



September 9, 2024

**Shared Appreciation Mortgages: Advance Notice of Proposed Rulemaking**

On August 9, 2024, Governor JB Pritzker signed Senate Bill 3551 into law as Public Act 103-1015 (the “Act”) (codified at 205 ILCS 635). The Act includes shared appreciation agreements within the definition of “mortgage loan,” “residential mortgage loan,” and “home mortgage loan.” Section 5-12.5 of the Act provides that, before taking any legally binding action on a shared appreciation agreement, the borrower or borrowers shall be provided (1) disclosures to them understand the cost, duration, and fees of the agreement, as well as potential alternatives and (2) counseling that may not be waived. Section 5-12.5(b) of the Act sets forth the rulemaking requirements and authority of the Illinois Department of Financial and Professional Regulation (“Department”). The Department is gathering information from the public before promulgating rules and invites all interested parties to participate by submitting written comments to this Advance Notice of Proposed Rulemaking (“ANPR”).

In this ANPR, the Department has outlined subject areas for potential rulemaking organized into the following sections: licensing, examination, methods of calculating fair market value, written consumer disclosures, and borrower counseling. Anyone interested may respond to the ANPR by submitting comments aimed at developing and improving the Department’s rulemaking under the Act. Interested parties may comment on any aspect of potential rulemaking; however, the Department is not requesting comments on the provisions of the Act itself.

In all cases, the most useful comments to the Department will be based on legal and policy analysis and include proposed specific wording or solutions to identified issues. Comments may be submitted as specified below.

The Department requests that all comments be submitted on or before October 23, 2024. During or after that period, at its discretion, the Department may meet with the public and stakeholders. While the Department will review all comments, and all comments will become part of the public record, the Department will not respond directly to comments made in response to the ANPR. After the Department has evaluated the comments and incorporated them into formal proposed rules, it will publish proposed rules in the Illinois Register for further comment in accordance with the Illinois Administrative Procedure Act (5 ILCS 100).

The subject areas for comments are as follows:

- A) Licensing, Examination, and Compliance Provisions

What changes specific to providers of shared appreciation agreements are needed in 38 Illinois Administrative Code Part 1050, Subparts A (Definitions), B (Fees), C (Licensing), D (Operations and Supervision), E (Annual Reports), G (Servicing), H (Advertising), J (Loan Application Practices), and K (General Lending Practices)?

B) Method of Calculating Property Value at the Agreement's Commencement and Termination

What methods of calculating a property's fair market value should be required? Under what circumstances should the value of the property at the termination of the agreement be limited to the sale price or another cap?

C) Disclosures to Help Borrowers Understand the Cost, Duration, and Fees of the Agreement, as well as Potential Alternatives

review the proposed disclosures prepared by the State of Maryland (available at <https://dsd.maryland.gov/MDRIssues/5114/Maryland%20Disclosure%202024%20-%20Appendix%20A.pdf>). What modifications, if any, should the Department make?

D) Counseling to Assist Borrowers

What programmatic and other requirements should providers of counseling meet? Should providers be approved by the Department? If so, what application and renewal processes should the Department establish, and what fees should it charge?

What technical and substantive requirements should be met for providing counseling to the borrower(s)?

E) Other Requirements

The Department notes that it is one of the first states to regulate the providers of shared appreciation agreements as residential mortgage licensees. Therefore, the Department also seeks comment on any other aspect of Part 1050 of the Rules or the potential suitability of any other state's proposed or adopted rules for shared appreciation agreements. For example, rules proposed by the State of Maryland are available at: [https://dsd.maryland.gov/MDRIssues/5114/Assembled.aspx#\\_Toc171416519](https://dsd.maryland.gov/MDRIssues/5114/Assembled.aspx#_Toc171416519)

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