

THE OHIO HOMEBUYERS' PROTECTION ACT

— *An Overview of Provisions Contained in Sub. SB 185* —

CONSUMER SALES PRACTICES ACT	
Expansion of the Consumer Sales Practices Act (CSPA)	<ul style="list-style-type: none"> • Applies the Consumer Sales Practices Act to mortgage brokers and loan officers employed by non-depository lending institutions • Subjects an affiliate of a bank or holding company to the CSPA if ownership is less than 25%. This brightline definition for “non-bank mortgage lenders” is consistent with the federal Bank Holding Company Act’s definition of affiliates controlled by a bank or holding company for purposes of regulatory oversight
Protecting the Secondary Market	<ul style="list-style-type: none"> • Removes assignee liability • Clarifies that the recovery of damages under the CSPA is only for “actual economic damages”
Other CSPA Provisions	<ul style="list-style-type: none"> • Addresses frivolous lawsuits by requiring an individual to pay the defendant’s attorney fees if the case is brought forth in bad faith or has no legal merit • Eliminates the expansion of the CSPA to include “business to business” transactions originally included in the As Introduced version of SB 185
ENHANCED LICENSURE REQUIREMENTS	
Appraiser Licensure	<ul style="list-style-type: none"> • Mandates the licensure of all residential real estate appraisers
National Background Checks	<ul style="list-style-type: none"> • Requires national background checks for all applicants for mortgage brokers, loan officers and appraisers • Prohibits an appraiser 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
Loan Officer 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 • Eliminates the 90-day provisional period in which an applicant could make loans prior to successfully passing the examination • Maintains the automatic suspension of licenses for failure to complete continuing education requirements

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 officer and customers stating that a loan can later be refinanced at a lower rate in the future Requires a written acknowledgement, signed by the customer, be obtained if a promise is agreed to
Details of Monthly Payments	<ul style="list-style-type: none"> Mandates clear disclosure stating the full amount of the monthly payments including cost of principal, interest, taxes and private mortgage insurance Requires a 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: type of loan, term of loan, change in rate, change in payment of the principal/interest greater than 5%, change of cash-out exceeding 10% Requires any 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"> Mandates that the broker or loan officer clearly disclose if fees associated with the loan are higher than originally discussed Requires any excess between the original amount 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 a Title Insurance 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 of a title company Grandfathers existing businesses and ownership interest; however, brokers or loan officers are prohibited from referring their customers to a title company in which they have an ownership interest Gives the Superintendent of the Division of Financial Institutions permissive authority to either revoke broker licenses or order brokers to divest their interest in the title company for violations under §1322

FIDUCIARY RESPONSIBILITY

Fiduciary Duty of Mortgage Brokers and Loan Officers	<ul style="list-style-type: none"> Requires licensed mortgage brokers or loan officers have a fiduciary duty to borrowers and must to act in the best financial interest of their clients
Fiduciary Duty of Lenders	<ul style="list-style-type: none"> Extends fiduciary duty to employees of non-bank mortgage lending companies when (1) the transaction does not involve a mortgage broker and (2) the borrower has less than \$25,000 in total net assets For this purpose, net assets excludes the equity of the borrower's home, Social Security, pension values and life insurance policies

INCREASED ENFORCEMENT AND REGULATION

Modify Confidentiality Laws	<ul style="list-style-type: none"> Allows the Superintendent of the Division of Financial Institutions, 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 violations
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 Attorney General and local prosecutors with enforcement authority for criminal violations of §1321 (second home mortgages only), §1322 (mortgage brokers act), and §1349 (predatory lending act) Requires local prosecutors to make an initial referral to the Attorney General. Should the Attorney General elect not to pursue the case, he or she shall submit an affirmative refusal back to the local prosecutor; upon receiving the refusal, that prosecutor may take any action Ensures all regulatory enforcement actions such as licensure revocation remain under the Department of Commerce; the Superintendent of the Division of Financial Institutions will continue to make referrals to local prosecutors if criminal violations are discovered