



Consumer Finance & Mortgage Banking Client Bulletin



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Bricker & Eckler LLP

100 South Third Street
Columbus, Ohio 43215-4291

Phone 614 . 227 . 2300
Fax 614 . 227 . 2390
info@bricker.com
www.bricker.com

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

Members of the Consumer Finance & Mortgage Banking Group

Drew H. Campbell
Kenneth C. Johnson
Luther L. Liggett, Jr.
Terrence O'Donnell
Nelson M. Reid
Justin W. Ristau
Christopher N. Slagle
David M. Whittaker

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Proposed Rule Changes to the Ohio Mortgage Loan Act and the Small Loans Act

On March 13, 2008, the Ohio Division of Financial Institutions (“Division”) held a public hearing to take comment on newly-proposed administrative rules implementing the Ohio Mortgage Loan Act¹ (“OMLA”) and the Small Loans Act (“SLA”).²

The OMLA regulates non-depository second mortgage lenders and servicers. The SLA restricts refinancing charges to small customers, and applies to loans of \$5,000 or less.

The rules as proposed make significant changes. While any effective date is uncertain, the rules could take effect as early as the end of April. Below we summarize some of the most important proposed changes. (Citations are to the rules as proposed).

Proposed Rules: OMLA and SLA

- **Recordkeeping:** Requires registrants and licensees to maintain original litigation records and documents, specifically including pleadings, court orders and judgments. Chapters 1301:8-2-04(A)(5)(c) & 1301:8-3-04(A)(6)(c).
- **Advertising Regulations / Medium:** Applies all existing advertising regulations, such as limitations on unqualified superlatives and disclosure of special terms limitations to include internet, telephone, facsimile, and electronic transmission methods. Chapters 1301:8-2-05(A)(1) & 1301:8-3-05(A)(1).
- **Advertising Regulations / Record Retention:** Expands the retention of advertising records from one year to two years from date of usage or dissemination, with the duty to provide the Division with copies upon request. Chapters 1301:8-2-05(B) & 1301:8-3-05(B).
- **Recordkeeping:** Allows registrants or licensees, with the written authorization of the superintendent, to keep their records and documents through copied, photographed, or alternate storage methods meeting specific requirements. Among these is the ability to make written printouts or hard copies readily available. Chapters 1301:8-2-04(C) & 1301:8-3-04(B).
- **Disclosure Requirements / Documents:** Requires prominent disclosure on loan documents of the federal or state laws authorizing the documents. The rule lists the authorities under which loan documents may be authorized. Chapters 1301:8-2-07(G) & 1301:8-3-07(H).
- **Disclosure Requirements / Insurer:** Requires licensees and registrants to disclose in writing the relationship between themselves and the insurer, when providing insurance on behalf of borrowers at the borrower’s expense. Chapters 1301:8-2-16(D) & 1301:8-3-17(D).
- **Notification Requirements / Ceasing Operation:** Requires registrants and licensees to notify the Division of the location of records for businesses ceasing operation. Chapters 1301:8-2-04(E) & 1301:8-3-04(F).
- **Notification Requirements / Material Change:** Requires registrants and licensees to notify the Division of any “material change” in the information contained in the licensure application or attached documents within thirty days of such change. Chapters 1301:8-2-07(D) & 1301:8-3-07(D).

- **Licensing:** Prohibits registrants or licensees from holding any other licenses or registrations from the Division if the registrant violates any federal or state law applicable to the business of making loans. Chapters 1301:8-2-07(H) & 1301:8-3-07(I).
- **Sanctions:** Grants the Division the authority to suspend, revoke, or refuse the renewal of *any* registration issued by the Division for failure to maintain records as required. Chapters 1301:8-2-04(F) & 1301:8-3-04(G).
- **Federal Compliance:** Demands compliance with the provisions of the “Fair and Accurate Credit Transactions Act of 2003” and the “Gramm Leach Bliley Act.” Chapters 1301:8-2-04(D) & 1301:8-3-04(E).

Proposed Rules: OMLA

- **Mediation:** Allows registrants to provide borrowers the option of mediation in addition to, or as part of their loan modification process. Chapter 1301:8-3-07(O).
- **Workout/Payment Plans:** Requires registrants provide a toll-free number, within the written notice of payment deficiency, where borrower can discuss payment problems and workout options in the event of a mortgage default. Chapter 1301:8-3-07(M).
- **Borrower Comprehension Standard:** Requires registrants provide payment statements “in a manner a reasonable borrower should understand[.]” Chapter 1301:8-3-07(K).
- **Failure to Modify:** Requires registrants, when modification of a defaulting loan cannot be reached, to provide borrower, by phone and letter, the contact information for the person authorized to discuss reinstatement and foreclosure options at least ten days before referral to foreclosure counsel. Chapter 1301:8-3-07(L).
- **Notification Requirements:** Expands borrower notification, including in some circumstances written and attempted telephone notification of

interest rate reset dates at least six months prior to change. Further, written disclosures must contain, among other things, index/formula explanations, a toll-free number where payment problems and workout options may be discussed, alternative options to pursue including pre-foreclosure sales, forbearance and refinancing, and good faith statements of anticipated future interest rates with payments after reset dates. Chapter 1301:8-3-07(G).

- **Fees to Affiliates:** Presumes fees paid to any affiliate for underwriting or processing as a settlement or closing cost are made for the purpose of evading Ohio Revised Code Section 1321.57 on the computation of interest. Chapter 1301:8-3-03(J).

SLA

- **Lender Agents:** Limits the foreign lender prohibition on face-to-face contact, stating *bona fide* third party title agencies, notaries, insured depositories, or attorneys shall not be considered agents of the lender when acting as closing providers. Chapter 1301:8-2-12(E).

To view the proposed rules in their entirety click here: <http://www.bricker.com/publications/1301PropRuleChanges.pdf>. For more information, please contact Terrence O’Donnell at todonnell@bricker.com or 614.227.2345 or Francisco Lüttecke at fluttecke@bricker.com or 614.227.4877.

(Footnotes)

¹ RC § 1321.51 et seq.
² RC § 1321.01 et seq.

This bulletin was prepared by the Bricker & Eckler LLP Consumer Finance & Mortgage Banking practice group. For more information, please contact any member of the Consumer Finance & Mortgage Banking practice group.

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Consumer Finance & Mortgage Banking Group

Drew H. Campbell
 614.227.2319
dcampbell@bricker.com

Luther L. Liggett, Jr.
 614.227.2399
lliggett@bricker.com

Nelson M. Reid
 614.227.8812
nreid@bricker.com

Christopher N. Slagle
 614.227.8826
cslagle@bricker.com

Jeffery E. Smith
 614.227.2352
jsmith@bricker.com

Kenneth C. Johnson
 614.227.2322
kjohnson@bricker.com

Terrence O’Donnell
 614.227.2345
todonnell@bricker.com

Justin W. Ristau
 614.227.4857
jristau@bricker.com

David M. Whittaker
 614.227.2355
dwhittaker@bricker.com