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## Predatory Lending Database Pilot Program Signed Into Law

On July 21, 2005, Governor Rod R. Blagojevich signed Illinois House Bill 4050 into law, greatly expanding government regulation of mortgage loans originated in Cook County, Illinois. The new law, which amends the Residential Real Property Disclosure Act, creates a government pilot program under which every mortgage loan application completed in the pilot program area (yet to be determined) will be submitted to an online database that will determine whether the applicant is in need of credit counseling, and if so, the applicant will be required to meet with a credit counselor, at the expense of the mortgage broker or originator who accepted the application, before proceeding with the loan transaction.

The purpose of the law is to combat predatory lending practices in areas afflicted by high rates of mortgage foreclosures by counseling and educating consumers. However, mortgage industry groups such as the Illinois Mortgage Bankers Association argue that the new law imposes an undue burden on loan brokers and originators and unfairly infringes on the civil liberties of consumers. In an open letter to the governor dated July 29, 2005, the IMBA argues that the new law will have negative consequences that outweigh its potential benefits, and that recently enacted anti-predatory lending laws should be afforded more time to take hold before proceeding with this "extreme measure." The governor's press release announcing the new law notes that home foreclosures in Chicago fell by ten percent from 2003 to 2004, which suggests to some that the new law is not needed. Opponents argue that the new law unfairly applies only to mortgage brokers and originators regularly engaged in the business of selling settlement services, while exempting most banks and other direct lenders. Brokers and originators argue that the new law will create an unfair competitive landscape in the pilot program area that will require them to stop doing business there, which will

decrease competition and increase fees associated with mortgage loan transactions, ultimately harming consumers.

The new law directs the Department of Financial and Professional Regulation (the Department) to establish and administer a secure predatory lending database designed to allow mortgage brokers, originators, credit counselors, title insurance companies, and closing agents to submit, but not retrieve, information to the database online. With limited exceptions, the information in the database will not be subject to disclosure pursuant to the Freedom of Information Act.

Within ten days after taking an application for a loan secured by real estate in the pilot program area, the broker or originator must submit required loan file information about the applicant to the database. Within seven days after receipt of the information, the Department is required to compare that information to credit counseling standards to be determined by the Department. According to a press release from the governor's office, the database will be able to automatically analyze the details of each loan and determine if it meets credit counseling standards. If the mortgage broker or originator changes the terms of the loan or issues a new loan commitment to the applicant, the required information must be resubmitted to the database on a shorter timetable, which is a provision intended to discourage "bait and switch" tactics.

If the Department determines that the applicant does not meet credit counseling standards, the applicant must meet with a HUD-certified credit counselor and the broker or originator who submitted the application to the database must pay for it. The law expressly provides that "The borrower may not waive credit counseling." Within seven days after meeting with the loan applicant, the credit counselor must submit certain required information to the database along with a formal

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**Predatory Lending Database Pilot Program Signed Into Law** (cont'd.)

recommendation regarding the loan transaction. Neither the loan broker or originator, nor the loan applicant, may take any legally binding action concerning the loan transaction until either the Department determines that credit counseling is not necessary, or the Department determines that credit counseling is necessary and the credit counselor submits the required information to the database. At that point, and only at that point, the parties to the proposed loan transaction are free to proceed.

In addition to the broker or originator and the credit counselor, the title insurance company and closing agent must also submit information to the database as required under the new law. The names of all settlement service providers and the credit counselor, if any, must now be recorded along with the mortgage in connection with a loan transaction in the pilot program area. The new law provides that any violation of the requirements of the predatory lending database pilot program is actionable under the Illinois Consumer Fraud and Deceptive Practices Act.

The pilot program will become effective on January 1, 2006, and it will continue for four years after the creation of the database. Lord, Bissell & Brook LLP will continue to monitor this new law and how it is implemented. Please contact the authors at 312.443.0700 with any questions.

**About the Authors**

Thomas J. Cunningham is a partner in Locke Lord's litigation department and the leader of the firm's Class Action Practice Group. He focuses his practice on the representation of banks and financial institutions in both state and federal courts. Mr. Cunningham frequently engages in consumer protection litigation and litigation involving fraud, fraudulent transfers, and bankruptcy litigation.

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