

OHIO HOMEBUYERS' PROTECTION ACT

— *An Overview of the SB 185 Conference Committee Report* —

CONSUMER SALES PRACTICES ACT	
Expansion of the Consumer Sales Practices Act (CSPA)	<ul style="list-style-type: none"> • Applies the CSPA to mortgage brokers, loan officers and non-depository lending institutions • Subjects an affiliate of a bank or holding company to the CSPA based on a two-prong test: <ol style="list-style-type: none"> (1) Affiliates with less than 25% common ownership of the bank or holding company are subject to the CSPA (2) Affiliates with 25% or more common ownership are subject to the CSPA if they fail to meet a test based on examination, supervision and regulation (must meet all 3 criteria), including ensuring compliance of applicable consumer protection laws
Unfair & Deceptive Acts or Practices	<ul style="list-style-type: none"> • In addition to prohibitions in the CSPA under current law, specifies that knowingly failing to provide disclosures required by state or federal law or knowingly making a material misrepresentation on one of these disclosures is an unfair or deceptive practice
Unconscionable Acts or Practices	<ul style="list-style-type: none"> • Creates a bright line list of unconscionable acts or practices (ORC § 1345.031) that applies in connection with residential mortgages, including: <ul style="list-style-type: none"> ✓ Flipping a mortgage loan without a net tangible benefit ✓ Charging and attempting to enforce prepayment penalties in loans under \$75,000 (indexed with CPI) ✓ Using and attempting to enforce unconscionable contract terms related to mandatory arbitration clauses, clauses requiring payment of attorney fees and liquidated damages ✓ Failing to consider the consumer's ability to repay ✓ Compensating, coercing or instructing an appraiser in order to influence the appraised values ✓ Taking advantage of the consumer's known physical or mental infirmities or illiteracy • Gives the Attorney General (AG), in consultation with the Superintendent of the Division of Financial Institutions (DFI), rulemaking authority to add to this list of prohibited acts
Protecting the Secondary Market	<ul style="list-style-type: none"> • Specifies that rescission actions for residential mortgage loan transactions brought by individuals must occur within the timeframe specified under the federal Truth in Lending Act (TILA) (three day no-fault and up to three years from the date of closing) for any violation of TILA • Specifies that assignees or purchasers of a loan for value are not liable under the CSPA unless the assignee or purchaser commits a violation or is under common control with the broker or lender that commits the violation

BROKER AND LENDER DUTIES

Mortgage Broker Duties	<ul style="list-style-type: none"> • Adds standards of care that mortgage brokers must follow when dealing with a borrower by specifying the broker shall: <ol style="list-style-type: none"> (1) Safeguard and account for any money handled for the borrower (2) Follow reasonable and lawful instructions from the borrower (3) Act with reasonable skill, care and diligence in connection with originating any residential mortgage loan (4) Act in good faith and fair dealing in connection with brokering or originating a mortgage loan (5) Make reasonable efforts to secure a mortgage loan, from lenders with whom they regularly do business, with rates, charges and repayment terms that are advantageous to the borrower • Specifies that this standard of care cannot be waived
Lender Duty	<ul style="list-style-type: none"> • Prohibits a lender from engaging in any transaction, practice or course of business which is not in good faith or fair dealing; or is fraudulent in the making, purchasing, or selling of a residential mortgage loan • Specifies that this standard of care cannot be waived

IMPROVED DISCLOSURE STANDARDS AND PROHIBITED ACTS

Appraiser Coercion	<ul style="list-style-type: none"> • Prohibits coercion between brokers and appraisers in order to prohibit inflated property valuation
Non-written Promises	<ul style="list-style-type: none"> • Prohibits non-written promises between brokers or loan officers and consumers, stating that a loan can be refinanced at a lower rate in the future • Requires that a written acknowledgement, signed by the consumer, be obtained if a promise is made and agreed upon
Details of Monthly Payments	<ul style="list-style-type: none"> • Mandates clear disclosure of the full amount of a home loan monthly payments, including the cost of principal, interest, taxes and private mortgage insurance • Requires written disclosure of whether the consumer is required to have an escrow account for taxes
Changes to the Mortgage Loan Origination Disclosure Statement (MLODS)	<ul style="list-style-type: none"> • Requires timely disclosure of material changes to loan terms, including: the type of loan, term of loan, change in rate, and change in payment of the principal/interest greater than 5% • Requires changes to the MLODS to be fully disclosed to consumers within 24 hours after the change occurs or 24 hours prior to the loan closing, whichever is earlier • Requires mortgage brokers to maintain a signed copy of the MLODS for four years
Notification of Higher Fees	<ul style="list-style-type: none"> • Instructs a mortgage broker to deliver a good faith estimate,

	<p>in accordance to the federal Real Estate Settlement Procedure Act (RESPA), which discloses the amount and range of charges that the consumer may incur</p> <ul style="list-style-type: none"> • Mandates that a broker or loan officer clearly disclose, within at least 24 hours prior to the closing if fees associated with the loan are 10% higher than originally disclosed • Requires any excess between the original amount of the fee and the new, higher amount be refunded to the consumer if this regulation is not followed
90% Loan-to-Value Warning	<ul style="list-style-type: none"> • Requires an acknowledged warning on loans expected to exceed 90% of the loan-to-value ratio to ensure borrowers know that if they borrow all, or nearly all, of the equity in their home that it may be difficult to refinance at a better interest rate or sell their home without significant out-of-pocket expenses
Prohibition from Owning an Appraisal Company	<ul style="list-style-type: none"> • Prohibits mortgage brokers and/or a member of their immediate family (i.e. spouses or dependents) from owning or operating a majority interest in a residential real estate appraisal company (existing businesses are grandfathered) • Prohibits mortgage brokers or loan officers from referring their customers to a title or appraisal company in which the broker or loan officer has an ownership interest • Gives the Superintendent of the DFI permissive authority to either revoke broker licenses or order brokers to divest their interest in the company for violations under ORC 1322
Title Company Referral Prohibitions	<ul style="list-style-type: none"> • Prohibits a broker from referring a customer to a title company without providing a written notice disclosing any financial relationship that may exist between the broker and the title company
Title Agent Requirements	<ul style="list-style-type: none"> • For loans of \$75,000 or less, makes it a violation of the CSPA for title agents to engage in the following conduct: <ol style="list-style-type: none"> (1) Coercing or wrongfully instructing the borrower to into a mortgage loan; (2) Failing to disclose to the borrower that they do not have to close on a loan; (3) Making a material misrepresentation to the borrower regarding the terms of the loan (4) Failing to obtain a signed disclosure from the borrower acknowledging the risks of entering into the loan • Requires title insurance agents to notify purchasers of the availability of title insurance in conjunction with a residential mortgage loan • Authorizes title insurance companies to offer settlement protection to the lender, borrower and seller • Requires a title insurance agent that handles escrow, settlement, closing costs or security deposits to maintain records of those accounts and allow audits of the accounts

ENHANCED LICENSURE REQUIREMENTS

Appraiser Licensure	<ul style="list-style-type: none"> Requires that appraisers be licensed in order to perform appraisals for residential mortgage loans
National Background Checks	<ul style="list-style-type: none"> Requires national background checks for all applicants for mortgage brokers, loan officers and appraisers Prohibits appraisers from obtaining a license who has been convicted of financial-related crimes such as theft, fraud, forgery and money laundering in Ohio or any other state Creates an appeals process for appraisers with prior convictions to obtain a license if they can show by a preponderance of the evidence that the applicant's record indicates that he or she is honest, truthful and of good reputation Stipulates that upon renewal, an applicant must attest that they have committed no criminal offenses in the preceding 12 months
Examinations and Continuing Education Requirements	<ul style="list-style-type: none"> Requires an applicant to successfully pass a licensing examination prior to obtaining a loan officer license and eliminates the 90-day provisional period in which an applicant could make loans prior to passing the exam Prohibits the Superintendent of DFI from granting a mortgage broker license if the applicant has been found guilty of theft Requires new mortgage broker applicants to complete 24 hours of classroom instruction relating to the mortgage broker industry, including ethics training Permits the Superintendent of DFI to automatically revoke a registrant's license if they are found guilty of specified criminal offenses or for failing to meet the continuing education requirements under ORC 1322

COVERED LOANS AND PREPAYMENT PENALTIES

Prepayment Penalties on Subordinate Loans	<ul style="list-style-type: none"> Limits the amount of prepayment penalties (PPP) percentages that may be charged for subordinate mortgages under ORC 1321 to 2% in the first year and 1% in the second year
Prohibition of Prepayment Penalties for First Mortgage Loans	<ul style="list-style-type: none"> Prohibits PPP for first lien mortgages under ORC 1343 of \$75,000 or less, originated by a mortgage broker, loan officer or nonbank lender Requires that the \$75,000 level shall be adjusted according to the CPI index and mandates the Department of Commerce to publish the annual amount
Points and Fees Triggers for Covered Loans	<ul style="list-style-type: none"> Lowers the points and fees triggers for "covered loans" under ORC 1349 to 5% of the total loan amount; 6% if indirect compensation (yield spread premiums) is included Excludes VA and FHA premiums from the points and fees

<u>Small Loan Exception</u>	<ul style="list-style-type: none"> • Maintains the current 8% points and fee triggers for loans less than \$25,000; loans above
Open-ended Loans	<ul style="list-style-type: none"> • Adds open-ended mortgage loans to covered loans under ORC 1349
Loans Exceeding Debt-to-Income Ratio of 50%	<ul style="list-style-type: none"> • Mandates the following prior to a loan being made if a borrower is entering into a covered loan that will cause their debt-to-income ratio to exceed 50%: <ul style="list-style-type: none"> (i) Mandatory counseling for the consumer (ii) A signed disclosure from the borrower acknowledging the risks of entering into the loan
INCREASED ENFORCEMENT AND REGULATION	
Modify Confidentiality Laws	<ul style="list-style-type: none"> • Allows the DFI, the Superintendent of the Division of Real Estate & Professional Licensing and the Director of the Department of Insurance to more easily share confidential information about registrants or licensees
Public Records Database and Website	<ul style="list-style-type: none"> • Requires the Department of Commerce to maintain a public database and public website of licensed brokers or loan officers who have been found guilty of any violation, whether it be regulatory or criminal in nature
Semi-Annual Reports	<ul style="list-style-type: none"> • Requires the Director of Commerce to submit semi-annual reports to the Governor, Speaker of the House, Senate President and leaders of the minority party in each chamber detailing the enforcement actions, complaints filed, licensure information and educational outreach efforts by the Office of Consumer Affairs
Direct Enforcement Authority	<ul style="list-style-type: none"> • Provides the AG and local prosecutors with enforcement authority for violations of §1321 (second home mortgages only), §1322 (mortgage brokers act), and §1349 (predatory lending act) • For criminal cases, gives local prosecutors the first opportunity to prosecute any criminal violation. If the local prosecutor elects not to pursue a case or fails to take any action within a reasonable period of time, then the AG may take action • For civil enforcement actions, gives the AG first opportunity to bring civil actions. If the AG elects not pursue any civil actions within a reasonable period of time, then the county prosecutor may take action • Stipulates that records maintained by the Department of Commerce may be used as admissible evidence without permission from the regulator and clarifies that the Department of Commerce may release investigative material to the AG, prosecutors and local law enforcement • Ensures all regulatory enforcement actions such as licensure revocation remain under the Department of Commerce; the Superintendent of the DFI will continue to make referrals to local prosecutors if criminal violations are discovered

Will lending bill unleash disorder in the courts?

BY ADRIAN BURNS | BUSINESS FIRST

When Ohio's predatory lending bill goes into effect Jan. 1, the state's mortgage industry will have reams of new rules to follow.

Exactly how the dozens of provisions in the more than 75-page Senate Bill 185 will affect the industry is still unclear, as lenders, lawyers, industry groups, brokers and those in the secondary market try to interpret the legislation.



J. Padgett: Has confidence in bill

The bill, introduced in September by Sen. Joy Padgett, R-Coshocton, takes aim at predatory lending practices, such as bait and switch tactics, rogue appraisers and collusion, through rules affecting nearly every part of the lending process.

"There's so much in there that what the industry is going to need to do is study it over a period of months," said Donald Lampe, a partner with the Winston-



D. Baird: Will be difficult to follow

Salem, N.C.-based Womble Carlyle Sandridge & Rice PLLC, and an expert on lending-related legislation.

Regardless of the bill's ultimate effects, however, many in the industry are on edge because of the sheer breadth of the new rules and what some see as a large amount of vague language in the legislation.

"I think it's going to be a nightmare to attempt to comply with to protect yourself," said Dayna Baird, executive vice president.

SEE BILL, PAGE B2

B1/B2/B3

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BILL: Many waiting for clarification

FROM PAGE B1

ident of the Ohio Financial Services Association, a trade group for sub-prime lenders in the state.

Difficulties understanding and properly following the rules in the legislation, and the lack of precedent on many of the rules could create a perfect storm for Ohio's mortgage industry, said Lampe, who believes Ohio's bill is the most comprehensive undertaken by any state.

GOING TO COURT

Lampe and others fear that if mortgage lenders, and the secondary market (investors in mortgage-backed securities) determine that there is a high risk of new litigation stemming from the bill, they might raise rates to cover their risks, reduce volume or even pull out of the state altogether.

"I think that there's a significant possibility that mortgage loan availability is going to be curtailed in Ohio," said Lampe, who served as a consultant on the bill to Ohio lending trade groups.

One provision is a section that places mortgage brokers and lenders under the auspices of the Consumer Sales Practices Act, a set of rules prohibiting unfair or deceptive business practices that are overseen and enforced by the Ohio Attorney General's Office.

The bill sets out 16 "unconscionable" acts as part of the Consumer Sales Practices Act. One reads that mortgage brokers should not "knowingly (take) 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."

Baird said she's not sure what that means.

"Do we ask if they're an alcoholic or if they're on Prozac?" she said.

A major fear among those in the industry is that consumers who default on their mortgage payments can simply cite violations in vague clauses of the bill, then legally renege on their mortgages, said Luther Liggett, a lobbyist for the Ohio Mortgage Bankers Association.

"How are investors going to look at that?" asked Liggett, a partner with Bricker & Eckler LLP in Columbus.

Despite the concerns from the mortgage industry, Padgett said she's confident the bill will not be onerous or create a situation that damages the mortgage market.

"I think these folks had several opportunities over the last several years to clean up their industry. I don't believe this is anything

PREDATORY LENDING ACT

Introduced by: Sen. Joy Padgett, R-Coshocton

Status: Gov. Bob Taft signed the bill into law June 19. It takes effect Jan. 1.

Vote: The Senate passed the bill 29-4 Feb. 22., with the House concurring, following conference committees and amendments, 84-7 on May 24.

Purpose: The bill creates new rules and strengthens existing language pertaining to mortgage lending. It also places mortgage lending under the auspices of the Consumer Sales Practices Act.

Key provisions:

- The bill primarily applies to mortgage brokers and non-bank mortgage lenders. Banks and thrifts are largely exempt due to their existing coverage under federal laws.
- Allows the Ohio Attorney General to oversee mortgage lending under the Consumer Sales Practices Act, which prohibits unfair and deceptive business practices.
- Violations of any of the 16 "unconscionable" acts spelled out in the bill could give consumers the ability to renege their mortgages.
- Prohibits the making of a loan that does not provide a "reasonable, tangible net benefit" to the borrower.
- Prohibits nonbank mortgage lenders from entering into a "transaction, practice, or course of business that is not in good faith or fair dealing."
- Imposes requirements of mortgage brokers to "act with reasonable skill, care, and diligence and make reasonable efforts to secure a mortgage loan" with terms that are advantageous for the buyer.
- Prepayment penalties may not be charged by brokers and nonbank lenders on first mortgages of less than \$75,000.
- Increases requirements for broker-consumer disclosures.
- Requires appraisers to be licensed.
- Increases mortgage broker licensing requirements.

Source: Ohio General Assembly; Bricker & Eckler LLP; Womble Carlyle Sandridge & Rice PLLC

they cannot deal with," she said.

The bill makes revisions or additions to several sections of Ohio law and regulation. But because the attorney general's office oversees the Consumer Sales Practices Act, the sections of the bill relating to the Consumer Sales Practices Act, including the "unconscionable" acts section, must now be written into official rules by the attorney general's office. Those rules, which the attorney general's office hopes to have drafted

by early September, must then be approved by a joint General Assembly committee to ensure they conform to the bill. Once approved, the rules will become part of the Ohio Administrative Code.

There is hope that some of the murkier parts of the legislation will be clarified during that rule-writing process, said Jeff Brader, co-manager of the Columbus branch of Cleveland-based mortgage lender Colony Mortgage Corp.

"It's kind of a wait-and-see situation," he said.

Lawyers representing the attorney general's office, however, said they're willing to work with industry groups on writing the rules.

"We want things to be clear, concise, understandable and workable for everybody,"

SEE LENDING, PAGE B3



L. Liggett: Lobbyist for Ohio Mortgage Bankers Association

LENDING: *Next step is for outside*

agencies to rate Ohio's mortgage industry

FROM PAGE B2

said Senior Deputy Attorney General Shaun Petersen.

Over the next several months, all industry eyes will also be on the ratings agencies that will look at the bill and rate Ohio's mortgage market based on their interpretation of potential new risks, said Paul Richman, senior director of government affairs for the Washington, D.C.-based Mortgage Bankers Association of America. Negative ratings could drive away investors that provide capital for the mortgage industry, he said.

More information could come out during the next few months, but it isn't likely ratings agencies will disclose their ratings decisions until about the time the law becomes effective, Richman said.

If cryptic parts of the bill remain and the

industry's analysis of its potential effects is negative, Ohio could be in big trouble, said Tyler Wood, director of government affairs at the Atlanta-based Southstar Funding LLC, a national mortgage lender with about 50 employees working in Ohio.

A 2002 mortgage lending bill in that state resulted in some lenders leaving Georgia. It also resulted in a decision by major ratings firms to not rate those mortgage securities affected by the law.

In March 2003, five months after the bill went into effect, Georgia's governor signed into law a revised version of the bill, which was meant to ease difficulties caused by the original bill.

Because of Ohio's bill, Southstar is hesitant to move forward with plans to open an 100-employee operations center in subur-

ban Cleveland, and will wait to see how things shake out to determine if it will keep doing as much business in Ohio, Wood said.

"There's too many pieces that will, without some specific definition, have to go to the courts to be tested, and that's not something we'll choose to do," he said.

Padgett said that when the law was put together, legislators took efforts to protect the secondary market.

"We really made a very conscious effort," she said.

The bill does have provisions assigning liability to brokers or lenders that violate its provisions, but it's still unclear just how the secondary market could be affected in the face of private litigation, Mortgage Banker's Richman said.

"There's total uncertainty," he said.

But Padgett said she's sure that the bill will eventually get many crooked lenders off the streets, because under the strict new rules, no one will want to do business with them.

"If a mortgage broker is going to still engage in unfair and deceptive acts, they can be sure they're going to expose themselves to liability," she said.

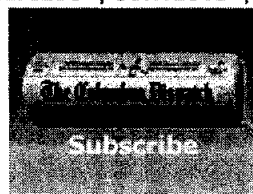
The bill will do the most harm to those who harm consumers, so its best to conform to it, said Shaun Ford, a broker with Worthington-based Priority Mortgage.

"It shouldn't be a huge imposition if you're doing things right," he said.

And if ultimately there are major problems with the bill, the General Assembly will go back and make corrections, Padgett said.

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Baited with promises, they refinanced; now they're fighting to save their house

Sunday, February 19, 2006

Jill Riepenhoff
THE COLUMBUS DISPATCH

Six years ago, Larry and Martha Clay paid off their house.

Then a salesman called.

They could save hundreds of dollars — maybe thousands — on utility bills with new energy-efficient windows.

The Clays replaced all 11 windows in their two-story Franklinton house with a \$25,000 mortgage arranged by the salesman's company. So began their financial free fall.

Since then, the Clays have gone from owning their home

- **Plagued by debt**
Costlier home loans — and more foreclosures — spread to Ohio's small towns and suburbs
- **Baited with promises, they refinanced; now they're fighting to save their house**
- **High-rate mortgages**
- **Spread of subprime mortgages**
- **High-interest loans in foreclosure**
- **Behind the numbers**
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of 17 years to foreclosure. It happened one unsolicited telephone call at a time.

Refinance at a lower interest rate. Consolidate credit-card debt. Get some cash.

"You trust people who are in the mortgage business to know more about finances than you do," said Mrs. Clay, who is 76.

Mortgage brokers convinced the Clays that they could manage a \$39,000 mortgage. Then \$53,544. Then \$72,200.

Each refinancing brought a higher monthly payment: \$293, then \$356, then \$455.

So mortgage broker Scott Johnson's call in the fall of 2004 seemed to offer relief. He had a plan to reduce the amount the couple paid each month.

Mrs. Clay was battling ovarian cancer. Bills were mounting. They were just getting by on their \$1,975 monthly Social Security income.

The Clays said that Johnson, of Assurance Banc in Dublin, made three tempting promises:

- He could find them a loan with an interest rate lower than 6 percent.
- They would pay less each month with a new mortgage.
- They could borrow up to \$85,000 because of the equity in their house, even though it's

foreclosure

STATISTICS

- **High-cost mortgages by Ohio county**
Federal data shows Hardin County leads the state
- **High-cost mortgages by state**
Mississippi tops the nation

WEB EXTRAS

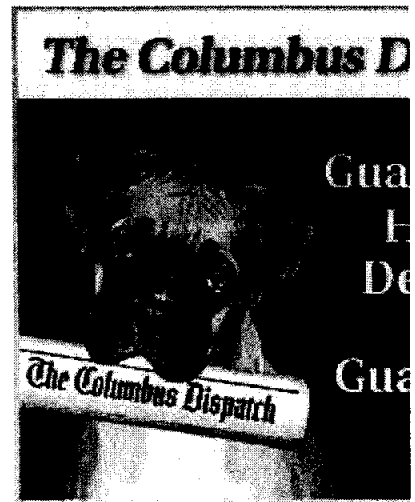
- **The proposed Ohio Homebuyers' Protection Act**
An overview of provisions in Senate Bill 185 (.pdf file)
- **The High Cost of Credit**
A study by ACORN Fair Housing (Word document)
- **GAO Report: Predatory lending**
From U.S. General Accounting Office (.pdf file)
- **Who really gets higher-cost home loans?**
A report from the California Reinvestment Coalition (.pdf file)

FROM THE ARCHIVE

- **Brokered Dreams**
A Dispatch investigative report



FRED SQUILLANTE | DISPATCH PHOTOS
Larry Clay, who leads songs at Inner City Ministries twice a week, went to the Franklinton church to pray for help with his mortgage.



JOB'S CARS HOMES

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in one of Columbus' poorest neighborhoods.

Instead, Johnson locked the couple into a loan with a 10 percent interest rate at a time when rates hovered around 6 percent.

The Clays' mortgage was one of 72,909 such high-interest loans signed by Ohioans in 2004. Known as subprime loans, they typically are given to borrowers with poor credit.

In 2004, more than half of the homeowners in the Clays' neighborhood west of Downtown who signed mortgages took out high-rate loans, more than triple the state rate.

The blighted neighborhood is bordered by I-70, Rt. 315 and Mount Carmel West hospital. Census figures show that nearly a quarter of the residents live in poverty. Nearly two-thirds of the houses are rental properties.

The Clays qualified for a lower interest rate, but Johnson didn't tell them. Nor did he tell them that he collected a \$1,600 bonus for putting them into a highrate mortgage.

"Our clients deny they violated the law," said Matt Alden, a lawyer representing Johnson and his company in a lawsuit filed by the Clays, who claim they were victims of predatory lending.



Rachel Robinson, left, an attorney with Equal Justice Foundation, and Martha Clay explain to the Ohio Senate Finance Committee how the elderly couple went from owing nothing on their Franklinton house to foreclosure in six years.



At church, Mr. Clay, 69, follows the hymnal in Braille as he sings. He has been legally blind his whole life because of congenital cataracts.

Johnson and his company have not filed a response. Alden declined to comment further. Johnson referred questions to his attorney.

The couple didn't learn the true terms of their new loan until a title agent hired by Johnson arrived at their house in December to close the deal.

"We about jumped out of our chairs," Mr. Clay said.

The Clays said the agent, Alan Sheppard of Arlington Title, pressed them to make a decision.

He told them he was in a hurry. Christmas was coming. He had things to do, places to go.

"We got the feeling he wanted us to do it," Mr. Clay said.

Sheppard said he could not discuss the case and declined to comment further.

The Clays started signing the papers. They said he told them not to date them; he'd handle that later at the office.

To further speed the process, Sheppard explained to the Clays what each document said. He didn't have time for them to read the paperwork. That would have taken way too long.

Both of the Clays are legally blind.

Borrowers' remorse

Within 30 minutes, the title agent was gone.

The Clays were left with a pile of unread papers and a nagging feeling: They made a mistake.

Mr. Clay didn't want his wife to worry herself sick. She had yet to regain her spunk or appetite from her final chemotherapy

Protecting home buyers

Ohio lawmakers are considering a predatory-lending bill called the Ohio Homebuyers' Protection Act. Highlights include:

- ▶ Expanding deceptive sales law to include mortgages.
- ▶ Requiring state licensing and background checks of appraisers.
- ▶ Prohibiting verbal promises between lenders and borrowers about future refinancing possibilities.
- ▶ Warning borrowers who finance more than 90 percent of the house price that they may not be able to sell or refinance without significant out-of-pocket expenses.
- ▶ Requiring mortgage brokers to act in the best financial interest of borrowers.
- ▶ Giving the attorney general and county prosecutors authority to pursue criminal charges for predatory lending.
- ▶ Making public the disciplinary records of brokers.

Source: Ohio Senate

treatment seven weeks earlier.

"We'll make it," he assured her.

His optimism faded, though, when it came time for the couple to make their first payment in February 2005. They didn't have enough money for all their bills.

They had to choose: the gas bill or the mortgage?

They paid the mortgage.

They juggled bills the next month, paying the mortgage and skipping other bills.

In May, their payment shot up \$65 to \$855 because of a property-tax increase. They didn't have enough money, and their mortgage company refused to accept anything less than the full amount.

Threatening letters and telephone calls followed: Pay up by Aug. 30, or face foreclosure.

The Clays were doomed. They naively thought that on Aug. 30, a deputy sheriff would arrive at their house, sell it to the highest bidder and then evict them.

They didn't understand that the foreclosure process can take months, if not years.

They knew only that they had nowhere to go and no way to get there.

So they called on God.

Worrisome signs

The Clays consider the church around the corner from their house a second home.

Mr. Clay leads songs at Inner City Ministries and helps feed the homeless who worship there. Regulars call him "Mr. Mud," a play on his last name.

During one Thursday night service in August, Mr. Clay rose to his feet and asked the congregation to pray for him and his wife.

"We have a problem," he said, offering no explanation.

The cryptic request caught the Rev. Mela Bowman by surprise because the Clays had been among the happiest, most carefree members of the church.

About a week later, Mr. Clay approached her privately. "Mela,

can you pray with me?" Again, he didn't offer specifics, and she didn't pry at first.

But Mr. Clay's chipper demeanor had vanished. Worry flushed his face. Bowman sensed the Clays' problems were extraordinary. She asked him to explain.

"We're about to lose our house," he told her.

Bowman grabbed a phone book and sprang into action.

Three calls later, she connected with Pat Scott, a project coordinator for Franklin County Senior Options, a tax-funded program that helps the elderly.

She began looking for money to head off foreclosure.

No one had enough, though.

The Clays had unknowingly signed documents that allowed their mortgage company to collect attorney fees before foreclosure. They needed more than \$8,100 to halt court proceedings.

"We couldn't even refinance them because the house had been overappraised," Scott said.

She reviewed the Clays' paperwork and recognized the telltale signs of predatory lending:

- It was the second refinancing that Johnson arranged for the Clays in less than a year.
- The interest rate changed at the closing.
- The house was appraised at \$80,000 when even the most attractive houses in the neighborhood, sometimes called the Bottoms, sell for less than \$50,000. The Franklin County auditor valued the Clays' house at \$37,700.
- Johnson collected \$3,225 in fees for arranging the loan, including a bonus known as a yield-spread premium for giving the Clays a higher interest rate. The Clays never knew that they qualified for a lower rate.

"They were deceived," Scott said.

She called a lawyer.

Fighting chance

At her nonprofit law firm, Rachel K. Robinson sees the victims of predatory lending every day: mothers, fathers and grandparents who are on the verge of losing their homes because they acted on bad advice from a mortgage broker.

The Clays' story especially touched Robinson, not because they are blind but because they were targets of mortgage brokers time and again.

"It's just parasitic," Robinson told a committee of state senators considering new predatory lending laws. "It's just sucking out every last dollar from these people."

Robinson's firm, the Equal Justice Foundation, agreed to represent the Clays free.

The Clays wrestled with their own responsibility for taking out the loans. They could have said no but didn't. "We weren't thinking," Mrs. Clay said.

Their attitude changed, however, after learning that the dates on their loan papers had been forged.

Ohio law gives borrowers three days after taking out a loan to change their mind. The Clays were instructed by the title agent not to date their documents.

The official documents, however, are dated Dec. 13 — four days before the Clays signed them.

"The more I hear about these people, the more furious I get," Mrs. Clay said.

The Clays' lender filed foreclosure against them on Sept. 20. Robinson filed a 25-page countersuit on the Clays' behalf.

The complaint accuses Johnson, Sheppard, the appraisers and their companies of a litany of state and federal violations.

Those involved, Robinson wrote, "conspired to defraud the Clays."

The Clays now make a monthly mortgage payment to an escrow account set up by Robinson. They pay what they can handle — about \$500 — to show the judge that they want to keep their home.

They continue to receive solicitations from mortgage brokers.

Johnson recently sent them a postcard: "If your situation should change and you need my help, call me."

They tossed the card into the trash.

Dispatch Projects Editor Doug Haddix analyzed data for this story.

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Petro to go after slippery lenders

Attorney general's office to enforce bill cracking down on deceptive loan practices

LENDERS

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The attorney general's office also will write rules to implement the bill, such as creating a reader-friendly list of what constitutes out-of-bounds tactics for brokers and lenders. The list must be handed out to potential borrowers after Jan. 1.

Bill Faith, executive director of the Coalition on Homelessness and Housing in Ohio and a key supporter of the predatory-lending bill, said he hopes the attorney general clarifies some gray areas. This includes rules defining what it means to flip a loan without a net tangible benefit to the consumer, and

"We don't want the attorney general to water down the bill's intent."

BILL FAITH

Coalition on Homelessness and Housing in Ohio

determining exactly which bank affiliates should be covered by the bill.

"We don't want the attorney general to water down the bill's intent," Faith said.

Petersen insisted that would not happen, noting Petro's strong advocacy for the measure.

"We envision rules adding

By Jim Siegel
THE COLUMBUS DISPATCH

Attorney General Jim Petro wanted the power to protect consumers from predatory lending. Now he must prepare his office to wield that new power.

The legislature recently passed a bill to crack down on the deceptive mortgage-lending practices that have helped fuel Ohio's sky-high foreclosure rate.

Once Gov. Bob Taft's signature makes it official, the focus turns to Petro, even though his final term in office will be ending as the bill takes effect Jan. 1.

The attorney general's office has plenty of experience handling complaints and pursuing lawsuits for a variety of consumer-protection matters. But the complicated mortgage industry will be a whole new world.

Unlike in most states, the industry has always been exempted from Ohio's Consumer Sales Practices Act, the set of laws that gives the attorney general's office its consumer-protection power.

Senate Bill 185 ends that exemption for all mortgage brokers and nonbank lenders.

"We'll be very much on the front line," said Shaun Petersen, chief of the Consumer Protection Section. Under current law, "we have a very minor role in the lending industry."

The office has plenty to do, not the least of which is bring the staff and attorneys in its Consumer Protection Section up to speed on a home lending industry that can be very complex.

Petersen said he has one mortgage expert on staff, and expects to bring in outside help to train others so that when a complaint comes in, they fully understand the terms, documents and situations.

He's grateful the bill doesn't go into effect for another seven months. "It gives us the opportunity to get our hands around this," he said.

onto that to make it stronger and clearer," he said.

Luther Liggett, a lobbyist for the Ohio Mortgage Bankers Association, said his biggest concern is that the attorney general will turn the new oversight into a "punitive process" by pulling the trigger too quickly on lawsuits, rather than trying to mediate disputes.

The threat of litigation, from both the attorney general and from individual borrowers, "is the biggest risk that the legislature put on this market," Liggett said.

He said he expects that risk will lead to less available credit and higher costs for borrowers, though bill supporters have disagreed.

While the industry should expect more than the light slaps on the wrist they've been getting in the past, Petersen said the office is not out to shut down businesses.

"We will mediate these complaints like we mediate every other complaint...to resolve it short of any investigation or litigation," he said.

Petersen also is confident the office can filter out the baseless complaints, just as his section currently does with the roughly 25,000 annual calls it gets on other matters.

"Dumb decisions do not equate to unfair, deceptive or unconscionable practices," he said.

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OUR VIEW ON PREDATORY LENDING

Lobbyists' protests expose brokers' greed

The Ohio Chamber of Commerce's position on an anti-predatory lending bill is so offensive that the group might consider referring itself to the Better Business Bureau — for an ethics refresher course.

The legislation — Substitute Senate Bill 185 — overwhelmingly passed the Senate in late February. It was a rare and impressive show of bipartisanship aimed at ending corporate abuses that devastate individual families, neighborhoods and sometimes large swaths of cities.

Ohio is the national leader in home foreclosures. It's earned that distinction because it has refused to rein in shady lenders who sell high-interest loans with terms that would shame thieves to poor or unsuspecting consumers.

The bill seeks to instill basic consumer protections in the mortgage lending market. The state Senate offers an ingenious approach: Don't micromanage loan products; instead, require brokers (and, in some cases, lenders) to take good care of their customers.

"Fiduciary duty" is the legal term, and it would require mortgage professionals to charge a fair fee — and earn it. That means taking time to find out what customers need and can afford in a loan — and then hunt for a good deal.

The proposal is hardly the product of wild-eyed liberals. To the contrary, it was pushed by Senate President Bill Harris, R-Ashland — a friend of the financial services industry who Ohio's mortgage bankers have named "Legislator of the Year."

Now, the bill has moved to the House of Representatives, where Speaker Jon Husted, R-Kettering, wants time for his members to "become educated" by the bill's supporters and opponents.

Business lobbyists didn't need to be asked twice to give their input. They were swarming on House members even before the Senate acted.

The lending industry is bitterly opposed to the proposed changes, and its response offers House members rare insight into what drives predatory lending. The Ohio Chamber Commerce's position makes the point.

About the "fiduciary duty" requirement, the chamber says:

"This proposed new duty to act in the best financial interest of their clients or borrowers unquestionably creates a conflict of interest for mortgage brokers and other lenders. ...It places mortgage brokers and loan officers in an untenable position, wondering under most circumstances to whom their principal duty of loyalty is owed — to their company and its officers/management or to their customers."

How revealing. Mortgage lenders and brokers believe being required to look out for customers puts them in an "untenable position," that it makes them disloyal to their company and shareholders.

But what about trust departments run by banks and brokerage firms? What about stock brokers who have similar obligations? They have a legal duty to protect customers. Indeed, their entire business model is based on loyalty to customers first.

The mortgage industry prefers a different expectation. They want the license to continue selling people loans that will put them in bankruptcy and cost them their homes.

Ohio House members should listen carefully to the lobbyists. They'll hear that the lenders' reject any sense of corporate decency.

Lenders in no-win situation

The Ohio Chamber has never condoned deceptive, misleading or fraudulent business practices, much less in the mortgage financing and lending industry where the greatest assets most Ohioans have, their home, is at stake.

We believe those responsible for such practices should be held to account. ...However, our overriding concern is that in (the state Senate's) effort to craft a system that will determine and sanction the bad actors, the final product will not detrimentally affect the economic viability and competitiveness of Ohio's mortgage industry and broad availability of credit for home purchases.

Substitute Senate Bill 185 imposes a problematic new fiduciary duty on mortgage brokers, lenders and their employees. In our view, this proposed new duty to act in the best financial interest of their clients or borrowers unquestionably creates a conflict of interest for mortgage brokers and other lenders.

In so doing, it significantly alters the primary duty of loyalty that is already owed by a company, acting through its employees and officers, to its shareholders. It places mortgage brokers and loan officers in an untenable position, wondering under most circumstances to whom their principal duty of loyalty is owed — to their company and its officers/management or to their customers.

Moreover, authorizing the courts to resolve which duty takes precedence in mortgage lending transactions is the wrong approach to deterring predatory lending.

The substitute bill seems to rely heavily on the idea

that giving people the right to sue for alleged breaches of fiduciary duty will "protect" consumers. Instead, we believe it creates an alarming option where trial attorneys could be enforcing compliance with the law and thereby risks the unintended consequences of driving responsible lenders out of the Ohio market.

That prospect would undoubtedly damage Ohio's mortgage lending market and harm — not benefit — consumers.

Ohio's Consumer Sales Practices Act is one of the most stringent in the country, allowing a private right of action, liberal class-action certification, treble damages and mandatory attorney fees. However, extending the law to certain mortgage transactions is still counterproductive. ...

As with the proposed new fiduciary duty, the Consumer Sales Practices Act simply empowers trial attorneys and does little to help Ohioans navigate the process of obtaining affordable mortgage loans. While the chamber is not opposed to finding other ways to strengthen predatory lending laws or enhance enforcement, we don't believe the Consumer Sales Practices Act is the best mechanism to accomplish that objective. ...

Given the position the Ohio Chamber has taken on this bill based on inclusion of the new fiduciary duty, if and when the bill is on the Senate floor, your vote on Substitute Senate Bill 185 will be included in our Legislative Voting Record.

— The preceding is from a letter to members of the Ohio Senate from Daniel J. Navin, assistant vice president of the Ohio Chamber of Commerce.