



Illinois Bankers Association Bank Counsel Conference Banking Law Update

December 1, 2023

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Mortgage Escrow Account Act Amendments

- Amends the Illinois Mortgage Escrow Account Act — which requires notice for loans secured by single-family, owner-occupied, residential properties of the **right to terminate their mortgage escrow accounts** when the mortgage has been reduced to 65% of its original amount
- Regulation Z **requires maintenance of escrow accounts for five years** for higher-priced mortgage loans, and escrow cannot be canceled until the loan principal balance is less than 80% of the mortgaged property's original value
- Now, the conflict is resolved — “a mortgage lender that complies with the escrow account requirements in Title 12 CFR Part 1026 . . . for a mortgage loan that is a higher-priced mortgage loan . . . is deemed to be in compliance”

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Prohibitions on Credit Sales of Cats and Dogs

- Prohibit the origination of loans for the sale of cats or dogs
- Amends the:
 - Sales Finance Agency Act (205 ILCS 660/10.6)
 - Predatory Loan Prevention Act (815 ILCS 123/15-5-16)
 - Retail Installment Sales Act (815 ILCS 405/29.5)



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Consumer Fraud Act Amendments – Postcard and Letter Advertising

- Applicability: Advertising by letter and postcard to recipients in Illinois that asks recipients to contact the sender
- A postcard or letter must:

- **Disclaim that it is not a bill**
- **Disclaim that it is a solicitation**
- **Disclose “any and all affiliations or lack thereof”**
- **Disclaimers must be conspicuously located at the top**
- **Disclaimers must be easily readable in clear and unambiguous language**
- **Disclaimers must be printed in at least 14-point bold-face font in a black-outlined box**

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Consumer Fraud Act Amendments – Mortgage Advertising

- Applicability: “Marketing materials from a mortgage company not connected to the consumer’s mortgage company”
- Cannot use the terms: **urgent, action required, materials inspected, time sensitive, or important account information enclosed**
- Prominently state the **solicitor’s name** in three locations, with clear language explaining there is no affiliation with the consumer’s mortgage company
- Cannot state or insinuate that the marketing comes from the consumer’s mortgage company, including by presenting its name on the envelope
- Clearly state that the consumer’s mortgage company had no part in helping the solicitor obtain the homeowner’s mortgage information

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Automatic Contract Renewal Act Amendments

- Amends the Automatic Contract Renewal Act
- New disclosure requirements:
 - (1) Disclose the automatic renewal offer terms before purchase
 - (2) Obtain the consumer's consent to the automatic renewal offer terms before charging their card
 - (3) Disclose the automatic renewal offer terms, cancellation policy, and information on how to cancel, and
 - (4) If including a free trial, disclose how to cancel the contract and allow cancellation before the consumer pays for goods or services

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Automatic Contract Renewal Act Amendments

- New disclosure requirements — clear and conspicuous disclosure (larger/contrasting type or, if in audio, in a volume and cadence sufficient to be readily audible and understandable):
 - (5) That the paid subscription continues until the consumer cancels
 - (6) When the consumer must cancel to avoid being charged for a subsequent term
 - (7) The recurring charges that will be charged, that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known
 - (8) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer
 - (9) The minimum purchase obligation, if any

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Automatic Contract Renewal Act Amendments

- New requirements — for automatic renewal contracts with terms of twelve months or more:
 - Written notice of the deadline for cancellation to avoid being charged
 - Mechanism for cancellation “in a manner in which the consumer commonly interacts with the business” (*i.e.*, link to website where consumer can cancel)

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Illinois Paid Leave for All Workers Act

- Paid leave requirements for all full- and part-time employees in Illinois—with no waivers
- Generally, provide **40 hours of paid leave** for every full-time employee (accrues pro-rata for part-timers at 1 hour of paid leave per 40 hours worked)
- **Covered employers:** any individual or business “for which one or more persons is gainfully employed,” with exceptions including employers in municipalities or counties with their own paid leave ordinances
- **Covered employees:** all employees, including domestic workers
- Paid leave can be used in 2-hour increments, for any reason, without documentation or certification, on an oral or written request, with reasonable notification only if it is “foreseeable”

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Equal Pay Act Amendments – Pay Scale and Benefits in Job Postings

- **Applicability:** Employers with 15 or more employees, if the employee will be physically performing the job or reporting to a supervisor in Illinois
- Job postings must include the pay scale (wage, salary, or a range) with a general description of benefits (bonuses, stock options, other incentives)
- Must announce or post internal opportunities for promotion to existing employees within 14 days after external posting is made

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Notices for Remote Employees and Emailing Personnel Records

- Online posting or email notices for remote employees for notices under the:
 - Minimum Wage Law
 - Equal Pay Act of 2003
 - Illinois Wage Payment and Collection Act
 - Day and Temporary Labor Services Act
 - Child Labor Law
- Requested personnel records must be emailed, if requested (formerly, only mailing was required)

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Freelance Worker Protection Act

- Economic protections for natural persons acting as independent contractors, for contracts of \$500 or greater, for contracting entities located in Illinois
- Written contract must provide for payment within 30 days of completion (with model contracts to be available on the Illinois Department of Labor's website)
- 2-year record retention
- Stiff penalties, private right of action, and statutory remedies including doubling the amount of any underpayment

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Illinois Mortgage Foreclosure Law Amendments

- No more of providing copies of notices of residential foreclosures to municipalities or counties (and Chicago alderpersons)
- Foreclosure record sealing:
 - Narrow subset of mortgages that were not subject to Freddie or Fannie's or other federal moratoriums related to COVID-19
 - Time period differs than that for residential eviction record sealing

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Illinois Human Rights Act Amendments – Immigration Status

- Prohibits discrimination in real estate transactions based on an individual's immigration status
- Financial institutions may consider immigration status “in compliance with State or federal law”
 - Regulation B expressly allows lenders to “consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment”

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Residential Real Property Disclosure Act Amendments

- Act requires sellers of residential real property to provide disclosure reports to prospective buyers
- Now exempts the following, if they have never occupied nor had management responsibility over the residential real property being sold:
 - Beneficiaries of a trust
 - Beneficiaries of a testate disposition
 - Beneficiaries of an intestate succession
 - Beneficiaries of a transfer on death instrument

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Electronic Wills and Remote Witnesses Act – Electronic Estate Planning

- Authorizes the execution of electronic nontestamentary estate planning documents, including remote witnessing with electronic signatures
- Validates electronic signatures on such documents
- “Nontestamentary estate planning document:” “a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will” (e.g., a trust instrument, durable power of attorney, living will)

Adult Protective Services Act Amendments – Mandated Reporters

- **Adds investment advisors to the list of mandated reporters** of the suspected abuse, abandonment, neglect, or financial exploitation of an elderly person or adult with a disability
- Excludes banks, savings banks, trust companies, credit unions, and their employees
- Prohibition on discrimination against employees for making good faith report

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Consumer Contract Reciprocal Attorney's Fees Act (new)

- Awards attorney's fees to defendants who prevail in certain small claims cases brought by creditors under consumer contracts entered into on or after 1/1/24
- A defendant "prevails" when:
 - The court enters a judgment in favor of the defendant
 - The court grants the defendant's motion to dismiss under Section 2-619 of the Code of Civil Procedure
 - The plaintiff voluntarily dismisses the case after a trial date has been set and after the pending case has previously been filed on the same consumer contract and dismissed

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Vehicle Code Amendments – Prohibition on Video Conferencing

- Don't Zoom and drive!

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Business Corporation Act Amendments – Franchise Tax

- Exempts the first \$5,000 in franchise tax liability
- Rolls back previous phase-out of the tax

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Insurance Data Security Law

- New information security standards for insurance companies licensed in Illinois (with exceptions)
- Written information security and incident response plans required
- “Cybersecurity events” must be investigated and reported within three business days of determining that the event occurred
 - Illinois licensees must report all events
 - Foreign licensees must report events involving 250 or more Illinois residents

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Electronic and Remote Notarization Rules

- With the adoption of these rules, statutory changes authorizing electronic and remote notarizations became effective
- Standards for the audio-visual technology required for remote and fully-electronic notarizations, as well as electronic seals
- **Journals:** Each notarial act must have a journal entry (whether physical or electronic), except that **notaries employed by an attorney or law firm do not have to maintain journals if the attorney or firm retains the notarized documents**
- **Training:** Must pass a course of study for each renewal every four years

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Revised Proposed Illinois Community Reinvestment Act Rules

- Implementing rules for the Illinois CRA (passed in 2021)
- Second draft under review by the Joint Committee on Administrative Rules
- Separate (and sometimes differing) proposed rules for banks, credit unions, and residential mortgage lenders
- Compliance date: Six months after the effective date of the rules, when finalized

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Chicago Paid Leave and Paid Sick Leave Ordinance

- Paid sick leave *and* paid leave
- Applicability: Employees working in Chicago for **at least two hours** within any two-week period (not including uncompensated commute time)
- 1 hour of paid leave and 1 hour of paid sick leave for every 35 hours worked
- Not required to provide more than 40 hours of each type of leave per year
- Paid leave may be used for any reason, without documentation
- Paid sick leave may be used for illness, injuries, etc. of the employee or qualifying family members

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Chamber of Commerce of United States v. CFPB

- Eastern District of Texas: Invalidates a portion of the CFPB's Supervision and Examination Manual
- The CFPB indicated that it considers discrimination to be a UDAAP and that it would begin examining for discrimination with respect to "all aspects of consumer products and services"
- Outside of the CFPB's statutory authority

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Western & Lake Check Cashers, LLC v. Propane Pete, LLC

- Common fact situation: Worker deposits check by mobile deposit and later cashes it at a currency exchange
 - Payor's bank detected the duplicate presentment and returned the check to the currency exchange
- Currency exchange was a “holder in due course” (taking the check free of previous holders' claims and defenses)
- Inequitable result: Payor is on the hook, while the payee was the wrongdoer

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Small Business Lending Under the ECOA

- Dodd–Frank Act, Section 1071 (enacted in 2010)—and now subject to a nationwide preliminary injunction
- HMDA for small business loans (including strict error tolerances)
- **Covered lenders:** Originator of 100 covered small business loans in each of the two preceding calendar years
- **Covered small businesses:** Less than \$5 million in annual revenue
- **Covered small business loans:** Business credit (as defined in Regulation B)
- **Reporting:** 81 required data fields
- **Other provisions:** Firewalls, anti-discouragement requirements, publication of data

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Community Reinvestment Act Rules Rewrite

- OCC, Federal Reserve, and FDIC
- Most changes affect banks with over \$600 million in assets, which will be subject to very complex, costly retail lending tests (testing lending for home mortgages, multifamily properties, small businesses, small farms, and potentially auto loans)
- Retail lending assessment areas: Delineating CRA assessment areas based on retail lending, rather than traditional geographic delineations
- List of qualifying CRA activities

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Entity Identifiers for Reporting Beneficial Ownership Information

- Financial Crimes Enforcement Network’s beneficial ownership information reporting requirements for businesses (effective January 1, 2024)
- Reporting into a nonpublic database accessible by law enforcement, regulatory agencies, and, subject to strict limitations, financial institutions
- Individuals and entities may obtain “FinCEN identifiers” to fulfill reporting obligations

Adverse Action Notices for Credit Denials Involving AI

- CFPB guidance on artificial intelligence or complex credit models for credit decisions
- Adverse action notice cannot be overly broad, vague, or otherwise fail to inform the consumer
- Examples of insufficient disclosures (e.g., “insufficient projected income” instead of disclosing that AI denied an application due to the applicant’s chosen profession)



Questions?