



Ohio Legislative Service Commission

Bill Analysis

Suzanne Lindamood

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(As Introduced)

Reps. Foley and Driehaus, Heard, Skindell, Stewart, Newcomb, Yuko, Hagan, Harris, B. Williams, S. Williams, Yates, Luckie, Patten, Slesnick, Ujvagi, Letson, Harwood, Boyd, Weddington, Winburn, Pryor, Murray, Mallory, Domenick, DeBose

BILL SUMMARY

- Modifies court procedures and requirements with respect to residential mortgage foreclosures with additional duties given to the clerk of courts with respect to complaints filed to initiate residential mortgage foreclosure actions.
- Declares a six month moratorium on residential mortgage foreclosure judgments and sales of occupied properties, establishes that mortgage and related payments must be made during the moratorium, and provides for discontinuance of the moratorium with respect to a particular property.
- Enables a court during the next three years to modify a mortgage agreement if beneficial to both parties.
- Enables a borrower to remain in a property after foreclosure if the purchaser at foreclosure does not need the property for personal use and occupancy and the borrower petitions the court prior to court approval of sale; establishes procedure for a court determining rent due.
- Establishes registration law for mortgage servicers administered by the Superintendent of Financial Institutions of the Department of Commerce.
- Requires mortgage servicers to register and to adhere to the bill's Mortgage Servicers Registration Law which includes business standards, responsibility to borrowers, the requirement of a criminal background check, civil and criminal penalties for violations, and a \$1,000 annual fee.

- Requires mortgage servicers to provide notice and information to property owners regarding resources and rights before a mortgage foreclosure action may be filed.
- Requires mortgage servicers to include with the filing of a complaint for a residential mortgage foreclosure, information regarding the holder of the note and the right to file for a foreclosure action.
- Requires a filing fee of \$1,500 and a current appraisal accompany the filing for a residential mortgage foreclosure action.
- Requires the Director of Commerce to establish the State Foreclosure Prevention Project and to annually report to the General Assembly findings on foreclosures and mitigation results of that project.
- Requires the Director of Commerce and the Administrative Director of the Ohio Supreme Court to establish a mortgage foreclosure database which the Administrative Director maintains.
- Requires mortgage servicers to provide information regarding filings, adherence to notice requirements, and agreements with a borrower to the Administrative Director of the Supreme Court for inclusion in the Mortgage Foreclosure Database.
- Establishes the Foreclosure Prevention Revolving Trust Fund in the state treasury with money in the fund to be distributed to counties, the Ohio Housing Trust Fund, and the Division of Financial Institutions of the Department of Commerce to provide grants for preventing and mitigating problems related to foreclosure.
- Requires the Director of Commerce to adopt rules to implement a comprehensive loan modification program that establishes guidelines for loan modifications.

TABLE OF CONTENTS

Overview of the bill.....	4
I. Moratorium.....	4
Payments required during moratorium.....	5
Discontinuing a moratorium	5
II. The foreclosure process	5
Clerk of courts duties	5
Requirements for filing complaint.....	6
Provision of mortgage information	6
Appraisal	7
Certification that notice requirements have been met.....	7
Filing fee	7
Confirmation of requirements before judgment.....	7
III. Judicial modification of mortgage terms.....	7
IV. The special program to reduce foreclosures act	8

Servicer duty to inform borrower	8
Resources to assist borrower.....	8
Right to remain in property.....	9
Servicer duty to file information for database.....	10
Right of the borrower to become tenant following foreclosure	11
State foreclosure prevention project	11
State foreclosure database	12
Report to the General Assembly.....	12
Evaluate mortgage servicers	13
Foreclosure prevention revolving trust fund.....	13
Distribution of trust fund money	14
V. The residential mortgage servicers registration act.....	14
Overview	14
Registration requirements.....	15
Servicing without registration	16
Servicing with expired registration	16
Registration application procedures.....	17
Registration fees	17
Investigations.....	18
Issuance or denial of certificate of registration.....	18
Expiration of registration	18
Registration renewal	19
Additional investigation authority.....	19
Conditions of registration and certification	19
Conspicuous display	19
One place of business	19
Change in place of business.....	19
Name change.....	20
Asset and bonding requirements	20
Notice of action alleging injury	20
Superintendent's authority	21
Adopt rules.....	21
Revoke, suspend, or refuse to renew registration.....	22
Monetary fine	22
Fines	23
Fines for servicer without registration	23
Investigation and request of court.....	23
Right to subpoena.....	23
Cease and desist order.....	24
Mortgage servicer responsibilities.....	24
Maintain records	24
Information that is a public record.....	25
Standards of servicer conduct	25
With respect to Superintendent.....	25
Duty to supervise	26
Books and records open to inspection	26
Duty to inform borrower.....	27
Duty of honesty	27
Servicer duties of good faith and fair dealing.....	28
Prohibitions with respect to servicing a loan	29
Standards for collection of money.....	30
Servicer business standards.....	31

Damages to borrower	31
Civil penalties	31
Criminal penalties	31
VI. Comprehensive loan modification program	32
Extraordinary measure.....	32
Emergency measure.....	33
Definitions	33

CONTENT AND OPERATION

Overview of the bill

The bill modifies court procedures and requirements with respect to residential mortgage foreclosure actions, declares a six-month moratorium on residential mortgage foreclosure judgments and sales, enables a court during the next three years to modify a mortgage agreement if in the interest of both parties, enacts the Special Program to Reduce Foreclosures Act which, among other provisions, requires servicers to provide notice and information to property owners and enables a borrower to petition a court to stay in a property after it is sold at foreclosure, and enacts the Residential Mortgage Servicers Registration Act which requires servicers to register with the Superintendent of Financial Institutions of the Department of Commerce, undergo criminal background checks, and maintain standards of operation that comply with the bill's requirements. The "**COMMENT**" section at the end of this analysis contains a brief discussion of the current mortgage servicers and the mortgage foreclosure process in Ohio.

The bill applies to residential mortgages which the bill defines as an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state, containing four or fewer residential units, and includes such an obligation on a residential condominium or cooperative unit. (R.C. 1323.01.)

I. Moratorium

The bill declares a six-month moratorium on mortgage foreclosure actions on residential properties occupied by the owner of the property or the tenant of that owner, to commence on the effective date of the bill. (R.C. 2308.03(A).) The bill repeals the moratorium six months after the bill's effective date. (Section 2.)

During the time of the moratorium, residential mortgage foreclosure filings may be made to initiate foreclosure actions but actions related to judgment and sale of occupied properties are halted as follows (R.C. 2308.03(B)):

- No court may hear a complaint for foreclosure or issue a judgment on such a property;

- No clerk of court may issue a writ of execution on such a property;
- No foreclosed property may be sold at auction nor may any auction be scheduled to conduct such a sale;
- No court may confirm the sale at auction of such property.

Payments required during moratorium

During the time of the moratorium on residential mortgage foreclosure actions, the borrower must make payments each month in an amount equal to one-half of the monthly payment for interest and principal that was in effect at the time the foreclosure action was filed, or other amount that a judge determines is just and equitable. In addition, the bill requires the borrower to pay any escrow amount for taxes and insurance if the borrower's mortgage loan required such payments into escrow. The borrower is to make the payments to the mortgage servicer to whom the borrower was responsible for making payments at the time the foreclosure action was filed. The bill prohibits the mortgage servicer from refusing to accept the payments that the borrower makes during the time of foreclosure. (R.C. 2308.04(B).)

Discontinuing a moratorium

If a borrower fails to make the payments during the moratorium on residential mortgage foreclosure, 30 days after a missed payment, the party who filed the action may petition the court for the foreclosure action to resume and that action must resume as if there were no moratorium. In addition, at any time during the moratorium, a borrower may petition the court to request that the foreclosure action on the borrower's property proceed as if there were no moratorium. (R.C. 2308.04(C).)

II. The foreclosure process

Clerk of courts duties

The bill prohibits a clerk of courts from accepting a complaint to initiate foreclosure on a residential mortgage loan unless the filing contains a copy of the notices that the bill requires servicers to provide to borrowers (under R.C. 1323.02). The copies of these notices are to be filed under seal in connection with the foreclosure, along with a certification by the filer that all required notices and information have been provided and that the requisite periods of time have elapsed. In addition, a clerk of courts may not accept a complaint to initiate a foreclosure on a residential mortgage unless the complaint is accompanied by a writing that discloses the name of the holder of the note and other information with respect to the right to file a foreclosure action that the bill requires. (R.C. 2303.33(A) and (B).)

The bill permits a clerk of court of common pleas or other judicial officer in this state to have access to the state mortgage foreclosure database (see "**State Foreclosure Database**," below) that the bill establishes to confirm information provided by the person filing the complaint. A materially inaccurate statement in the certification is cause for dismissal without prejudice of any foreclosure proceeding initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding. (R.C. 2303.33(C).)

Within three business days of issuing a writ of execution in a residential mortgage foreclosure action, the clerk of court entering that writ must file information of that action with the Administrative Director of the Ohio Supreme Court for inclusion in the foreclosure database. The filing must contain the name and address of the borrower, the date of the writ, and the name of the mortgage servicer or mortgage holder that filed the complaint to initiate the foreclosure action. (R.C. 2303.33(D).)

Requirements for filing complaint

The bill requires that when filing a complaint to initiate a residential mortgage foreclosure action, a person accompany that complaint with (1) a writing (see "**Provision of mortgage information**," below) providing information relating to the holder of the mortgage and authority file the foreclosure action, (2) an appraisal of the property, (3) a certification that all notice requirements have been met, and (4) a payment of a filing fee of \$1,500.

Provision of mortgage information

A writing to provide mortgage information must accompany the foreclosure complaint that is filed. That writing must contain all of the following:

- A statement setting forth the name of the holder of the note and asserting that the named holder is the true party in interest with a right to file the action;
- A statement as to whether the mortgage note has been securitized and if so, the identity of any mortgage-backed security that holds the loan and the name of the trustee of that mortgage-backed security;
- A statement of the plaintiff's counsel or other person filing the complaint asserting that the counsel or person filing the complaint is the designated representative of the true party in interest and that the counsel or other person filing the complaint is authorized to negotiate on behalf of the plaintiff and is not an intermediary representative of the plaintiff;

- A statement as to whether the residential property is occupied and the date that its occupancy status last was assessed. (R.C. 2308.02(A).)

Appraisal

The complaint must be accompanied by a copy of an appraisal of the property, conducted within the prior three months by an appraiser who is certified or licensed pursuant to the Ohio Appraisers Law (R.C. Chapter 4763.) to perform residential appraisals. (R.C. 2308.02(B).)

Certification that notice requirements have been met

In any foreclosure on a residential mortgage loan, the filing must contain a certification by the filing party that the notice and information the servicer is required to provide to the borrower prior to the filing were properly provided in all material respects and that the required periods of time have elapsed. (R.C. 2323.06(C).)

Filing fee

The bill requires a filing fee to be charged of any creditor that files a complaint to initiate a foreclosure action that involves a residential mortgage loan. The fee is to be paid simultaneously with filing a complaint in a court by transmission of a certified check in the amount of \$1,500 payable to the Department of Commerce for deposit into the trust fund the bill establishes. The bill prohibits the creditor from adding the amount of the fee to the amount the borrower owes the creditor or seek recovery of this cost from the borrower. The bill prohibits a court from granting a judgment of foreclosure to any creditor of a residential loan unless that creditor provides evidence to the court that the creditor has paid the fee as the bill requires. (R.C. 1323.11.)

Confirmation of requirements before judgment

In an action for a residential foreclosure, before any entry of an order granting a judgment of foreclosure, the court must determine whether the underlying mortgage debt is a residential mortgage loan, and if so, whether the servicer provided the required notices to borrowers in all material respects and that the required periods of time have elapsed. (R.C. 2323.06(B).)

III. Judicial modification of mortgage terms

For a period of three years after the bill's effective date, in a residential mortgage foreclosure action, a judge is given discretion to modify the loan by reducing the principal or interest if the judge determines the modification would be just and equitable and would benefit both parties. The bill repeals the statute authorizing this judicial modification three years after the bill's effective date. (Section 3.)

Under the bill, the judge may reduce the principal amount of the loan that is being foreclosed if, in consideration of the appraised value of the property and other equitable considerations, including a finding that both parties would benefit from such a modification, the court finds under all the circumstances, the modification appears just and equitable, and that the modification would enable the borrower to make payments and retain the property. (R.C. 2308.04(A)(1).)

The judge may reduce the interest rate of the loan to an amount the judge determines is just and equitable and would enable the borrower to make payments and retain the property. (R.C. 2308.04(A)(2).)

IV. The special program to reduce foreclosures act

The Special Program to Reduce Foreclosures Act establishes requirements of mortgage servicers with respect to information provided to borrowers, including (1) notifying borrowers prior to a foreclosure action of resources available to avoid foreclosure, and (2) the borrowers right to stay in the property during the foreclosure action and possibly after.

The bill establishes the State Foreclosure Prevention Project (see below), under the Director of Commerce, and requires the development of a database system to be implemented and maintained by the Administrative Director of the Ohio Supreme Court to track residential mortgage foreclosure information and to promote the efforts of the Foreclosure Prevention Project. The bill requires the Director of Commerce annually to report to the General Assembly on foreclosures in Ohio and the actions and efforts of the Foreclosure Prevention Project. (R.C. 1323.01 to 1323.11.)

Servicer duty to inform borrower

The bill requires a mortgage servicer, at least sixty days prior to filing a complaint to initiate a residential mortgage foreclosure action on a property occupied by an owner or a tenant of that owner, to provide the borrower with two notices: (1) a notice of the availability of resources, and (2) a notice of the possible right of the borrower to remain in the property following the sale at foreclosure. The notices must be mailed to the last known address of the borrower and evidenced by a certificate of mailing from the United States postal service. (R.C. 1323.02.)

Resources to assist borrower

The notice of the availability of resources to avoid foreclosure must be on a form the Director of Commerce prescribes and include all of the following (R.C. 1323.02(A)(1)):

- An itemization of all past due amounts causing the loan to be in default;
- An itemization of any other charges that the borrower must pay in order to be current on loan payments;
- A statement that the borrower may have options available other than foreclosure, and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the United States Department of Housing and Urban Development;
- The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or an agent for either of them who is authorized to work with the borrower to avoid foreclosure;
- The name, address, telephone number, and other contact information for one or more United States Department of Housing and Urban Development-approved counseling agencies operating to assist borrowers in Ohio to avoid foreclosure;
- The address, telephone number, and other contact information for the consumer complaint sections of the Division of Financial Institutions and the Ohio Attorney General;
- Other information the Director considers necessary.

Right to remain in property

The bill requires the servicer to provide the borrower with a notice setting forth the borrower's right to retain possession of the property during foreclosure, which exists under ongoing law, and the possibility that the buyer could remain in the property after it is sold at foreclosure, which possibility is established under the bill. Under this notice requirement, the servicer must have the following prominently displayed (R.C. 1323.02(A)(2)):

NOTICE TO BORROWER: YOU HAVE THE RIGHT TO REMAIN IN THIS PROPERTY DURING THE FORECLOSURE PROCEEDINGS AND AFTER THE SHERIFF'S SALE UNTIL A COURT CONFIRMS THE SALE. AFTER THAT CONFIRMATION BY A COURT, YOU MAY SEEK TO REMAIN IN THE PROPERTY UNLESS THE PROPERTY IS ACQUIRED BY AN INDIVIDUAL WHO PLANS TO OCCUPY THE PROPERTY. IF [NAME OF CREDITOR] ACQUIRES THE PROPERTY AT SHERIFF'S

SALE, YOU MAY ASK THE COURT TO REMAIN IN THE PROPERTY AS A TENANT UNTIL [NAME OF CREDITOR] SELLS THE PROPERTY TO AN INDIVIDUAL WHO PLANS TO OCCUPY THE PROPERTY. YOU MUST PAY A FAIR MARKET RENT AND KEEP THE PROPERTY IN GOOD CONDITION. TO REMAIN AS A TENANT, YOU MUST REQUEST IT OF THE COURT PRIOR TO THE CONFIRMATION OF THE FORECLOSURE SALE. THIS CONFIRMATION TAKES PLACE AFTER THE SHERIFF'S AUCTION.

ADDRESS OF PROPERTY:

Servicer duty to file information for database

Under the bill, within three business days after mailing the required notices, a mortgage servicer is required to file information the bill specifies with the Administrative Director of the Ohio Supreme Court, who is required to keep the information in the database the bill establishes. The information includes the date the notice was mailed to the borrower and, unless prohibited by a state or federal law, any additional information the Administrative Director requests for review as part of the State Foreclosure Prevention Project. (R.C. 1323.04(A).)

The bill also requires that at any time during the foreclosure process, the servicer must notify the Administrative Director, in an electronic format information, information regarding the nature and terms of an agreement with a borrower to do any of the following (R.C. 1323.04(B)):

- Reduce or forego any fees or arrearages, including acceptance of a deed in lieu of foreclosure;
- Modify or otherwise alter the terms of the loan agreement by a reduction in the interest rate, lessening of the monthly payment, increase in the term for repayment, deferment of interest or other payment, or alteration of the variable rate adjustment date;
- Refinance the loan under new terms;
- Rent the property to the borrower upon foreclosure.

Right of the borrower to become tenant following foreclosure

Under existing law, a borrower has the right to occupy the foreclosed property until a court confirms the sale and foreclosure after the sheriff's sale. (R.C. 2329.31, not in the bill.) Under conditions set forth in the bill, a borrower possibly could remain in the property as a tenant following a court's confirmation of the foreclosure and sale. (R.C. 1323.05(A).)

To remain in the property following foreclosure, before the court confirms the sale and foreclosure a borrower must apply to the court to grant a tenancy. If the court grants the request, the borrower, as tenant in possession, must pay the title holder a fair market rent for the property. The court is to establish a reasonable rental value for the property based on information the title holder provides, information the borrower provides, and information available to the court from state or local government sources. The bill requires the title holder to provide the court and borrower information on the fair market rent for the property based on information an independent third party provides as well as the rental income for comparable properties in the same area. Nothing in the bill prevents a title holder, as landlord, from evicting the borrower as tenant in possession for any reason that a landlord normally may evict a tenant in this state. (R.C. 1323.05(B).)

The right to occupy the property as a tenant after foreclosure does not apply when the title holder requires the property for personal use and occupancy or conveys the property to another person who requires the property for personal use and occupancy. At any time the title holder requires the property for personal use and occupancy, the holder may require the borrower, as tenant in possession, to vacate upon the same notice as for a month-to-month tenancy.¹ (R.C. 1323.05(A)(2).)

State foreclosure prevention project

The bill requires the Director of Commerce to establish the State Foreclosure Prevention Project pursuant to the bill's specifications. The purpose of the project is to collect residential mortgage foreclosure information, track loss mitigation efforts, encourage viable loan modifications, and seek solutions to avoid foreclosures for residential mortgage loans. In developing the project, the Director may include input from the United States Department of Housing and Urban Development-approved

¹ Termination of a month-to-month tenancy requires a notice of at least 30 days prior to the date upon which rent normally is paid. At this point, if the tenant does not vacate, an eviction action would have to be filed pursuant to procedures for eviction under the Ohio Forcible Entry and Detainer Law, R.C. Chapter 1923. The existing Ohio eviction procedure enables a tenant to be heard in court and requires that any removal of the tenant from the property, following that court procedure, be made by a sheriff or other designated official.

housing counselors, community organizations, state agencies including the Ohio Attorney General, mortgage lenders, mortgage servicers, and others. (R.C. 1323.06.)

State foreclosure database

The bill also establishes a database to track residential mortgage foreclosure information. The bill requires the Director of Commerce to design and develop the system for the database, in consultation with the Administrative Director of the Ohio Supreme Court. The database is to be designed in a manner to promote the efforts of the State Foreclosure Prevention Project. The Administrative Director of the Ohio Supreme Court is required to implement the database not later than October 1, 2009. (R.C. 1323.07(A).)

Access to the information in the database is limited to the Administrative Director of the Ohio Supreme Court, the Director of Commerce, the Superintendent of Financial Institutions, the Ohio Attorney General, and the clerk of a court of common pleas for the purposes the bill sets forth. (R.C. 1323.07(B).)

Any information provided for inclusion in the foreclosure prevention database is exclusively for the use and purposes of the State Foreclosure Prevention Project and is not a public record subject to R.C. 149.43 and may not be disclosed except as the bill provides. However, a mortgage servicer has access to the information submitted with respect to its own loans. (R.C. 1323.07(C).)

The bill stipulates that providing information to the database does not violate any state law pertaining to financial privacy and that a mortgage servicer is held harmless for any alleged breach of privacy rights with respect to information the mortgage servicer provides in accordance with the bill's requirements. (R.C. 1323.07(D).)

Report to the General Assembly

The bill requires the Director of Commerce annually to submit a report to the General Assembly describing the operation of the State Foreclosure Prevention Project until the funds specifically appropriated to operate the project have been completely disbursed. Information in the report is to be presented in aggregate form, and may include the number of borrowers helped, the effectiveness of the funds in preventing foreclosure, recommendations for further efforts needed to reduce foreclosures, and any other aggregated information the Director determines is pertinent or that the General Assembly requests. (R.C. 1323.08(A).)

In preparing the report, the Director is to review information in the foreclosure prevention database to determine all of the following (R.C. 1323.08(B)):

- Whether the loss mitigation programs and efforts of mortgage servicers have resulted in an efficient review of loan default issues;
- The most effective means for determining and establishing successful foreclosure alternatives including loan modification programs;
- Which procedures best comport with the servicer's obligations to investors, if applicable, to lessen losses resulting from borrower defaults.

Evaluate mortgage servicers

Using the information in the mortgage foreclosure database, the Director of Commerce is to determine whether any mortgage servicer has failed to provide required disclosures or information or is not acting in good faith to provide borrowers with an effective method to discuss payment options for past due amounts and alternatives to foreclosure. If the Director determines that a mortgage servicer has violated any of these requirements, that violation or failure may be considered when determining the character and general fitness of the mortgage servicer for its licensure or certificate of registration as a mortgage servicer under the bill or for licensure as a second mortgage broker or lender under R.C. 1321.53 (not in the bill). (R.C. 1323.09.)

Foreclosure prevention revolving trust fund

The bill establishes in the state treasury the Foreclosure Prevention Revolving Trust Fund, comprised of moneys collected or accruing to the trust fund pursuant to the bill for the purpose of providing, but not limited to, the following (R.C. 1323.10(A)):

- Grants to counseling foreclosure prevention entities for the purpose of maintaining or expanding foreclosure prevention counseling and related services and activities to assist homeowners to prevent foreclosure;
- Grants to individuals or to counseling entities for the purpose of providing emergency foreclosure prevention assistance loans;
- Loans and grants to nonprofit or local government entities to provide relocation assistance or acquire mortgage loans or properties from creditors in order to restructure the mortgage loans or restore the properties to productive use;
- Funding to establish, operate, and maintain the state foreclosure database;
- Funding to cover the costs and expenses of the state foreclosure prevention project, as well as the associated regulatory costs the Superintendent of Financial Institutions of the Department of Commerce

and the Director of Commerce incur in administering the mortgage servicer law, the law governing second mortgage lenders and brokers (R.C. 1321.51 to 1321.60, not in the bill), and the law governing mortgage brokers (R.C. 1322.01 to 1322.12, not in the bill).

Distribution of trust fund money

Under the bill, each quarter the Director of Commerce is to distribute the amounts in the trust fund as follows (R.C. 1323.10(B)):

- Up to 10% to the Division of Financial Institutions of the Department of Commerce for administrative costs;
- Up to 5% to the office of the Administrative Director of the Supreme Court;
- The balance to be divided between the Department of Development (for deposit into the Ohio Housing Trust Fund) and boards of county commissioners (on a *pro rata* basis according to the amount collected as filing fees per county).

The Director of Development and boards of county commissioners are required to establish rules governing the procedures to qualify counseling and foreclosure prevention entities, nonprofit entities, and individuals for loan assistance to receive moneys from the fund to carry out the fund's purposes. Any amount deposited in the fund but not allocated by the end of the fiscal year is available for allocation in the subsequent fiscal year. (R.C. 1323.10(C) and (D).)

V. The residential mortgage servicers registration act

Overview

The "Residential Mortgage Servicers Registration Act" is comprised of R.C. 1323.20 to 1323.37 plus a criminal penalty section, R.C. 1323.99. The act requires mortgage servicers to be registered and generally establishes standards for, and regulates the behavior of, mortgage servicers. It provides civil and criminal penalties for violations.

The bill does not apply to, nor may it be enforced against, any entity over which the state has no regulatory authority due to a federal preemption with respect to that provision. (R.C. 1323.20(B).) In addition, the bill does not apply to any of the following (R.C. 1323.20(C)):

- Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state of the United States;
- A college or university, or controlled entity of a college or university;
- A debt collector acting under the name of, and as agent for, a mortgage servicer registrant to collect a debt in default;
- Any attorney or law firm acting on behalf of any mortgage note holder or registered mortgage servicer when acting in connection with the practice of law in this state.

Registration requirements

Under the bill, "mortgage servicer" means a person who engages directly or indirectly, whether for compensation, gain for another, or on the person's own behalf, in the business of receiving scheduled periodic payments from a borrower pursuant to the terms of a residential mortgage loan, including amounts received for deposit in an escrow account, and applying those payments received toward principal, interest, and other obligations of the borrower including amounts to be paid from an escrow account.

"Mortgage servicer" includes a person who makes or holds a loan if that person also services the loan. "Mortgage servicer" does not include any of the following:

(a) The Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to the "Federal Deposit Insurance Corporation Act," 64 Stat. 873 (1950), 12 U.S.C. 1823(c), or as receiver or conservator of an insured depository institution;

(b) The Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by:

- (i) Termination of the contract for servicing the loan for cause;
- (ii) Commencement of proceedings for bankruptcy of the servicer;

(iii) Commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer or an entity by which the servicer is owned or controlled.

Under current law, a person must be registered as a second mortgage lender and broker under R.C. 1321.52 if the person "engages in the business of lending or collecting the person's own or another person's money, credit, or choses in action for such loans." The bill removes the registration requirement under the second mortgage broker law and includes those persons under the definition of "mortgage servicers" to whom the bill applies. (R.C. 1321.52 and 1323.01.)

The bill requires a person who performs mortgage servicing to be registered as a mortgage servicer and have a certificate of registration from the Superintendent of Financial Institutions of the Department of Commerce, if the person does either of the following (R.C. 1323.21(A)):

- Engage in the business of collecting money, credit, or choses in action for residential mortgage loans or otherwise act as a mortgage servicer;
- Operate, arrange, or offer to arrange for compensation or gain a biweekly or other accelerated payment plan in connection with a residential mortgage and collect those accelerated mortgage payments.

Servicing without registration

Under the act, any person who services a residential mortgage loan in willful violation of the bill's registration requirement, after receiving written notice of the violation by the Superintendent or a court, may not collect, receive, or retain any interest or charges on that loan. Further, any amounts that are collected in excess of principal will be credited as a principal reduction to the loan. (R.C. 1323.21(B).)

Servicing with expired registration

When a registration expires due to nonrenewal or otherwise and the former registrant continues to engage in the business of servicing residential mortgage loans in violation of the bill's prohibition, the Superintendent may take administrative action, including action on any subsequent application for a certificate of registration. Unless a servicer with an expired registration complies with the bill's "grace period" requirements, the servicer may not collect, charge, or retain any late fee, bad check charge except as incurred, charge related to default, cost to realize on its security interest, or prepayment. (R.C. 1323.21(C).)

The bill provides a grace period for registration renewal under which penalties are not charged if the person applies for a registration renewal and a certificate of registration after the date required for that renewal but prior to the first day of August of that year, and the Superintendent approves that application. (R.C. 1323.21(D).)

Any person not specifically exempt is prohibited from conducting the business of a mortgage servicer through, in association with, or in conjunction with any exempt business if the Superintendent finds pursuant to a hearing conducted in accordance the Ohio Administrative Procedures Law, that the other business is acting as a mere conduit for the mortgage servicing and the intent is to conceal an evasion of the registration requirements. Upon such a finding, the Superintendent is to order the person to desist from the conduct. (R.C. 1323.21(E).)

Registration application procedures

An application for registration as a mortgage servicer is to be in writing, under oath, and on a form the Superintendent of Financial Institutions of the Department of Commerce prescribes. It must contain an undertaking by the applicant to abide by the registration law, in addition to any other information that the Superintendent requires. Applicants that are foreign corporations are to obtain and maintain a license pursuant to the Ohio Foreign Corporation Law (R.C. Chapter 1703.) before seeking registration or registration renewal as a mortgage servicer. (R.C. 1323.22(A).)

On the application, the applicant must designate an employee or owner as the applicant's operations manager. An operations manager may not be employed by any other registrant or mortgage servicer. The operations manager an applicant designates must be acceptable to the Superintendent and must have at least three years' experience in the mortgage, collections, servicing, or lending field. (R.C. 1323.22(C).)

Registration fees

An applicant for registration must pay a nonrefundable \$200 investigation fee, a nonrefundable \$1,000 annual registration fee, and any additional fee required by law. If the application involves an investigation outside this state, the applicant may be required to advance sufficient funds to pay any of the actual expenses of that investigation, when it appears that these expenses will exceed \$200. The Superintendent must furnish an itemized statement of any expenses that the applicant is required to pay and may not issue a certificate of registration unless all the required fees have been submitted. (R.C. 1323.22(B).)

The Superintendent may consider an application for registration as a mortgage servicer withdrawn if that application does not contain all of the required information and does not submit that information within 90 days after the Superintendent requests the information in writing. (R.C. 1323.22(D).)

Investigations

Any investigation the Superintendent undertakes with respect to an application for registration as a mortgage servicer must include a civil records check of the applicant including any individual whose identity is required to be disclosed in the application. The investigation also shall include a criminal records check by the Superintendent of the Bureau of Criminal Identification and Investigation at the time of the initial application and every five years thereafter, or upon a change of control of the registrant if the persons acquiring control have not had a criminal records check submitted to the Superintendent of Financial Institutions within the past five years. Where the applicant is a business entity, the Superintendent may require a civil and criminal background check of those persons that in the Superintendent's determination have the authority to direct and control the applicant's operations. (R.C. 1323.23(A).)

The Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor the Bureau approves, is to conduct the criminal background check based on the applicant's fingerprints, or if fingerprints are unreadable, based on the applicant's social security number in accordance with the usual procedure for such checks. (R.C. 109.572.) The bill also requires the Superintendent of Financial Institutions to request that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. The bill requires the applicant to pay any fee necessary for the criminal background check. (R.C. 1323.23(B) and (C).)

Issuance or denial of certificate of registration

The bill directs the Superintendent of Financial Institutions of the Department of Commerce to issue a certificate of registration as a mortgage servicer to an applicant if the Superintendent finds that the applicant's financial responsibility, experience, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the registration law and the rules promulgated under it, and that the applicant has the requisite bond or applicable net worth. (R.C. 1323.24(A).)

If the Superintendent finds an applicant does not meet those conditions, the bill requires the Superintendent to issue a notice of intent to deny an application for registration or renewal to notify the applicant of that denial, the grounds for the denial, and the applicant's opportunity to be heard on the action in accordance with the Administrative Procedures Law. (R.C. 1323.24(B).)

Expiration of registration

All registrations and certificates issued pursuant to the bill expire on the first day of July next after a certificate's issue, and on the first day of July in each succeeding year

unless renewed by filing a renewal application and payment of an annual fee and any additional fee required by law, on or before the last day of June of each year. (R.C. 1323.24(C).)

Registration renewal

To renew a registration as a mortgage servicer, a registrant must file a renewal application on a form the Superintendent prescribes, along with any additional information that the Superintendent requires, on or before the last day of June. As a condition of renewal, a registrant must provide proof that the designated operation manager meets the criteria for initial approval as the bill requires. The bill prohibits the Superintendent from granting any renewal if the applicant's certificate of registration is subject to an order of suspension, revocation, or an unpaid and past due fine the Superintendent has imposed. (R.C. 1323.25.)

Additional investigation authority

The bill enables the Superintendent, at any time there is a change of 5% or more in the ownership of a registrant, to make any investigation necessary to determine whether any fact or condition exists that, if it had existed at the time of the original application for a certificate of registration, it would have warranted denying the registration. In such a case, the Superintendent, in accordance with the Administrative Procedures Law, may revoke the registration and certificate. (R.C. 1323.26.)

Conditions of registration and certification

Conspicuous display

A registrant is required to keep a certificate of registration conspicuously posted in the registrant's place of business. A certificate of registration is not transferable or assignable. (R.C. 1323.27(D).)

One place of business

The bill prohibits any person from maintaining under the same certificate of registration, more than one place of business to which borrowers are regularly directed to remit payment. The Superintendent may issue additional certificates of registration to the same person upon compliance with the requirements governing the issuance of a single certificate. (R.C. 1323.27(A).)

Change in place of business

The bill also prohibits a change in the place of business to a location outside the original municipal corporation under the same certificate of registration. A registrant

who makes such a change of location is required to submit a new application, pay the registration fee and, if the Superintendent requires, pay an investigation fee of \$200. The Superintendent must issue a new certificate of registration before the registrant may operate in the new location. (R.C. 1323.27(B)(1).)

When a registrant wishes to change its place of business within the same municipal corporation, it must give written notice of the change in advance to the Superintendent who will provide a certificate for the new address without cost. (R.C. 1322.27(B)(2).)

Name change

A registrant that changes its name must give written notice of the change to the Superintendent prior to acting as a mortgage servicer under the new name. The bill directs the Superintendent to provide a certificate in the new name without cost. (R.C. 1323.27(C).)

Asset and bonding requirements

The bill establishes bonding requirements for mortgage servicers and a separate set of requirements that applies only to mortgage servicers that arrange biweekly or other accelerated payment plans and collects payments under those plans.

General mortgage services are required to maintain at all times a net worth of at least \$250,000 and, for each additional certificate of registration, assets of at least \$50,000 either in use or readily available for use in the conduct of the business. (R.C. 1323.28(A).)

A mortgage servicer who arranges biweekly or other accelerated payment plans and collects payments on those plans must maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and file a copy of the bond with the Superintendent of Financial Institutions of the Department of Commerce. The bill sets forth specific requirements of that bond. (R.C. 1323.28(B).)

Notice of action alleging injury

Under the bill, a mortgage servicer must give the Superintendent notice by certified mail of any action a borrower brings against the servicer alleging injury by a violation of the Mortgage Servicers Registration Law and of any judgment that is entered against the servicer by an injured borrower. The notice must provide details sufficient to identify the action or judgment, and be filed within ten days after the

commencement of the action or notice to the servicer of entry of a judgment. (R.C. 1323.28(C)(1).)

The bill requires a corporate surety to give to the Superintendent notice of any payment by certified mail within ten days after it pays any claim or judgment, with details sufficient to identify the person and the claim or judgment paid. (R.C. 1323.28(C)(2).)

Whenever the penal sum of the corporate surety bond is reduced by one or more recoveries or payments, a servicer must furnish a new or additional bond so that the total or aggregate penal sum of the bond or bonds equals the sum required under the bill. Otherwise, the bill requires the surety to execute and furnish an endorsement reinstating the bond to the required penal sum. (R.C. 1323.28(D).)

The bill specifies that the liability of the corporate surety on the bond to the Superintendent and to any injured borrower is not affected in any way by any misrepresentation, breach of warranty, or failure to pay the premium, by any act or omission upon the part of the servicer, by the insolvency or bankruptcy of the servicer, or by the insolvency of the servicer's estate. The liability for any act or omission that occurs during the term of the corporate surety bond is maintained and in effect for at least two years after the date on which the corporate surety bond is terminated or canceled. (R.C. 1323.28(E).)

The bill prohibits the servicer and the corporate surety from cancelling the corporate surety bond except upon notice to the Superintendent by certified mail, return receipt requested. Any such cancellation is not effective prior to 30 days after the Superintendent receives the notice. (R.C. 1323.28(F).)

The bill specifically requires servicers to comply with the Mortgage Servicers Registration Law's asset and bonding requirements. Under the bill, any servicer that fails to comply with the law must cease acting as a mortgage servicer in this state until that servicer complies with the asset and bonding requirements. (R.C. 1323.28(D).)

Superintendent's authority

Adopt rules

The bill authorizes the Superintendent of Financial Institutions of the Department of Commerce, in accordance with the Administrative Procedures Law, to adopt rules to administer and enforce the Mortgage Servicer Registration Law and to carry out the purposes of the law. (R.C. 1323.29(A).)

Revoke, suspend, or refuse to renew registration

The bill enables the Superintendent to revoke, suspend, or refuse to renew any registration and certificate issued under this chapter, upon written notice to the registrant stating the contemplated action, the grounds for the action, and the registrant's opportunity to be heard on the action in accordance with the Administrative Procedures Law if the Superintendent finds any of the following (R.C. 1323.29(B)):

- A violation of or failure to comply with any provision of the Mortgage Servicers Registration Law or the rules adopted under it, under the Consumer Sales Practices Act (R.C. Chapter 1345.), any federal debt collection laws, or any other law applicable to the business conducted under the registrant's certificate of registration;
- The registrant has been convicted of or pleads guilty or nolo contendere (no contest) in a domestic, foreign, or military court to any criminal felony offense;
- The registrant has been convicted of or pleads guilty or nolo contendere in a domestic, foreign, or military court to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities;
- The registrant's mortgage servicer's certificate of registration, license, or comparable authority has been revoked in any other state.

Monetary fine

In addition to, or in lieu of, any revocation, suspension, or denial, the Superintendent may impose a monetary fine after an administrative hearing or in settlement of matters subject to claims. (R.C. 1323.29(B)(2).)

The revocation, suspension, or refusal to renew a registration does not impair the obligation of any pre-existing lawful contract if a mortgage servicer makes a good faith effort to promptly transfer its collection rights to a registrant or person exempt from registration. If the servicer does not make the requisite good faith effort, it is subject to additional monetary fines and legal or administrative action by the Superintendent. The powers available to the Superintendent to revoke and suspend licenses or to impose fees do not limit a court's ability to impose a cease and desist order preventing any further business or servicing activity. (R.C. 1323.29(C).)

Fines

The Superintendent may impose a fine of not more than \$1,000 for each violation of the Mortgage Servicers Law or rule that is committed, repeated, or continued. If a servicer engages in a pattern of repeated violations of the law or rule, the Superintendent may impose a fine of not more than \$2,000 for each violation and each day that the violation is committed, repeated, or continued. All fines are to be paid to the Treasurer of State to the credit of the Consumer Finance Fund created in R.C. 1321.21 (not in the bill). (R.C. 1323.29(D).)

In determining the amount of a fine to impose, the Superintendent may consider all of the following to the extent it is known to the Superintendent: the seriousness of the violation; the servicer's good faith efforts to prevent the violation; the servicer's history regarding violations and compliance with the Superintendent's orders; the servicer's financial resources; any other matters the Superintendent considers appropriate. Monetary fines do not preclude any criminal fine imposed for violations the bill specifies. (R.C. 1323.29(D).)

Fines for servicer without registration

The Superintendent also, in taking administrative action to enjoin a person from acting as a registrant or mortgage servicer without registration, may seek and impose fines for those violations in an amount not to exceed \$5,000 per violation. Such an order is enforceable in the court of common pleas. (R.C. 1323.29(G).)

Investigation and request of court

The Superintendent may investigate alleged violations of the Mortgage Servicers Registration Law or complaints concerning any such violation and the Superintendent may make application to the court of common pleas for an order enjoining any violation. Upon a showing by the Superintendent that a person has committed, or is about to commit, a violation, the court shall grant an injunction, restraining order, or other appropriate relief. The Superintendent also, in making application to the court of common pleas for an order enjoining a person from acting as a registrant or mortgage servicer may seek and obtain civil penalties for that unregistered or unlicensed conduct in an amount not to exceed \$5,000 per violation. (R.C. 1323.29(E).)

Right to subpoena

In conducting an investigation, the Superintendent, by subpoena, may compel witnesses to testify in relation to any matter over which the Superintendent has jurisdiction, and may require the production or photocopying of any book, record, or other document pertaining to such matter. If a person fails to file any statement or

report, obey any subpoena, give testimony, produce any book, record, or other document as required by such a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the Superintendent, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court, or a refusal to testify. (R.C. 1323.29(F).)

Cease and desist order

If the Superintendent determines that a person is engaged in, or is believed to be engaged in, activities that may constitute a violation of the Mortgage Servicers Registration Act, after notice and a hearing conducted in accordance with the Administrative Procedures Law, the Superintendent may issue a cease and desist order. (R.C. 1323.29(G).)

Mortgage servicer responsibilities

Maintain records

The bill requires mortgage servicers to keep separate records pertaining to each loan serviced and preserve those records for at least four years after making the final entry on them. Any system of electronic imaging of required records must be approved by the Superintendent of Financial Institutions of the Department of Commerce prior to its use in lieu of retaining original documents. The bill states as acceptable, those accounting systems that are maintained in whole or in part by mechanical or electronic data processing methods and that provide information equivalent to that otherwise required for the purpose of keeping payment records. (R.C. 1323.30(A)(1).)

As often as necessary, the Superintendent may make or cause to be made an examination of records pertaining to those loans serviced for the purpose of determining whether the servicer is complying with the bill's provisions and of verifying any registrant's annual report. (R.C. 1323.30(A)(2).)

As a supplement to or in lieu of an examination, the Superintendent may require each servicer to file each year a report under oath or affirmation, on forms the Superintendent supplies, concerning the business and operations for the preceding calendar year. Whenever a servicer operates two or more registered offices or whenever two or more affiliated servicers operate registered offices, a composite report of the group of registered offices may be filed in lieu of individual reports. These reports are not public records and are not open to public inspection. (R.C. 1323.30(B).)

The bill specifies as confidential information: (1) examination information, and any information leading to or arising from an examination, and (2) investigation

information, and any information arising from or leading to an investigation. This information is confidential for all purposes except when it is necessary for the Superintendent to take official action regarding the affairs of a servicer or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the Attorney General. This otherwise confidential information also may be introduced into evidence or disclosed when and in the manner authorized by R.C. 1181.25 (not in the bill) which governs information the Superintendent of Financial Institutions may introduce as evidence. (R.C. 1323.30(C).)

Information that is a public record

Public records under the bill include all application information except: social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information. (R.C. 1323.31(D).)

Nothing in the bill related to confidential information and public records prevents the Superintendent from releasing information relating to servicers or exchanging that information with other financial institution regulatory authorities, which includes a regulator of a business activity in which a servicer is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a servicer engaged in that business activity, which is defined in the bill. (R.C. 1323.30(E).)

Nothing in the bill related to confidential information and public records prevents the Superintendent from releasing information relating to servicers to the Attorney General, to the Superintendent of Real Estate and Professional Licensing of the Department of Commerce, to the Commissioner of Securities of the Department of Commerce for laws they administer, or to local law enforcement agencies and local prosecutors. Confidential information the Superintendent releases to those persons remains confidential. The Superintendent of Financial Institutions, by rule, may designate additional state agencies and regulatory authorities as entities with which the Superintendent may share otherwise confidential information. (R.C. 1323.30(F).)

Standards of servicer conduct

With respect to Superintendent

The bill establishes requirements of cooperation and prohibits acts by servicers that hinder the responsibilities of the Superintendent of Financial Institutions. Under the bill, no person, in connection with any examination or investigation the Superintendent conducts pursuant to the Residential Mortgage Servicers Registration Act, may knowingly do any of the following (R.C. 1323.31):

- Circumvent, interfere with, obstruct, or fail to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness;
- Withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information;
- Tamper with, alter, or manufacture any evidence.

Duty to supervise

Under the bill, no mortgage servicer, through its operations manager or otherwise, may fail to reasonably supervise persons employed by or associated with the servicer or to establish reasonable procedures designed to avoid violations of the Mortgage Servicers Registration Law or violations of applicable state and federal consumer and lending laws or rules by persons employed by or associated with the servicer. (R.C. 1323.32(A).)

The servicer also must keep the Superintendent informed of changes in personnel by informing the Superintendent within ten business days of any change in a servicer's statutory agent designation or address as well as evidence that the servicer has filed those changes with the Secretary of State. (R.C. 1323.32(B).)

At least 30 days prior to the closure of a registered office location, the servicer must notify the Superintendent by filing a notice of closure. The notice must be on a form the Superintendent prescribes and indicate the custodian of the records and the location where the records will be maintained. Within five business days after the closure, the servicer must surrender the certificate of registration issued to that location by returning it to the Superintendent. (R.C. 1323.32(C).)

Books and records open to inspection

The bill requires a servicer to maintain books and records in compliance with the Mortgage Servicers Registration Law and make them accessible to the Superintendent. After any closure, records remain subject to examination and or investigation under the Mortgage Servicers Registration Law. The servicer shall send a written notice of any change in the location of the records or the custodian of those records. (R.C. 1323.32(C)(2).)

The closure of an office and the surrender of a certificate does not affect a servicer's civil or criminal liability for acts committed before the surrender. (R.C. 1323.32(C)(3).)

Duty to inform borrower

The bill requires a mortgage servicer to provide information regarding the amount required to pay in full a residential mortgage loan when requested by the borrower or by another person the borrower designates in writing. The servicer must provide the requested payoff statement without charge once during any 12-month period. If additional payoff statements are requested, the servicer may charge an amount not in excess of \$3 for each additional statement. (R.C. 1323.33(A).)

Duty of honesty

The bill establishes standards of servicer honesty with respect to registration and compliance with state and federal laws. It provides that no person may obtain a certificate of registration through any false or fraudulent representation of a material fact or any omission of a material fact required by state or federal law, or make any substantial misrepresentation in the registration application. (R.C. 1323.33(B).) Further, it prohibits a servicer from making false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations. (R.C. 1323.33(C).) Also, no servicer may engage in conduct that constitutes improper, fraudulent, or dishonest dealings. (R.C. 1323.33(D).)

The bill imposes upon a servicer or an applicant for registration a duty to notify the Superintendent within 30 days after the servicer or applicant has (1) been convicted of or pleads guilty or nolo contendere in a domestic, foreign, or military court to any criminal felony offense, (2) been convicted of or pleads guilty or nolo contendere in a domestic, foreign, or military court to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, (3) had a mortgage servicer registration, license, or comparable authority revoked in any other state. (R.C. 1323.33(E).)

Under the bill, no servicer may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage servicing document or on any document related to an accounting of payments remitted or disbursed in acting as a mortgage servicer. For these purposes, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error. (R.C. 1323.33(F).)

In addition, the bill prohibits a servicer from knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a document in connection with acting as a mortgage servicer. (R.C. 1323.33(G).)

A violation of the bill's standards of conduct and other specified responsibilities with respect to a borrower is made an unfair and deceptive act or practice in violation of the Ohio Consumer Sales Practices Act (R.C. Chapter 1345). (R.C. 1323.33(H).)

Servicer duties of good faith and fair dealing

In addition to the duties imposed by common law or other provisions of state or federal law and regulation, the bill requires a mortgage servicer to do all of the following (R.C. 1323.34(A)):

- Act with good faith and fair dealing in any transaction, practice, or course of business associated with its servicing of residential mortgage loans in Ohio;
- Act with reasonable skill, care, and diligence;
- Act in good faith to provide the borrower with the facts relating to the nature and extent of any delinquency or default and the amounts owed or necessary to reinstate the loan or cure the default;
- If the borrower is delinquent in payments or in default on any mortgage obligation and requests assistance, attempt to negotiate with the borrower, subject to the servicer's duties and obligations under the servicer's mortgage servicing contract, to attempt a resolution, modification, or workout to the delinquency;
- Make a good faith effort to correct any erroneous information it has provided to any credit reporting agency;
- Provide information regarding the amount required to pay in full a residential mortgage loan within five business days when requested by the borrower or by another person designated in writing by the borrower. The servicer must provide the requested payoff statement without charge once during any 12-month period. If additional payoff statements are requested, the servicer may charge an amount not in excess of \$3 for each additional statement.
- Make all payments from any escrow account held for the borrower for insurance or property taxes in a timely manner, so as to avoid the assessment of late fees or resulting penalties or consequential damages, notwithstanding any loan delinquency, unless there are insufficient funds in the escrow account to cover the payments;

- Accept and credit each residential mortgage loan payment received on the date received;
- Take all steps necessary to terminate a foreclosure proceeding or action when the default giving rise to or justifying the proceeding or action has been fully cured and upon cure of default, reinstate the borrower to the same position as if the default had not occurred and nullify, as of the date of the cure, any acceleration of any obligation under the residential mortgage loan or note arising from the default.

In addition to the duties enumerated under the Servicer Registration Law, the bill requires any mortgage servicer for a government-insured loan to comply with the loss mitigation standards and guidelines as required by the insuring entity.

Prohibitions with respect to servicing a loan

The bill prohibits any mortgage servicer from doing any of the following in connection with servicing a residential mortgage loan (R.C. 1323.35):

- Collect, charge, or retain any fee from the borrower unless the fee is reasonable, for bona fide services rendered, and is specifically authorized by the terms of the residential mortgage loan or note and permitted by law;
- Initiate a foreclosure action without proof of ownership as evidenced by a declaration signed under penalty of perjury, stating that the trustee, mortgagee, assignee, or beneficiary has reviewed the original note and all subsequent assignments, and has determined that the mortgagee, assignee, or beneficiary owns the note or mortgage;
- Fail to provide written notice to the borrower before acquiring and placing hazard, homeowner's, or flood insurance on property subject to a residential mortgage loan, or acquire and place such insurance if the mortgage servicer knows or has reason to know that any policy for such required insurance was in effect;
- Acquire and place hazard, homeowner's, or flood insurance on property subject to a residential mortgage loan for an amount that exceeds the greater of the insurable improvements to the property, the last known coverage amount of insurance sufficient to meet the borrower's insurance obligations or the unpaid balance owed by the borrower;

- Fail to refund unearned premiums paid or charged to the borrower for hazard, homeowner's, or flood insurance of property subject to a residential mortgage loan placed by the mortgage servicer or its agents upon the borrower providing reasonable proof that the needed coverage had been obtained such that the forced placement is no longer necessary and the property is properly insured in accordance with the loan or note. (R.C. 1323.35.)

Standards for collection of money

The bill prohibits a mortgage servicer from using unfair, deceptive, or unconscionable means to collect or attempt to collect any claim in connection with a residential mortgage loan, which are in addition to any other requirement set forth in federal or state law regulating the conduct of collection activities, including the federal Fair Debt Collection Practices Act. Without limiting the general application of the foregoing, the following conduct violates the bill's prohibition (R.C. 1323.36):

- The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation, unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and by law;
- Any communication with a borrower, whenever it is known that the borrower is represented by an attorney and the attorney's name and address are known or could be easily ascertained, unless the attorney fails to respond within a reasonable period of time, within 30 days, to answer correspondence, return phone calls, or discuss the obligation in question or unless the attorney consents to the servicer having direct communication with the borrower;
- Placing a telephone call or otherwise communicating by telephone with a borrower or third party, at any place, including place of employment, falsely stating that the call is "urgent" or an "emergency";
- Using profane or obscene language or language that is intended to unreasonably abuse the listener or reader;
- Placing telephone calls without disclosure of the caller's identity and with the intent to annoy, harass, or threaten any person at the number called;
- Causing expense to any person in the form of long-distance telephone tolls, text messaging fees, or other charges incurred by a form of

communication, by concealment of the true purpose of the communication;

- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse, oppress, or threaten any person at the called number. (R.C. 1323.36.)

Servicer business standards

Under the bill, no mortgage servicer, in conducting a mortgage servicer business, may engage in any unfair, deceptive, or unconscionable act in violation of the Ohio Consumer Sales Practices Act (R.C. Chapter 1345.). The bill authorizes the Attorney General to take enforcement action and a borrower may seek recovery under that act for violations. (R.C. 1323.361(A).)

A borrower injured by a violation of that act may not recover any damages and attorney's fees and costs under that act if the borrower already has recovered any damages based on the same acts or circumstances in a cause of action initiated under the Mortgage Servicers Registration Law. (R.C. 1323.361(B).)

Damages to borrower

Civil penalties

A borrower injured by a violation of the Residential Mortgage Servicers Registration Act may bring an action for recovery of damages. Any damages awarded may be not less than all improper charges or fees paid to the mortgage servicer, plus reasonable attorney's fees and court costs. The borrower may be awarded punitive damages and the bill does not prevent recovery under other applicable sections of law but prevents double recovery under the same set of facts or circumstances. (R.C. 1323.37.)

Criminal penalties

A violation of the prohibition of collecting money on a mortgage without registration, or arranging for and collecting money on an accelerated mortgage payment without registration (R.C. 1323.21(A)(1) and (2)), the prohibition of making fraudulent statements in connection with an accounting document (R.C. 1323.33(F)), or the prohibition of causing a borrower to sign a blank document (R.C. 1323.33(G)) is a felony of the fifth degree.

A violation of the prohibition of interfering with an investigation with the intent to interfere or obstruct that examination or investigation by the Superintendent (R.C. 1323.31) is a felony of the fourth degree.

VI. Comprehensive loan modification program

The bill instructs the Director of Commerce to adopt rules to implement a comprehensive loan modification program pursuant to the guidelines in the bill. The loan modification program is intended to keep a borrower whose principal residence is a home in Ohio in that home when the anticipated recovery under the loan modification or workout plan for that home exceeds the anticipated recovery through foreclosure on a net present value basis. The bill specifies that the loan modification program will be developed to include some combination of the following features (R.C. 1323.34(B)):

- An interest rate reduction, as needed, for a fixed term of at least five years;
- An extension of the amortization period for the loan term, to not more than 40 years from the original date of the loan;
- Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan;
- Reduction of principal;
- Compliance with a federally mandated loan modification program;
- Other features the Director determines are appropriate, which may include efforts implemented in other jurisdictions that have resulted in a reduction in foreclosures.

The bill requires that when a servicer determines a loan modification solution for a borrower under the loan modification program, the servicer is required to seek to achieve long-term sustainability for the borrower. (R.C. 1323.34(C).)

Extraordinary measure

The bill sets forth the General Assembly's enactment of the moratorium (R.C. 2308.03) and the judicial authority to modify mortgages (R.C. 2308.04) as extraordinary measures necessary to respond to an emergency situation created by the mortgage foreclosure crisis in the state. The bill states that the high rate of residential foreclosures is proving harmful to families, lenders, and communities alike. The stated purpose of enacting these sections is to mitigate the very negative impact of the current situation and to preserve property values by providing time for solutions to begin to have an impact. These solutions that need time to be effective include modifying loans in a

manner beneficial to all parties concerned and implementing federal and state initiatives that provide assistance and guidance to homeowners, lenders, and communities. (Section 6.)

Emergency measure

The bill is an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is the "alarming rate of increase in mortgage foreclosures, with devastating impact on homeowners and communities alike, making immediate intervention and assistance necessary to allow owners an opportunity to explore alternatives and resolve problems so that they keep their homes and to halt and reverse the negative impact of vacant and foreclosed homes on the health and safety of communities." (Section 7.)

Definitions

The bill adopts the following definitions:

"**Mortgage servicer**" means a person who engages directly or indirectly, whether for compensation, gain for another, or on the person's own behalf, in the business of receiving scheduled periodic payments from a borrower pursuant to the terms of a residential mortgage loan, including amounts received for deposit in an escrow account, and applying those payments received toward principal, interest, and other obligations of the borrower including amounts to be paid from an escrow account. "**Mortgage servicer**" includes a person who makes or holds a loan if that person also services the loan. "**Mortgage servicer**" does not include any of the following:

(a) The Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to the "Federal Deposit Insurance Corporation Act," 64 Stat. 873 (1950), 12 U.S.C. 1823(c), or as receiver or conservator of an insured depository institution;

(b) The Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by:

- (i) Termination of the contract for servicing the loan for cause;
- (ii) Commencement of proceedings for bankruptcy of the servicer;

(iii) Commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer or an entity by which the servicer is owned or controlled.

"Mortgage lender" means a person engaged in the business of making residential mortgage loans for compensation or gain.

"Residential mortgage" and **"residential mortgage loan"** mean an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing four or fewer residential units and includes such an obligation on a residential condominium or cooperative unit.

"Employee" means an individual for whom a person pays a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" also includes any individual who acts as an operations manager of a registered mortgage servicer, but for whom the servicer is prevented by law from making income tax withholdings.

"Operations manager" means the employee or owner responsible for the everyday operations, compliance requirements, and management of a business.

COMMENT

1. Mortgage servicers

A mortgage servicer is a person who is in the business of receiving scheduled mortgage payments from a borrower. Although it is possible that the original lender (the loan originator) will service a mortgage until it is paid off or the house is sold, in today's market, that loan may be sold multiple times and the rights to service that loan also may be sold or contracted out to a separate company. The servicer generally has a contract with the holder of the loan to collect payments for the loan as well as to collect amounts the borrower pays into an escrow account for taxes and insurance. The servicer pays the amounts due from the escrow account for taxes and insurance. It is also the servicer who notifies a borrower when payments are late, imposes late fees, and files a foreclosure action if the borrower does not become current in payments. All actions of the servicer are pursuant to the terms of the servicer's contract with the holder of the loan. It is possible that the servicer may be part of the same company (lender) who holds the loan.

2. Foreclosure

Foreclosure procedures are governed by state law and therefore procedures among states differ. In Ohio, only judicial foreclosure is possible. Judicial foreclosure is

overseen by courts at every step of the procedure. This means that when a borrower defaults, the lender must file a complaint with the court and go through a court process in order to recover what is owed the lender. With judicial foreclosure, the lender has no right to possess the house unless and until the lender becomes the successful bidder at the sheriff's auction and a court confirms that sale. In Ohio, the borrower may pay the amount due and retain the house at any time during the foreclosure action until a court confirms the sale at auction. This means even after a home has been sold at sheriff's sale the borrower may keep the home by paying the amount due. In Ohio, the borrower also has a right to live in the property until the court confirms the sheriff's sale.

HISTORY

ACTION	DATE
Introduced	02-17-09

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