

Ohio Enacts Comprehensive Residential Mortgage Lending Law

January 26, 2018

Introduction

On December 22, 2017, Ohio Governor John Kasich signed House Bill 199 (HB 199) into law. This bill revises the Ohio Mortgage Broker Act (OMBA) to create the Ohio Residential Mortgage Lending Act (RMLA) for the purpose of regulating and licensing mortgage brokering and all non-depository lending secured by residential real estate. In addition, HB 199 removes residential mortgage lending from the purview of the Ohio Mortgage Loan Act (OMLA), Ohio Rev. Code §§ 1321.51 to 1321.60, and limits the application of the OMLA to unsecured and personal property secured loans. Finally, HB 199 modifies an exemption to the new Ohio Consumer Installment Loan Act (CILA), Ohio Rev. Code §§ 1321.62 to 1321.702.

While HB 199's effective date is March 23, 2018, persons that hold a valid certificate of registration or license under either the OMLA or the OMBA will not need to immediately transition to registration and licensing under the new RMLA. Current registrants and licensees will be able to operate under their current authority until they are due for renewal, at which time registration and licensure under the RMLA will be required.

Scope

Prior to the passage of HB 199, the OMLA regulated a large swath of lending in Ohio. Lenders who made second-lien residential mortgage loans and personal property secured loans of more than \$5,000 have been required to register under the OMLA and, once registered, could make other consumer loans on terms and conditions permitted by the OMLA.

In an effort to streamline the licensure of consumer lenders, the passage of HB 199 creates the RMLA as a mortgage-specific statute. All residential mortgage lending activity in Ohio will be governed by the RMLA, which in its previous incarnation as the OMBA, applied to mortgage brokers and mortgage loan originators.

Historically, the OMLA regulated servicing of second lien residential mortgage loans. Prior to HB 199, any person engaging in the business of collecting money for second lien residential mortgage loans was required to register under the OMLA. Servicers of first lien residential mortgage loans, previously known as "mortgage bankers," however, were exempt from registration under the OMBA.

After the passage of HB 199, the new RMLA regulates mortgage lenders, mortgage brokers and mortgage loan originators. However, unlike the previous versions of the OMLA and OMBA, these definitions do not include references to servicing or collecting payments on residential mortgage loans. As a result, the business of

servicing residential mortgage loans is unregulated under the RMLA, and servicers are not required to register. The Superintendent of Financial Institutions (the Superintendent) has rulemaking authority to amend the definition of a mortgage lender, so there may be further developments on this issue.

| | Prior to HB 199 | Following HB 199 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Mortgage Loan Act (Ohio Rev. Code § 1321.51, <i>et seq</i>)</p> | <p>Applicable to persons making:</p> <ul style="list-style-type: none"> • Real estate loans other than first lien • Personal property and unsecured secured loans of more than \$5,000 | <p>Applicable to persons making:</p> <ul style="list-style-type: none"> • Personal property secured loans • Unsecured loans |
| <p>Mortgage Broker Act (Ohio Rev. Code § 1322.01, <i>et seq</i>)</p> <p>Effective March 23, 2018</p> <p>Residential Mortgage Loan Act (Ohio Rev. Code § 1322.01, <i>et seq</i>)</p> | <p>Applicable to persons acting as:</p> <ul style="list-style-type: none"> • Mortgage brokers • Mortgage loan originators | <p>Applicable to persons who make first or junior lien loans, secured by residential real estate, including those acting as:</p> <ul style="list-style-type: none"> • Mortgage lenders • Mortgage brokers • Mortgage loan originators |

Licensure and what to expect as a licensee

The RMLA requires a certificate of registration for any person acting as a mortgage lender or a mortgage broker, and requires individuals acting as mortgage loan originators to obtain a license. Numerous entities are exempt from the RMLA, including many types of depository institutions and their subsidiaries, entities created solely for the purpose of securitizing real estate loans, provided the entity does not service the loans, and credit union service organizations that obtain a letter of exemption. A depository institution that has voluntarily filed with the Nationwide Multistate Licensing System & Registry (NMLS) to license its loan originators is also not subject to the RMLA if it holds a letter of exemption issued by the Superintendent. The substantive requirements of the RMLA largely apply to entities that hold a certificate of registration and individuals that are licensed mortgage loan originators. Companies that are issued a letter of exemption are subject to certain supervisory and regulatory requirement with respect to the conduct of their mortgage loan originators.

The RMLA grants the Superintendent greater latitude on granting a certificate of registration, a letter of exemption, or a license than that under the OMLA or OMBA. For example, the application for both a mortgage lender certificate of registration and a mortgage loan originator license asks whether the applicant has been convicted of or pleaded guilty or no contest to certain crimes. The RMLA provides that a pardon or expungement of a conviction is not considered a conviction, and also grants the Superintendent the right to consider the underlying crime, facts, or circumstances connected with a pardoned or expunged conviction,

when considering whether an applicant may properly obtain a certificate of registration or a license. This authority is a departure from the questions presented on the NMLS, the system on which applications are submitted, which does not require an applicant to disclose that a conviction had been pardoned or expunged. It appears that this may require a supplemental disclosure or additional information that will be collected when an entity or individual applies for a certificate of registration or license pursuant to the RMLA.

A high-level overview of the RMLA registration and license requirements, including the applicable exemptions, is below:

RMLA Registration or License Requirements

The RMLA requires mortgage lenders and mortgage brokers to obtain a certificate of registration and mortgage loan originators must obtain a license.

Mortgage lender registration

A “mortgage lender” is defined to mean an entity that consummates a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant.

Mortgage broker registration

A “mortgage broker” is defined to mean an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

Mortgage loan originator license

A “mortgage loan originator” is defined to mean an individual who, for compensation or in expectation of compensation or gain, does any of the following:

RMLA Exemptions

The RMLA does not apply to the following entities, among others:

- Any entity chartered and lawfully doing business under the authority of any law of Ohio or other states, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of such an entity that is regulated by a federal banking agency and is owned and controlled by a depository institution
- A consumer reporting agency in substantial compliance with the federal Fair Credit Reporting Act
- Any political subdivision or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state
- A college or university or controlled entity of a college or university
- Any entity created solely for the purpose of securitizing loans secured by an interest in real estate, provided the entity does not service the loans
- Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if certain circumstances exist
- A bona fide nonprofit organization recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for the use by low income families, if certain circumstances exist

- Takes a residential mortgage loan application
- Assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees and other costs
- Offers or negotiates the terms of a residential mortgage loan
- Issues or offers to issue a commitment for a residential mortgage loan to a buyer

Each RMLA registrant must have an office in Ohio. Further, each principal and branch office of the registrant must hold a separate certificate of registration. Operationally, the RMLA requires a registrant to designate an operations manager responsible for each location, and must obtain a surety bond for each location at which it will be engaged in the regulated activity.

Each mortgage loan originator licensee must comply with certain continuing education requirements and must be employed by or associated with a registered mortgage lender, mortgage broker, or an exempt entity. The RMLA prohibits a licensee from being employed by more than one mortgage lender, mortgage broker, or exempt entity at one time.

All entities subject to the RMLA must comply with fiduciary duties and are prohibited from acting in an unfair or deceptive manner. These entities must also retain all records created or processed by a licensee, pertaining to business transacted under the RMLA for four years, which the Superintendent may examine as often as necessary. HB 199 further authorizes the Superintendent to suspend, revoke, or refuse to issue or renew a mortgage lender or mortgage broker certificate of registration or a mortgage loan originator license if he discovers, among other things, a violation of, or a failure to comply with, the RMLA. HB 199 also allows the Superintendent to impose civil penalties for violations of the RMLA, and it provides for criminal penalties in certain instances.

Finally, HB 199 allows consumers to bring an action for recovery of damages for a violation of the RMLA. The damages awarded must be equal to all compensation paid directly and indirectly to the mortgage lender, mortgage broker, or mortgage loan originator from any source, plus reasonable attorneys' fees and court costs as well as any punitive damages that are awarded.

Substantive Requirements

Fees and Charges

With respect to non-residential mortgage loans made under the OMLA, the OMLA retains its alternative 25% interest rate limit along with the exhaustive list of permitted fees and charges in Ohio Rev. Code § 1321.57, which has been modified to eliminate irrelevant provisions dealing with real estate secured loans.

For transactions subject to the RMLA, the 25% interest limitation is incorporated; however, the limitation will be preempted for qualifying lenders making first lien loans that qualify for federal preemption under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA § 501). The new RMLA does not include an exhaustive list of permitted fees and charges similar to the list contained in Ohio Rev. Code § 1321.57. As a result, fees and charges are less regulated under the RMLA than they were for creditors that were making residential mortgage loans under the OMLA.

Disclosures

Historically, the OMBA and OMLA imposed several disclosure requirements for registrants and licensees. However, in an effort to streamline and simplify Ohio law, HB 199 has repealed most of the disclosure requirements that previously existed. Lenders under the new RMLA will not need to provide as many forms for the origination and closing of mortgage loans.

Nonetheless, the RMLA still requires a few disclosures. These disclosure requirements include consumer-facing disclosures, as well as others that registrants or licensees must provide directly to the Superintendent. The consumer-facing disclosures include:

- Registrants and licensees must provide written notice to the buyer if it has any affiliated business relationship, as defined under the Real Estate and Settlement Procedures Act, 12 U.S.C. 2602, with any settlement service provider, including any title insurance company
- Registered lead generators or brokers are only required to make the disclosures to the consumer for the activities that they are engaged in, and not any additional mortgage-specific disclosures
- A registrant or mortgage loan originator must disclose its business name and unique identifier in any printed, televised, broadcast, electronically transmitted, or online advertisement relating to its services

The disclosures that must be provided to the Superintendent include:

- Notice of any action that is brought by a buyer against the registrant, mortgage loan originator, or employee alleging injury by a violation of any provision of the RMLA and of any judgment that is entered against the

registrant, mortgage loan originator, or employee by a buyer injured by a violation of the RMLA. Ohio Rev. Code § 1322.32(B)(1)

- An annual report concerning the business and operations for the previous calendar year. Ohio Rev. Code § 1321.55(B)(1)

Regulations

HB 199 permits the Superintendent to adopt rules and regulations to enforce the RMLA. Of significant import, the Superintendent may amend the definition of a mortgage loan originator, mortgage broker, or mortgage lender, or the criteria for an entity to obtain a letter of exemption from the RMLA. At this time, the regulator has not promulgated or introduced regulations consistent with either the RMLA or the revised OMLA. Once HB 199 becomes effective, the OMLA regulations will only apply to individuals that make personal property secured loans and unsecured loans. We anticipate that the regulator will promulgate regulations to enforce the RMLA prior to its effective date, which will provide additional guidance for those entities engaged in mortgage activity pursuant to the new RMLA.

For more information about Ohio HB 199, please reach out to the authors of this alert or another member of the firm's Consumer Financial Services Group.

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