



Final Analysis

*Jennifer A. Parker
Daniel M. DeSantis
Amber Hardesty*

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Sens. Padgett, Schuring, Roberts, Carey, Amstutz, Armbruster, Brady, Dann, Fedor, Fingerhut, Grendell, Hagan, Harris, Jacobson, Miller, Prentiss, Spada, Zurz, Mumper, Clancy, Cates, Wilson, Kearney, Miller, D.

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ACT SUMMARY

- Expands the application of the Consumer Sales Practices Act to include certain consumer transactions in connection with a residential mortgage.
- Generally prohibits the appraisal of real estate for a mortgage loan without state certification or licensure.
- Prohibits any person from corrupting or improperly influencing the independent judgment of a real estate appraiser with respect to the value of the dwelling offered as security for a mortgage loan.
- Requires that a national criminal background check be conducted on all applicants for a real estate appraiser certificate or license, a mortgage broker certificate of registration, or a loan officer license.
- Modifies the Mortgage Brokers/Loan Officers Law, including with respect to pre-licensure education and examination, disclosure of

information, record keeping, prohibited acts, duties and standard of care, pre-hearing suspensions, and enforcement.

- Modifies the Mortgage Loan Law with respect to prepayment penalties and enforcement.
- Expands the application of the Consumer Credit Mortgage Loan Law.
- Modifies the General Usury Statute to prohibit penalties for the prepayment or refinancing of certain residential mortgage obligations.
- Makes revisions to the Title Insurance Law, including with respect to escrow and other accounts, annual independent reviews of such accounts, closing and settlement protection, notice, and record keeping, and deems certain actions by a title insurance agent unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act.
- Permits the Superintendents of Financial Institutions and Real Estate, for purposes of enforcement, to share confidential information about mortgage brokers and loan officers, real estate brokers and salespersons, and real estate appraisers with each other, the Superintendent of Insurance, the Attorney General, and local law enforcement agencies and prosecutors.
- Creates the Consumer Finance Education Board.
- Makes other changes with respect to residential mortgage lending.

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CONTENT AND OPERATION

Consumer Sales Practices Act

Background

(R.C. Chapter 1345.)

The Consumer Sales Practices Act (CSPA) prohibits "unfair or deceptive acts or practices" by suppliers in connection with consumer transactions, such as falsely representing the characteristics of a product, falsely indicating that a specific price advantage exists, misrepresenting a warranty, or falsely indicating the need for a repair.¹ The CSPA also prohibits "unconscionable acts or practices" in consumer transactions, such as taking advantage of a person's inability to understand the transaction's terms, making misleading statements on which a consumer is likely to rely, selling goods when the supplier knows the consumer cannot pay in full, or selling services to a consumer who is unable to receive a substantial benefit from the purchase.²

The CSPA authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies.³ It also provides consumers with a private right of action.⁴ In an individual action, a consumer generally may rescind the transaction or recover the individual's damages. In certain circumstances, the consumer may recover three times the amount of actual damages or \$200, whichever is greater, or may recover damages or other appropriate relief in a class action. The CSPA also permits consumers to seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that constitutes a violation. The court may award to the prevailing party a reasonable attorney's fee if the consumer brought an action that is groundless and filed the action in bad faith *or* the violation was knowingly committed.

¹ R.C. 1345.02.

² R.C. 1345.03.

³ R.C. 1345.07.

⁴ R.C. 1345.09.

Scope of "consumer transaction" and "supplier"

(R.C. 1345.01)

For purposes of the CSPA, "**consumer transaction**" is defined as a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. Transactions *excluded* from the definition of "consumer transaction" include transactions between public utilities and their customers; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between financial institutions, dealers in intangibles, or insurance companies and their customers.⁵

Under the act, "**consumer transaction**" expressly *includes* transactions in connection with residential mortgages between loan officers, mortgage brokers, and nonbank mortgage lenders and their customers, despite the exemptions described above. For these purposes:

--"**Residential mortgage**" or "**mortgage**" is defined as an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within Ohio containing two or fewer residential units or on which two or fewer residential units are to be constructed, and includes such an obligation on a residential condominium or cooperative unit.

--"**Loan officer**" has the same meaning as in the Mortgage Brokers/Loan Officers Law (R.C. 1322.01(E)), *except* that it does not include an employee of (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, or (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift

⁵ A "**dealer in intangibles**" is a person with an office in Ohio who engages in a business that consists primarily of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities. Financial institutions, insurance companies, and institutions used exclusively for charitable purposes are not considered dealers in intangibles. (R.C. 5725.01(B).) "**Financial institution**" is defined in R.C. 5725.01(A).

Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

--"**Mortgage broker**" has the same meaning as in the Mortgage Brokers/Loan Officers Law (R.C. 1322.01(G)), *except* that it does not include (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, or (4) an employee of any such entity.

--"**Nonbank mortgage lender**" means any person that engages in a consumer transaction in connection with a residential mortgage, *except* for (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, or (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

--"**Control**" of another entity means ownership, control, or power to vote 25% or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

--"**Credit union services organization**" has the same meaning as "CUSO" in the Code of Federal Regulations, 12 C.F.R. 702.2.

Under ongoing law, "**supplier**" is defined as a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. The act adds that, if the consumer transaction is in connection with a residential mortgage, "**supplier**" excludes an assignee or purchaser of the loan for value,

except as otherwise permitted (see "Assignee liability," below) and "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

Unfair or deceptive acts or practices

(R.C. 1345.02)

As mentioned above under "Background," the CSPA prohibits suppliers from committing unfair or deceptive acts or practices and lists several deceptive acts or practices of general application. For example, continuing law states that it is deceptive for a supplier to represent that a specific price advantage exists, if it does not. The act specifies two additional deceptive acts for consumer transactions in connection with a residential mortgage. These are knowingly failing to provide disclosures required under Ohio and federal law and knowingly providing a disclosure that includes a material misrepresentation.

Unconscionable acts or practices

(R.C. 1345.03 and 1345.031; Section 3(B))

Continuing law generally sets forth prohibited acts or practices that are considered unconscionable under the CSPA. The act specifies that these provisions do not apply to consumer transactions in connection with a residential mortgage. Instead, the act indicates a separate list of unconscionable acts or practices for consumer transactions in connection with a residential mortgage. The following acts or practices of a supplier in connection with such a transaction are unconscionable, whether they occur before, during, or after the transaction:

--Arranging for or making a mortgage loan that provides for a higher interest rate after default than before default. This excludes higher interest rates allowed for judgments applicable to the mortgage loan and also excludes interest rate changes in a variable rate loan transaction otherwise consistent with the provisions of the loan documents.

--Engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay.

--Making a consumer transaction that permits the creditor to demand repayment of the outstanding balance of a mortgage loan, in advance of the original maturity date, unless the creditor does so in good faith due to the consumer's failure to abide by the material terms of the loan.

--Knowingly replacing, refinancing, or consolidating a zero interest rate or other low-rate mortgage loan⁶ made by a governmental or nonprofit lender with another loan unless the current holder of the loan consents in writing to the refinancing and the consumer presents written certification from a third-party nonprofit organization counselor approved by the United States Department of Housing and Urban Development or the Superintendent of Financial Institutions that the consumer received counseling on the advisability of the loan transaction.

--Instructing the consumer to ignore the supplier's written information regarding the interest rate and dollar value of points because they would be lower for the consumer's transaction.

--Recommending or encouraging a consumer to default on a mortgage or any consumer transaction or revolving credit loan agreement.

--Charging a late fee more than once with respect to a single late payment. If a supplier deducts a late payment fee from a loan payment and the deduction causes a subsequent default on a subsequent payment, the supplier cannot impose a late payment fee for that default. If a supplier imposes a late payment fee once with respect to a particular late payment, the supplier cannot impose that fee with respect to any future payment that would have been timely and sufficient but for the previous default.

--Failing to disclose to the consumer at the closing of the consumer transaction that a consumer is not required to complete a consumer transaction merely because the consumer has received prior estimates of closing costs or has signed an application and should not close a loan transaction that contains different terms and conditions than those the consumer was promised.

--Arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consolidated and paid in advance from the loan proceeds provided to the consumer.

--Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Ohio law as a real estate appraiser for the purpose of

⁶ *In this provision, a "low-rate mortgage loan" is a mortgage loan that carries a current interest rate two percentage points or more below the current yield on United States Treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate is used to determine whether a loan is a low-rate mortgage loan.*

corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan.

--Financing, directly or indirectly, any credit, life, disability, or unemployment insurance premiums, any other life or health insurance premiums, or any debt collection agreement. Insurance premiums calculated and paid on a monthly basis are not considered financed by the lender.

--Knowingly or intentionally engaging in the act or practice of "flipping"⁷ a mortgage loan, regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified in Ohio law.

--Knowingly taking advantage of the inability of the consumer to reasonably protect the consumer's interests because of the consumer's known physical or mental infirmities or illiteracy.

--Entering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

--Attempting to enforce, by means not limited to a court action, a prohibited prepayment penalty (see "*General Usury Law: prepayment penalties*," below).

--Engaging in an act or practice deemed unconscionable by rules adopted by the Attorney General (see "*Attorney General's powers*" below). The act states that the General Assembly intends for the Attorney General to begin this rulemaking process starting on the act's effective date (91st day after the act is filed with the Secretary of State). However, any rules so adopted do not take effect until January 1, 2007.

Additionally, the act provides that any unconscionable arbitration clause, unconscionable clause requiring the consumer to pay the supplier's attorney's fees, or unconscionable liquidated damages clause included in a mortgage loan contract is unenforceable. The act also specifies that a supplier cannot attempt to enforce, by means not limited to a court action, such a clause or attempt to induce, by referring to such a clause, the consumer to take any action desired by the supplier.

⁷ Under the act, "flipping" a mortgage loan is making a mortgage loan that refinances an existing mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances.

Attorney General's powers

(R.C. 1345.05)

Ongoing law requires the Attorney General to adopt procedural rules relating to the operation of the CSPA. The Attorney General must make these rules and supporting documents available for public inspection and must continually inform consumers and suppliers of acts or practices that violate the CSPA. The act extends these duties to unfair, deceptive, or unconscionable acts or practices for consumer transactions in connection with a residential mortgage.

As part of the information campaign, the act requires the Attorney General to publish an informational document describing unfair, deceptive, or unconscionable acts and practices in connection with residential mortgages and to make that information available on the Attorney General's official web site. The Attorney General must make this document available for distribution to consumer mortgage loan applicants. Thereafter, the lender, mortgage broker, or loan officer must retain an acknowledgement of receipt, subject to the Attorney General's and the Department of Commerce's review.

Additionally, continuing law allows the Attorney General to conduct research, make inquiries, hold public hearings, and publish studies relating to consumer transactions and to adopt, amend, and repeal substantive rules defining acts or practices that violate the CSPA. The act provides that when adopting, amending, or repealing rules concerning a consumer transaction in connection with a residential mortgage, the Attorney General must consult with the Superintendent of Financial Institutions and give due consideration to state and federal statutes, regulations, administrative agency interpretations, and case law.

Civil remedies for CSPA violations

(R.C. 1345.07)

Under ongoing law, if the Attorney General has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates the CSPA, he or she may bring an action for a declaratory judgment, a temporary restraining order, a preliminary injunction, or a permanent injunction. The court may impose a maximum civil penalty of \$5,000 for each day the supplier violates the order or injunction, if the supplier received notice of the action. Also under ongoing law, the Attorney General may initiate a class action on behalf of consumers damaged by the following: unfair or deceptive acts or practices; acts or practices that violate a rule adopted by the Attorney General before that consumer transaction took place; or acts or practices determined by an Ohio court to violate

the CSPA and committed after the court decision was made available for public inspection by the Attorney General.

The act extends the reach of these provisions to cover consumer transactions in connection with a residential mortgage.

Assignee liability

(R.C. 1345.091)

The act provides that no claim or defense under the CSPA may be asserted by the Attorney General or any consumer against an assignee or purchaser of a mortgage loan for value unless one of the following applies:

- (1) The violation was committed by the assignee or purchaser.
- (2) The assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase.

Right of rescission

(R.C. 1345.09(C)(2))

Under ongoing law that is modified by the act, in any action for rescission under the CSPA, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers (or should have discovered) the ground for it and before any substantial change in condition of the subject of the consumer transaction. The act provides that, if a consumer transaction between a loan officer, mortgage broker, or nonbank mortgage lender and a customer is in connection with a residential mortgage, revocation of the consumer transaction in an action for rescission is only available to a consumer in an individual action, and must occur for no reason other than one or more of the reasons set forth in the federal Truth in Lending Act,⁸ not later than the time limit within which the right of rescission under section 125(f) of that Act expires.⁹

⁸ 82 Stat. 146 (1968), 15 U.S.C. 1635.

⁹ Under 15 U.S.C. 1635(f), an obligor's right of rescission generally expires three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first.

Real Estate Appraisers Law

(R.C. Chapter 4763.)

Certification or license required

(R.C. 4763.13 and 4763.19)

Ongoing law provides procedures for certifying "state-certified general real estate appraisers" and "state-certified residential real estate appraisers," for licensing "state-licensed residential real estate appraisers," and for registering "state-registered real estate appraiser assistants."¹⁰ Under prior law, however, nothing precluded a person who was not licensed or certified from appraising real estate for compensation.

The act prohibits a person from performing a real estate appraisal for a mortgage loan if the person is not licensed or certified.¹¹ But this prohibition does *not* apply to a lender using a market analysis or price opinion, an internal valuation analysis, or an automated valuation model or report based on an automated valuation model, and any person providing that report to the lender, in performing a valuation for purposes of a loan application, as long as the lender (a) gives the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model and (b) includes a disclaimer on that copy specifying that the valuation used for purposes of the application was obtained from a market analysis or price opinion or automated valuation model report and not from a person licensed or certified under the Real Estate Appraisers Law.

National criminal background checks

(R.C. 109.572 and 4763.05(A))

The act requires the Superintendent of Real Estate, upon the filing of an application for an initial certificate, license, or registration, to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), or a vendor approved by BCII, to conduct a criminal records check of the applicant based on the applicant's fingerprint. The Superintendent of BCII is to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to: (1) a violation of R.C. 2913.02 (theft and embezzlement), R.C. 2913.11 (passing bad checks), R.C. 2913.31 (forgery), R.C.

¹⁰ For the definitions of these terms, see R.C. 4763.01.

¹¹ A violation of this prohibition is a misdemeanor of the first degree (R.C. 4763.99).

2913.51 (receiving stolen property), or R.C. 2925.03 (trafficking in drugs), (2) any other criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any crime involving money or securities, as set forth in R.C. Chapter 2909. (arson and related offenses), R.C. Chapter 2911. (robbery, burglary, trespass, and safecracking), R.C. Chapter 2913. (theft and fraud), R.C. Chapter 2915. (gambling), R.C. Chapter 2921. (offenses against justice and public administration), R.C. Chapter 2923. (conspiracy, attempt, complicity, weapons control, and corrupt activity), or R.C. Chapter 2925. (drug offenses), or (3) any existing or former law of Ohio, another state, or the United States that is substantially equivalent to those offenses.

The Superintendent of Real Estate must also request that the criminal records check include criminal record information from the Federal Bureau of Investigation. Any fee required for the records check is to be paid by the applicant.

Offenses that may disqualify an applicant

(R.C. 4763.05(H)(2) and 4763.06)

Under the act, the Superintendent of Real Estate is prohibited from issuing a certificate, license, or registration to any person who has been convicted of or pleaded guilty to any criminal offense described above. However, if the person has pleaded guilty to or been convicted of such an offense, the Superintendent cannot consider it if the person has proven to the Superintendent, by a preponderance of the evidence, that the person's activities and employment record since the conviction show that the person is "honest, truthful, and of good reputation, and there is no basis in fact for believing that the person will commit such an offense again."

The act requires that each renewal application include a statement, signed by the certificate holder, registrant, or licensee, that the certificate holder, registrant, or licensee has not, during the immediately preceding 12-month period, been convicted of or pleaded guilty to any such criminal offense.

Influencing an appraiser's judgment

(R.C. 4763.12 and 4763.99(B))

The act prohibits any person, directly or indirectly, from knowingly compensating, instructing, inducing, coercing, or intimidating *or* attempting to compensate, instruct, induce, coerce, or intimidate, a certificate holder or licensee for the purpose of corrupting or improperly influencing their independent

judgment with respect to the value of the dwelling offered as security for repayment of a mortgage loan. A violation of this prohibition is a fifth degree felony.

Mortgage Brokers/Loan Officers Law

Background

(R.C. 1322.01 to 1322.12)

To act as a mortgage broker in Ohio, continuing law generally requires a person to obtain a certificate of registration from the Superintendent of Financial Institutions for every office the person maintains for the transaction of business. Similarly, it generally prohibits a person from acting as a loan officer without first obtaining a license from the Superintendent. A number of persons are exempt from the Mortgage Brokers/Loan Officers Law but only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate. Among those exempt persons are banks, savings banks, savings and loan associations, and credit unions organized under the laws of this state, another state, or the United States, and any subsidiary or affiliate of a bank, savings bank, savings and loan association, or credit union. Any individual who is employed by an exempt person is also exempt to the extent the individual is acting within the scope of the individual's employment.

Exempt entities

(R.C. 1322.02 and 1322.03(F))

In addition to the financial institutions and their subsidiaries or affiliates described above, the act includes credit union service organizations organized under the laws of this state, another state, or the United States, and their subsidiaries or affiliates, as entities exempt from the Mortgage Brokers/Loan Officers Law. The act defines "affiliate" as an entity that controls, is controlled by, or is under common control with a bank, savings bank, savings and loan association, credit union, or credit union service organization and that the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration has the authority to examine, supervise, and regulate, including with respect to the affiliate's compliance with applicable consumer protection requirements.

The act also provides that no person is exempt from the Law's requirements on the basis of prior work or employment as a mortgage broker, and that the registration requirements apply to any person acting as a mortgage broker.

National criminal background checks

(R.C. 109.572, 1322.03(B), and 1322.031(B))

Upon the filing of an application for a mortgage broker certificate or loan officer license, ongoing law requires the Superintendent to conduct an investigation of the applicant, which must include both a criminal records check based on the applicant's fingerprints and a civil records check. Under the act, the Superintendent is to request the Superintendent of the Bureau of Identification and Investigation (BCII), or a vendor approved by BCII, to conduct a criminal records check, and to obtain criminal record information from the Federal Bureau of Investigation, in the same manner as is required of the Superintendent of Real Estate under the Real Estate Appraisers Law (see above). Likewise, the Superintendent of BCII is to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to any of the same criminal offenses involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

Offenses that may disqualify an applicant

(R.C. 1322.04(A)(7) and 1322.041(A)(3))

Ongoing law requires the Superintendent of Financial Institutions to issue a mortgage broker certificate of registration if the Superintendent finds, among other things, that neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has pleaded guilty to or been convicted of any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities. Under the act, the Superintendent must also find that the applicant and the other persons have not pleaded guilty to or been convicted of a violation of an existing or former law of this state, any other state, or the United States that substantially is equivalent to any of those criminal offenses.

Pursuant to law generally retained by the act, if the applicant or any of those other persons *has* pleaded guilty to or been convicted of any such offense, the Superintendent cannot consider it if the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is "honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again." The act removes this opportunity with respect to *theft* offenses;

consequently, a guilty plea or conviction of theft outright disqualifies the applicant.

The same provisions apply to an applicant for a loan officer's license, except for the requirement that the applicant show that "no shareholder, member, partner, operations manager, or employee of the applicant" has pleaded guilty to or been convicted of any such criminal offense.

Applicant education requirements

(R.C. 1322.03(A)(5), 1322.031(A)(4), 1322.04(A)(3), and 1322.041(A)(5))

Under the act, applications for a mortgage broker certificate of registration that are submitted on or after January 1, 2007, must include evidence that the sole proprietor or the person designated as the operations manager has successfully completed either of the following:

(1) At least 24 hours of live classroom instruction in a course of study approved by the Superintendent. The instruction must cover at least (a) four hours on state and federal mortgage lending laws, with no less than two hours on the Mortgage Brokers/Loan Officers Law, (b) four hours on the Ohio Consumer Sales Practices Act as it applies to mortgage brokers and loan officers, (c) four hours on the loan application process, (d) two hours on the underwriting process, (e) two hours on the secondary market for mortgage loans, (f) four hours on the loan closing process, (g) two hours on basic mortgage financing concepts and terms, and (h) two hours on ethical responsibilities, including with respect to confidentiality, consumer counseling, and the duties and standards of care created by the act (see below).

(2) Other post-secondary education related specifically to the business of mortgage loans that the Superintendent determines meets the above requirements.

Applications for a loan officer license that are submitted on or after January 1, 2007, must include proof that the applicant successfully completed the 24 hours of live classroom instruction described in (1), above.

The act clarifies that these education requirements do *not* apply to any applicant who has an application on file with the Division of Financial Institutions prior to January 1, 2007. In addition, it provides that the required "evidence" or "proof" of the education may be in the form of transcripts or a statement indicating that the applicant has, and will maintain, transcripts at the applicant's place of business for a period of five years for inspection by the Superintendent at the Superintendent's request.

Pre-licensure examination

(R.C. 1322.041(A)(5) and 1322.051)

Prior law required each loan officer, within 90 days after the original issuance of the loan officer license, to successfully complete an examination approved by the Superintendent. The act makes the successful completion of the examination a condition of licensure.

Required disclosures

Mortgage loan origination disclosure statement (R.C. 1322.062(A) and (B)). Mortgage brokers are required under continuing law to deliver a mortgage loan origination disclosure statement (MLODS) to a buyer within three business days after taking an application for a loan. Among other things, the MLODS must include a description of the method by which the fee to be paid by the buyer to the mortgage broker will be calculated. Under the act, the MLODS must also provide a "good faith estimate" of the total amount of that fee.

If the loan applied for will exceed 90% of the value of the real property, the act requires the MLODS to include the following statement printed in boldface type of the minimum size of 16 points: "You are applying for a loan that is more than 90% of your home's value. It will be hard for you to refinance this loan. If you sell your home, you might owe more money on the loan than you get from the sale." Additionally, under the act the MLODS must include the signature of the buyer to acknowledge receipt.

Prior law required that, if there was any change in the information provided by an MLODS with respect to (1) the method by which the mortgage broker's fee was to be calculated or (2) the services the mortgage broker had agreed to perform for the buyer, the mortgage broker provide the buyer with a revised MLODS no later than three days after the change occurs, or the date the loan is closed, whichever is earlier. The act requires the delivery of a revised MLODS if there is a change in *any* of the information it provides. The revised document must include a written explanation of why the change occurred and must be given to the buyer no later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.

Good faith estimate statement (R.C. 1322.062(D)). The act requires a mortgage broker to deliver to the buyer, at the same time the MLODS is delivered, a good faith estimate statement that discloses the amount or range of charges for the specific settlement services the buyer is likely to incur in connection with the loan. The good faith estimate statement must comply with the federal Real Estate

Settlement Procedures Act¹² and include the following notice (in at least 10 point type, New Roman style):

Nature of Relationship: In connection with this residential mortgage loan, you, the borrower(s), has/have requested assistance from (company name) in arranging credit. We do not distribute all products in the marketplace and cannot guarantee the lowest rate.

Termination: This agreement will continue until one of the following events occurs:

1. The loan closes.
2. The request is denied.
3. The borrower withdraws the request.
4. The borrower decides to use another source for origination.
5. The borrower is provided a revised good faith estimate statement.

Notice to borrower(s): Signing this document does not obligate you to obtain a mortgage loan through this mortgage originator nor is this a loan commitment or an approval; nor is your interest rate locked at this time unless otherwise disclosed on a separate Rate Lock Disclosure Form. Do not sign this document until you have read and understood the information in it. You will receive a re-disclosure of any increase in interest rate or if the total sum of disclosed settlement/closing costs increases by 10% or more of the original estimate. Should any such increase occur, mandatory re-disclosure must occur prior to the settlement or close of escrow.

Credit score and report; appraisal report (R.C. 1322.062(C)). A mortgage broker is required by the act to deliver to the buyer, "immediately upon receipt," a copy of any nonproprietary or publicly available credit score and report regarding

¹² 12 U.S.C.A. 2601.

the buyer that is obtained by the broker for the purpose of the loan application. If the loan officer or broker uses an automated valuation model to determine an appraisal report, a copy of the automated valuation model report must also be included.

Additional disclosures (R.C. 1322.063). The act also requires a mortgage broker to deliver to the buyer, not later than 24 hours before the loan is closed, a written disclosure that includes (1) a statement indicating whether property taxes will be escrowed and (2) a description of what is covered by the regular monthly payment, such as principal, interest, taxes, and insurance, as applicable.¹³

Record keeping

(R.C. 1322.06)

Ongoing law requires mortgage brokers to maintain records pertaining to business transacted under the Mortgage Brokers/Loan Officers Law for four years. The act clarifies that "records pertaining to business transacted" includes copies of all mortgage loan origination disclosure statements.

Prohibited acts

Material changes in loan terms (R.C. 1322.064). The act prohibits mortgage brokers and loan officers from failing to timely inform the buyer (1) of any material change in the terms of the loan and (2) if any fees payable by the buyer to the broker or lender increase by more than 10% or \$100, whichever is greater. For purposes of this provision, "material change" means:

--A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;

--A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;

--A change in the interest rate of more than 0.15%;

--A change in the regular monthly payment of principal and interest of more than 5%;

--A change regarding the escrow of taxes or insurance; or

--A change regarding the payment of private mortgage insurance.

¹³ A buyer injured by a mortgage broker's failure to comply with this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

To be "timely," the revised information must be provided to the buyer not later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.¹⁴

If an increase in the total amount of the fee to be paid by the buyer to the mortgage broker is not disclosed as required, the broker must refund to the buyer the amount by which the fee was increased. If the fee is financed into the loan, the broker must also refund to the buyer the interest that would accrue over the term of the loan on that excess amount.

Unwritten promises to refinance (R.C. 1322.07). Mortgage brokers and loan officers are prohibited by the act from promising to refinance a loan in the future at a lower interest rate or with more favorable terms, unless the promise is set forth in writing and is initialed by the buyer.¹⁵

Influencing an appraiser's judgment (R.C. 1322.07 and 1322.99). Mortgage brokers and loan officers are also prohibited from knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under the Real Estate Appraisers Law for the purpose of corrupting or improperly influencing their judgment with respect to the value of the dwelling offered as security for repayment of a mortgage loan. A violation of this prohibition is a fifth degree felony, and a buyer injured by a violation may bring an action for the recovery of damages.

Ownership interest in an appraisal company; referrals (R.C. 1322.074 and 1322.075(B) and (C)). The act generally prohibits a mortgage broker, and any member of the mortgage broker's immediate family,¹⁶ from owning or controlling a majority interest in an appraisal company.¹⁷ This prohibition does *not* apply to

¹⁴ A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

¹⁵ A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

¹⁶ "Immediate family" means a spouse residing in the person's household and any dependent child (R.C. 1322.074(A)(2)).

¹⁷ "Appraisal company" is defined as a sole proprietorship, partnership, corporation, limited liability company, or any other business entity or association, that employs or retains the services of a person licensed or certified under the Real Estate Appraisers Law for purposes of performing residential real estate appraisals for mortgage loans (R.C. 1322.074(A)(1)).

any mortgage broker, or any member of the mortgage broker's immediate family, who--on the act's effective date--owns or controls a majority interest in an appraisal company. However, (1) the mortgage broker and immediate family members cannot increase their interest in the company, (2) the interest is not transferable to a member of the mortgage broker's immediate family, and (3) if the mortgage broker is convicted of or pleads guilty to a criminal violation of the Mortgage Brokers/Loan Officers Law or any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any crime involving money or securities, the Superintendent may, as an alternative to any other enforcement action available, order the mortgage broker or immediate family members to divest their interest in the company.

The act also prohibits mortgage brokers or loan officers from doing the following:

(1) Referring a buyer to an appraisal company if the mortgage broker or loan officer, or a member of their immediate family, has (a) an ownership or investment interest in the company, whether through debt, equity, or other means, or (b) any compensation arrangement with the company that involves remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(2) Knowingly entering into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a mortgage broker or loan officer to a particular appraisal company that would violate the prohibition in (1), above.

Referrals to a settlement service provider (R.C. 1322.075(A) and (D)).

The act also prohibits a mortgage broker or loan officer, or any person required to be registered or licensed under the Mortgage Brokers/Loan Officers Law, from referring a buyer to any settlement service provider, including a title insurance company, without providing the buyer with written notice disclosing any business relationship that exists between the mortgage broker, loan officer, or person, and the provider to which the buyer is being referred; any financial benefit that may be provided because of the relationship; the percentage of ownership interest in the provider; and the estimated charge or range of charges for the settlement service listed. Additionally, the notice must include the following statement (in boldface type of at least 16 points): "There are frequently other settlement service providers available with similar services. You are free to shop around to determine that you are receiving the best services and the best rate for these services." Proof that the buyer received these written disclosures must be retained by the mortgage broker, loan officer, or person for a period of four years.

Duty and standard of care

(R.C. 1322.081)

The act requires a mortgage broker, loan officer, or any person required to be registered or licensed under the Mortgage Brokers/Loan Officers Law, in addition to duties imposed by other statutes or common law, to do all of the following:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Follow reasonable and lawful instructions from the borrower;
- (3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the brokering or originating of any mortgage loan;

(5) Make reasonable efforts to secure a mortgage loan, from lenders with whom the mortgage broker, loan officer, or person regularly does business, with rates, charges, and repayment terms that are advantageous to the borrower. Wholesale lenders, which are defined as companies that have been issued a mortgage broker certificate of registration and that enter into transactions with borrowers exclusively through unaffiliated third party mortgage brokers, are not subject to these particular responsibilities.

A buyer injured by a failure to comply with this statute may bring an action for recovery of damages, which damages cannot be less than all compensation paid directly or indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs. Additionally, the buyer may be awarded punitive damages.¹⁸

These duties and standards of care cannot be waived or modified.

Pre-hearing suspensions

(R.C. 1322.10)

To protect the public interest, the act authorizes the Superintendent to suspend, without a prior hearing, (1) the certificate of registration of a mortgage

¹⁸ Damages are not available under this provision if the buyer has recovered any other damages under the Mortgage Brokers/Loan Officers Law for the same act or circumstance (R.C. 1322.081(E)). See "**Enforcement**," below.

broker, or the license of a loan officer, who is convicted of or pleads guilty to a criminal violation of the Mortgage Brokers/Loan Officers Law or any criminal offense described in "Offenses that may disqualify an applicant," above, (2) the certificate of registration of a mortgage broker who violates the ongoing surety bond requirement (R.C. 1322.05), or (3) the certificate of registration of a mortgage broker, or license of a loan officer, who fails to comply with a request made by the Superintendent to inspect qualifying education transcripts located at the mortgage broker's or loan officer's place of business. These certificates of registration and licenses may subsequently be revoked by the Superintendent in accordance with the Administrative Procedure Act.

The Superintendent is required to suspend, without a prior hearing, the certificate of registration of a mortgage broker whose operations manager has failed to fulfill the continuing education requirements of ongoing law, or the license of a loan officer who has failed to fulfill those requirements. The suspensions are to continue until the required continuing education is completed and a \$500 fine is paid.

The act also requires the Superintendent to adopt rules (in accordance with the Administrative Procedure Act) that prescribe the maximum amount of time a suspension under these provisions can continue before a hearing is conducted.

Enforcement

(R.C. 1322.11)

Under ongoing law, a buyer injured by a violation of the Mortgage Brokers/Loan Officers Law may bring an action for recovery of damages. The minimum amount of damages available was formerly set at the amount paid by the buyer to the mortgage broker, plus reasonable attorney's fees and court costs. The act sets the minimum amount at an amount equal to all compensation paid directly and indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs. In addition, it stipulates that damages under this provision are not available if the buyer has recovered damages (for the same act or circumstance) as a failure to comply with the duty and standard of care created by the act (see "Duty and standard of care," above).

Ongoing law also permits the Superintendent of Financial Institutions, the Attorney General, or a buyer to bring an action to enjoin a violation of the Mortgage Brokers/Loan Officers Law. The act stipulates that when the Attorney General brings such an action, the Attorney General has the same rights, privileges, and powers as under the Consumer Sales Practices Act (R.C. 1345.06). Additionally, it permits the prosecuting attorney of the county in which the action may be brought to bring an action to enjoin a violation *only if* the prosecuting

attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, the Superintendent is authorized under continuing law to initiate such proceedings by presenting evidence of criminal violations to the prosecuting attorney of the county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the prosecuting attorney's request, the Superintendent is required to present the evidence to the Attorney General, who may proceed with all the rights, privileges, and powers conferred by law on prosecuting attorneys.

The act permits the prosecuting attorney to directly initiate criminal proceedings, and permits the Attorney General to initiate criminal proceedings *only if* the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

The act requires the clerk of court, when a judgment becomes final, to mail a copy of the judgment, including supporting opinions, to the Superintendent.

Confidentiality

(R.C. 1322.061)

Under prior law, examination and investigation information, as well as any information leading to or arising from an examination or investigation, were deemed both privileged and confidential. The information remained privileged and confidential for all purposes *except* (1) when the Superintendent took official action regarding a registrant or licensee or (2) in connection with criminal proceedings.

The act removes the references to "privileged." And, in light of the changes described immediately above under "**Enforcement**," it modifies the exception described in (2) by including civil proceedings and by indicating that the civil and criminal proceedings are to be initiated by a prosecuting attorney or the Attorney General.

Mortgage Loan Law

Background

The Mortgage Loan Law (R.C. 1321.51 to 1321.60 and 1321.99) prohibits any person from (1) advertising that the person is engaged in the business of making loans secured by a mortgage on a borrower's real estate that is other than a

first lien on the property or (2) engaging in the business of lending or collecting money or credit for such loans, without first obtaining a certificate of registration from the Division of Financial Institutions. Generally, the Law regulates certain business practices of registrants and the terms and conditions of second mortgage loans and other loans made by registrants.

Prepayment penalties

(R.C. 1321.57)

With respect to loans secured by an interest in real estate, ongoing law permits registrants to charge a prepayment penalty of not more than 1% of the original principal amount of the loan. If the loan is a refinancing, however, no prepayment penalty may be charged. (For purposes of the Mortgage Loan Law, "**prepayment penalty**" is defined as a charge for prepayment of a loan at any time prior to five years from the date the loan contract is executed, and "**refinancing**" means a loan the proceeds of which are used to pay the unpaid balance of a prior loan made by the same registrant to the same borrower (R.C. 1321.51, not in the act).)

Law generally retained by the act also provides an alternative to the prepayment penalty described above. The following chart sets forth the alternative penalty permitted by prior law and the alternative penalty as modified by the act. In both cases, the amount of the penalty is expressed as a percentage of the original principal amount of the loan.

| If the loan is paid in full ... | Alternative prepayment penalty under prior law | Alternative prepayment penalty under the Act |
|--|--|--|
| Prior to one year after the date of the loan contract | 3% | 2% |
| From one year to prior than two years after the date of the loan contract | 2% | 1% |
| From two years to prior than three years after the date of the loan contract | 1% | none |

Enforcement

(R.C. 1321.541)

The act authorizes the Attorney General to directly bring an action to enjoin a violation of the Mortgage Loan Law. The prosecuting attorney of the county in



which the action may be brought is authorized to bring an action to enjoin a violation of the Law *only if* the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, the act authorizes the prosecuting attorney to directly initiate such proceedings. It also permits the Attorney General to initiate criminal proceedings *only if* the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

Consumer Credit Mortgage Loan Law

Background

The Consumer Credit Mortgage Loan Law (R.C. 1349.25 to 1349.37) was enacted to generally conform Ohio law with the federal Home Ownership and Equity Protection Act of 1994 (HOEPA) with respect to specified consumer loans, "in order to facilitate the uniform administration and enforcement of state and federal laws on the regulation of certain high cost mortgages." The Law provides disclosure requirements, and prohibits creditors from engaging in certain practices, in relation to "covered loan" transactions.

Application: definition of "covered loan"

(R.C. 1349.25)

As mentioned above, the disclosure requirements and prohibited practices of the Consumer Credit Mortgage Loan Law apply with respect to "covered loans." Under prior law, "**covered loan**" was defined as a consumer credit mortgage loan transaction that involved property located within Ohio *and* was considered a "mortgage" under HOEPA.

Generally, to be considered a mortgage under HOEPA, the transaction must be secured by the consumer's principal dwelling (*other than* a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan),¹⁹ and must meet either of the following conditions:

¹⁹ As defined in HOEPA, "**residential mortgage transaction**" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of the dwelling. "**Open end credit plan**" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such

(1) The annual percentage rate at consummation of the transaction will exceed by more than eight percentage points for first-lien loans, or by more than ten percentage points for subordinate-lien loans, the yield on United States Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

(2) The total points and fees payable by the consumer at or before closing will exceed 8% of the total loan amount or \$400, whichever is greater. (The \$400 figure is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.)

The act modifies the definition of "covered loan" to expand the application of the Consumer Credit Mortgage Loan Law. Under the act, "**covered loan**" means a consumer credit mortgage loan transaction, *including an open end credit plan*, that involves property located within Ohio; is secured by the consumer's principal dwelling; and meets either the condition described in (1), above, *or* the following:

--If the total loan amount is at least \$25,000, the total points and fees payable by the consumer at or before loan closing exceed 5% of the total loan amount.

--If the total loan amount is less than \$25,000, the total points and fees payable by the consumer at or before loan closing exceed 8% of the total loan amount.

Under the act, "**points and fees**" has the same meaning as in HOEPA, but *also* includes single premium credit insurance, all compensation paid directly or indirectly to a mortgage broker from any source, and--for transactions under an open end credit plan--fees paid for the ability to access the line of credit and fees paid in order to utilize the maximum amount of credit available. "**Points and fees**" does *not* include fees paid to a federal or state government agency that insures payment of some portion of a home loan (including the Federal Housing Administration and the U.S. Department of Veterans Affairs) or an amount of not more than one percentage point in indirect mortgage broker compensation paid by any source.

The act also adds a definition of total loan amount. Under the act, "**total loan amount**" means the principal of the loan minus points and fees that are

transactions, and which provides for a finance charge that may be computed from time to time on the outstanding unpaid balance.

included in the principal amount. In the case of an open end credit plan, "total loan amount" is to be calculated by using the total line of credit allowed under the loan at closing.

Though the act extends application of the Consumer Credit Mortgage Loan Law to open end credit plans, it retains the exclusion for residential mortgage transactions and reverse mortgage transactions. It also provides that it cannot be construed as authorizing a consumer or any other party to pay compensation to a creditor for services provided in connection with a covered loan *or* as prohibiting a creditor from charging or receiving such compensation.

Consumer's repayment ability; prepurchase counseling

(R.C. 1349.27 and 1349.271)

The act generally prohibits a creditor from making a covered loan if, at the time the loan was consummated, the consumer's total monthly debt (including amounts owed under the loan) exceed 50% of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means. Such a loan *can* be made, however, if the consumer submits both of the following:

(1) Verification that the consumer received prepurchase counseling from a counseling service meeting criteria to be established under the act by the Superintendent of Financial Institutions by rule adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act provides that any not-for-profit credit counseling service approved by a federal agency is deemed to meet the criteria.

(2) A disclosure, signed by the consumer, that acknowledges the risk of entering into such a loan.

Enforcement

(R.C. 1349.31)

The act authorizes the Superintendent to directly bring an action to enjoin a violation of the Law and the Attorney General to directly bring such an action against a mortgage broker, loan officer, or nonbank mortgage lender.²⁰ The prosecuting attorney of the county in which the action may be brought is permitted

²⁰ For definitions of these terms, see "**Consumer Sales Practices Act**," "**Scope of consumer transaction**" and "**supplier**," above.

to bring an action against a mortgage broker, loan officer, or nonbank mortgage lender to enjoin a violation *only if* the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, ongoing law permits the Superintendent to initiate such proceedings by presenting evidence of criminal violations to the prosecuting attorney of the county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the prosecuting attorney's request, the Superintendent is required to present the evidence to the Attorney General, who may proceed with all the rights, privileges, and powers conferred by law on prosecuting attorneys.

The act permits the prosecuting attorney to directly initiate criminal proceedings, and permits the Attorney General to initiate such proceedings *only if* the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

General Usury Law: prepayment penalties

(R.C. 1343.011)

The Usury Law (R.C. Chapter 1343.) contains the general statutory provisions governing interest. In the case of written instruments for the payment of money at a future time, the maximum interest rate that may be charged is 8% per year. This interest rate ceiling is subject to several exceptions, however, including whenever authorized by the General Assembly relative to a specific type of loan or a specific lender.

Ongoing law stipulates that residential mortgage obligations may be prepaid or refinanced without penalty at any time more than five years after the date the mortgage was executed. If prepaid or refinanced prior to that time, the penalty cannot exceed 1% of the original principal amount of the loan. (For purposes of the Law, "**residential mortgage**" means an obligation to pay money that is evidenced by a note and secured by a lien upon real property in Ohio containing no more than two residential units, or on which no more than two residential units will be constructed.)

The act creates an exception to this provision. Under the act, *no* prepayment or refinancing penalty can be charged on any residential mortgage obligation of *less than \$75,000* that (1) is made or arranged by a mortgage broker,

loan officer, or nonbank mortgage lender²¹ and (2) is secured by a mortgage on the borrower's real estate that is a first lien. The \$75,000 figure is to be adjusted on January 1 of each year by the annual percentage change in the Consumer Price Index for all urban consumers, Midwest region, all items, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor, as reported on June 1 of the year preceding the adjustment. The Department of Commerce is required to publish these adjusted amounts on its official web site.

Title Insurance Law modifications

Background

The business of title insurance is regulated under Chapter 3953. of the Revised Code. It generally encompasses insuring or indemnifying owners of, or others interested in, real property against loss suffered by reason of liens or encumbrances upon, a defect in, or the unmarketability of the title to the property. It also includes the warranting by a title insurance company of the correctness of searches relating to the title to real property. A "title insurance agent" is a person, partnership, or corporation authorized by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies on its behalf. The term does not include officers and salaried employees of a title insurance company. (R.C. 3953.01, not in the act.)

Escrow accounts; fidelity bond

(R.C. 3953.23(B) and (C))

Ongoing law modified by the act permits a title insurance agent to engage in the business of handling escrows of real property transactions that are directly connected with the business of title insurance. The act removes the requirement that the transactions be "directly connected with the business of title insurance" and revises the fidelity bond coverage requirements of agents.

Under prior law, all agents were required to be covered by a fidelity bond in an amount and with a company satisfactory to the principal. The act instead requires all title insurance agents or agencies that handle escrows in real property transactions *not involving* the issuance of title insurance to have coverage protecting the parties to such transactions against theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds. The Superintendent of Insurance is required to adopt rules, in accordance with the

²¹ For definitions of these terms, see "Consumer Sales Practices Act," "Scope of consumer transaction" and "supplier," above.

Administrative Procedure Act, setting forth the minimum requirements for such coverage.

Errors and omissions policy

(R.C. 3953.23(D))

The act mandates the Superintendent to require every title insurance agent or agency, and any subcontractors, to maintain an errors and omissions policy that includes coverage for the agent's or agency's delegation of any agent or agency function. The Superintendent must adopt rules, in accordance with the Administrative Procedure Act, setting forth the minimum requirements of that coverage.

Annual independent review

(R.C. 3953.33(A) and (B))

The act requires every title insurance agent or agency that handles escrow, settlement, closing, or security deposit accounts to have an annual independent review made of these accounts within 90 days after the close of the previous fiscal year. Proof of the annual review must be provided to each title insurance company that the agent or agency represents. The Superintendent is required to promulgate rules under the Administrative Procedure Act setting forth the minimum threshold level at which a review is required, the standards of the review, the minimum qualifications of the independent party conducting the review, and the form of the report that is required. The Superintendent may also require agents or agencies to provide a copy of their annual review reports to the Superintendent. The act specifically exempts from this annual review requirement interest on lawyer's trust accounts (IOLTAs) that are established and maintained by an attorney.

Furthermore, title insurance agents and agencies must allow the Superintendent, and every title insurer that they represent, reasonable access to their escrow, settlement, closing, and security deposit accounts and any and all supporting account information in order to ascertain the safety and security of the funds held by the agent or agency.

Lender's title insurance policy

(R.C. 3953.30)

In the event a title insurance agent issues a lender's title insurance policy in conjunction with a residential mortgage loan made simultaneously with the purchase of all or part of the real property securing the loan, and no owners title

insurance policy has been requested, the agent is required by the act to give written notice to the mortgagor at the time the commitment is prepared. (For this purpose, "residential mortgage loan" is defined as an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property in Ohio containing no more than two residential units or on which no more than two residential units are to be constructed, and includes an obligation on a residential condominium or cooperative unit. "Residential mortgage lender" means any person, including a bank, savings and loan association, mortgage broker, credit union, or saving bank, that lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt.)

The notice must be on a form prescribed or approved by the Superintendent and must include all of the following:

--An explanation that a lender's title insurance policy is issued to protect the residential mortgage lender and that the policy does not provide title insurance protection to the mortgagor as the owner of the property being purchased;

--An explanation of what an owner's title insurance policy insures against and what possible exposures exist for the mortgagor that could be insured against through the purchase of such a policy;

--A statement that the mortgagor may obtain an owner's title insurance policy either at a specified cost or at an approximate cost if the proposed coverage or amount of insurance is not then known.

The agent is required to maintain a copy of the notice, signed by the mortgagor, in the relevant underwriting file for at least ten years after the effective date of the lender's title insurance policy.

Closing and settlement protection

(R.C. 3953.32)

The act requires a title insurance agent or title insurance company, at the time of close with the company for issuance of a title insurance policy, to offer closing or settlement protection to the lender, borrower, and seller of the property, and to any applicant for title insurance. The closing or settlement protection offered must indemnify any lender, borrower, seller, and applicant that has requested the protection, both individually and collectively, against the loss of settlement funds resulting from certain acts of the company's named title insurance agent or anyone acting on the agent's behalf. Those acts involve a failure to properly disburse settlement, closing, or escrow funds (including through theft or fraud) or to comply with any applicable written closing instructions, when agreed

to by the title insurance agent. The act prohibits a title insurance company from offering or issuing any other coverage that purports to indemnify against a person's improper acts or omissions in connection with escrow, settlement, or closing services.

The Superintendent may adopt rules to carry out the purposes of this provision, including rules detailing the specific language that must be included in the written document that offers closing or settlement protection. Any such rules must be adopted in accordance with the Administrative Procedure Act.

Records

(R.C. 3953.33(C))

Title insurance agents and agencies are required by the act to maintain sufficient records of their affairs, including their escrow operations and escrow trust accounts, to enable the Superintendent to confirm compliance with the Title Insurance Law. These records must be kept for a period of not less than ten years. The Superintendent may prescribe the specific records and documents that must be kept.

Unfair and deceptive acts or practices

(R.C. 3953.35)

The act prohibits a title insurance agent from doing any of the following in connection with a mortgage loan of \$75,000 or less;

- (1) Knowingly coercing or wrongfully instructing the consumer to enter into the loan;
- (2) Knowingly failing to disclose to the consumer that the consumer does not have to close on the loan;
- (3) Knowingly making a material misrepresentation to the consumer regarding the terms of the loan.

A violation of this prohibition is considered an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act (R.C. 1345.02).

Other provisions

Consumer Finance Education Board

(R.C. 1349.71 and 1349.72)

The act creates the Consumer Finance Education Board, consisting of 12 members. The members are to be appointed jointly by the Governor, the Speaker of the House of Representatives, and the President of the Senate, with the advice and consent of the House and Senate. Taking into consideration a geographically diverse representation of the state, one member must be appointed from, or as a representative of, each of the following:

- The Attorney General's Office;
- The Department of Commerce;
- The Ohio Housing Finance Agency;
- Ohio minority advocacy groups;
- The Ohio Bankers League;
- The Ohio Mortgage Bankers Association;
- The Ohio Credit Union League;
- The Ohio Community Bankers Association;
- The Ohio real estate industry;
- The Ohio Mortgage Brokers Association;
- The financial services industry;
- Consumer advocacy organizations.

Duties. The Board is required to perform the following duties:

(1) Analyze and investigate, on its own initiative, the policies and practices of state agencies, nonprofit entities, and businesses that address financial literacy, access by state residents to financial information, education, and resources, prevention of foreclosures and bankruptcies, and prepurchase and postpurchase counseling and education for homebuyers;

(2) Provide an annual report and consultation and recommendations to the Governor, the General Assembly, state agencies, nonprofit entities, and businesses based on the Board's findings;

(3) Coordinate and provide resources and assistance to state agencies, nonprofit entities, and businesses in the furtherance of their efforts to improve financial literacy, access by state residents to financial information, education, and resources, prevention of foreclosures and bankruptcies, and prepurchase and postpurchase counseling and education for homebuyers;

(4) Provide financial assistance to Ohioans through grants funded through the ongoing Consumer Finance Fund (R.C. 1321.21) and utilize these same funds to provide grants to design, develop, and implement any of the programs required by the Act;

(5) Receive grants from the Consumer Finance Fund to carry out the Board's duties.

The Board is permitted to delegate the execution of its duties to smaller groups of its own members. In the context of the objectives described above, these committees must be specifically chartered to address the needs of persons ages 18 to 25; the needs of persons classified as needy, based on a household adjusted gross income equal to or less than 200% of the poverty level or the federal earned income amount; the needs of persons previously convicted of one or more felonies; the needs of persons characterized as vulnerable by reason of advanced age, disability, minority, or other demographic consideration; and the needs of any other group identified by the Board as worthy of particular attention.

Pilot program. The act requires the Board to create a pilot financial literacy and counseling program to be operated in the five counties with the highest mortgage foreclosure rates as of the act's effective date. Mortgage brokers and loan officers are to recommend completion of the program for any consumer seeking a mortgage loan with origination fees greater than 5%, and brokers must notify the consumer that such a loan may have attributes that are predatory. The program is to be funded through the Consumer Finance Fund.

The act states that persons who offer education, advice, or counseling through this program cannot be held liable for any damages incurred from actions taken on the basis of the education, advice, or counseling given.

Advisory committee; other assistance. For the purpose of receiving recommendations on policy, rules, and activities, the Board is required to assemble an advisory committee of representatives from (1) the Departments of Aging, Rehabilitation and Correction, Development, and Job and Family Services, (2) the

Treasurer of State's Office, (3) the County Treasurers Association of Ohio, (4) Ohio college professors, (5) Ohio university professors, (6) the Ohio Board of Regents, (7) the Ohio Community Development Corporations Association, (8) the Ohio Council for Economic Education, and (9) The Ohio State University extension service.

The act also permits the Board to obtain services from any state agency, including the Department of Commerce.

Terms of office; organization; procedures. Of the initial appointments to the Board, four are for a term ending December 31, 2008; four are for a term ending December 31, 2009; and four are for a term ending December 31, 2010. After that, terms of office are for three years--beginning on January 1 and ending on December 31. The act requires each member, prior to assuming the duties of office, to subscribe to the constitutional oath of office and file it with the Secretary of State. Members are prohibited from serving more than two consecutive terms.

Each member must hold office from the date of the member's appointment until the end of the term for which the member is appointed. Vacancies on the Board are to be filled in the manner prescribed for regular appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed must hold office for the remainder of that predecessor's term. A member is to continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until 60 days have elapsed, whichever occurs first.

The act requires the Governor to call the first meeting of the Board. At that meeting, and annually thereafter, the Board must elect a chairperson for a one-year term and may elect members to other positions on the Board as deemed necessary. Meetings must be held at least once each calendar quarter. A majority of the members of the Board constitutes a quorum to transact and vote on all business.

Board members are to receive an amount fixed pursuant to the pay schedules set forth in continuing law for each day employed in the discharge of official duties, as well as the member's actual and necessary expenses incurred in the discharge of those duties.

Standard of care for nonbank mortgage lenders

(R.C. 1349.41)

The act prohibits a nonbank mortgage lender from engaging in a transaction, practice, or course of business that is "not in good faith or fair dealing, or that operates a fraud upon any person," in connection with the attempted or

actual making, purchase, or sale of any mortgage loan. A consumer affected by a lender's failure to comply with this standard of care may recover damages equal to at least all compensation paid directly or indirectly to the lender from any source, plus reasonable attorney's fees and court costs. (For these purposes, "consumer" is defined as an individual to whom credit is offered or extended primarily for personal, family, or household purposes. **Nonbank mortgage lender**" has the same meaning as in "Consumer Sales Practices Act," "Scope of 'consumer transaction' and 'supplier'," above, except that it does not include a person that purchases or is assigned a loan or that functions solely as the servicer of a loan.)

The duty created by this provision cannot be waived or modified.

Sharing of confidential information among regulators

(R.C. 1322.061(D), 4735.05, and 4763.03)

The act states that the confidentiality requirements of the Mortgage Brokers/Loan Officers Law, the Real Estate Brokers Law, and the Real Estate Appraisers Law do *not* prevent the Superintendent of Financial Institutions or the Superintendent of Real Estate from sharing information regarding mortgage brokers and loan officers, real estate brokers and salespersons, and real estate appraisers for purposes relating to the administration of those laws. Such information may also be shared with the Superintendent of Insurance for purposes relating to the administration of the Title Insurance Law, and with the Attorney General, local law enforcement agencies, and local prosecutors.²² The information remains confidential.

Electronic database of enforcement actions

(R.C. 1349.43)

Under the act, the Department of Commerce must establish and maintain an electronic database accessible through the internet that contains information on the following:

(1) The enforcement actions taken by the Superintendent of Financial Institutions for each violation of or failure to comply with any provision of the Mortgage Brokers/Loan Officers Law, *upon final disposition of the action*;

²² *The ongoing Mortgage Brokers/Loan Officers Law already provided that the Superintendent of Financial Institutions is not prevented from sharing such information with the Attorney General for CSPA purposes.*

(2) The enforcement actions taken by the Attorney General under the Consumer Sales Practices Act (CSPA) against loan officers, mortgage brokers, and nonbank mortgage lenders, *upon final disposition of the action*;

(3) All judgments by Ohio courts, concerning which *appellate remedies have been exhausted or lost by the expiration of the time for appeal*, finding (a) a violation of the Mortgage Brokers/Loan Officers Law or (b) that specific acts or practices by a loan officer, mortgage broker, or nonbank mortgage lender violate the CSPA.

The Attorney General is required to submit the information related to the CSPA to the Department on the first day of each January, April, July, and October. The Department may adopt, in accordance with the Administrative Procedure Act, any rules necessary to implement this database requirement. The database cannot, however, include information deemed confidential under the Mortgage Brokers/Loan Officers Law.

Semi-annual reports on the operations of the Division of Financial Institutions

(R.C. 1349.44)

The Superintendent of Financial Institutions is required by the act to report semi-annually to the Governor and the General Assembly on the operation of the Division of Financial Institutions with respect to:

--Enforcement actions instituted by the Superintendent under the Mortgage Brokers/Loan Officers Law, and their final dispositions;

--Suspensions, revocations, or refusals to issue or renew certificates of registration and licenses under the Mortgage Brokers/Loan Officers Law;

--Outreach efforts of the Office of Consumer Affairs to provide education regarding predatory lending, borrowing, and related financial topics.

The information the Superintendent is required to report under this provision does not include information that is deemed confidential under the Mortgage Brokers/Loan Officers Law.

When act takes effect

(Section 3(A))

Though the effective date of the act is the 91st day after the act is filed with the Secretary of State, the act's provisions do not take effect until January 1, 2007.

HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 09-22-05 |
| Reported, S. Finance & Financial Institutions | 02-22-06 |
| Passed Senate (29-4) | 02-22-06 |
| Reported, H. Financial Institutions, Real Estate & Securities | 03-29-06 |
| Passed House (89-5) | 03-29-06 |
| Senate refused to concur in House amendments (0-32) | 03-29-06 |
| House requested conference committee | 05-17-06 |
| Senate acceded to request for conference committee | 05-18-06 |
| Senate agreed to conference committee report (30-3) | 05-24-06 |
| House agreed to conference committee report (84-7) | 05-24-06 |

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