

Ohio Division of Financial Institutions

Mortgage Brokers & Lenders Letter 2008-4

September 2, 2008

TO: Ohio Registered Mortgage Brokers & Lenders

SUBJECT: Prohibition against Originating Mortgage Loans Outside the State of Ohio Without a Certificate & License in Violation of Ohio R.C. §1322.02(A) and (B).

SUMMARY: This letter is intended to alert mortgage brokers and lenders in Ohio of the position of the Ohio Division of Financial Institutions that it is a violation of Ohio R.C. §1322.02(A) and (B) to originate consumer mortgage loans at offices in Ohio without registration and proper licensing even if the subject property is outside of Ohio.

Ohio Revised Code § 1322.02(A) and (B)

These provisions of the Mortgage Broker Act are intended to require registration of mortgage broker businesses and the licensing of loan officers who originate mortgage loans in or from Ohio.

Using Ohio Offices to Broker Consumer Mortgage Loans Requires Registration and Licensing

Rules adopted in September 1, 2006 specifically address the issue of out of state lending. O.A.C. § 1301:8-7-01(A) makes clear the Division's position that the term "mortgage broker" includes "*persons whose business is physically located in Ohio but who exclusively solicit buyers from states other than Ohio.*" Thus, such businesses who operate from offices in Ohio must obtain a certificate of registration pursuant to R.C. § 1322.01 et seq. in order to do so, notwithstanding the fact that the property or buyer may be outside of Ohio. Consequently, persons "originating" mortgage loans (as that term is defined in R.C. § 1322.01(l)(1)) must have a loan officer license to engage in such business from any Ohio mortgage broker office.

Transaction of Mortgage Broker Business in Ohio

Coverage of the OMBA is not dependent on whether the borrower is an Ohio resident or on whether the property securing the loan is in Ohio. Rather, the determining factor is whether any transaction of mortgage broker business occurs in this state. An out-of-state resident who utilizes a mortgage broker in Ohio to obtain a mortgage to purchase or refinance their home outside Ohio is a transaction subject to the OMBA. Given the scope of the law is transaction based, the Division views mortgage broker transactions as undertaken in Ohio unless they are initiated and completed entirely outside of the state without any solicitation or maintenance of an active website available to Ohio borrowers, and the subject property is outside Ohio. For example, an Ohio resident vacationing outside the state may go into a mortgage broker office to refinance his/her non-Ohio vacation home. The fact that the borrower is an Ohio resident does not, in

and of itself, make the transaction one that occurs in this state. However, a mortgage broker outside the state who solicits Ohio residents who then respond to a mailing by making an application by telephone, internet, or mail is involved in a mortgage broker transaction in this state, even if the property is outside Ohio.

In short, if the transaction is conducted by a mortgage broker through offices in this state, then the OMBA applies unless otherwise exempted by the statute or preempted by federal law. Further, a mortgage broker transaction is considered to be one that takes place in this state if procured by solicitation in this state and either the application or closing for the loan occurs with the borrower sitting in Ohio. Lastly, notwithstanding a lack of solicitation in this state, a mortgage broker transaction processed through an active website allowing for the on-line application of a borrower sitting in Ohio is also a covered mortgage broker transaction, provided the property is in Ohio.

Mortgage brokers and loan officers are hereby advised that transactions they undertake from their Ohio offices are subject to the OMBA both in terms of licensing and in terms of substantive requirements such as disclosures. Any prior belief that a person could sit in the Ohio office of an OMBA registrant and originate or otherwise broker mortgage loans to non-resident consumers outside of Ohio without being a licensed loan officer is not the view of the Division.

Mortgage brokers and loan officers are also hereby advised that transactions they undertake from their non-Ohio offices are subject to the OMBA if the property is located in Ohio or if the business was obtained through solicitations directed to Ohio residents who make application for the loan from Ohio, whether by telephone, internet or mail.

ACTION: Registrants and licensees need to review their procedures to ensure compliance with the current state law prohibiting unauthorized branch locations from conducting out of state consumer mortgage loan brokering, and prohibiting persons from originating out of state consumer mortgage loans without a loan officer license and adjust their policies and practices accordingly to conform to this letter.

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