Ohio Division of Financial Institutions

Mortgage Brokers & Lenders Letter 2008-3

April 11, 2008

TO: Ohio Mortgage Lenders Registered Under the Ohio Mortgage Loan Act ("OMLA").

SUBJECT: Provision of Speed Pay Products as a Permissible Other Service under the OMLA pursuant to R.C. §§ 1321.57(H)(1) and (2), 1321.53(A)(4) and 1349.41(B)

SUMMARY: This letter is intended to alert mortgage lenders registered under the Ohio Mortgage Loan Act of the position of the Ohio Division of Financial Institutions regarding the offering of electronic payment and other speed pay products as a permissible "other transaction" under the act with certain limitations. While permissible, compliance with and within the purposes of sections 1321.51 to 1321.60 of the Revised Code per Ohio R.C. §1321.53(A)(4), as well as to act in good faith and with fair dealing per Ohio R.C. §1349.41(B), requires limitations on the solicitation and provision of such speed pay products.

Ohio Revised Code § 1321.57(H)(1) and (2)

This provision of the Ohio Mortgage Loan Act is intended to limit charges permitted on consumer and mortgage loans to those fees specifically set forth under the statute. However, the statute provides that it is not intended to prohibit OMLA registrants from providing and charging for "other transactions" where those transactions are not a condition of the loan.

Ohio Revised Code § 1321.53(A)(4)

This provision of the Ohio Mortgage Loan Act is intended to broadly prevent dishonest businesses or those that act in violation of the OMLA or its purposes from obtaining or retaining a certificate of registration under the OMLA.

Ohio Revised Code § 1349.41(B)

This provision of the Ohio Revised Code is intended to require that mortgage lenders act in good faith and fair dealing when, among other transactions, lenders present loan products and financing options to consumer borrowers.

Charge for Electronic Payment or Other Speed Payment Systems Only Permissible Under Certain Circumstances

The Division has been requested to provide its position on the provision of electronic payment and other speed pay options for a fee by OMLA registrants in connection with loans made under the OMLA. Typically a lender might provide various payment options in an effort to help their customers avoid a late payment charge, such as an electronic payment option. Such speed pay options are offered for a particular fee to the borrower. To the extent that the electronic payment fee: a) is optional and offered on an as needed basis; b) is not the exclusive product for obtaining electronic or other speed payments and the

consumer is informed of such; and c) is charged in lieu of a late fee and in an amount that is the lesser of the late fee set out in R.C. § 1321.57(L) or $10.00 - then such a service will be viewed by the Division as a permissible fee collected in connection with another transaction.

As the OMLA statute sets a limit on delinquency fees in R.C. § 1321.57, a registrant may not augment such fees by also charging for speed payment methods on the same transaction or monthly payment. Further, the provision of speed pay service must be a method to avoid a particular late fee, and not a fee for the regular drafting for repayment by electronic means from the borrower's own bank checking or similar account.

The first pre-condition arises from the need to prevent evasion of the limits set forth in the OMLA for delinquency fees. The second pre-condition arises so as to prevent an OMLA registrant from effectively obtaining a regular fee for the simple processing of payments, a processing that the borrower is already entitled to by law under the provisions of R.C. § 1321.57(C)(1)(c) and (D)(1). To charge for a service that the law already requires that registrants provide would be both dishonest and unfair in violation of R.C. §§ 1321.53(A)(4) and 1349.41(B). Similarly, a registrant cannot make its own speed pay program the exclusive program. Registrants have a duty to accept timely payments and cannot erect barriers - for their own financial profit - by refusing to accept timely payments from others.

ACTION: Registrants and licensees need to review their procedures to ensure compliance with the current state law prohibiting additional fees as it relates to providing and collecting fees for electronic and other speed pay options and will need to adjust their policies and practices accordingly to conform to this letter.

CONTACT: Leigh Willis, Deputy Superintendent (614) 728-8400