



Ohio Revised Code

Section 1321.52 Registering second mortgage lenders and brokers.

Effective: March 22, 2013

Legislation: Senate Bill 333 - 129th General Assembly

(A)(1) No person, on that person's own behalf or on behalf of any other person, shall do any of the following without having first obtained a certificate of registration from the division of financial institutions:

(a) Advertise, solicit, or hold out that the person is engaged in the business of making residential mortgage loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate;

(b) Engage in the business of lending or collecting the person's own or another person's money, credit, or choses in action for non-first lien residential mortgage loans;

(c) Employ or compensate mortgage loan originators licensed or who should be licensed under sections 1321.51 to 1321.60 of the Revised Code to conduct the business of making residential mortgage loans;

(d) Make loans in this state of the type set forth in division (C) of this section that are unsecured or are secured by other than real property, which loans are for more than five thousand dollars at a rate of interest greater than permitted by section 1343.01 or other specific provisions of the Revised Code.

(2) Each person issued a certificate of registration or license is subject to all the rules prescribed under sections 1321.51 to 1321.60 of the Revised Code.

(B)(1) All loans made to persons who at the time are residents of this state are considered as made within this state and subject to the laws of this state, regardless of any statement in the contract or note to the contrary, except as follows:

(a) If the loan is primarily secured by a lien on real property in another state and is arranged by a



mortgage loan originator licensed by that state, the borrower may by choice of law designate that the transaction be governed by the law where the real property is located if the other state has consumer protection laws covering the borrower that are applicable to the transaction.

(b) If the loan is for the purpose of purchasing goods acquired by the borrower when the borrower is outside of this state, the loan may be governed by the laws of the other state.

(2) Nothing in division (B)(1) of this section prevents a choice of law or requires registration or licensure of persons outside of this state in a transaction involving the solicitation of residents of this state to obtain non-real estate secured loans that require the borrowers to physically visit a lender's out-of-state office to apply for and obtain the disbursement of loan funds.

(C) A registrant may make unsecured loans, loans secured by a mortgage on a borrower's real estate which is a first lien or other than a first lien on the real estate, loans secured by other than real estate, and loans secured by any combination of mortgages and security interests, on terms and conditions provided by sections 1321.51 to 1321.60 of the Revised Code.

(D)(1) If a lender that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A)(1) of this section, the lender has no right to collect, receive, or retain any interest or charges on that loan.

(2) If a registrant applies to the division for a renewal of the registrant's certificate after the date required by division (A)(7) of section 1321.53 of the Revised Code, but prior to the first day of February of that year, and the division approves the application, division (D)(1) of this section does not apply with respect to any loan made by the registrant while the registrant's certificate was expired.

(3) If a person's registration under sections 1321.51 to 1321.60 of the Revised Code terminates due to nonrenewal or otherwise but the person continues to engage in the business of collecting or servicing non-first lien residential mortgage loans in violation of division (A)(1) of this section, the superintendent of financial institutions may take administrative action, including action on any subsequent application for a certificate of registration. In addition, no late fee, bad check charge except as incurred, charge related to default or cost to realize on its security interest, or prepayment



penalty on non-first lien residential mortgage loans shall be collected or retained by a person who is in violation of division (A)(1)(b) of this section for the period of time in which the person was in violation. Nothing in division (D)(3) of this section prevents or otherwise precludes any other actions or penalties provided by law or modifies a defense of holder in due course that a subsequent purchaser servicing the residential mortgage loan may raise.

(E)(1) No individual shall engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license pursuant to section 1321.532 of the Revised Code from the division of financial institutions. A mortgage loan originator shall be employed or associated with a registrant or entity exempt from registration under sections 1321.51 to 1321.60 of the Revised Code, but shall not be employed by or associated with more than one registrant or exempt entity at any one time.

(2) An individual acting under the individual's authority as a registered mortgage loan originator shall not be required to be licensed under division (E)(1) of this section.

(3) An individual who holds a valid temporary mortgage loan originator license issued pursuant to section 1321.537 of the Revised Code may engage in the business of a mortgage loan originator in accordance with sections 1321.51 to 1321.60 of the Revised Code during the term of the temporary license.

(F)(1) Each licensee shall register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

(2) No person shall use a licensee's unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

(G)(1) If a person that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A)(1)(d) of this section and subsequently sells or assigns that loan, the person is liable to the borrower for any interest paid on that loan to the holder or assignee in excess of the rate that would be applicable in the absence of sections 1321.51 to 1321.60 of the Revised Code, in addition to any interest or charges paid on that loan to the unauthorized lender as provided



by division (D)(1) of this section.

(2) If a person that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a residential mortgage loan in violation of division (A)(1)(b) or (c) of this section and subsequently sells or assigns that loan, the lender is liable to the borrower for any interest paid on that loan to the holder or assignee in excess of the rate set forth in division (B)(4) of section 1343.01 of the Revised Code, in addition to any interest or charges paid on that loan to the unauthorized lender as provided by division (D)(1) of this section.