



Ohio Revised Code

Section 1322.01 Mortgage brokers - loan officers definitions.

Effective: December 28, 2009

Legislation: Senate Bill 124 - 128th General Assembly

As used in sections 1322.01 to 1322.12 of the Revised Code:

- (A) "Buyer" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for purposes of obtaining a residential mortgage loan.
- (B) "Consumer reporting agency" has the same meaning as in the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C.A. 1681a, as amended.
- (C) "Employee" means an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" also includes any individual who acts as a loan originator or operations manager of a registrant, but for whom the registrant is prevented by law from making income tax withholdings.
- (D) "Licensee" means any individual who has been issued a loan originator license under sections 1322.01 to 1322.12 of the Revised Code.
- (E)(1) "Loan originator" means an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following:
- (a) Takes or offers to take a residential mortgage loan application;
 - (b) 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;
 - (c) Offers or negotiates terms of a residential mortgage loan;
 - (d) Issues or offers to issue a commitment for a residential mortgage loan to a buyer.



- (2) "Loan originator" does not include any of the following:
- (a) An individual who performs purely administrative or clerical tasks on behalf of a loan originator;
 - (b) A person licensed under Chapter 4735. of the Revised Code, or under the similar law of another state, who performs only real estate brokerage activities permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, loan originator, or by any agent thereof;
 - (c) A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101 in effect on January 1, 2009;
 - (d) An employee of a registrant who acts solely as a loan processor or underwriter and who does not represent to the public, through advertising or other means of communicating, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the employee can or will perform any of the activities of a loan originator;
 - (e) A mortgage loan originator licensed under sections 1321.51 to 1321.60 of the Revised Code, when acting solely under that authority;
 - (f) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or another loan originator, or by any agent thereof;
 - (g) Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:
 - (i) Offer or negotiate the residential mortgage loan rates or terms;
 - (ii) Provide any counseling with borrowers about residential mortgage loan rates or terms;



(iii) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured home, mobile home, or industrialized unit;

(iv) Assist the borrower in completing a residential mortgage loan application.

(h) An individual employed by a nonprofit organization that is 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 use by low-income families, provided that the nonprofit organization makes no-profit mortgage loans or mortgage loans at zero per cent interest to low-income families and no fees accrue directly to the nonprofit organization or individual employed by the nonprofit organization from those mortgage loans and that the United States department of housing and urban development does not deny this exemption.

(F) "Mortgage" means any indebtedness secured by a deed of trust, security deed, or other lien on real property.

(G)(1) "Mortgage broker" means any of the following:

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien residential mortgage loans.

(2) "Mortgage broker" does not include any of the following persons only with respect to business engaged in or authorized by the person's charter, license, authority, approval, or certificate, or as otherwise authorized by division (G)(2)(h) of this section:



- (a) A person that makes residential mortgage loans and receives a scheduled payment on each of those mortgage loans;
- (b) Any entity chartered and lawfully doing business under the authority of any law of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution;
- (c) A consumer reporting agency that is in substantial compliance with the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C.A. 1681a, as amended;
- (d) Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state;
- (e) A college or university, or controlled entity of a college or university, as those terms are defined in section 1713.05 of the Revised Code;
- (f) 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. For purposes of division (G)(2)(f) of this section, "securitizing" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.
- (g) Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:
 - (i) Offer or negotiate the residential mortgage loan rates or terms;
 - (ii) Provide any counseling with borrowers about residential mortgage loan rates or terms;
 - (iii) Receive any payment or fee from any company or individual for assisting the borrower obtain



or apply for financing to purchase the manufactured home, mobile home, or industrialized unit;

(iv) Assist the borrower in completing the residential mortgage loan application.

(h) A mortgage banker, provided it complies with section 1322.022 of the Revised Code and holds a valid letter of exemption issued by the superintendent. For purposes of this section, "mortgage banker" means any person that makes, services, buys, or sells residential mortgage loans secured by a first lien, that underwrites the loans, and that meets at least one of the following criteria:

(i) The person has been directly approved by the United States department of housing and urban development as a nonsupervised mortgagee with participation in the direct endorsement program. Division (G)(2)(h)(i) of this section includes a person that has been directly approved by the United States department of housing and urban development as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the federal national mortgage association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the United States department of housing and urban development. Division (G)(2)(h)(i) of this section does not include a mortgagee approved as a loan correspondent.

(ii) The person has been directly approved by the federal national mortgage association as a seller/servicer. Division (G)(2)(h)(ii) of this section includes a person that has been directly approved by the federal national mortgage association as a seller/servicer and that makes loans in excess of the applicable loan limit set by the federal national mortgage association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the federal national mortgage association.

(iii) The person has been directly approved by the federal home loan mortgage corporation as a seller/servicer. Division (G)(2)(h)(iii) of this section includes a person that has been directly approved by the federal home loan mortgage corporation as a seller/servicer and that makes loans in excess of the applicable loan limit set by the federal home loan mortgage corporation, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the federal home loan mortgage corporation.



(iv) The person has been directly approved by the United States department of veterans affairs as a nonsupervised automatic lender. Division (G)(2)(h)(iv) of this section does not include a person directly approved by the United States department of veterans affairs as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

(i) A nonprofit organization that is 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 use by low-income families, provided that the nonprofit organization makes no-profit mortgage loans or mortgage loans at zero per cent interest to low-income families and no fees accrue directly to the nonprofit organization from those mortgage loans and that the United States department of housing and urban development does not deny this exemption.

(j) A credit union service organization, provided that the organization utilizes services provided by registered loan originators or that it holds a valid letter of exemption issued by the superintendent under section 1322.023 of the Revised Code and complies with that section.

(H) "Operations manager" means the employee or owner responsible for the everyday operations, compliance requirements, and management of a mortgage broker business.

(I) "Registered loan originator" means an individual to whom both of the following apply:

(1) The individual is a loan originator and an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration.

(2) The individual is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(J) "Registrant" means any person that has been issued a mortgage broker certificate of registration under sections 1322.01 to 1322.12 of the Revised Code.

(K) "Superintendent of financial institutions" includes the deputy superintendent for consumer finance as provided in section 1181.21 of the Revised Code.



(L) "Table-funding mortgage loan" means a residential mortgage loan transaction in which the residential mortgage loan is initially payable to the mortgage broker, the mortgage broker does not use the mortgage broker's own funds to fund the transaction, and, by the terms of the mortgage or other agreement, the mortgage is simultaneously assigned to another person.

(M) "Warehouse-lending mortgage loan" means a residential mortgage loan transaction in which the residential mortgage loan is initially payable to the mortgage broker, the mortgage broker uses the mortgage broker's own funds to fund the transaction, and the mortgage is sold or assigned before the mortgage broker receives a scheduled payment on the residential mortgage loan.

(N) "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(O) "Appraisal company" means a sole proprietorship, partnership, corporation, limited liability company, or any other business entity or association, that employs or retains the services of a person licensed or certified under Chapter 4763. of the Revised Code for purposes of performing residential real estate appraisals for mortgage loans.

(P) "Depository institution" has the same meaning as in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813, and includes any credit union.

(Q) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

(R) "Immediate family" means an individual's spouse, child, stepchild, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, or sister-in-law.

(S) "Individual" means a natural person.



(T) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed loan originator or registered loan originator. For purposes of this division, to "perform clerical or support duties" means to do all of the following activities:

(1) Receiving, collecting, distributing, and analyzing information common for the processing or underwriting of a residential mortgage loan;

(2) Communicating with a buyer to obtain the information necessary for the processing or underwriting of a loan, to the extent the communication does not include offering or negotiating loan rates or terms or counseling buyers about residential mortgage loan rates or terms.

(U) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities, for the licensing and registration of loan originators, or any system established by the secretary of housing and urban development pursuant to the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

(V) "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

(W) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including all of the following:

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for any such transaction;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for any such



transaction;

(4) Engaging in any activity for which a person engaged in that activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law;

(5) Offering to engage in any activity, or to act in any capacity, described in division (W) of this section.

(X) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling. For purposes of this division, "dwelling" has the same meaning as in section 103 of the "Truth in Lending Act," 82 Stat. 146, 15 U.S.C 1602.

(Y) "State," in the context of referring to states in addition to Ohio, means any state of the United States, the district of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the trust territory of the Pacific islands, the virgin islands, and the northern Mariana islands.

(Z) "Unique identifier" means a number or other identifier that permanently identifies a loan originator and is assigned by protocols established by the nationwide mortgage licensing system and registry or federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.