

# Alert: SB185 Regulations

June 22, 2007

McGlinchey Consumer Financial Services Alert

## **Introduction**

On May 14, 2007, the Superintendent of the Ohio Department of Commerce, Division of Financial Institutions (“Division”) announced certain amendments to various provisions of the Mortgage Brokers Regulations, Ohio Admin. Code §§1301:8-7-01 through 1301:8-7-22 (“OH-MBRAR”). OH-MBRAR implements the provisions of the Mortgage Broker Registration Act, Ohio Rev. Code §§1322.01 through 1322.99 (“OH-MBRA”). The amendments are effective June 1, 2007. These amendments to OH-MBRAR complete the changes to various Ohio statutes and regulations stemming from SB185. The substantive changes, which deal with definitional matters, license and registration matters and disclosure, are discussed below.

## **Definitional Matters**

OH-MBRAR §1301:8-7-01 contains various definitions applicable to OH-MBRA. Of significance, OH-MBRAR §1301:8-7-02 is amended to clarify OH-MBRA §1322.01(G)(3). OH-MBRA §1322.01(G)(3) provides that the term “mortgage broker” includes a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans. OH-MBRAR §1301:8-7-02 also clarifies the term “mortgage broker” to exclude a person or entity to whom the mortgage is originally payable if, following the sale or assignment of the mortgage to a trust for the purposes of securitization, that person or entity remains the mortgage servicer and in that capacity receive for the benefit of the trust purchaser or assignee, one or more scheduled payments.

## **License and Registration Matters**

OH-MBRAR §1301:8-7-02 sets forth the possible statuses for a mortgage broker certificate of registration and defines each status. In general, a mortgage broker certificate of registration can either be pending, active, suspended, revoked, denied, cancelled, or withdrawn. Only a person with an active certificate of registration is authorized to engage in mortgage broker activities.

OH-MBRAR §1301:8-7-03(E) and (K) are amended to require a mortgage broker to correct inaccurate information in his or her application for registration within 30 days of the change unless otherwise required by OH-MBRAR §1301:8-7-19 (which deals with registrant notification requirements).

OH-MBRAR §1301:8-7-06(E) (regarding recordkeeping requirements) is amended to require all records to be legible and be maintained in a type size that is clearly readable without magnification. Records must also be in conformity with any specific typeface or font size that may be required by state or federal law and be maintained in English except where otherwise provided by federal or state law. When records are allowed to be in a language other than English, the registrant, at its expense, is responsible for providing the Division with a full and accurate translation.

OH-MBRAR §1301:8-7-06(H)(3)(h) is amended to now require copies of applicable state law disclosures to be kept in the individual buyer files.

OH-MBRAR §1301:8-7-08(C)(3) is amended to no longer require a loan officer licensee whose license is in escrow or suspended status to comply with the 90-day examination requirement of OH-MBRA §1322.051. In addition, a loan officer license is no longer considered canceled if the licensee fails to successfully complete the examination required by OH-MBRA §1322.051 on the 91st day after the license was issued.

OH-MBRAR §1301:8-7-09(A) is amended to require a “notarized” certificate of employment to be submitted by an individual who wishes to apply for a loan officer license as well as proof of completion of the pre-licensing education set forth in OH-MBRA §1322.031(A)(4).

New OH-MBRAR §1301:8-7-09(C) requires an applicant to satisfactorily pass the examination required by OH-MBRA §1322.051 before the Division can issue a loan officer license. Previously, the Division would not accept an application from any individual who has twice failed to pass the examination.

OH-MBRAR §1301:8-7-11(A) is amended to no longer require a loan officer licensee to file a transfer application when the licensee chooses to inactivate his or her license and to place the license in escrow status.

OH-MBRAR §1301:8-7-12(E)(3) is amended to require a proposed operations manager to complete, when applicable, the pre-licensing education required by OH-MBRA §1322.03(A)(5) or meet the alternative educational requirements set forth in OH-MBRAR §1301:8-7-28(D) in order to be approved as such.

### **Disclosure**

New OH-MBRAR §1301:8-7-15(A) and (B) clarify OH-MBRA §1322.062 regarding the mortgage loan origination disclosure statement that must be given to a buyer within 3 business days after taking an application for a loan. OH-MBRA 1322.062(B) requires a registrant to provide the buyer with a revised mortgage loan origination disclosure statement if there are any changes to the original disclosure, and a written explanation of why the change occurred, no later than twenty-four hours after the change occurs, or twenty-four hours before the loan is closed, whichever is earlier. OH-MBRAR §1301:8-7-15 clarifies that to make the required disclosure, whether in original or revised form, the registrant must use “Mortgage Loan Origination Disclosure Statement”, the form approved by the Division and posted on its website.

The new regulation also provides expanded details on how to disclose the method by which the fee to be paid to the registrant by the buyer will be calculated and how to provide a good faith estimate of the total dollar amount of the fee. The fee calculation method must disclose any and all compensation received by the registrant from the buyer, regardless of how the compensation is identified on mortgage loan disclosures. The disclosure of the fees must be expressed as the total dollar amount of the fees the registrant anticipates receiving from the buyer for originating the loan. If the registrant bases its fee, in whole or in part, on a percentage of the principal amount of a loan, the registrant must disclose the dollar amount of fees in the required good faith estimate by multiplying the percentage to be charged by the anticipated principal amount of the loan. The disclosure of ranges of dollar amounts or percentages, or statements that the fee are “to be determined”, is prohibited. In addition, if the mortgage loan to be originated by the registrant will exceed ninety percent of the value of the property involved, the Mortgage Loan Disclosure Statement must include the boldface statement required by OH-MBRAR §1322.062(A)(1)(j) in the form approved by the Division and posted on its website.

New OH-MBRAR §1301:8-7-15(C) defines the phrase “the fee to be paid by the buyer to the registrant” in OH-MBRAR §1322.062 to mean any and all broker compensation the registrant receives from the buyer, but excludes any fees paid to the registrant by lenders in the form of yield spread premiums or service release premiums. The phrase also excludes any fees collected by registrants from buyers on behalf of bona fide third party service providers.

New OH-MBRAR §1301:8-7-15(D) requires the “nature of relationship” and “notice to borrower” disclosures required by OH-MBRAR §1322.062(D) to be appended to the good faith estimate disclosure required by the federal Real Estate Procedures Act (“RESPA”). Registrants must use the forms for those disclosures approved by the Division and posted on its website.

New OH-MBRAR §1301-8-7-15(E) clarifies the meaning of “24 hours after the change occurs” in OH-MBRAR §1322.064. OH-MBRAR §1322.064 requires registrants or licensees to timely inform a buyer of any material change in the loan terms not later than 24 hours after the change occurs or 24 hours before the loan is closed, whichever is earlier. OH-MBRAR §1301-8-7-15(E) clarifies that “24 hours after the change occurs” does not include Sundays and national holidays. OH-MBRAR §1301-8-7-15(E) also requires registrants to document a material change notification by doing the following:

1. obtaining the signature of the buyer on a dated statement in which the buyer acknowledges the time and date that notification of the changes was received;
2. maintain a record by time-dated facsimile that the disclosures were provided by fax to and received by the buyer;
3. maintain a record by time-dated computer e-mail that the disclosures were provided by e-mail to and received by the buyer; or
4. maintain a record by time-dated overnight, express, or certified mail that the disclosures were provided by such mail and received by the buyer.

In addition, new OH-MBRAR §1301:8-7-15 requires each registrant to maintain the disclosures required by OH-MBRAR §1301:8-7-15, both the initial and any revised versions, as executed by the borrower and the responsible loan officer.

OH-MBRAR §1301:8-7-17 is amended to set forth the requirements a loan officer must meet in order to sit for the required examination.

New OH-MBRAR §1301:8-7-23 clarifies OH-MBRAR §1322.07(G) regarding what constitutes mortgage broker appraisal misconduct. Examples of such misconduct include, in the case of any refinance or non-purchase second mortgage loan, identifying on the appraisal order form or communicating by any other means to any licensed or certified appraiser either the loan amount or any other express or implied statement of the anticipated or desired appraisal value. In the case of any purchase money mortgage loan, including any second mortgage loan connected to a sale transaction, a registrant engages in appraiser misconduct by identifying on the appraisal order form or communicating by any other means to any licensed or certified appraiser either the loan amount of any other express or implied statement of the anticipated or desired appraisal value, This

prohibition does not preclude disclosing the sales price of the property or providing a copy of the sales agreement to an appraiser.

If the registrant or licensee, however, is aware that a previous sales agreement at a lower price between the buyer and seller had been made for the property within the previous thirty days, the appraiser must be apprised of the earlier agreement and provided a copy of the agreement appended to any appraisal the registrant or licensee provides to the lender or anticipated purchaser of the loan.

The new regulation also states, however, registrants are not prohibited from requesting in writing or by electronic transmittal that the appraiser who prepared the appraisal report consider additional appropriate information when acting upon a good faith belief that the appraisal contains an error or is professionally deficient. Any appraisal review or revision request cannot be based on the grounds that the valuation is not high enough to qualify for the proposed loan.

New OH-MBRAR §1301:8-7-25 clarifies OH-MBRAR §1322.075(A) regarding affiliated business disclosures. The new regulation states that registrants should make any disclosures required by OH-MBRAR as an addendum to the RESPA affiliated business disclosures unless RESPA does not apply to the transaction. In that case, the registrants should make the disclosures required by OH-MBRAR on a separate form.

New OH-MBRAR §1301:8-7-27 sets forth the procedures for an expedited hearing upon automatic suspension pursuant to an order of suspension under OH-MBRAR §1322.10(F).

Finally, new OH-MBRAR §1301:8-7-28 provides detailed requirements for the approval of pre-licensing education programs, while new OH-MBRAR §1301:8-7-29 specifies the means by which information regarding registrants will be added to the new public actions database.

This summary of the changes made to Ohio law by SB185 is general in nature and should not be construed as legal advice.

#### **Related people**

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