11), (12), (13), (14), (15), (16), (17), and (18) of Section 72.
- (2) Any information from the borrower that confirms or contradicts the information called for under item (1) of this Section.
- (3) The name of the counselor and address of the HUD-certified [\[FN1\]](#) housing counseling agency that employs the counselor.
- (4) Information pertaining to the borrower's monthly expenses that assists the counselor in determining whether the borrower can afford the loans or loans for which the borrower is applying.
- (5) A list of the disclosures furnished to the borrower, as seen and reviewed by the counselor, and a comparison of that list to all disclosures required by law.
- (6) Whether the borrower provided tax returns to the broker or originator or to the counselor, and, if so, who prepared the tax returns.
- (7) A statement of the recommendations of the counselor that indicates the counselor's response to each of the following statements:
 - (A) The loan should not be approved due to indicia of fraud.
 - (B) The loan should be approved; no material problems noted.

- (C) The borrower cannot afford the loan.
- (D) The borrower does not understand the transaction.
- (E) The borrower does not understand the costs associated with the transaction.
- (F) The borrower's monthly income and expenses have been reviewed and disclosed.
- (G) The rate of the loan is above market rate.
- (H) The borrower should seek a competitive bid from another broker or originator.
- (I) There are discrepancies between the borrower's verbal understanding and the originator's completed form.
- (J) The borrower is precipitously close to not being able to afford the loan.
- (K) The borrower understands the true cost of debt consolidation and the need for credit card discipline.
- (L) The information that the borrower provided the originator has been amended by the originator.

[FN1] So in original; probably should read “certified”.

77/76. Title insurance company or closing agent; required information

§ 76. Title insurance company or closing agent; required information. As part of the predatory lending database pilot program, a title insurance company or closing agent must submit all of the following information for inclusion in the predatory lending database:

- (1) The borrower's name, address, social security number or taxpayer identification number, date of birth, and income and expense information contained in the mortgage application.
- (2) The address, permanent index number, and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.
- (3) Annual real estate taxes for the property, together with any assessments payable in connection with the property to

be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower as well as any required escrows and the amounts paid monthly for those escrows.

(4) All itemizations and descriptions set forth in the RESPA settlement statement including items to be disbursed, payable outside closing "POC" items noted on the statement, and a list of payees and the amounts of their checks.

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

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

(7) The date of closing, a detailed list of all notices provided to the borrower at closing and the date of those notices, and all information indicated on the Truth in Lending statement and Good Faith Estimate disclosures.

77/78. Exemption

§ 78. Exemption. Borrowers applying for reverse mortgage financing of residential real estate including under programs regulated by the Federal Housing Authority (FHA) that require HUD-certified counseling are exempt from the program and may submit a HUD counseling certificate to comply with the program.

77/80. Predatory Lending Database Program Fund

§ 80. Predatory Lending Database Program Fund. The Predatory Lending Database Program Fund is created as a special fund in the State treasury. Subject to appropriation, moneys in the Fund shall be appropriated to the Illinois Housing Development Authority for the purpose of making grants for HUD-certified counseling agencies participating in the Predatory Lending Database Program to assist with implementation and development of the Predatory Lending Database Program.

77/99. Effective date

§ 99. This Act takes effect on October 1, 1994.

END OF DOCUMENT