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Consumer Protection Section

The Ohio Homebuyer's Protection Act



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Expansion of the Consumer Sales Practices Act

- **Historical exemption for dealers in intangibles and financial institutions**
 - **Financial institutions exemption still applies**
 - **Dealers in intangibles exemption removed for:**
 - **Mortgage brokers**
 - **Loan officers**
 - **Non-bank mortgage lenders**

Expansion of the Consumer Sales Practices Act

- Subsidiaries of financial institutions not covered
- Affiliates of financial institutions to CSPA if:
 - Less than 25% common ownership of bank or holding company of bank
 - More than 25% common ownership of bank or holding company of bank if:
 - not subject to examination, supervision, and regulation including ensuring compliance with consumer protection laws

CSPA—Unfair, deceptive and unconscionable

- General unfair and deceptive acts prohibited
- Per se unfair or deceptive to knowingly fail to provide disclosures required by state or federal law
- Specific list of unconscionable acts or practices
 - Flipping without a reasonable net tangible benefit
 - Failing to consider consumer's ability to pay
 - Knowingly influencing or coercing appraiser

CSPA and the Secondary Market

- CSPA allows for rescission of transaction
 - Limited to violations of TILA
 - Limited to time frames of TILA (3-day no fault)
- Protections for assignees and bona fide purchasers of notes
 - No cause of action against assignees and bona fide purchasers for violations by broker, lender
 - Does not prohibit action for own violations

Broker and Lender Duties Created

- Standard of care for brokers
 - Safeguard and account for money handled for borrower
 - Follow reasonable and lawful instructions from borrower
 - Act with reasonable skill, care, and diligence
 - Act in good faith and fair dealing
 - Make reasonable efforts to secure loan, from lenders regularly do business, with rates, charges, and repayment terms that are advantageous to borrower

Broker and Lender Duties

- Lenders duty
 - Cannot engage in any transaction, practice, or course of business which is not in good faith or fair dealing
 - Cannot engage in fraudulent making, purchasing, or selling residential mortgage loan
- Neither broker nor lender duties can be waived

Additional prohibitions and disclosures

- Non-written promises
 - Cannot promise later refinancing at a lower rate
 - Must have signed written acknowledgment
- Disclosure of monthly payments
 - Principal and interest
 - Taxes
 - Private mortgage insurance
 - Written disclosure of whether escrow account for taxes needed

Additional prohibitions and disclosures

- Changes to MLODS
 - Timely disclosure of all material terms
 - Type of loan
 - Term of loan
 - Rate change
 - Change in principal and interest greater than 5%
 - MLODS must be provided within 24 hours of closing or updated within 24 hours of change, whichever is earlier

Additional prohibitions and disclosures

- Warning if loan to value exceeds 90%
- Mortgage brokers/loan officers and/or member of immediate family cannot own or operate majority interest in appraisal company

Prepayment penalties

- Subordinate mortgages
 - Prepayment penalties limited to 2% in 1st year and 1% in 2nd year
- First mortgages
 - Loans \$75,000 or less—no prepayment penalties

Covered HOEPA loans

- Points and fees triggers lowered to 5% of total loan; 6% if yield spread premium included
- Small loan exemption
 - Maintains current 8% points and fees for loans less than \$25,000
- Open ended mortgages added to covered loans
- If debt to income exceeds 50%
 - Mandatory counseling for consumer
 - Signed disclosure from borrower-know risks

Office of Attorney General

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