

# Am I subject to the Consumer Sales Practices Act?

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## The Marketable Title Act

### ***Garden Botanical Garden v. Drewien*, 8th Dist. Cuyahoga No.108536, 2020-Ohio-1278**

In this case, the Eighth Appellate District affirmed in part and reversed in part the trial court's decision, holding that the defendants' reversionary interest in the property was not extinguished and that plaintiff's continuous possession of the property satisfied the notice requirement under the Ohio Marketable Title Act.

**The BulletPoint:** The Ohio Marketable Title Act provides that a person who has an unbroken chain of title of record to any interest in land for forty years or more, has a "marketable record title" to such interest. R.C. 5301.48. The marketable record title operates to extinguish such interests and claims that existed prior to the effective date of the "root of title". R.C. 5301.47(A). The root of title is the conveyance in the chain of title that was most recently recorded as of a date forty years prior to the date when marketability is being determined. R.C. 5301.47(E). Put another way, the act gives the record owner clear, marketable title to the property free from competing interests that existed forty years before the person took record ownership of the property. To prevent the act from extinguishing an interest and to preserve such an interest, a person must assert their interest with a written notice recorded within the look-back period or the same owner must be in continuous possession of the property for forty years or more during which time there are no title transactions recorded with respect to said interest.

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## Consumer Transactions under the CSPA

### ***Capital One Bank v. Jones*, 9th Dist. Medina No.18CA0116-M, 2020-Ohio-1204**

In this appeal, the Ninth Appellate District affirmed the trial court's decision, agreeing that the attorneys who filed the complaint on behalf of the financial institution were exempt from claims under the Ohio Consumer Sales Practices Act as the financial institution's exemption extended to its counsel.

**The BulletPoint:** A claim brought under the Ohio Consumer Sales Practices Act (OCSA) fails when there is no consumer transaction between the parties and when the defendant is not considered a "supplier" under the act. Transactions between a financial institution and its customers are not considered "consumer transactions" under the OCSA. R.C. 5725.01. Furthermore, as the court explained, this exemption from the OCSA extends to a financial institution's own counsel. Consequently, "when an attorney represents a financial institution in a transaction that is exempted from the OCSA, the attorney is similarly exempt from liability under the statute."

## Arbitration Agreement Incorporated by Reference

### ***Bennett v. KeyBank, N.A.*, 6th Dist. Lucas No.L-19-1249, 2020-Ohio-1152**

In this appeal, the Sixth Appellate District affirmed the trial court's decision that the matter was subject to arbitration, finding that the arbitration agreement was incorporated by specific reference into the signed contract.

**The Bullet Point:** Ohio law adheres to the "long-held principle that parties to contracts are presumed to have read and understood them and that a signatory is bound by a contract that he or she willingly signed." As the court detailed, separate, unsigned agreements may be incorporated by reference into a signed contract. Under this so-called "incorporation doctrine", when a document is incorporated into a contract by explicit or precise reference, that document becomes part of the signed contract. As such, the parties to a signed contract do not need to separately execute the incorporated arbitration agreement in order to be bound by its terms.

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