

MEMORANDUM

TO: Clients and Interested Persons[♦]

FROM: Donald C. Lampe^{*}

DATE: May 31, 2006

RE: Enactment of Ohio Senate Bill 185

The Ohio General Assembly passed the long-awaited mortgage lending reform bill, Senate Bill 185 (the “Bill”), on May 24, 2006. The Bill has been submitted to the Governor of Ohio, Bob Taft, for his signature. If enacted, the effective date of the Bill will be January 1, 2007. The Bill may be found online at: www.legislature.state.oh.us/bills.cfm?ID=126_SB_0185

The Bill arose out of several years of debate in Ohio over the need for stronger regulation of residential mortgage lending. Ohio saw the enactment of a high-cost home loan law, the Ohio Predatory Lending Act, effective in 2002. Consumer and community advocates viewed this HOEPA-based law as inadequate. It was thought that application of Ohio’s strong consumer sales practices law (which covers both unfair and deceptive trade practices and unconscionable acts in the sales of goods and services) to residential mortgage lending would address this problem. The Bill began as a two-page proposal, introduced in the Ohio Senate on September 22, 2005. The original proposal simply provided that the Ohio Consumer Sales Practices Act (“CSPA”) would apply to residential mortgage lending transactions. As it traveled through the Senate over a period of months, the Bill grew to encompass mortgage broker reform and appraiser licensing provisions, together with RESPA-like limitations on ownership of settlement services businesses and consumer disclosures incident thereto.

The Bill reached the Ohio House of Representatives in late March, 2006. There it underwent substantial revision (resulting in a House Committee Substitute). As passed by the Ohio General

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Assembly, the final Bill represented a compromise between House and Senate versions, and consisted of a comprehensive rewrite of nearly a dozen Ohio statutes dealing with residential mortgage lending and settlement services. The Conference Committee Synopsis of the Bill, showing how the Senate and House versions were harmonized, may be found at www.lsc.state.ohio/us/confsyn126/S185-126.pdf.

As is the case with numerous so-called “predatory lending” laws, the Bill borrows from existing state and federal statutes. The Bill is unique in the nation, however, in its scope and coverage. Not only does the Bill deal with high-cost home loans, in the form of amendments to Ohio’s existing Predatory Lending Act, it introduces extensive limitations and prohibitions on ALL residential mortgage loans originated by mortgage brokers and non-bank mortgage lenders. In addition, the Bill extends new restrictions and disclosure requirements to mortgage brokers, while imposing new limitations on appraisers and title insurance agents. It can be said that virtually no aspect of residential mortgage lending origination, underwriting, closing and settlement in Ohio is left untouched by the Bill. It follows that every participant in the mortgage lending origination and funding process in Ohio should become familiar with the Bill and promulgate compliance programs in advance of the January 1, 2007 effective date.

The Bill makes comprehensive revisions to Ohio law in seven areas: (1) licensing, oversight and conduct of mortgage brokers; (2) Ohio Consumer Sales Practices Act, with unfair and deceptive trade practices and special “unconscionability” provisions newly applied to mortgage lending; (3) statutory duties imposed on “nonbank mortgage lenders”; (4) public database of regulatory and enforcement actions and regulatory reporting; (5) mortgage pricing, including new limitations on prepayment fees and lowered thresholds for “points and fees” under and expanded coverage of Ohio’s existing high-cost home loan law; (6) ownership and conduct of settlement service providers; and (7) consumer education. These seven areas are dealt with in turn below. [^]

[^] *A note on coverage of the Bill:* under the Ohio Mortgage Brokers Act mortgage broker is defined as: “(1) 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; (2) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker, and charges or receives from the mortgage broker money or other valuable consideration readily convertible into money for providing the information; (3) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.” O.R.C. § 1322.01(G). As a result of regulatory interpretation of this definition, a wholesale mortgage lender may elect to obtain a certificate of registration from the Ohio Division of Financial Institutions and accordingly would be considered a “registrant” under the law. Section 1322.081 of the Bill, a new statutory section of the Ohio Mortgage Brokers Act, excepts wholesale mortgage lenders from new statutory duty requirements imposed on mortgage brokers and loan officers, but goes on to state that “wholesale lenders are subject to all other requirements applicable to mortgage brokers and nonbank mortgage lenders.” (“Wholesale mortgage lender” is defined, for purposes of this subdivision of Section 1322.81, as “a company that has been issued a mortgage broker certificate of registration and enters into transactions with [borrowers] exclusively through unaffiliated third-party mortgage brokers.”) It is not clear from the context of this language, which is contained in only one division of this new section of the Mortgage Brokers Act, whether this language qualifies other sections of the Bill or only the particular section in which it appears. In any case, wholesale mortgage lenders should review carefully those portions of the SB 185 that impose duties not just on loan officers or mortgage brokers but more on “registrants,” as well.

I. Mortgage Brokers

A. Licensing

- Further restrictions are added to the mortgage broker registration and licensing law, the Ohio Mortgage Brokers Act (O.R.C. Chapter 1322), including FBI criminal background checks and increased education (24 hours “live” classroom instruction). The additional requirements apply to sole proprietors, designated operations managers and loan officers.

B. Clarification of Exemptions

- The Bill clarifies the bank-related exemption to the Mortgage Brokers Act (O.R.C. §§ 1322.01 to 1322.12) by defining “affiliate” of a bank, savings bank, savings and loan association or credit union. The Bill defines, for purposes of exemption from the Mortgage Brokers Act, “affiliate” to mean -

“an entity that controls, is controlled by, or is under common control with a bank, savings bank, savings and loan association, credit union or credit union service organization and that the Board of Directors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration has the authority to examine, supervise, and regulate including with respect to the affiliate’s compliance with applicable consumer protection requirements.”

C. Additional Disclosures

- Under existing Ohio law, a mortgage broker (“registrant”) is required to provide the borrower with application-related disclosure (known as “mortgage loan origination disclosure statement”) regarding the mortgage broker’s services and the cost of such services within three business days after taking the loan application. The Bill adds a “good faith estimate” of the amount of the mortgage broker’s fee and special 90% LTV statement to this mandated disclosure. Under the Bill, the mortgage loan origination disclosure statement must be signed by the borrower to acknowledge receipt (presumably, with a counterpart so signed returned to the mortgage broker).
- Existing law states that if there is any change in the method by which the mortgage broker fee is to be calculated or the services to be performed by the mortgage broker (as originally disclosed in the mortgage loan origination disclosure statement), the mortgage broker must provide the borrower with a revised mortgage loan origination disclosure statement. The Bill expands the

mortgage broker redisclosure requirement to any change in the information in the original mortgage loan origination disclosure statement and adds, “and a written explanation of why the change occurred, ” which must be provided within 24 hours (existing laws says 3 days) after the change occurs or 24 hours before closing (existing law says date of closing), whichever is earlier.

- Mortgage broker (“registrant”) must deliver to the borrower, at the same time the mortgage loan origination disclosure statement is delivered, a GFE under RESPA that must include a specified “nature of relationship” disclosure in 10-point type with special acknowledgment disclaiming the borrower’s obligation to obtain the mortgage through the mortgage broker.
- Mortgage broker (“registrant”) required to deliver to borrower “immediately upon receipt, a copy of any nonproprietary or publicly available credit score and report” obtained by the mortgage broker in connection with the loan application. If the loan officer or the registrant uses an AVM to “determine an appraisal report,” the registrant shall “include a copy of the AVM report.”
- Mortgage broker (“registrant”) must deliver a written pre-closing disclosure (not later than 24 hours before closing) covering required escrows and monthly payment amount.
- The Bill adds two new “timely information” disclosure requirements if a material change occurs during the course of underwriting in the loan terms or there is a change in the amount of fees paid. First, the mortgage broker (“registrant”) or loan officer (“licensee”) must timely inform the borrower of any “material change in the terms of the loan.” Though not specified, it appears that these disclosures should be in writing, and the timing requirements are the same as a change giving rise to a mortgage loan origination disclosure statement re-disclosure, i.e., within 24 hours after the change occurs or 24 hours before closing, whichever is earlier. Any required “change in loan terms” disclosure evidently must be provided separately from the “change in mortgage loan origination disclosure statement” disclosure (see above). For purposes of this section, a “material change” means a change:
 - o In the type of loan being offered, “such as fixed or variable rate loan or a loan with a balloon payment”,
 - o In the term of the loan as expressed in the number of monthly payments due before maturity,
 - o In the interest rate of more than 15 basis points (.15%),
 - o In the regular monthly payment of principal and interest of more than 5%,

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- o Regarding escrow of taxes and insurance, or
- o Payment of mortgage insurance.
- Under this same heading in the Bill, the second new disclosure requirement is a “change in fees” disclosure. A registrant or licensee must “timely inform the [borrower] if any fees payable by the [borrower] to the registrant or the lender[sic] increase” by the greater of 10% or \$100. The timing for this disclosure requirement is the same as for the change-in-loan-terms disclosure discussed just above, but evidently this disclosure must be provided separately from any other disclosure. The penalty for failure to provide this change-in-fees disclosure is that the registrant must refund the amount that the fee increased, and if the fee is financed into the loan, the registrant must also refund “the interest that would accrue over the term of the loan on that excess amount.”
- Existing Ohio law imposes various prohibitions on mortgage brokers, registrants and loan officers. The Bill adds two additional prohibitions:
 - o Corrupting or improperly influencing the independent judgment of an appraiser, through means of payment, instruction, inducement, coercion, intimidation or any attempt at such, and
 - o Promising to refinance a loan at a lower interest rate or with more favorable terms, unless the promise is set forth in writing and initialed by the borrower.

D. New Statutory Duties

- *The Bill creates new statutory duties, imposed on mortgage brokers, registrants and loan officers.* These duties, also referred to as “standards of care,” cannot be waived by the borrower. An express exception appears for wholesale mortgage lenders, which (as discussed above) are defined as registrants who enter into transactions with borrowers “exclusively through unaffiliated third-party mortgage brokers.” These duties are based on provisions in the North Carolina Mortgage Lending Act (which apply only to mortgage brokers as defined in that law). There are five separate duties, each of which is mandatory, and which are in addition to duties imposed by other statutes or common law:
 - o Safeguard and account for any money handled for the borrower,
 - o Follow reasonable and lawful instructions from the borrower,
 - o Act with reasonable skill, care, and diligence,
 - o Act in good faith with fair dealing, and

- o “Make reasonable efforts to secure a mortgage loan from lenders, with whom the registrant, licensee or person regularly does business, with rates, charges and repayment terms that are advantageous to the borrower.”
- The terms used in this section are not defined. It is probably safe to say that the most of the duties imposed are those of a reasonable standard of care, coupled with familiar duties of good faith and fair dealing found in the UCC. It is not known, however, what “advantageous to the borrower” means here nor whether such a duty in effect will require a mortgage broker to conduct additional inquiry into the particular borrower’s circumstances.
- There are special borrower remedies for the violation of this new section, including damages not less than the compensation paid to the mortgage broker (whether direct or indirect) and reasonable attorneys’ fees and court costs plus punitive damages. The borrower is not permitted to obtain “double recovery” in an action under this section if the borrower has recovered damages and attorneys’ fees under the general remedies and penalties provisions of the Mortgage Broker Act.

II. Consumer Sales Practices Act (“CSPA”)

A. General Coverage for Residential Mortgage Loans

- Existing Ohio CSPA excludes transactions involving intangibles, and has been interpreted over the years to exclude consumer loan transactions. The Bill expands the coverage of Ohio CSPA to “*consumer transactions in connection with residential mortgages between loan officers, mortgage brokers and nonbank mortgage lenders and their customers.*” The former terms are defined by reference to the Ohio Mortgage Brokers Act, while “nonbank mortgage lender” (in a somewhat circular way) is defined as “any person that engages in a consumer transaction in connection with a residential mortgage transaction” *except for banks, savings banks, savings and loan associations, credit unions or CUSO’s or subsidiaries or affiliates of same.*
- For purposes of this latter exclusion, the term “subsidiary” is not defined, but “affiliate” is defined using the same word formula as provided in the Mortgage Brokers Act - “controls, is controlled by, or under common control of” such a financial institution and subject to the examination, supervision and regulation of a federal banking regulator (including the Federal Reserve Board). The definition of “control” here is “ownership, control or power to vote 25% or more of the outstanding voting shares,” directly or indirectly.

- The Bill defines “residential mortgage” or “mortgage” as a note secured by a lien on real property consisting of two or fewer residential units or upon which two or fewer residential units are to be constructed (including condo and co-op units). CSPA currently defines “consumer transaction” as a specified transaction “for purposes that are primarily personal, family or household.” It follows that consumer-purpose residential mortgage lending transactions solicited, offered or made by nonbank mortgage lenders, mortgage brokers (as defined in the Ohio Mortgage Brokers Act in Ohio) or loan officers (also as defined in the Mortgage Brokers Act), regardless of the size of the loan or the nature of the real estate collateral, are covered by Ohio CSPA.
- Existing CSPA covers “suppliers,” a term which is defined to include “sellers”. The Bill redefines these terms - if the “consumer transaction is in connection with a residential mortgage loan,” then “supplier does not include an assignee or purchaser of a loan for value” except as otherwise provided in the Bill (see discussion below regarding assignee liability) and “seller” means a loan officer, mortgage broker or nonbank mortgage lender.

B. Unfair or Deceptive Acts or Practices

- Existing Ohio CSPA contains an “unfair or deceptive trade practices” section. This section consists of a general prohibition on any deceptive or unfair practice in connection with a consumer transaction, coupled with a non-exclusive list of sales practices that are deceptive or unfair. The Bill applies this section of existing CSPA law to *residential mortgage lending transactions involving mortgage brokers, loan officers and nonbank mortgage lenders*. Unfortunately, the listed practices are centered around the sale of goods and appear to have little bearing on mortgage lending transactions. The Bill adds two specific acts that are “deceptive” under this section: (i) knowingly failing to provide disclosures required under state and federal law; and (ii) knowingly providing a disclosure that includes a material misrepresentation.

C. Unconscionable Acts or Practices

- Existing CSPA also contains a unique section on unconscionable acts or practices, at O.R.C. § 1345.03. The Bill states that this section does not apply to “a consumer transaction in connection with a residential mortgage.” Rather, the Bill creates an entirely new CSPA section that prohibits unconscionable acts or practices in such consumer transactions, to be codified at O.R.C. § 1345.031. The practices that are unconscionable are set forth in a sixteen-item list that was referred to in the course of the House’s consideration of the Bill as the “borrower’s bill of rights.”

- This list includes a number of prohibitions or limitations that heretofore have been seen only in state high-cost home loan statutes, including some borrowed from Ohio's existing Predatory Lending Act (keeping in mind that this part of the Bill applies to all consumer mortgage lending transactions involving mortgage brokers or nonbank mortgage lenders). The list also includes prohibitions that are completely new in any state mortgage lending law. The Bill's "unconscionable" prohibitions and limitations are:
 - o arranging or making a loan with post-default interest,
 - o engaging in a pattern or practice of lending based predominantly on the lender's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan,
 - o provisions for payment demand in advance of maturity of a mortgage loan unless the creditor[sic] does so in good faith due to the consumer's failure to abide by "the material terms of the loan",
 - o knowingly replacing, refinancing or consolidating a low-interest loan made by a government or non-profit lender unless the current holder of the loan consents in writing to the refinancing and the consumer presents a home ownership counseling certificate on the advisability of the new loan transaction,
 - o instructing a borrower to ignore written information about a loan's rate and points because the loan as to which the written information pertains has a lower price,
 - o recommending or encouraging default on any mortgage loan, consumer transaction or revolving credit loan agreement,
 - o charging a late fee more than once (no pyramiding),
 - o failing to disclose to the consumer at closing of the transaction that a consumer (a) is not required to complete a transaction merely because the consumer has received prior estimates of closing costs or signed an application, and (b) should not close a loan transaction that contains different terms than those the consumer was promised,
 - o consolidation of two or more payments in a consumer transaction,
 - o knowingly coercing, instructing or intimidating an appraiser (or attempting same),

- o financing credit insurance premiums or any other life or health insurance premiums or “any debt collection agreement”,
 - o “flipping” in any refinancing transaction (using the “reasonable tangible net benefit” language from North Carolina),
 - o “knowingly taking advantage of the inability of the consumer to reasonably protect the consumer’s interests because of the consumer’s known physical or mental infirmities or illiteracy”,
 - o entering into a consumer transaction “knowing there is no reasonable probability of payment” by the consumer,
 - o attempting to enforce an unlawful prepayment penalty (see below as to new prohibitions on prepayment penalties in the Bill), and
 - o engaging in an act or practice deemed unconscionable under rules adopted by the Attorney General for unconscionable mortgage lending acts or practices.
- This section of the Bill also adds stand-alone prohibitions on “unconscionable” attorneys’ fees and liquidated damages provisions. The lender is prohibited from attempting to enforce any such provisions or referring to such provisions as a means of inducing the consumer to take any action desired by the lender. It follows that a lender including such a clause in a consumer mortgage transaction could multiply the violation by attempting to enforce it or even bringing it to the borrower’s attention.

D. Regulations and Policy Interpretations

- The Bill provides the Ohio Attorney General with additional administrative powers of rulemaking and disclosure promulgation. In addition, as is the case with CSPA generally now, the Attorney General will be responsible for publishing annually precedent-setting policies, interpretations and reported cases arising under the special mortgage lending-related unconscionability section (O.R.C. § 1345.031). It appears that current precedent on the CSPA unfair or deceptive trade practices section (O.R.C. § 1345.02) will apply to consumer mortgage loan transactions occurring after the effective date of the Bill.
- The Attorney General is required, as part of his/her duty to inform consumers and suppliers on a continuing basis of acts or practices that violate CSPA, to publish “an informational document describing acts and practices that an unfair, deceptive or unconscionable” in residential mortgages. This informational document must be made available to consumers as a disclosure at loan application and the lender,

mortgage broker or loan officer, as applicable, must obtain an acknowledgement of receipt from the applicant.

- Under existing CSPA, the Attorney General's rulemaking is to be carried out with "due consideration and great weight" to FTC orders, rules and guides, and federal court interpretations of, Section 5 of the FTC Act. The Bill adds that the Attorney General is to conduct this rule-making in consultation with the Superintendent of the Ohio Division of Financial Institutions and shall give due consideration to existing state and federal law.

E. Remedies and Penalties; Assignee Liability

- Existing CSPA (O.R.C. § 1345.09) provides for extensive private remedies, including treble damages and attorneys' fees. The law also provides for equitable relief and for rescission. The Bill limits rescission in connection with a residential mortgage transaction involving a loan officer, mortgage broker or nonbank mortgage lender to individual actions, only for the reasons and within the timeframe set forth in the Truth in Lending Act's rescission statute (15 USC § 1635).
- The Bill creates limitations on assignee liability for CSPA violations. First, the definition of "supplier" in residential mortgage transactions expressly excludes "an assignee or purchaser of the loan for value," except as provided in Section 1345.091. This new section of the CSPA (quoted in full) provides -
 - o "Sec. 1345.091. No claim or defense under this chapter [CSPA] may be asserted by the attorney general of any consumer against an assignee or purchaser of a mortgage loan for value unless any one of the following applies: (A) The violation was committed by the assignee or purchaser. (B) The assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase."

III. Statutory Duties of Nonbank Mortgage Lenders

- The Bill imposes a new statutory duty on "nonbank mortgage lenders" (defined by reference to the new CSPA definition discussed above) but excluding assignees or servicers of a loan.
- Under the Bill, a lender is prohibited, "in connection with the attempted or actual making, purchase or sale of any mortgage loan," from engaging in "a transaction, practice, or course of dealing that is not in good faith or fair dealing, or that operates a fraud on any person." The former duty is similar to the duty imposed on mortgage brokers that is found elsewhere in the Bill, and appears to be based

on the UCC. There is no explanation in this part of the Bill as to what it means to “operate a fraud on any person.”

- A violation of this duty entitles the affected consumer to recover damages of not less than all compensation paid directly or indirectly to the lender plus reasonable attorneys’ fees and court costs.

IV. Public Database and Regulatory Reporting

- The Bill creates a new requirement that the Ohio Department of Commerce (presumably through the Division of Financial Institutions) must establish and maintain an internet-based public database containing -
 - o Upon final disposition, information about enforcement actions taken by the DFI for violations of the Mortgage Brokers Act,
 - o Upon final disposition, enforcement actions taken by the Attorney General under the amended CSPA against mortgage brokers, loan officers and nonbank mortgage lenders, and
 - o All non-appealable judgments from Ohio courts finding a violation of the Mortgage Brokers Act or a violation of specific provisions of amended CSPA by mortgage brokers, loans officers or nonbank mortgage lenders.
- The Attorney General is required to submit to the Ohio Department of Commerce, quarterly, a list of all enforcement actions and judgments as provided in the foregoing section (see above).
- DFI similarly is required to report to the Governor and the General Assembly, semiannually, enforcement actions under the Mortgage Brokers Act as well as suspensions, revocations or refusals to issue licenses or registrations under the Ohio Mortgage Brokers Act, as well as outreach efforts of the Office of Consumer Affairs to provide education on predatory lending, borrowing and related financial topics.

V. Mortgage Loan Pricing

A. General Provisions

- The Bill adds new prepayment penalty restrictions on certain residential mortgage lenders in Ohio. This appears as an amendment to the residential mortgage lending fee restrictions in Ohio’s general interest law. Under existing law, residential mortgages may bear a prepayment fee not in excess of 1% for 5 years from closing, with no such restriction after 5 years. The Bill prohibits prepayment

penalties for first mortgage loans of less than \$75,000 that are made or arranged by mortgage brokers, loan officers or nonbank mortgage lenders (as these terms are defined in amended CSPA, discussed above).

- The Bill amends the statute prescribing authorized fees and charges for second mortgage loan registrants (lenders licensed under Ohio second mortgage loan law). Under existing law, such registrants may charge upon refinancing either points or a prepayment penalty. The Bill further limits prepayment penalties in time and amount.
- The CSPA-related amendments (discussed above) impose numerous limitations or prohibitions on price-related loan terms such as default interest and late fees.

B. Ohio Predatory Lending Act Amendments

- The definition of “covered loan” is extended to include open end credit plans, but otherwise the types of loans covered by the Ohio Predatory Lending Act are not expanded (i.e., “residential mortgage transactions” defined in Regulation Z are not covered by Ohio PLA).
- The HOEPA-based APR threshold remains in place, but the definition of “points and fees” is changed substantially. The “points and fees” threshold under Ohio PLA is changed from the existing HOEPA-based trigger to --
 - o If “total loan amount” is less than \$25,000, then 8%, and
 - o If “total loan amount” is \$25,000 or greater, then 5%.
- The basic definition of “points and fees” appears to be extended to include “all compensation paid directly or indirectly to a mortgage broker from any source,” while VA and FHA fees or premiums are excluded AND up to “one percentage point in indirect mortgage broker compensation paid by any source.” This should mean that yield spread premiums are counted in the PLA definition of “points and fees” but up to 1% in YSP’s may be excluded.
- A non-standard definition of “total loan amount” is added, as the principal amount of the loan amount minus points and fees that are included in the principal amount.
- The Bill adds certain additional restrictions on PLA “covered loans,” including counseling requirements.

VI. Ownership and Conduct of Settlement Service Providers

A. Mortgage Brokers and Appraisers

- The Bill prohibits any registrant under the Mortgage Brokers Act or any member of the registrant's "immediate family" from owning or controlling a majority interest in an appraisal company.
- Under the Bill, no registrant or licensee under the Mortgage Brokers Act is permitted to refer any borrower or potential borrower to any settlement service provider (including a title insurance company) without providing a written notice that tracks the RESPA-mandated affiliated business arrangement disclosure.
- No registrant or licensee under the Mortgage Brokers Act is permitted to refer a borrower to an appraisal company in which the registrant or licensee has an ownership or investment interest (whether debt or equity) or if the appraisal company is providing any compensation or any kind to such registrant or licensee. Compensation may be deemed to include cross-referral arrangements.
- Applicants for state-certified appraisal certificates or appraiser licenses will be subject to criminal background checks.
- The Bill provides that it is unlawful for any person to corrupt or improperly influence an appraisal certificate holder or appraiser licensee with respect to the value of any dwelling offered as collateral security for a mortgage loan.
- The Bill provides that no person shall perform a real estate appraisal for a mortgage loan if the person is not licensed or certified under the Ohio appraiser statute. There is an exception here for a lender using a market analysis or price opinion, an internal valuation analysis, or an AVM or AVM report, if the Lender
 - o Gives the consumer applicant a copy of the written market analysis, or price opinion or AVM report, and
 - o Provides, on the consumer's copy, a corresponding disclaimer.

B. Title Insurance Agents

- Title insurance agents that handle escrows in transactions not involving issuance of title insurance policies must have fidelity-type insurance; title insurance agents must have errors and omissions coverage.
- In purchase-and-sale residential mortgage loan transaction in which a title insurance agent is issuing a lender's policy of title insurance but no owner's

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policy has been requested, the title insurance agent must provide a detailed notice to the mortgagor/borrower at the time the title commitment is prepared.

- Title insurance agents are required to offer insured closing or settlement protection to the lender, seller, borrower or any applicant for title insurance. Title insurance companies are not authorized to offer or issue any other closing, settlement or escrow protection coverage.
- The Bill creates a number of closing-related conduct prohibitions on title insurance agents in connection with loans of \$75,000 or less.

VII. Consumer Education

- The Bill creates a Consumer Finance Education Board, to be comprised of twelve members appointed by the Governor, the Speaker of the House and the President of the Senate, respectively. There is to be diverse representation on the Board from government, industry and consumer advocates, as well as geographic diversity within Ohio.
- The Board is given broad authority to analyze state policies, study financial literacy initiatives (both private and public), coordinate and provide resources to state agencies and provide financial assistance to Ohio as through grants.
- The Board is to create a pilot financial literacy and counseling program funded through Ohio's consumer finance fund (a fund maintained by the DFI from penalties and forfeitures from regulated financial services companies), to be operated in the five counties in Ohio with the highest foreclosure rates.
 - o Any mortgage broker or loan officer working with a consumer in one of these counties seeking a mortgage loan with "origination fees greater than five percent" must recommend the consumer to the pilot program.
 - o The mortgage broker or loan officer, before permitting the borrower to commit to such a loan, must notify the consumer that the loan "may have attributes that are predatory".
 - o There is a negation of liability for any person who offers education, advice or counseling through this program for any damages incurred from actions taken based on such education, advice or counseling.