



Ohio Revised Code

Section 1321.51 Second mortgage loan definitions.

Effective: December 28, 2009

Legislation: Senate Bill 124 - 128th General Assembly

As used in sections 1321.51 to 1321.60 of the Revised Code:

- (A) "Person" means an individual, partnership, association, trust, corporation, or any other legal entity.
- (B) "Certificate" means a certificate of registration issued under sections 1321.51 to 1321.60 of the Revised Code.
- (C) "Registrant" means a person to whom one or more certificates of registration have been issued under sections 1321.51 to 1321.60 of the Revised Code.
- (D) "Principal amount" means the amount of cash paid to, or paid or payable for the account of, the borrower, and includes any charge, fee, or expense that is financed by the borrower at origination of the loan or during the term of the loan.
- (E) "Interest" means all charges payable directly or indirectly by a borrower to a registrant as a condition to a loan or an application for a loan, however denominated, but does not include default charges, deferment charges, insurance charges or premiums, court costs, loan origination charges, check collection charges, credit line charges, points, prepayment penalties, or other fees and charges specifically authorized by law.
- (F) "Interest-bearing loan" means a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.
- (G) "Precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due.



(H) "Actuarial method" means the method of allocating payments made on a loan between the principal amount and interest whereby a payment is applied first to the accumulated interest and the remainder to the unpaid principal amount.

(I) "Applicable charge" means the amount of interest attributable to each monthly installment period of the loan contract. The applicable charge is computed as if each installment period were one month and any charge for extending the first installment period beyond one month is ignored. In the case of loans originally scheduled to be repaid in sixty-one months or less, the applicable charge for any installment period is that proportion of the total interest contracted for, as the balance scheduled to be outstanding during that period bears to the sum of all of the periodic balances, all determined according to the payment schedule originally contracted for. In all other cases, the applicable charge for any installment period is that which would have been made for such period had the loan been made on an interest-bearing basis, based upon the assumption that all payments were made according to schedule.

(J) "Broker" means a person who acts as an intermediary or agent in finding, arranging, or negotiating loans, other than residential mortgage loans, and charges or receives a fee for these services.

(K) "Annual percentage rate" means the ratio of the interest on a loan to the unpaid principal balances on the loan for any period of time, expressed on an annual basis.

(L) "Point" means a charge equal to one per cent of either of the following:

- (1) The principal amount of a precomputed loan or interest-bearing loan;
- (2) The original credit line of an open-end loan.

(M) "Prepayment penalty" means a charge for prepayment of a loan at any time prior to five years from the date the loan contract is executed.

(N) "Refinancing" means a loan the proceeds of which are used in whole or in part to pay the



unpaid balance of a prior loan made by the same registrant to the same borrower under sections 1321.51 to 1321.60 of the Revised Code.

(O) "Superintendent of financial institutions" includes the deputy superintendent for consumer finance as provided in section 1181.21 of the Revised Code.

(P)(1) "Mortgage loan originator" means an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following:

(a) Takes or offers to take a residential mortgage loan application;

(b) Assists or offers to assist a borrower in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs;

(c) Offers or negotiates terms of a residential mortgage loan;

(d) Issues or offers to issue a commitment for a residential mortgage loan to a borrower.

(2) "Mortgage loan originator" does not include any of the following:

(a) An individual who performs purely administrative or clerical tasks on behalf of a mortgage loan originator;

(b) A person licensed pursuant to Chapter 4735. of the Revised Code, or under the similar law of another state, who performs only real estate brokerage activities permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, mortgage loan originator, or by any agent thereof;

(c) A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101, in effect on January 1, 2009;

(d) A person acting solely as a loan processor or underwriter, who does not represent to the public, through advertising or other means of communicating, including the use of business cards,



stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities of a mortgage loan originator;

(e) A loan originator licensed under sections 1322.01 to 1322.12 of the Revised Code, when acting solely under that authority;

(f) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or another mortgage loan originator, or by any agent thereof;

(g) Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:

(i) Offer or negotiate the residential mortgage loan rates or terms;

(ii) Provide any counseling with borrowers about residential mortgage loan rates or terms;

(iii) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured home, mobile home, or industrialized unit;

(iv) Assist the borrower in completing the residential mortgage loan application.

(3) An individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to existing mortgage transactions shall not be considered a mortgage loan originator for purposes of sections 1321.51 to 1321.60 of the Revised Code until July 1, 2011, unless such delay is denied by the United States department of housing and urban development.

(Q) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling. For purposes of this division, "dwelling" has the same meaning as in the "Truth in



Lending Act," 82 Stat. 146, 15 U.S.C. 1602.

(R) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the secretary of housing and urban development pursuant to the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

(S) "Registered mortgage loan originator" means an individual to whom both of the following apply:

(1) The individual is a mortgage loan originator and an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration.

(2) The individual is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(T) "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(U) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

(V) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed mortgage loan originator or registered mortgage loan originator. For purposes of this division, to "perform clerical or support duties" means to do all of the following activities:

(1) Receiving, collecting, distributing, and analyzing information common for the processing or



underwriting of a residential mortgage loan;

(2) Communicating with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent the communication does not include offering or negotiating loan rates or terms or counseling borrowers about residential mortgage loan rates or terms.

(W) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including all of the following:

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for any such transaction;

(4) Engaging in any activity for which a person engaged in that activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law;

(5) Offering to engage in any activity, or to act in any capacity, described in division (W) of this section.

(X) "Licensee" means any person that has been issued a mortgage loan originator license under sections 1321.51 to 1321.60 of the Revised Code.

(Y) "Unique identifier" means a number or other identifier that permanently identifies a mortgage loan originator and is assigned by protocols established by the nationwide mortgage licensing system and registry or federal banking agencies to facilitate electronic tracking of mortgage loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.



(Z) "State" in the context of referring to states in addition to Ohio means any state of the United States, the district of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the trust territory of the Pacific islands, the virgin islands, and the northern Mariana islands.

(AA) "Depository institution" has the same meaning as in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813, and includes any credit union.

(BB) "Bona fide third party" means a person that is not an employee of, related to, or affiliated with, the registrant, and that is not used for the purpose of circumvention or evasion of sections 1321.51 to 1321.60 of the Revised Code.

(CC) "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

(DD) "Employee" means an individual for whom a registrant or applicant, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" also includes any individual who acts as a mortgage loan originator or operations manager of the registrant, but for whom the registrant is prevented by law from making income tax withholdings.

(EE) "Primary point of contact" means the employee or owner designated by the registrant or applicant to be the individual who the division of financial institutions can contact regarding compliance or licensing matters relating to the registrant's or applicant's business or lending activities secured by an interest in real estate.

(FF) "Consumer reporting agency" has the same meaning as in the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C. 1681a, as amended.

(GG) "Mortgage broker" has the same meaning as in section 1322.01 of the Revised Code.