

1301:8-7-02

Mortgage broker registration; office requirements and restrictions.

- (A) For purposes of division (G) of section 1322.01 of the Revised Code and division (A)(2) of section 1322.02 of the Revised Code, a person "holds oneself out" by advertising or otherwise informing the public that the person engages in any of the activities indicated, including without limit through the use of business cards, stationery, brochures, rate lists, or an internet website.
- (B) Division (G)(1) of section 1322.01 of the Revised Code, includes, but is not limited to, collecting data from buyers through any medium including the internet or telephone, distributing the information to multiple lenders who in turn provide loan terms which the lenders would be willing to provide to buyers based on the information submitted, then forwarding the loan terms to the buyers so that the buyers can contact the lender directly and charging or receiving any valuable consideration from the buyer, lender, or mortgage broker.
- (C) Division (G)(2) of section 1322.01 of the Revised Code, includes, but is not limited to, soliciting personal financial and mortgage information from buyers through any medium including the internet or telephone, and providing that information to a mortgage broker and charging or receiving any valuable consideration for the information. This practice is commonly referred to as obtaining or generating "leads." For purposes of this rule, "personal financial and mortgage information" includes, but is not limited to, social security numbers and any financial account number such as a credit card or bank account number.
- (D) As used in division (C)(1) of section 1322.02 of the Revised Code, the phrase "only with respect to business engaged in or authorized by" means that a person is exempt from registration and compliance under sections 1322.01 to 1322.12 of the Revised Code only while performing the work and/or activities specifically authorized by their charter, license, authority, approval, or certificate, or authorization described in division (C)(1)(g) of section 1322.02 of the Revised Code. However, if the person performs any activity not expressly authorized and the activity falls within the scope of sections 1322.01 to 1322.12 of the Revised Code, registration and compliance is required. The origination of mortgage loans that comply with the guidelines set forth by the United States department of housing and urban development, the federal national mortgage association, the federal home loan mortgage corporation or the United States department of veterans affairs in all respects except the size of the loans is not exempt from the registration and compliance requirements of Chapter 1322. of the Revised Code unless the person originating the loan meets the definition of "mortgage banker" in division (C)(1)(g) of section 1322.02 of the Revised Code.
- (E) In accordance with division (A)(1) of section 1322.02 of the Revised Code, a certificate of registration must be obtained from the superintendent of financial

institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state. A person must register a location as an office for the transaction of business as a mortgage broker in this state where any of the following activities occur or conditions exist:

- (1) Financial and mortgage information is solicited from the public for sale to a mortgage broker;
- (2) Records required by rule 1301:8-7-06 of the Administrative Code are maintained;
- (3) Printed or electronic advertisements indicate that mortgage lending or brokering is conducted; or
- (4) Any location that is held out to ~~the general public~~ as a location at which the registrant, an employee of the registrant, or any agent of the registrant provides mortgage ~~brokerage~~ broker services.

(F) A registrant may share office space with another person if:

- (1) The physical arrangement of the shared space does not confuse or mislead buyers about the registrant's identity;
- (2) Computer access to buyer files and/or personal financial information is limited to the registrant's employees in the absence of full disclosure and written consent of the buyer;
- (3) Records required to be created and maintained under rule 1301:8-7-06 of the Administrative Code are kept separate and inaccessible from any person not employed by the registrant.

(G) In accord with division (A)(1) of section 1322.02 of the Revised Code, every registrant shall maintain at all times at least one office located in the state of Ohio that meets the following minimum criteria:

- (1) The office location shall be a physical location of at least one room in a building of secure construction, which does not include portable buildings, where:
 - (a) The registrant conducts mortgage broker activities pursuant to Chapter 1322. of the Revised Code;

- (b) At least one licensed loan officer employed by the registrant has the ability to investigate and resolve questions and complaints from buyers; and
 - (c) Where a buyer who wishes to meet face-to-face with a licensed loan officer can bring all documents applicable to his or her application for or existing home mortgage for examination in conjunction with an inquiry, complaint or concern.
 - (2) The office location shall have a street address, and shall not be a post office box or similar designation. An unstaffed storage facility shall not meet the requirements of ~~this~~ section 1322.02 of the Revised Code.
- (H) The following restrictions and requirements apply to branch offices:
- (1) A branch office shall not be a separate business entity. Each branch office and every employee of each branch office is the responsibility of the registrant and shall be under the direct control, management and supervision of the registrant.
 - (2) A branch office shall not pay its own operating expenses. Operating expenses shall include, but are not limited to, compensation of branch office employees, and payments for equipment, furniture, office rent, 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 must 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 remain the responsibility of the registrant.
 - (3) A branch office shall not indemnify the registrant against damages incurred from any apparent, express, or implied agency representation, or from any actions of the branch or the employees working in, from or through the branch.
 - (4) A branch shall not maintain a banking account or accounts for the payment of expenses of that branch that is separate from the account or accounts of the registrant. All operating expenses must 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 lines of credit, warehouse agreements, or other investor agreements that are separate from those of the registrant.
- (6) A branch office shall not maintain contractual relationships with vendors for items such as leases, telephones, utilities, and advertising in the name of the branch office. All contractual relationships must be by and through the registrant.
- (7) All practices, policies, and procedures, including but not limited to those relating to employment and operations, must be originated and established by the registrant and must be applied consistently to the main office and all branches.
- (I) A purported branch location which does not comply with paragraph (H) of this rule, or any other arrangement where a registrant allows a separate entity to conduct mortgage business under the registrant's certificate of authority, sometimes referred to as "net branching," is not permissible.
- (J) 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.
- (K) The following statuses apply to certificates of registration:
 - (1) Pending. A person with a pending application for a mortgage broker certificate of registration is not licensed and is not authorized to conduct mortgage broker activities.
 - (2) Active. A person with an active certificate of registration is authorized to engage in mortgage broker activities.
 - (3) Suspended. Suspension is a disciplinary registration status. A person with a suspended certificate of registration is not permitted to conduct mortgage broker activities.
 - (a) Engaging in, or participating or assisting in any way in any conduct or activity for which a certificate of registration is required while a certificate of registration is suspended, constitutes a violation of division (A) of section 1322.02 of the Revised Code.
 - (b) A suspended certificate of registration is subject to revocation or any other administrative, disciplinary, or penal action for actionable conduct

occurring before, during or after the certificate was suspended.

(c) A suspended certificate of registration may be returned to active status upon the following conditions:

(i) The superintendent believes that all conditions of the disciplinary action for which the certificate was suspended have been satisfied; and

(ii) The registrant is otherwise eligible and suitable to hold an active certificate.

(4) Revoked. Revocation is a disciplinary status. A person with a revoked certificate of registration is not permitted to engage in mortgage broker activities. Engaging in, or participating or assisting in any way in any conduct or activity for which a certificate of registration is required while a certificate of registration is revoked constitutes a violation of division (A) of section 1322.02 of the Revised Code.

(5) Denied. Denial is a disciplinary registration status. A person denied registration is not permitted to engage in mortgage broker activities. Engaging in, or participating or assisting in any way in any conduct or activity for which a certificate of registration is required while a certificate of registration is denied constitutes a violation of division (A) of section 1322.02 of the Revised Code.

(6) Cancelled. A person with a cancelled certificate of registration is not permitted to engage in mortgage broker activities. A cancelled certificate may not be reinstated. To receive a new certificate of registration a person must comply with rule 1301:8-7-03 of the Administrative Code for obtaining a certificate of registration. A certificate of registration may be cancelled on occurrence of the following:

(a) When the certificate of registration expires; or

(b) If the certificate of registration is surrendered in accordance with the following:

(i) A person may voluntarily surrender an active certificate of registration as long as the person is not under investigation by the division, or the superintendent has not issued a notice of opportunity for a hearing under chapter 119. of the Revised Code. An investigation includes the review of any complaint made against or involving the person. A person may surrender the certificate of registration by submitting a notarized statement to the superintendent on a form prescribed by the superintendent.

- (ii) Once a surrendered certificate of registration has been accepted by the division, the registration will be cancelled. A voluntary surrender that is accepted by the division will be effective immediately upon the division's acceptance, and not a later date.
 - (iii) A surrender will not affect the person's civil or criminal liability for acts committed before the surrender, and does not impair or affect the obligation of a preexisting lawful contract between the registrant and any person, including a buyer.
 - (7) Withdrawn. A person whose application has been withdrawn is not permitted to engage in mortgage broker activities. Engaging in, or participating or assisting in any way in any conduct or activity for which a certificate of registration is required while a certificate of registration is withdrawn constitutes a violation of division (A) of section 1322.02 of the Revised Code. A withdrawn application may not be reactivated. If the application of a person is withdrawn and the person later decides to re-apply, a new application must be completed and submitted.
- (L) No registrant, through its operations manager or otherwise, shall fail to reasonably supervise a loan officer or other persons associated with the registrant or to establish reasonable procedures designed to avoid violations of Chapter 1322. of the Revised Code or of Chapter 1301:8-7 of the Administrative Code by loan officers or other persons associated with the registrant.

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Certification

Date

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