11-O-78
ORDINANCE

Sponsored by

THE HONORABLE TONI PRECKWINKLE, PRESIDENT AND JOHN P. DALEY, JESUS G. GARCIA, ROBERT B. STEELE, LARRY SUFFREDIN AND DEBORAH SIMS COUNTY COMMISSIONERS

RELOCATING DIVISION 7 – INTERGOVERNMENTAL CONTRACTS AND DIVISION 8 – PREDATORY LENDERS FROM THE PROCUREMENT CODE TO OTHER CHAPTERS OF THE COUNTY CODE

BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 34 Finance, Article, IV, Division 7, Sec. 34-311 through 34-315 and Division 8, Sec. 34-340 through 34-342 is hereby repealed.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that Chapter 2 Administration, Article XI. Intergovernmental Contracts, Sec. 2-950 through 2-953 be enacted as follows:

ARTICLE XI. INTERGOVERNMENTAL CONTRACTS

Sec. 2-950. - Authorized.

The County may contract or otherwise associate with other units of government to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance.

Sec. 2-951. - Intergovernmental activity by County officers and employees.

County officers and employees may participate in intergovernmental activities authorized by the County without relinquishing their offices or positions.

Sec. 2-952. - Intergovernmental agreements temporary.

Where the County enters into an agreement with a governmental unit to provide a service or perform a function for such governmental unit, the agreement shall provide that the County's service or function shall be on an interim and temporary basis and shall set forth the length of time for which the County agrees to perform such

Sec. 2-953. - Review of contracts by County Board and State's Attorney.

Each contract entered into pursuant to this division shall be reviewed separately by the County Board, taking into consideration the capability of the County to provide such service or perform such function without detriment to the County's ability to provide the same to the County as a whole. Each contract shall be submitted to the State's Attorney for approval as to form.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that Chapter 2 Administration, Article V, Division 3, Sub-division I, Sec. 2-407 is hereby enacted as follows:

Sec. 3-407. Predatory lending ordinance.

This section may be cited as the Cook County Predatory Lending Ordinance.

(a) Definitions. The following words, terms and phrases, when used in this section shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity, as determined under the Federal Bank Holding Company Act of 1956, as amended from time to time. However, the term "affiliate" specifically shall not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

Financial institution means a bank, savings and loan association, thrift, credit union, mortgage banker, mortgage broker, a trust company, a savings bank, an investment bank, a securities broker, a municipal securities broker, a securities dealer, a municipal securities dealer, a securities underwriter, a municipal securities underwriter, an investment trust, a venture capital company, a bank holding company, a financial services holding company, or any licensee under the Consumer Installment Loan Act, the Sales Finance Agency Act, or the Residential Mortgage Licensing Act. However, the term "financial institution" specifically shall not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

First lien mortgage means any loan secured by a first lien on residential real property, including but not limited to purchase money and nonpurchase money loans, refinancing loans, home equity loans, and reverse mortgages.

Flipping means the refinancing and charging of additional points, charges or other costs on a threshold loan within a 24-month period after the refinanced loan was made, unless the refinancing results in a financial benefit to the borrower.

Home equity loan means the extension of credit secured by a lien on residential real property under a plan in which:

(1) The lender reasonably contemplates repeated transactions;

(2) The lender may impose a finance charge from time to time on an outstanding balance; and

(3) The amount of credit that may be extended to the borrower during the term of the plan (up to any limit set by the lender) is generally made available to the extent that any outstanding balance is repaid.

Junior mortgage means any loan secured by a mortgage other than a first lien mortgage.

Points and fees means:

(1) All items required to be disclosed under 12 CFR 226.4(a), (b), except the interest rate or time-price differential;

(2) Subject to the exclusions provided below in this subdivision, all charges for items listed under 12 CFR 226.4(c)(7), but only if the lender receives direct or indirect compensation, in connection with the charge or the charge is paid to an affiliate of the lender, and otherwise the charges are not included within the meaning of the phrase "points and fees";

(3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction, not otherwise included in Subsection (1) or (2) of this definition;

(4) The premium of any single premium credit life, credit disability, credit unemployment, or any other life or health insurance that is financed directly or indirectly into the loan, unless the disclosures and acknowledgment described in Subsection (7) of the definition of Predator loan have been made.

(5) Points and fees shall not include:

a. Taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing or satisfying a security interest;

b. A payment to a government agency or a government-sponsored agency in connection with a government-sponsored mortgage program;

c. Bona fide and reasonable fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for home inspections performed prior to closing; credit reports; surveys; attorney's fees (if the borrower has the right to select the attorney); notary fees; escrow charges, so long as not otherwise included under Subsection (1) of this definition; title insurance premiums; and hazard insurance and flood insurance premiums, provided that the conditions in 12 CFR 226.4(d)(2) are met; and

d. Any bona fide, competitive and reasonable fees paid to the lender or an affiliate of the lender for the services and products described in Subsection (5)c of this definition, but only if the loan is not conditioned on the fees being paid to the lender or its affiliate, and the borrower is given the option to obtain the service or product from an unaffiliated entity.

Predatory lender means a financial institution that has made, within the 12-month period, prior to submission of a bid or contract offer, or prior to the date of proposed designation as a County depository, whichever is applicable, predatory loans that comprise either:

(1) Five percent of the total annual number of loans made; or

(2) Twenty-five individual loans; whichever is less. Each financial institution and affiliate shall be considered separately for the purposes of these calculations, and only loans secured by residential real estate that is located within the County shall be considered. The term "predatory lender" shall not include a financial institution, or its affiliates, that has submitted to the Chief Financial Officer a plan which is accepted in writing by the Chief Financial Officer to discontinue the practice of making predatory loans which plan:

a. Ensures the prompt disengagement from the practice of making predatory loans by the financial institution and its affiliates; and

b. Ensures the complete cessation of the making of predatory loans by the financial institution and its affiliates within 180 days after the plan is submitted; provided that no more than one plan may be submitted on behalf of any financial institution.

Predatory loan means a threshold loan that was made under circumstances that involve any of the following acts or practices:

(1) Fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing and sales efforts to sell threshold loans.

(2) Prepayment penalties:

a. That apply to a prepayment made after the expiration of the 36-month period following the date the loan was made; or

b. That are more than three percent of the total loan amount if the prepayment is made within the first 12-month period following the date the loan was made, or more than two percent of the total loan amount if the prepayment is made within the second 12-month period after the date the loan was made, or more than one percent of the loan amount if the prepayment is made within the third 12-month period following the date the loan was made.

(3) Balloon payments. A threshold loan that has a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance, except for bridge loans connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling, and except for loans with a final balloon payment that have a term of not less than 180 months provided such balloon payment is conspicuously disclosed to the borrower, and except for home equity loans.

(4) Loan flipping.

(5) Negative amortization. A threshold loan, other than a loan secured only by a reverse mortgage, with terms under which the outstanding balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of the interest due, unless the negative amortization is the consequence of a temporary forbearance sought by the borrower.

(6) The financing of points and fees in excess of six percent of the loan amount.

(7) The financing of a single premium credit life, credit disability, credit unemployment, or any other life or health insurance, directly or indirectly, into one or more threshold loans unless the lender, at least three business days before the borrower signs the loan agreement, makes to the borrower a separate oral disclosure, and a separate clear and conspicuous written disclosure containing the following information, all of which must be true:

a. The total cost of the insurance premium and, separately stated, the total amount of interest that will be charged for the financing of the insurance premium over the life of the loan.

b. The fact that the insurance will be prepaid and financed at the interest rate provided for in the loan.

c. The fact that the purchase of such insurance is not required in order to obtain the loan.

d. The amount that the lender or its affiliates will receive as direct or indirect commissions in connection with the insurance.

e. That the borrower may terminate the insurance at any time and receive a refund of the unearned premium, and that the borrower will receive a refund of the entire premium if the borrower cancels the insurance within 90 days after the policy goes into effect.

f. The term of the insurance coverage and, if different from the term of the loan, the length of the difference. In addition, the written disclosure shall contain a signed and dated acknowledgment by the borrower that the oral disclosure was made, and a signed and dated acknowledgment by the lender that the oral disclosure was made.

(8) Lending without due regard to repayment ability. The lender makes a loan if the lender believes at the time the loan is consummated that the borrower or the borrowers (when considered collectively in the case of multiple borrowers) will not be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). A borrower shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, or at the time of the first rate adjustment in the case of a lower introductory interest rate, the borrower's scheduled monthly payments on the loan (including principal, interest, taxes, insurance and assessments), combined with the scheduled payments for all other debts, do not exceed 50 percent of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. This provision applies only to borrowers whose income, as reported on the loan application which the lender relied upon in making the credit decision, is no greater than 120 percent of the median family income for the Chicago Metropolitan Statistical Area (MSA) (as defined by the Director of the U.S. Office of Management and Budget). For purposes of this division, the median family income shall be derived from the most recent estimates made available by the U.S. Department of Housing and Urban Development, at the time the application is received. For purposes of determining median income, only the income of the borrower or borrowers shall be considered.

(9) The payment by a lender to a contractor under a home improvement contract from the proceeds of a threshold loan, other than:

a. By an instrument payable to the borrower or jointly to the borrower and the contractor; or

b. At the election of the borrower, by a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor before the date of payment.

(10) The payment from loan proceeds by a lender to a contractor under a home repair or improvement contract, where the contractor has been, on two or more occasions within the previous 24-month period, determined by a court or agency of competent jurisdiction to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct, unless:

a. The lender has no knowledge of the determinations; and

b. The lender has received a written affidavit from the contractor stating that there have not been two or more such determinations regarding the contractor within the previous 24-month period.

(11) Such other circumstances that the Chief Financial Officer may determine to be predatory in nature, in administrative rules promulgated to implement this division, which rules shall be submitted to the County Board for approval.

Reverse mortgage means a nonrecourse security interest in the borrower's principal dwelling where no interest or principal is payable on the secured loan (except in the case of default) until:

(1) The borrower dies;

(2) The dwelling is transferred; or

(3) The borrower ceases to occupy the dwelling.

Threshold loan means a loan that is entered into after the effective date of this division and is secured by residential real property located within the County on which there is situated a dwelling for not more than four families or a condominium unit, or is secured by a cooperative unit within the County, if:

(1) At the time of the loan's origination, the annual percentage rate of the loan exceeds by more than six percentage points in the case of a first lien mortgage, or by more than eight percentage points in the case of a junior mortgage, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(2) The total points and fees exceed:

a. Five percent of the total loan amount if the loan amount is $16,000.00 or greater; or

b. Eight hundred dollars if the loan amount is less than $16,000.00. However, the term "threshold loan" shall not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan and shall not include a loan with a total loan amount over $250,000.00.

Treasurer means the Treasurer of the County.

(b) County contracts.

(1) The Chief Financial Officer shall determine whether any financial institution seeking a contract with the County is a predatory lender as defined in this division section. If the Chief Financial Officer determines that any such financial institution is a predatory lender, the County will not award a contract to such financial institution. For purposes of this division section, a County contract shall not include designation as a County depository. The Chief Financial Officer shall notify the Treasurer of this determination.

(2) With each bid or offer submitted by a financial institution for any contract with the County, there shall be a pledge signed by the chairman of the board, chief executive officer, or other officer of the financial institution acceptable to the Chief Financial Officer. The pledge shall be in substantially the following form:

> We pledge that we are not and will not become a predatory lender as defined in Cook County's Predatory Lending Ordinance. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in this Ordinance. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the County.

(3) Nothing in this section shall affect the validity of any contract entered into in connection with any debt obligations issued by or on behalf of the County prior to a determination by the Chief Financial Officer that an entity participating in the contract is a predatory lender.

(4) The Chief Financial Officer, at the direction of the President of the County Board, may suspend the ineligibility of a financial institution in order to allow Execution of a contract with the financial institution upon written application by the head of a County agency or department affected by the proposed contract setting forth facts sufficient in the judgment of the purchasing agent to establish:

a. That the public health, safety or welfare of the County requires the goods or services of the financial institution; and

b. That the County is unable to acquire the goods or services at comparable price and quality, and in sufficient quantity, from other sources.

(c) County depositories.

(1) All financial institutions, seeking designation as a County depository by the County Board upon the request of the Treasurer, shall submit to the Chief Financial Officer, prior to any such designation, a pledge affirming that neither it nor any of its affiliates is or will become a predatory lender within the County. Upon receipt, the Chief Financial Officer shall forward this pledge to the Treasurer. The pledge shall be signed by the chairman of the board, chief executive officer, or other officer of the financial institution acceptable to the Chief Financial Officer. The pledge shall be in substantially the following form:

> We pledge that we are not and will not become a predatory lender as defined in Cook County's Predatory Lending Ordinance. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in this Ordinance. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of our designation as a County depository.

(2) Upon receipt of any written complaint regarding predatory lending practices by any financial institution seeking designation as a County depository or serving as a County depository, the Chief Financial Officer shall refer such complaints to the Treasurer who may conduct an investigation of the complaint in accordance with the Treasurer's policies and procedures.

Effective date: This Ordinance shall be in effect immediately upon adoption.

Approved and adopted this 7th day of September 2011.

TONI PRECKWINKLE, President
Cook County Board of Commissioners

Attest: DAVID ORR, County Clerk