

*** DRAFT - NOT YET FILED ***

1301:8-7-02

Registration, letters of exemption, office requirements and restrictions.

(A) A registrant shall register every office where any of the following activities occur or conditions exist:

- (1) Leads are solicited or received, directly or indirectly, from residents of this state, for property in this state, or from a location physically in this state;
- (2) Records pertaining to business conducted pursuant to Chapter 1322. of the Revised Code are maintained in paper form;
- (3) A registrant's licensees originate residential mortgage loans for residents of this state, property in this state, or from a location physically in this state regardless of the location of the borrower or property.

(B) A qualified exempt entity shall seek and obtain an approved letter of exemption for every office where any of the following activities occur or conditions exist:

- (1) Records pertaining to business conducted pursuant to Chapter 1322. of the Revised Code are maintained in paper form;
- (2) A qualified exempt entity's licensees originate residential mortgage loans for residents of this state or property in this state.

(C) A registrant or qualified exempt entity may share office space with another person if:

- (1) The physical arrangement does not confuse or mislead borrowers;
- (2) Access to borrower files, financial and mortgage information of borrowers or potential borrowers, and all records required to be maintained by Chapter 1322. of the Revised Code, whether in electronic or paper form, is restricted to only the registrant's or qualified exempt entity's employees or licensees, and is maintained in compliance with applicable state and federal privacy laws.
- (3) Notwithstanding paragraph (C)(2) of this rule, a registrant or qualified exempt entity may allow an independent contractor licensed pursuant to Chapter 1322. of the Revised Code or employees of a loan processing or underwriting company holding a valid letter of exemption issued pursuant to rule 1301:8-7-32 to access borrower files, financial and mortgage information of borrowers or potential borrowers, and all records required to be maintained by Chapter 1322. of the Revised Code, whether in electronic or paper form, for the purpose of conducting the clerical or support duties of loan processing or underwriting for the same registrant or qualified exempt entity.

(D) In accordance with division (A)(1) of section 1322.02 of the Revised Code, a registrant shall maintain at all times at least one registered office located in this state that meets all of the following criteria:

- (1) The registered office shall be a physical location of at least one room in a building of secure construction, which does not include portable buildings;
- (2) The registrant conducts mortgage broker activities pursuant to Chapter 1322. of the Revised Code at the registered office;
- (3) At least one licensee employed by or associated with the registrant uses the registered office to principally transact business as a mortgage broker in this state and has the ability to investigate and resolve questions and complaints from buyers;
- (4) A buyer who wishes to meet face-to-face with a licensee or employee of the registrant can bring all documents applicable to his or her loan application or existing residential mortgage loan for examination in conjunction with an inquiry or complaint; and
- (5) The registered office shall have a street address, and shall not be a post office box or similar designation. Unstaffed, virtual or temporary office locations shall not meet the requirements of section 1322.02 of the Revised Code.

(E) The following restrictions and requirements apply to each additional office location maintained by the registrant, also referred to herein as branch offices:

- (1) A branch office shall not be a separate business entity;
- (2) A branch office shall not pay its own operating expenses for the transaction of business as a mortgage broker in this state. Operating expenses include, but are not limited to, compensation of branch office employees, and payments for equipment, furniture, office rent, utilities, advertising and other similar expenses incurred in operating a mortgage broker business. All assets and liabilities of the branch are assets and liabilities of the registrant and all income and expenses of the branch are income and expenses of the registrant and shall be properly accounted for in the financial records and state and federal tax returns of the registrant. Compensation of a branch manager may be based on the income of the branch minus the operating expenses of the branch as long as the ultimate responsibility and payment of those operating expenses remains the responsibility of the registrant;
- (3) A branch office shall not indemnify, hold harmless, or defend a registrant against damages, losses, injury, or liability arising out of acts or omissions of the branch or employees or licensees working from the branch.

- (4) A branch office shall not maintain a bank account for the payment of expenses that is separate from the bank accounts of the registrant. All operating expenses shall be paid from an account of the registrant, and may not be paid through or from any employee's personal account or any non-registrant account;
- (5) A branch office shall not maintain its own lines of credit, warehouse agreements, or other investor agreements that are independent from those of the registrant;
- (6) All practices, policies, and procedures, including but not limited to, those relating to employment and operations, shall be established by the registrant and shall be applied consistently to the main office and all branch offices.
- (F) Any arrangement where a registrant allows another person to transact business as a mortgage broker in this state under the registrant's certificate of registration at a location that does not comply with paragraph (E) of this rule, sometimes referred to as "net branching," is not permissible.
- (G) In a conspicuous place in each registered office, a registrant shall at all times post a copy of the certificate of registration issued for that office.
- (H) A mortgage banker holding an approved letter of exemption is exempt from registration as a mortgage broker only for residential mortgage loan transactions that meet all of the following criteria:
- (1) the residential mortgage loan transaction falls within one of the mortgage banker's specific approvals set forth in divisions (G)(2)(h)(i)-(iv) of section 1322.01 of the Revised Code or paragraph (J) of 1301:8-7-01 and issued by the United States department of housing and urban development (FHA), federal national mortgage association (FNMA), federal home loan mortgage corporation (FHLMC), United States department of veterans affairs (VA), USDA, or FHLB of Cincinnati loan;
 - (2) the mortgage banker makes, services, buys, or sells the residential mortgage loans;
 - (3) the residential mortgage loans are secured by a first lien;
 - (4) the mortgage banker underwrites the loans.
- (I) A mortgage banker shall not under the authority of its letter of exemption originate or make a residential mortgage loan that falls outside of the specific approvals issued to it by FHA, FNMA, FHLMC, VA, USDA, or FHLB of Cincinnati and which specific approvals were submitted to and approved by the superintendent in order to obtain the letter of exemption. A mortgage banker may under the authority of its

letter of exemption originate or make a conventional jumbo FHA, FNMA, or FHLMC loan only if it has a specific approval issued to it by FHA, FNMA, or FHLMC, the underwriting and documentation of the conventional jumbo loan otherwise meets the requirements of that same approval, and the approval was submitted to and approved by the superintendent in order to obtain the letter of exemption. A mortgage banker shall not under the authority of its letter of exemption originate or make a residential mortgage loan which is secured by other than a first lien. A mortgage banker may hold an approved letter of exemption under Chapter 1322. of the Revised Code and a certificate of registration under sections 1321.51 to 1321.59 of the Revised Code.

- (J) A mortgage banker holding an approved letter of exemption shall not act as a mortgage broker. A mortgage broker holding a certificate of registration may act as a mortgage banker without having to obtain an approved letter of exemption from the superintendent provided that all residential mortgage loan transactions shall comply with the requirements for loans made by a registered mortgage broker.
- (K) A residential mortgage loan is primarily for personal, family, or household use if more than one half of the total loan amount is used for consumer purposes and not for business purposes. In assessing the purpose (or purposes, if the loan is a hybrid used for both consumer and business purposes), the superintendent shall consider the totality of the circumstances surrounding the loan and not merely the purpose of cash-out proceeds. If more than one half of the total loan amount is for business purposes, then the requirements of Chapter 1322. of the Revised Code do not apply.
- (L) Notwithstanding paragraph (K), a residential mortgage loan made to a borrower for purposes of investing in a dwelling to either lease, rent, or resell for profit is considered a business purpose loan and is not subject to the requirements of Chapter 1322. of the Revised Code unless the dwelling, or at least one unit of the dwelling in the case of a two to four family housing unit, will be occupied by the borrower or an immediate family member of the borrower. "Immediate family member" shall have the same meaning as set forth in division (R) of section 1322.01 of the Revised Code.
- (M) Nothing in division (E)(2)(b) of section 1322.01 of the Revised Code prevents a person licensed under Chapter 4735. of the Revised Code or similar law of another state from receiving compensation for real estate brokerage activities performed for a mortgage lender or agent thereof who is also the owner of the property provided that the person does not act as a loan originator in the transaction.
- (N) A registrant or qualified exempt entity shall not hold a certificate of registration issued pursuant to Chapter 4712. of the Revised Code.
- (O) A registrant or qualified exempt entity shall not evade the limits on points and fees for qualified mortgages set forth in 12 C.F.R. 1026.43(e)(3), as in effect on January 12, 2014, by conducting business in conjunction with a person registered or who

should be registered pursuant to Chapter 4712. of the Revised Code. Assisting a borrower with improving his or her credit record, history, or rating as well as removing adverse credit information are considered part of the normal activities of a registrant or qualified exempt entity.

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