



Ohio Revised Code

Section 1322.01 Mortgage brokers - loan officers definitions.

Effective: March 20, 2019

Legislation: House Bill 489 - 132nd General Assembly

As used in this chapter:

(A) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(B) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a residential mortgage lending transaction.

(C) "Application" has the same meaning as in 12 C.F.R. 1026.2(a)(3).

(D) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(E) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(F) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(G) "Branch office" means a location at which a licensee conducts business other than a registrant's principal place of business, if at least one of the following applies to the location:

(1) The address of the location appears on business cards, stationery, or advertising used by the registrant;

(2) The registrant's name or advertising at the location suggests that mortgage transactions are made



at the location;

(3) The location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the registrant; or

(4) The location within this state is controlled directly or indirectly by the registrant.

(H) "Buyer" means an individual who is solicited to purchase or who purchases the services of a mortgage loan originator for purposes of obtaining a residential mortgage loan. "Buyer" includes an individual whose mortgage loan is serviced by a mortgage servicer.

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

(J) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise. A person is presumed to control an entity if that person:

(1) Is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;

(2) Directly or indirectly has the right to vote five per cent or more of a class of a voting security or has the power to sell or direct the sale of five per cent or more of a class of voting securities;

(3) In the case of a limited liability company, is a managing member; or

(4) In the case of a partnership, has the right to receive upon dissolution or has contributed five per cent or more of the capital.

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

(L) "Dwelling" has the same meaning as in 15 U.S.C. 1602(w). "Dwelling" includes a single



condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence, whether or not that structure is attached to real property.

(M) "Employee" means an individual for whom a mortgage broker or mortgage lender, 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 a registrant, but for whom the registrant is prevented by law from making income tax withholdings.

(N) "Entity" means a business organization, including a sole proprietorship.

(O) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

(P) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

(Q) "Immediate family" means an individual's spouse, child, stepchild, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, or sister-in-law.

(R) "Independent contractor" means an individual who performs duties for another person and is not subject to that person's supervision or control.

(S) "Individual" means a natural person.

(T) "Licensee" means any individual who has been issued a mortgage loan originator license under this chapter.

(U) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.



(V) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs administrative or clerical tasks as an employee at the direction of and subject to the supervision of a mortgage lender or mortgage broker. For purposes of this division, "origination of a residential mortgage loan" means all activities related to a residential mortgage loan, from the taking of a loan application through the completion of all required loan closing documents and the funding of the loan.

(W) "Mortgage" means the consensual interest in real property located in this state, including improvements to that property, securing a debt evidence by a mortgage, trust indenture, deed of trust, or other lien on real property.

(X) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration. For purposes of this division, "attempting to obtain or assisting in obtaining" a mortgage loan includes referring a borrower to a mortgage lender, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(Y) "Mortgage lender" means an entity that consummates a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant.

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

- (a) Takes a residential mortgage loan application;
- (b) Assists or offers to assist a buyer 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 buyer.



- (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 under 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;
 - (d) An employee of a mortgage lender or mortgage broker who acts solely as a loan processor or underwriter and 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 employee can or will perform any of the activities of a mortgage loan originator;
 - (e) 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 mortgage lender, a mortgage broker, or another mortgage loan originator, or by any agent thereof;
 - (f) 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 a residential mortgage loan application.

(g) An individual employed by a nonprofit organization that is recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for use by low-income families, provided that the nonprofit organization makes no-profit mortgage loans or mortgage loans at zero per cent interest to low-income families and no fees accrue directly to the nonprofit organization or individual employed by the nonprofit organization from those mortgage loans and that the United States department of housing and urban development does not deny this exemption.

(AA) "Mortgage servicer" means an entity that, for itself or on behalf of the holder of a mortgage loan, holds the servicing rights, records mortgage payments on its books, or performs other functions to carry out the mortgage holder's obligations or rights under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.

(BB) "Nationwide mortgage licensing system and registry" means a 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 persons providing non-depository financial services.

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

(DD) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(EE) "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 salesperson 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 licensed as a real estate salesperson or real estate broker under the law of this state;
 - (5) Offering to engage in any activity, or to act in any capacity, described in division (EE) of this section.
- (FF) "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.
- (GG) "Registrant" means any person that has been issued a certificate of registration under this chapter.
- (HH) "Residential mortgage loan" means any loan that meets both of the following requirements:
- (1) It is primarily for personal, family, or household use and is secured by a mortgage, deed of trust,



or other equivalent consensual security interest on a dwelling or on residential real estate located in Ohio.

(2) It is provided and secured by a first lien holder secured creditor or by a second lien holder secured creditor.

(II) "Residential real estate" means any real property located in this state upon which is constructed a dwelling or upon which a dwelling is intended to be built within a two-year period, subject to 24 C.F.R. 3500.5(b)(4). For purposes of this division, a borrower's intent to build a dwelling within a two-year period is presumed unless the borrower has submitted a written, signed statement to the contrary.

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

(KK) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.