



Ohio Revised Code

Section 1345.031 Unconscionable acts by supplier prohibited - unconscionable provisions.

Effective: April 6, 2017

Legislation: Senate Bill 227 - 131st General Assembly

(A) No supplier shall commit an unconscionable act or practice concerning a consumer transaction in connection with the origination of a residential mortgage. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) For purposes of division (A) of this section, the following acts or practices of a supplier in connection with such a transaction are unconscionable:

(1) Arranging for or making a mortgage loan that provides for an interest rate applicable after default that is higher than the interest rate that applies before default, excluding rates of interest for judgments applicable to the mortgage loan under section 1343.02 or 1343.03 of the Revised Code and also excluding interest rate changes in a variable rate loan transaction otherwise consistent with the provisions of the loan documents;

(2) Engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay;

(3) Making a consumer transaction that permits the creditor to demand repayment of the outstanding balance of a mortgage loan, in advance of the original maturity date unless the creditor does so in good faith due to the consumer's failure to abide by the material terms of the loan.

(4) Knowingly replacing, refinancing, or consolidating a zero interest rate or other low-rate mortgage loan made by a governmental or nonprofit lender with another loan unless the current holder of the loan consents in writing to the refinancing and the consumer presents written certification from a third-party nonprofit organization counselor approved by the United States department of housing and urban development or the superintendent of financial institutions that the consumer received



counseling on the advisability of the loan transaction. For purposes of division (B)(4) of this section, a "low-rate mortgage loan" means a mortgage loan that carries a current interest rate two percentage points or more below the current yield on United States treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used, in lieu of the current rate, to determine whether a loan is a low-rate mortgage loan.

(5) Instructing the consumer to ignore the supplier's written information regarding the interest rate and dollar value of points because they would be lower for the consumer's consumer transaction;

(6) Recommending or encouraging a consumer to default on a mortgage or any consumer transaction or revolving credit loan agreement. This practice also shall constitute an unconscionable act or practice in connection with a consumer transaction under section 1345.03 of the Revised Code.

(7) Charging a late fee more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been imposed once with respect to a particular late payment, no such fee may be imposed with respect to any future payment that would have been timely and sufficient but for the previous default. This practice also shall constitute an unconscionable act or practice in connection with a consumer transaction under section 1345.03 of the Revised Code.

(8) Failing to disclose to the consumer at the closing of the consumer transaction that a consumer is not required to complete a consumer transaction merely because the consumer has received prior estimates of closing costs or has signed an application and should not close a loan transaction that contains different terms and conditions than those the consumer was promised;

(9) Arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consolidated and paid in advance from the loan proceeds provided to the consumer;

(10) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Chapter



4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(11) Financing, directly or indirectly, any credit, life, disability, or unemployment insurance premiums, any other life or health insurance premiums, or any debt collection agreement. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(12) Knowingly or intentionally engaging in the act or practice of "flipping" a mortgage loan. "Flipping" a mortgage loan is making a mortgage loan that refinances an existing mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This provision applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified in any section of the Revised Code.

(13) 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;

(14) Entering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer;

(15) Attempting to enforce, by means not limited to a court action, a prepayment penalty in violation of division (C)(2) of section 1343.011 of the Revised Code. This practice also shall constitute an unconscionable act or practice in connection with a consumer transaction under section 1345.03 of the Revised Code.

(16) Engaging in an act or practice deemed unconscionable by rules adopted by the attorney general pursuant to division (B)(2) of section 1345.05 of the Revised Code.

(C)(1) Any unconscionable arbitration clause, unconscionable clause requiring the consumer to pay the supplier's attorney's fees, or unconscionable liquidated damages clause included in a mortgage loan contract is unenforceable.



(2) No supplier shall do either of the following:

(a) Attempt to enforce, by means not limited to a court action, any clause described in division (C)(1) of this section;

(b) By referring to such a clause, attempt to induce the consumer to take any action desired by the supplier.