



## Good intentions gone awry?

*New predatory lending act could set dangerous precedent*

On September 1, a potentially troublesome residential mortgage-lending experiment sanctioned by the State of Illinois got underway in a substantial portion of Cook County. On that date, The Predatory Lending Act of 2005 became active within the confines of 10 zip codes in Cook County, and the future of residential mortgage lending in those zip codes may be imperiled. (Zip codes include 60620, 60621, 60623, 60628, 60629, 60632, 60636, 60638, 60643 and 60652).

The Predatory Lending Act was passed by the state legislature and signed into law by the governor with the noblest of intentions — to aggressively fight predatory mortgage lending practices that prey especially on the poorer members of our society.

“Predatory lending” is a broad term, covering many unsavory lending practices. Generally it is a practice of using a borrower’s ignorance against him/her/them for profit. Lower-income families, immigrants and the elderly are particularly susceptible. Such practices include deceptive marketing and sales practices, improper/incomplete disclosures, concealment of loan terms and falsifying documentation to gain otherwise unattainable loan approvals. It is generally agreed among real estate and lending experts that in areas where unsavory lending practices are more common the rate of foreclosure is higher.

Clearly, combating predatory lending is an important regulatory role of government. Unfortunately, in formulating a program to help fight dubious lending practices, the state legislature, in our view, may have inadvertently made the situation worse. While members of the real estate industry applaud the state government for taking the initiative in the fight against predatory lending, the state has chosen to fight the practice with an ill-thought-out program that may actually curb legitimate mortgage lending practices that the communities within the affected zip codes need.

In essence, the program requires mortgage brokers and lenders to enter into a centralized database loan application information regarding every potential borrower who applies with them for a residential mortgage loan within the designated zip codes. The state Department of Financial Services will then determine if a mortgage applicant falls below certain thresholds established by the state. If so, that applicant must attend mortgage counseling before proceeding with the loan process. The mortgage lender

would pay for that counseling. The applicant can decide to proceed with a loan application even if counseling shows that that is not a wise idea. Sounds like a decent idea, right?

Although the end purpose is certainly laudatory, the law as it stands raises many questions, including:

Will the complexities of the law and additional costs result in a “cooling” of lender interested in the affected areas? If so, is this not a disservice to homeowners and borrowers in the affected areas? What would then be the impact on property values in the affected areas?

Although counseling may be mandatory, the borrower will still be free to proceed with the transaction. Will this truly cure the problem or just result in added cleverness on the part of unethical originators?

Will errors and omissions on certificates, which could result in unenforceable liens, create opportunities for unscrupulous borrowers to shirk their financial obligations?

These and many other questions and concerns are not addressed by this law. I believe that the State of Illinois entered into this program in a haphazard manner without thinking through the potential pitfalls, and that the citizens of Cook County are ill-served by this law. When the new legislature convenes early next year, the state should take another look at this program (especially with several months operational experience under our belts at that time) and seriously consider amending the law to make it work better for the citizens of Cook County.

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