



## Putting the chill on lenders

*New law may have unintended effects*

By: Frank Pellegrini

Imagine that the Illinois General Assembly passed a bill, dutifully signed into law by the governor, that was intended to help protect low-income families from predatory lending practices. The law was approved in good faith by men and women in Springfield who wanted to make a difference in the lives of the less fortunate in Cook County. Now imagine that that new law had the net effect of chilling mortgage lending in the very low-income neighborhoods it was intended to bolster.

HB 4050, which became effective on Jan. 1, may be just such a law. The bill had the admirable intention of protecting low-income families as they strive to own their own homes. Unfortunately, the bill has unintended consequences that many of us in the real estate industry fear will slow down or even stall mortgage lending in low income areas of Cook County (or perhaps all of Cook County).

In a synopsis of its intentions published by the General Assembly, the law, "Establishes a predatory lending database pilot program within certain zip code areas. Requires the Department of Financial and Professional Regulation to maintain and administer a predatory lending database based on information submitted by any broker, originator, credit counselor and title insurance company or closing agent involved in a mortgage transaction on residential real property within the pilot program area. Sets forth required information to be submitted by those entities to the database and authorizes the Department to require additional information by rule.

Based on information submitted to the Department by the originator require the Department to make a determination as to whether credit counseling is recommended to the borrower."

That's a lot of words, but in essence the General Assembly set the bar so high in its quest to forestall predatory lending that mortgage lenders are thinking twice about whether to loan mortgage money in Cook County at all. The main issue stems from the law's provision calling for disclosure of private information about potential home buyers (social security numbers, credit histories and other information).

That information is used to determine whether the buyer will be required to undergo credit counseling (paid for by the lender).

Once credit counseling is completed, title insurers are required to file for a Certificate of Compliance affirming that the borrower has undergone the counseling. The title insurer would then record that certificate with the recording of the mortgage. If that certificate is not included when the mortgage is recorded, or if it contains errors (inadvertent or otherwise), the lien of the mortgage may be impaired. That could impede foreclosure if a buyer does not fulfill the loan obligations. As a result, the lender may be unwilling to lend and title companies unwilling to insure.

There are many issues here (including the fact that the Department of Financial and Professional Regulation is not yet prepared to accept the information that title insurers are expected to provide), but the main problem here is twofold: 1) Disclosing private information about borrowers may violate federal law

(Graham-Leach-Bliley and/or Sarbanes-Oxley); and, 2) Borrowers can still take out a loan even if the credit counselor recommends against it. In such cases, title companies will likely refuse to insure the loan because of potential liability problems. In turn, lenders will refuse to make loans because uninsured loans are a lending dead end. Lenders may even opt to not originate mortgage loans at all in Cook County because of ambiguities caused by this law.

What can be done at this point? The General Assembly can, of course, revise the law and the Illinois Land Title Association and other Illinois real estate organizations will be working hard this spring to try to convince our state representatives to do just that. I urge you to join in that effort through your professional organizations and by contacting your state representative and senator directly. In the meantime, legal action seeking to clarify the effective date and application of this new law are likely forthcoming.

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