



# Ohio Legislative Service Commission

## Final Analysis

Aida S. Montano

### **Am. Sub. S.B. 124** 128th General Assembly (As Passed by the General Assembly)

**Sens.** Faber and Schiavoni, Seitz, Fedor, Schuler, Kearney, D. Miller, Carey, Harris, Hughes, Patton, Strahorn, Wagoner, Gibbs, Stewart, R. Miller, Sawyer, Turner, Wilson

**Reps.** Harwood, Mecklenborg, Stebelton, J. Adams, Bolon, Carney, Combs, Daniels, Dodd, Domenick, Gerberry, Hackett, Huffman, Letson, Luckie, Murray, Okey, Patten, Sayre, Slesnick, Stautberg

**Effective date:** Emergency, December 28, 2009

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## ACT SUMMARY

### Real property--transfer on death designation

- Changes the transfer on death designation instrument from a deed to an affidavit.
- Allows an individual who owns real property or any interest in real property as a survivorship tenant to execute a transfer on death designation affidavit.
- Allows an individual who together with the individual's spouse owns real property or an interest in real property as tenants by the entireties (pursuant to a deed recorded between February 9, 1972, and April 3, 1985) to execute a transfer on death designation affidavit.
- Specifies the information that a transfer on death designation affidavit must include.
- Provides that any person who knowingly makes any false statement in a transfer on death designation affidavit or an affidavit of confirmation is guilty of falsification.
- Requires the county recorder to receive the transfer on death designation affidavit and cause it to be recorded in the same manner as deeds are recorded.
- Requires that the transfer of a deceased owner's real property or interest in real property as designated in a transfer on death designation affidavit be recorded by presenting to the county auditor and filing with the county recorder an affidavit of

confirmation executed by any transfer on death beneficiary to whom the transfer is made and specifies the information that must be contained in the affidavit of confirmation.

- Modifies the characteristics and ramifications that the real property or an interest in real property that is the subject of a transfer on death designation affidavit must have.
- Provides that the act does not affect any deed that was executed and recorded prior to the effective date of the act and does not affect any transfer on death beneficiary designation made pursuant to R.C. 5302.22 as it existed prior to the effective date of the act.
- Specifies that a nontestamentary instrument includes, but is not limited to, a transfer on death designation affidavit.

### **Regulation of mortgage lenders under the Mortgage Loan Law and regulation of mortgage brokers under the Mortgage Brokers Law**

- Makes changes generally to the provisions of the Mortgage Loan Law (R.C. 1321.51 to 1321.60) and the Mortgage Brokers Law (R.C. 1322.01 to 1322.12) that were enacted or amended by Am. Sub. H.B. 1 of the 128th General Assembly in the implementation of the S.A.F.E. Act, Title V of the federal Housing and Economic Recovery Act of 2008.
- Removes the requirement for a registrant engaged in residential mortgage loan activity to maintain a net worth of at least \$50,000 and, for each certificate of registration, assets of at least \$50,000 either in use or readily available for use in the conduct of business, and retains continuing law's requirement that the registrant maintain a corporate surety bond.
- Permits the Superintendent of Financial Institutions to consider withdrawn an application or renewal application for registration under the Mortgage Loan Law or the Mortgage Brokers Law or for licensing as a loan originator under either Law if the information required under the applicable Law is not submitted to the Nationwide Mortgage Licensing System and Registry within the required period of time after the information is requested.
- Requires an individual applying for a mortgage loan originator license under the Mortgage Loan Law to additionally achieve a test score of at least 75% correct answers on all questions relating to Ohio mortgage lending laws and the Ohio Consumer Sales Practices Act as it applies to registrants and licensees.

- Specifies that any of the following must not have been convicted of or pleaded guilty to (continuing law) *or pleaded nolo contendere* (no contest) to any of the offenses specified in continuing law in a domestic, foreign, or military court during the applicable period of time: (1) an applicant for licensure as a loan originator under the Mortgage Loan Law or Mortgage Brokers Law, (2) an applicant or any person whose identity is required to be disclosed on an application for a mortgage broker certificate of registration.
- Permits the Division or Superintendent of Financial Institutions to revoke, suspend, or refuse to issue or renew a certificate of registration or license under the Mortgage Loan Law or the Mortgage Brokers Law if it finds that the person has been convicted of or pleaded guilty to (continuing law) *or pleaded nolo contendere* to any of the offenses specified in continuing law in a domestic, foreign, or military court.
- Prohibits any registrant, licensee, applicant, or other specified person under the Mortgage Loan Law or Mortgage Brokers Law from failing to notify the Division of Financial Institutions within 30 days after knowing that the registrant, licensee, applicant, or other person was convicted of or pleaded guilty to (continuing law) *or pleaded nolo contendere* to any of the offenses specified in continuing law in a domestic, foreign, or military court.
- Requires an application by a credit union service organization for exemption from registration under the Mortgage Loan Law or the Mortgage Brokers Law, or an application by a mortgage banker from registration under the Mortgage Brokers Law, to include an attestation that the organization or mortgage banker, as applicable, and its owners, officers, or partners have not been convicted of or pleaded guilty to (continuing law) *or pleaded nolo contendere* to any of the offenses specified in continuing law in a domestic, foreign, or military court during the applicable period of time.
- If a registrant under the Mortgage Brokers Law or any member of the immediate family of an owner of a registrant generally owns or controls a majority interest in an appraisal company, permits the Superintendent of Financial Institutions to order the registrant or family member to divest their interest in the company if the registrant is convicted of or pleads guilty to (continuing law) *or pleads nolo contendere* to a criminal violation of the Mortgage Brokers Law or to a felony in a domestic, foreign, or military court.
- Provides that the persons excluded from the definition of "mortgage broker" in the Mortgage Brokers Law are excluded only with respect to the business engaged in or authorized by the person's charter, license, authority, approval, or certificate.

- Specifically prohibits any person acting as a mortgage broker or loan originator from failing to register with, and maintain a valid unique identifier issued by, the Nationwide Mortgage Licensing System and Registry.
- Replaces the term "loan originator" in the Consumer Sales Practices Act with "loan officer" and defines the "loan officer" as an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; 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; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan.
- Modifies the transition provisions of Am. Sub. H.B. 1 to specify dates when any credit union service organization or mortgage banker in operation as of January 1, 2010, may obtain a valid letter of exemption from the Superintendent of Financial Institutions to continue to operate as an exempt entity and when any person performing the duties of a mortgage loan originator and is employed by any of specified persons or entities as of January 1, 2010, may obtain a mortgage loan originator license to continue to perform those duties.
- Enacts an emergency clause.

### **Delinquent Tax and Assessment Collection Fund**

- Authorizes, temporarily, a treasurer and a prosecuting attorney of a county with a population greater than 800,000 but less than 900,000 to designate that part of any surplus balance in the county's Delinquent Tax and Assessment Collection Fund be used to pay operating expenses in that office in lieu of county general fund money.

### **Requirements for instruments or documents recorded with county recorder**

- Requires a county recorder to accept for recording an instrument or document that does not conform to the format requirements without charging the additional fees under continuing law for incidental information not essential to the recording process or the legal validity of the instrument or document.

### **Other provisions**

- Authorizes the Chief of the Division of Parks and Recreation in the Department of Natural Resources to make leases to remove coal by underground mining methods at Burr Oak State Park in Athens and Morgan counties pursuant to lease agreements

and real estate transactions that have been entered into not later than January 1, 2011.

- Authorizes the Governor to execute a release of reversionary interest in the name of the state of Ohio releasing the state's reversionary interest in specific real estate in Auglaize County if it ceased to be used for youth recreation center purposes or related civic purposes and requires the release to be delivered to the Wapakoneta Family Young Men's Christian Association, Inc. for recording with the Auglaize County Recorder.

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## CONTENT AND OPERATION

### REAL PROPERTY--TRANSFER ON DEATH DESIGNATION

#### Definitions

The act provides the following definitions for the purposes of the law regarding transfer on death designations (R.C. 5302.22(A)):

(1) "Affidavit of confirmation" means an affidavit executed under R.C. 5302.222(A) (see "**Recording of affidavit of confirmation**," below).

(2) "Survivorship tenancy" means an ownership of real property or any interest in real property by two or more persons that is created by executing a deed pursuant to R.C. 5302.17 (not in the act).

(3) "Survivorship tenant" means one of the owners of real property or any interest in real property in a survivorship tenancy.

(4) "Tenants by the entireties" mean only those persons who are vested as tenants in an estate by the entireties with survivorship pursuant to any deed recorded between February 9, 1972, and April 3, 1985, under R.C. 5302.17 as it existed during that period of time. Nothing in R.C. 5302.22, 5302.222, 5302.23, and 5302.24 authorizes the creation of a tenancy by the entireties or recognizes a tenancy by the entireties created outside that period of time.

(5) "Transfer on death designation affidavit" means an affidavit executed under R.C. 5302.22 (see "**Transfer on death designation**," below).

(6) "Transfer on death beneficiary or beneficiaries" means the beneficiary or beneficiaries designated in a transfer on death designation affidavit.

## **Transfer on death designation**

### **Former law**

Under former law, any person who, under the Revised Code or the common law of Ohio, owned real property or any interest in real property as a sole owner or as a tenant in common could create an interest in the real property transferable on death by executing and recording a deed conveying the person's entire, separate interest in the real property to one or more individuals, including the grantor, and designating one or more other persons, identified in the deed by name, as transfer on death beneficiaries. A deed conveying an interest in real property that included a transfer on death beneficiary designation did not need to be supported by consideration and did not need to be delivered to the transfer on death beneficiary to be effective. (R.C. 5302.22(B).)

### **Operation of the act**

The act replaces "person" in this provision with "individual" and provides that any individual who, under the Revised Code or the common law of Ohio, owns real property or any interest in real property as a sole owner, as a tenant in common, *or as a survivorship tenant, or together with the individual's spouse owns an indivisible interest in real property as tenants by the entireties*, may designate the entire interest, or any specified part that is less than the entire interest, in that real property as transferable on death to a designated beneficiary or beneficiaries by executing, *together with the individual's spouse if any, a transfer on death designation affidavit*. The act removes the provision that allows the person to execute and record a deed conveying the person's entire, separate interest in the real property to one or more individuals, including the grantor, and designating one or more other persons, identified in the deed by name, as transfer on death beneficiaries. It also removes the provision specifying that a deed conveying an interest in real property that includes a transfer on death beneficiary designation does not have to be supported by consideration and does not have to be delivered to the transfer on death beneficiaries. (R.C. 5302.22(B).)

The act also provides that if the affidavit is executed by an individual together with the individual's spouse, if any, the dower rights of the spouse are subordinate to the vesting of title to the interest in the real property in the transfer on death beneficiary or beneficiaries designated under the act's provisions. The affidavit must be recorded in the county recorder's office in the county in which the real property is located, and,

when so recorded, the affidavit or a certified copy of the affidavit is evidence of the transfer on death beneficiary or beneficiaries so designated in the affidavit insofar as the affidavit affects title to the real property. (R.C. 5302.22(B).)

Under the act, if an individual who owns real property or an interest in real property as a sole owner or as a tenant in common executes a transfer on death designation affidavit, upon the death of that individual, title to the real property or interest in the real property specified in the affidavit vests in the transfer on death beneficiary or beneficiaries designated in the affidavit. If an individual who owns real property or an interest in real property as a survivorship tenant executes a transfer on death designation affidavit, upon the death of that individual or of one but not all of the surviving survivorship tenants, title to the real property or interest in the real property specified in the affidavit vests in the surviving survivorship tenant or tenants. Upon the death of the last surviving survivorship tenant, title to the real property or interest in the real property vests in the transfer on death beneficiary or beneficiaries designated in the affidavit, subject to paragraph (7) under "**Designating transfer on death beneficiary**" below. If an individual who together with the individual's spouse owns an indivisible interest in real property as tenants by the entireties executes a transfer on death designation affidavit, upon the death of that individual, title to the real property or interest in the real property vests in the remaining tenant by the entireties. Upon the death of the remaining tenant by the entireties, title to the real property or interest in the real property vests in the transfer on death beneficiary or beneficiaries designated in the affidavit, subject to paragraph (7) under "**Designating transfer on death beneficiary**" below. (R.C. 5302.22(C).)

The act requires that a transfer on death designation affidavit be verified before any person authorized to administer oaths and must include all of the following (R.C. 5302.22(D)):

- (1) A description of the real property the title to which is affected by the affidavit and a reference to an instrument of record containing that description;
- (2) If less than the entire interest in the real property is to be transferred on death under the affidavit, a statement of the specific interest or part of the interest in the real property that is to be so transferred;
- (3) A statement by the individual executing the affidavit that the individual is the person appearing on the record of the real property as the owner of the real property or interest in the real property at the time of the recording of the affidavit and the marital status of that owner. If the owner is married, the affidavit must include a statement by the owner's spouse stating that the spouse's dower rights are subordinate



to the vesting of title to the real property or interest in the real property in the transfer on death beneficiary or beneficiaries designated in the affidavit.

(4) A statement designating one or more persons, identified by name, as transfer on death beneficiary or beneficiaries.

### **Transfer of property that is the subject of a transfer on death designation affidavit**

Under former law, upon the death of any individual who owned real property or an interest in real property that was subject to a transfer on death beneficiary designation made under a transfer on death deed, the deceased owner's interest was transferred only to the transfer on death beneficiaries who were identified in the deed by name and who survived the deceased owner or that were in existence on the date of death of the deceased owner. The act modifies this provision by providing that it is subject to the act's provisions regarding the vesting of title to the real property or interest in the real property under certain specified circumstances, removes the references to "deed" and replaces them with "affidavit," and specifies that the *real property or interest in real property of the deceased owner* is transferred only to the transfer on death *beneficiary or beneficiaries* who are identified in the *affidavit* by name and who survive the deceased owner or that are in existence on the date of death of the deceased owner. (R.C. 5302.22(G).) The act also provides that if a natural or legal person designated by name in the affidavit as a transfer on death beneficiary or as a contingent transfer on death beneficiary as provided below under paragraph (2) in "**Designating transfer on death beneficiary**," solely in that person's capacity as a trustee of a trust has died, has resigned, or otherwise has been replaced by a successor trustee of the trust on the date of death of the deceased owner, the successor trustee of the trust is considered the transfer on death beneficiary or contingent transfer on death beneficiary in existence on the date of death of the deceased owner in full compliance with the provisions of this paragraph, notwithstanding that the successor trustee is not named as a transfer on death beneficiary or contingent transfer on death beneficiary in the affidavit. (R.C. 5302.22(G).) Any person who knowingly makes any false statement in a transfer on death designation affidavit is guilty of falsification under R.C. 2921.13(A)(6) (R.C. 5302.22(H)).

The act relocates a provision that provides that upon the death of any individual holding real property or an interest in real property that is subject to a transfer on death beneficiary designation made under a transfer on death deed, if the title to the real property is registered pursuant to R.C. Ch. 5309. (Registration of Land Titles), the procedure for the transfer of the interest of the deceased owner is pursuant to R.C. 5309.081 (law regarding transfer of interest following the death of a survivorship tenant) (former R.C. 5302.22(C)) to new R.C. 5302.222(D) and specifies that the real

property or interest in real property is the subject of a transfer on death *designation affidavit* and that the procedure for the transfer of the interest of the deceased owner to the transfer on death beneficiary or beneficiaries designated in the affidavit is pursuant to R.C. 5309.081.

### **Recording of a transfer on death designation affidavit**

The act requires that the county recorder of the county in which a transfer on death designation affidavit is offered for recording receive the affidavit and cause it to be recorded in the same manner as deeds are recorded. The county recorder must collect a fee for recording the affidavit in the same amount as the fee for recording deeds. The county recorder also must index the affidavit in the name of the owner of record of the real property or interest in the real property who executed the affidavit. (R.C. 5302.22(E).) A transfer on death designation affidavit need not be supported by consideration and need not be delivered to the transfer on death beneficiary or beneficiaries designated in the affidavit to be effective. However, in order to be effective, that affidavit must be recorded with the county recorder prior to the death of the individual who executed the affidavit. (R.C. 5302.22(F).)

### **Recording of affidavit of confirmation**

Prior law required that the transfer of a deceased owner's interest be recorded by presenting to the county auditor and filing with the county recorder an affidavit, accompanied by a certified copy of a death certificate for the deceased owner. The affidavit was required to recite the name and address of each designated transfer on death beneficiary who survived the deceased owner or that was in existence on the date of the deceased owner's death, the date of the deceased owner's death, a description of the subject real property or interest in real property, and the names of each designated transfer on death beneficiary who had not survived the deceased owner or that was not in existence on the date of the deceased owner's death. The affidavit had to be accompanied by a certified copy of a death certificate for each designated transfer on death beneficiary who had not survived the deceased owner. The county recorder was required to make an index reference to any affidavit so filed in the record of deeds.

The act removes this provision from former R.C. 5302.22(C) and enacts a very similar provision in new R.C. 5302.222. The act specifies that the transfer of a deceased owner's real property or interest in real property as designated in a transfer on death designation affidavit must be recorded by presenting to the county auditor of the county in which the real property is located and filing with the county recorder of that county an *affidavit of confirmation executed by any transfer on death beneficiary to whom the transfer is made. The affidavit of confirmation must be verified before a person authorized to administer oaths.* The act provides that the affidavit of confirmation must contain the

same information that the affidavit of the transfer of the deceased owner's interest was required to contain, but also provides that if a named beneficiary was designated as a transfer on death beneficiary solely in that person's capacity as a trustee of a trust and that trustee subsequently has been replaced by a successor trustee, the affidavit of confirmation must include the name and address of the successor trustee and must be accompanied by a copy of the recorded successor trustee affidavit. As with the affidavit of the transfer of the deceased owner's interest, the affidavit of confirmation must be accompanied by a certified copy of the death certificate of the deceased owner and of the death certificate for each transfer on death beneficiary who has not survived the deceased owner, and the county recorder must make an index reference in the record of deeds to any affidavit of confirmation filed with the county recorder (R.C. 5302.222(A), (B), and (C)).

The act also provides that any person who knowingly makes any false statement in an affidavit of confirmation is guilty of falsification under R.C. 2921.13(A)(6) (R.C. 5302.222(E)).

### **Designating transfer on death beneficiary**

Prior law required that any deed containing language that showed a clear intent to designate a transfer on death beneficiary be liberally construed to do so. The act provides that the document containing this language is an affidavit rather than a deed. (R.C. 5302.23(A).) The act also modifies the provision that real property or an interest in real property that is *the subject of a transfer on death designation affidavit* have certain characteristics and ramifications. Those characteristics and ramifications are as follows (R.C. 5302.23(B)):

(1) An interest of a deceased owner must be transferred to the transfer on death beneficiaries who are identified in the *affidavit* by name and who survive the deceased owner or that are in existence on the date of the deceased owner's death. If there is a designation of more than one transfer on death beneficiary, the beneficiaries take title to the interest in equal shares as tenants in common, *unless the deceased owner has specifically designated other than equal shares or has designated that the beneficiaries take title as survivorship tenants, subject to (3) below.* If a transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of the deceased owner's death, and the deceased owner has designated one or more persons as contingent transfer on death beneficiaries as provided in (2) below, the designated contingent transfer on death beneficiaries take the same interest that would have passed to the transfer on death beneficiary had that transfer on death beneficiary survived the deceased owner or been in existence on the date of the deceased owner's death. If none of the designated transfer on death beneficiaries survives the deceased owner or is in existence on the date of the deceased owner's death and no contingent transfer on death

beneficiaries have been designated, have survived the deceased owner, *or are in existence on the date of death of the deceased owner*, the interest of the deceased owner must be distributed as part of the probate estate of the deceased owner of the interest. *If there are two or more transfer on death beneficiaries and the deceased owner has designated that title to the interest in the real property be taken by those beneficiaries as survivorship tenants, no designated contingent transfer on death beneficiaries can take title to the interest unless none of the transfer on death beneficiaries survives the deceased owner on the date of death of the deceased owner.*

(2) A transfer on death *designation affidavit* may contain a designation of one or more persons as contingent transfer on death beneficiaries, who take the interest of the deceased owner that would otherwise have passed to the transfer on death beneficiary if that named transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of death of the deceased owner. Persons designated as contingent transfer on death beneficiaries must be identified in the *affidavit* by name.

(3) *Any transfer on death beneficiary or contingent transfer on death beneficiary may be a natural or legal person, including, but not limited to, a bank as trustee of a trust, except that if two or more transfer on death beneficiaries are designated as survivorship tenants, all of those beneficiaries must be natural persons and if two or more contingent transfer on death beneficiaries are designated as survivorship tenants, all of those contingent beneficiaries must be natural persons. A natural person who is designated a transfer on death beneficiary or contingent transfer on death beneficiary solely in that natural person's capacity as a trustee of a trust is not considered a natural person for purposes of designating the transfer on death beneficiaries or contingent transfer on death beneficiaries as survivorship tenants under this provision.*

(4) The designation of a transfer on death beneficiary has no effect on the present ownership of real property, and a person designated as a transfer on death beneficiary has no interest in the real property until the death of the owner of the interest.

(5) The designation in a *transfer on death designation affidavit* of any transfer on death beneficiary may be revoked or changed at any time, without the consent of that transfer on death beneficiary, by the owner of the interest, *by the surviving survivorship tenants of the interest, or by the remaining tenant by the entirety of the interest*, by executing and recording, *prior to the death of the owner of the interest, of the surviving survivorship tenants of the interest, or of the remaining tenant by the entirety of the interest, as the case may be*, a new transfer on death designation affidavit pursuant to R.C. 5302.22 stating the revocation or change in that designation. *The new transfer on death designation affidavit automatically supersedes and revokes all prior recorded transfer on death designation affidavits with respect to the real property or the interest in real property identified in the new affidavit, provided that the prior recorded affidavit was executed before the later recorded affidavit.*

(6) A fee simple title or any fractional interest in a fee simple title may be subjected to a transfer on death beneficiary designation.

(7)(a) A transfer on death beneficiary takes only the interest that the deceased owner or owners of *the interest* held on the date of death, subject to all encumbrances, reservations, and exceptions.

(b) *If the owners hold title to the interest in a survivorship tenancy, the death of all except the last survivorship tenant automatically terminates and nullifies any transfer on death beneficiary designations made solely by the deceased survivorship tenant or tenants without joinder by the last surviving survivorship tenant. The termination or nullification of any transfer on death beneficiary designations under this provision is effective as of the date of death of a deceased survivorship tenant. No affirmative act of revocation is required of the last surviving survivorship tenant for the termination or nullification of the transfer on death beneficiary designations to occur. If the last surviving survivorship tenant dies with no transfer on death beneficiary designation, the entire interest of that last surviving survivorship tenant must be distributed as part of the tenant's probate estate.*

(c) *If the owners hold title to the interest in a tenancy by the entireties, the death of the first tenant by the entireties automatically terminates and nullifies any transfer on death beneficiary designations made solely by that deceased first tenant without joinder by the remaining tenant by the entireties. The termination or nullification of any transfer on death beneficiary designations under this provision is effective as of the date of death of the first tenant by the entireties. No affirmative act of revocation is required of the remaining tenant by the entireties for the termination or nullification of the transfer on death beneficiary designations to occur. If the remaining tenant by the entireties dies with no transfer on death beneficiary designation, the entire interest of that remaining tenant must be distributed as part of the tenant's probate estate.*

(8) No rights of any lienholder, including, but not limited to, any mortgagee, judgment creditor, or mechanic's lienholder, can be affected by the designation of a transfer on death beneficiary. If any lienholder takes action to enforce the lien, by foreclosure or otherwise through a court proceeding, it is not necessary to join *any* transfer on death beneficiary as a party defendant in the action unless the transfer on death beneficiary has another interest in the real property.

(9) Any transfer on death of real property or of an interest in real property that results from a *transfer on death designation affidavit* designating a transfer on death beneficiary is not testamentary. *That transfer on death supersedes any attempted testate or intestate transfer of that real property or interest in real property.*

(10) *The execution and recording of a transfer on death designation affidavit is effective to terminate the designation of a transfer on death beneficiary in a transfer on death deed involving the same real property or interest in real property and recorded prior to the effective date of R.C. 5302.23.*

(11) *The execution and recording of a transfer on death designation affidavit is effective to bar the vesting of any rights of dower in a subsequent spouse of the owner of the real property who executed that affidavit unless the affidavit is revoked or changed.*

### **Deeds executed and recorded prior to the effective date of the act**

The act provides that the above-described provisions of the act do not affect any deed that was executed and recorded prior to the effective date of R.C. 5302.24, or any transfer on death beneficiary designation made pursuant to the law as it existed prior to that effective date. If that deed or designation is valid on the day prior to the effective date of R.C. 5302.24, the deed or designation continues to be valid on and after that effective date. A grantee of that deed need not execute a transfer on death designation affidavit that designates the same transfer on death beneficiary or beneficiaries as in the deed unless the grantee chooses to do so. (R.C. 5302.24.)

### **Disclaiming testamentary and nontestamentary succession to real and personal property**

Under continuing law, a disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in a specified manner provided in the law (R.C. 5815.36(B)(1)). The written instrument of disclaimer must be signed and acknowledged by the disclaimant and must contain all of the following (R.C. 5815.36(B)(3)):

- (1) A reference to the donative instrument;
- (2) A description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;
- (3) A declaration of the disclaimer and its extent.

Generally, under former law, if the interest disclaimed was created by a nontestamentary instrument, the disclaimer instrument had to be delivered personally or by certified mail to the trustee or other person who had legal title to, or possession of, the property disclaimed. The act specifies that a nontestamentary instrument includes, but is not limited to, a transfer on death designation affidavit. The act also provides

that if the interest disclaimed is created by a transfer on death designation affidavit, the disclaimer instrument must be filed with the county recorder of the county in which the real property that is the subject of that affidavit is located. (R.C. 5815.36(F)(1).) Under former law, if the interest disclaimed was created by a testamentary instrument, by intestate succession, by a transfer on death deed, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidenced ownership of the motor vehicle, watercraft, or outboard motor that was transferable on death, the disclaimer instrument had to be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate had been commenced, and an executed copy of the disclaimer instrument was required to be delivered personally or by certified mail to the personal representative of the decedent's estate. The act removes the reference to a transfer on death deed. (R.C. 5815.36(F)(2).)

### **Statutory forms**

Former law provided that a deed conveying any interest in real property, and in substance following the form set forth in the law, when duly executed in accordance with R.C. Ch. 5301. and recorded in the office of the county recorder, created a present interest as sole owner or as a tenant in common in the grantee and created a transfer on death interest in the beneficiary or beneficiaries. Upon the death of the grantee, the deed vested the decedent's interest in the beneficiary or beneficiaries. The act removes these provisions. Prior law also required that the deed in substance conform to the form described in former R.C. 5302.22 and provided that the form set forth in former R.C. 5302.22 could be used and was sufficient for its purpose. The act removes these provisions. (R.C. 5302.01 and 5302.22(A).)

### **Rules and definitions**

Former law stated that the rules and definitions contained in former R.C. 5302.22 (among other sections) applied to all deeds or other instruments relating to real estate, whether the statutory forms or other forms were used, where the instruments were executed on or after October 1, 1965, or in relation to the rules and definitions contained in former R.C. 5302.22 on or after the effective date of that section. The act removes the first reference to former R.C. 5302.22 and provides that the rules and definitions contained in former R.C. 5302.22, as it existed prior to the effective date of this amendment, apply to instruments executed on or after August 29, 2000 (the effective date of former R.C. 5302.22), and prior to the effective date of this amendment. The act also provides that the rules and definitions contained in current R.C. 5302.22 apply to instruments executed on or after the effective date of this amendment. (R.C. 5302.02.)

## **Transfer on death designation affidavit Medicaid estate recovery form**

Under prior law, the administrator of the Medicaid Estate Recovery Program was required to prescribe a form on which a beneficiary of a transfer on death deed, who survived the deceased owner of the real property or an interest in the real property or that was in existence on the date of death of the deceased owner, or such a beneficiary's representative was to indicate certain information. The county recorder had to obtain a properly completed form from the beneficiary of a transfer on death deed or the beneficiary's representative and send a copy of the form to the administrator of the Medicaid Estate Recovery Program before recording the transfer of the real property or interest in the real property under former R.C. 5302.22(C). The act removes the reference to a transfer on death deed and replaces it with a transfer on death designation affidavit and removes the cross-reference to former R.C. 5302.22(C) and replaces it with a cross-reference to current R.C. 5302.222. (R.C. 5302.221(B) and (C).)

## **REGULATION OF MORTGAGE LENDERS UNDER THE MORTGAGE LOAN LAW AND REGULATION OF MORTGAGE BROKERS UNDER THE MORTGAGE BROKERS LAW**

### **Background**

The Mortgage Loan Law (R.C. 1321.51 to 1351.60) prohibits any person from doing any of specified acts without having first obtained a certificate of registration from the Division of Financial Institutions. Among these acts are: (1) advertising, soliciting, or holding out that the person is engaged in the business of making residential mortgage loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate, (2) engaging in the business of lending or collecting the person's own or another person's money, credit, or choses in action for such non-first lien residential mortgage loans, or (3) employing or compensating mortgage loan originators licensed or who should be licensed under that Law to conduct the business of making residential mortgage loans. (R.C. 1321.52(A)(1)(a), (b), and (c), not in the act.)

The Mortgage Brokers Law (R.C. 1322.01 to 1322.12) prohibits any person from acting as a mortgage broker without first having obtained a certificate of registration 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 Ohio, and prohibits any person acting or holding that person's self out as a mortgage broker under the authority or name of a registrant or person exempt from registration without first having obtained a certificate of registration from the Superintendent (R.C. 1322.02(A)).



Am. Sub. H.B. 1 of the 128th General Assembly provided for the implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act") by requiring the licensing of "loan originators" (see **COMMENT 1**) who are employed by or associated with either a mortgage broker registered under the Mortgage Brokers Law or a mortgage lender registered under the Mortgage Loan Law, and made numerous revisions to the Mortgage Loan Law with respect to the regulation of mortgage lenders and to the Mortgage Brokers Law with respect to the regulation of mortgage brokers.

## **Overview of the act**

The act makes changes to the provisions in the Mortgage Loan Law and the Mortgage Brokers Law that were enacted or amended by Am. Sub. H.B. 1 to implement the S.A.F.E. Act.

### **Residential mortgage loans--requirement for registrant to maintain net worth and assets**

Under the former Mortgage Loan Law, a registrant engaged in residential mortgage loan activity could not conduct business in Ohio, unless the registrant: (1) maintained a net worth of at least \$50,000 and, for each certificate of registration, assets of at least \$50,000 either in use or readily available for use in the conduct of business, and (2) maintained in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. The act removes the requirement for a registrant engaged in residential mortgage loan activity to maintain the net worth and assets described in (1), above, in order to conduct business in Ohio. A registrant engaged in residential mortgage loan activity would still be required to be bonded, and a registrant that engages in lending under the Mortgage Loan Law other than residential mortgage loan activity would still be required to maintain a net worth and assets as described in (1), above. (R.C. 1321.533(A)(1) and 1321.53(B).)

### **Certain applications or renewal applications considered withdrawn**

#### **Mortgage Loan Law**

Under former law, if any application for a "certificate of registration" under the Mortgage Loan Law or any renewal application did not contain all of the information required under the respective law governing the application or renewal application, and if such information was not submitted to the Division of Financial Institutions within 90 days after the Superintendent requested the information in writing, the Superintendent could consider the application or renewal application withdrawn (R.C. 1321.53(A)(6) and (7)(b)). If an application for a mortgage loan originator license under

the Mortgage Loan Law or a renewal application did not contain all of the information required under the law governing the application or renewal application, and if that information was not submitted to the Superintendent of Financial Institutions within 90 days after the Superintendent requested the information in writing, the Superintendent could consider the application or renewal application withdrawn (R.C. 1321.531(F) and 1321.532(E)).

The act provides that if any of the applications or renewal applications described in the preceding paragraph does not contain all of the information required under the Mortgage Loan Law provisions governing the application or renewal application, and if that information is not submitted to the Division or the Superintendent *or to the Nationwide Mortgage Licensing System and Registry* within 90 days after the Superintendent *or the Nationwide Mortgage Licensing System and Registry* requests the information in writing, *including by electronic transmission or facsimile*, the Superintendent may consider the application or renewal application withdrawn (italicized language is added by the act) (R.C. 1321.53(A)(6) and (7)(b), 1321.531(F), and 1321.532(E)).

### **Mortgage Brokers Law**

Under prior law, if an application for a "mortgage broker certificate of registration" or an application for a loan originator license did not contain all of the information required under the Mortgage Brokers Law governing the applicable application, and if that information was not submitted to the Superintendent within 90 days after the Superintendent requested the information in writing, the Superintendent could consider the application withdrawn. The act provides that if an application described in the preceding sentence does not contain all of the information required under the Mortgage Brokers Law provisions governing the application and if that information is not submitted to the Superintendent *or to the Nationwide Mortgage Licensing System and Registry* within 90 days after the Superintendent *or the Nationwide Mortgage Licensing System and Registry* requests the information in writing, *including by electronic transmission or facsimile*, the Superintendent may consider the application withdrawn (italicized language is added by the act) (R.C. 1322.03(D) and 1322.031(G)).

### **Call reports**

The former Mortgage Loan Law required each licensee to submit to the Nationwide Mortgage Licensing System and Registry call reports or other reports of condition, which were required to be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require. The act applies the above requirement to each *mortgage licensee*. (R.C. 1321.55(B)(3).)

## **Test for mortgage loan originator license**

Formerly, the Mortgage Loan Law provided that an individual applying for a mortgage loan originator license was not considered to have passed the required written test unless the individual achieved a test score of at least 75% correct answers on all questions. The act adds the requirement that the individual is not considered to have passed the test unless the individual also achieves a test score of at least 75% correct answers on all questions relating to Ohio mortgage lending laws and the Ohio Consumer Sales Practices Act, R.C. Chapter 1345., as it applies to registrants and licensees. (R.C. 1321.535(A)(2).)

## **Definition of "mortgage broker"**

The Mortgage Brokers Law defines "mortgage broker" (see **COMMENT 2**) as excluding persons or entities specified in that Law, unchanged by the act. The act provides that the persons or entities excluded from the definition of "mortgage broker" are excluded only with respect to business engaged in or authorized by the person's charter, license, authority, approval, or certificate, or as otherwise authorized under a valid letter of exemption issued to a mortgage broker by the Superintendent of Financial Institutions. (R.C. 1322.01(G)(2).)

## **Definition of "residential mortgage loan"**

The former definition of "residential mortgage loan" in the Mortgage Brokers Law was any loan primarily for personal, family, or household use that was secured by a mortgage on a dwelling or on residential real estate upon which was constructed or intended to be constructed a dwelling. The act defines "residential mortgage loan" in that Law as any loan primarily for personal, family, or household use that is secured by a mortgage *or other equivalent consensual security interest* (added by the act) on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling. (R.C. 1322.01(X).)

## **No contest pleas to certain offenses**

### **Issuance of mortgage loan originator license, loan originator license, and mortgage broker certificate of registration**

The Mortgage Loan Law and Mortgage Brokers Law provide that upon the conclusion of the investigation required by the applicable Law, the Superintendent of Financial Institutions must issue a mortgage loan originator license or a loan originator license, whichever is applicable, to the applicant if the Superintendent finds that all of the required conditions are met. One of these conditions under former law was that the applicant had not been convicted of, or pleaded guilty to, any of the following in a

domestic, foreign, or military court: (1) during the seven-year period immediately preceding the date of application for licensure, any felony or a misdemeanor involving theft or (2) at any time prior to the date of application for licensure (for mortgage loan originator applicants) or at any time prior to the date the application for licensure is approved (for loan originator applicants), a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. The act additionally provides that the applicant for licensure must not have pleaded *nolo contendere* to any of the offenses specified in (1) and (2) in this paragraph in a domestic, foreign, or military court during the applicable period of time. (R.C. 1321.532(A)(4) and 1322.041(A)(3).)

The Mortgage Brokers Law provides that upon the conclusion of the investigation required by that Law, the Superintendent of Financial Institutions must issue a certificate of registration as a mortgage broker to the applicant if the Superintendent finds that all of the required conditions are met. One of these conditions under former law was that the applicant or any person whose identity was required to be disclosed on an application for a mortgage broker certificate of registration had not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court: (1) during the seven-year period immediately preceding the date of application for the certificate of registration, any felony or a misdemeanor involving theft or (2) at any time prior to the date of application for the certificate of registration, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. The act additionally provides that the applicant or any person whose identity is required to be disclosed on an application for a mortgage broker certificate of registration must not have pleaded *nolo contendere* to any of the offenses specified in (1) and (2) in this paragraph in a domestic, foreign, or military court during the applicable period of time. (R.C. 1322.04(A)(7).)

### **Revocation, suspension, or refusal to renew certificate of registration or license**

The Mortgage Loan Law permits the Division of Financial Institutions, upon written notice to a registrant or licensee stating the contemplated action, the grounds for the action, and the registrant's or licensee's reasonable opportunity to be heard on the action in accordance with the Administrative Procedure Act, to revoke, suspend, or refuse to renew any certificate or license issued under that Act, if it finds any of specified findings, including a finding under former law that the person had been convicted of or pleaded guilty to any criminal felony offense in a domestic, foreign, or military court or that the person had been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court. The act additionally provides that the Division may revoke, suspend, or refuse to

renew any certificate or license if it finds that the person has pleaded *nolo contendere* to any of the offenses described in this paragraph. (R.C. 1321.54(B)(1)(b) and (c).)

The former Mortgage Loan Law permitted the Superintendent, to protect the public interest and without a hearing, to suspend the certificate of registration or license of a person who was convicted of or pleaded guilty to a criminal violation of that Law or any criminal offense described in the preceding paragraph. The act additionally permits the Superintendent, to protect the public interest and without a hearing, to suspend the certificate of registration or license of a person who pleads *nolo contendere* to a criminal violation of that Law or any criminal offense described in the preceding paragraph. (R.C. 1321.54(H)(1)(a).)

The Mortgage Brokers Law provides that after notice and opportunity for a hearing conducted in accordance with the Administrative Procedure Act, the Superintendent of Financial Institutions may suspend, revoke, or refuse to issue or renew a certificate of registration or license if the Superintendent finds any of specified findings, including, under former law: (1) a conviction of or guilty plea to a felony in a domestic, foreign, or military court, or (2) a conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court. The act additionally provides that the Superintendent may revoke, suspend, or refuse to issue or renew a certificate of registration or license if it finds that the person has pleaded *nolo contendere* to any offense described in (1) or (2) in this paragraph. (R.C. 1322.10(A)(1)(b) and (c).)

The former Mortgage Brokers Law permitted the Superintendent, to protect the public interest and without a hearing, to suspend the mortgage broker certificate of registration or loan originator license of a registrant or licensee who was convicted of or pleaded guilty to a criminal violation of that Law or any criminal offense described in the preceding paragraph. The act additionally permits the Superintendent, to protect the public interest and without a hearing, to suspend the mortgage broker certificate of registration or loan originator license of a registrant or licensee who pleads *nolo contendere* to a criminal violation of that Law or any criminal offense described in the preceding paragraph. (R.C. 1322.10(F)(1)(a).)

### **Failure to notify Division of Financial Institutions of certain offenses**

The Mortgage Loan Law prohibits any registrant, licensee, or applicant while involved in the business of making or offering to make residential mortgage loans, from failing to notify the Division of Financial Institutions within 30 days after knowing any of specified information, including, under former law: (1) that the registrant, licensee,

or applicant had been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court, or (2) that the registrant, licensee, or applicant had been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court. The act prohibits any registrant, licensee, or applicant described above from also failing to notify the Division within 30 days after knowing that the registrant, licensee, or applicant pleaded *nolo contendere* to any of the offenses described in (1) or (2) in this paragraph. (R.C. 1321.59(H)(1) and (2).)

The prior Mortgage Brokers Law prohibited any registrant, licensee, person required to be registered or licensed under that Law, or individual disclosed in an application as required under that Law from failing to notify the Division of Financial Institutions within 30 days after (1) being convicted of or pleading guilty to a felony in a domestic, foreign, or military court, or (2) being convicted of or pleading guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities. The act prohibits any registrant, licensee, person, or individual described in this paragraph from also failing to notify the Division within 30 days after pleading *nolo contendere* to any of the offenses described in (1) or (2) in this paragraph and specifies that the conviction or plea of guilty or *nolo contendere* of an offense described in (2) is in a domestic, foreign, or military court. (R.C. 1322.07(D)(1) and (2).)

### **Exemptions from registration**

A credit union service organization seeking exemption from registration under the Mortgage Loan Law or the Mortgage Brokers Law must submit an application to the Superintendent of Financial Institutions that includes specified information, including, under former law, an attestation that the organization and its owners, officers, or partners having control of the organization had not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court: (1) during the seven-year period immediately preceding the date of application for exemption, any felony or a misdemeanor involving theft or (2) at any time prior to the date of application for exemption, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. The act additionally requires the application for exemption to include an attestation that the organization and its owners, officers, or partners having control of the organization have not pleaded *nolo contendere* to any of the offenses described in (1) and (2) in this paragraph in a domestic, foreign, or military court during the applicable period of time. (R.C. 1321.522(A)(3)(b) and 1322.023(A)(3)(b).)

A mortgage banker seeking exemption from registration pursuant to the Mortgage Brokers Law must submit an application to the Superintendent of Financial Institutions that includes specified information, including, under former law, an attestation that the mortgage banker and its owners, officers, or partners having control of the business had not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court: (1) during the seven-year period immediately preceding the date of application for exemption, any felony or a misdemeanor involving theft or (2) at any time prior to the date of application for exemption, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. The act additionally requires the application for exemption to include an attestation is that the mortgage banker and its owners, officers, or partners having control of the business have not pleaded *nolo contendere* to any of the offenses specified in (1) and (2) in this paragraph in a domestic, foreign, or military court during the applicable period of time. (R.C. 1322.022(A)(3)(b).)

### **Interest in an appraisal company**

The former Mortgage Brokers Law provided that, except as otherwise described in the following sentence, no registrant, or any member of the immediate family of an owner of a registrant, could own or control a majority interest in an appraisal company. This prohibition did not apply to any registrant, or any member of the immediate family of an owner of a registrant, who, on October 16, 2009 (the effective date of the amendment to this provision by Am. Sub. H.B. 1 of the 128th General Assembly), directly or indirectly owned or controlled a majority interest in an appraisal company. However, such ownership or control was subject to specified conditions, one of which was that if the registrant was convicted of or pleaded guilty to a criminal violation of the Mortgage Brokers Law or to a felony in a domestic, foreign, or military court, the Superintendent of Financial Institutions could, in addition to any of the disciplinary actions authorized under R.C. 1322.10, order the registrant or members of the immediate family of an owner of a registrant to divest their interest in the company. The act adds the condition that if the registrant pleads *nolo contendere* to a criminal violation of the Mortgage Brokers Law or to a felony in a domestic, foreign, or military court, the Superintendent of Financial Institutions may, in addition to any of the disciplinary actions authorized under R.C. 1322.10, order the registrant or members of the immediate family of an owner of a registrant to divest their interest in the company. The act also provides that the above prohibition does not apply to any registrant, or any member of the immediate family of an owner of a registrant, who, on *January 1, 2010*, directly or indirectly owns or controls a majority interest in an appraisal company. (R.C. 1322.074(A) and (B)(3).)

## Miscellaneous changes

### Definition of "loan processor or underwriter"

The Mortgage Loan Law and Mortgage Brokers Law define "loan processor or underwriter" as 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 (in the Mortgage Loan Law) or a licensed loan originator or registered loan originator (in the Mortgage Brokers Law). For purposes of these provisions, "clerical or support duties" includes certain activities, including the following under former law: the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan. The act modifies former law by providing that for purposes of the above definitions of "loan processor or underwriter" in the Mortgage Loan Law and the Mortgage Brokers Law, *"to perform clerical or support duties" means to do all of the following activities: receiving, collecting, distributing, and analyzing* information common for the processing or underwriting of a residential mortgage loan, and the activities unchanged from either Law (modified language is in italics). (R.C. 1321.51(V) and 1322.01(T).)

### Unique identifier

The former Mortgage Brokers Law *required* each licensee to register with, and maintain a valid unique identifier issued by, the Nationwide Mortgage Licensing System and Registry. It prohibited any person from using a licensee's unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008." A violation of this prohibition was a misdemeanor of the first degree.

Instead of the above requirement for a licensee, the act *prohibits* any person acting as a mortgage broker or loan originator from failing to register with, and maintaining a valid unique identifier issued by, the Nationwide Mortgage Licensing System and Registry. It prohibits any person from using a mortgage broker's or loan originator's (instead of licensee's) unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008." A violation of either prohibition is a misdemeanor of the first degree. (R.C. 1322.02(C) and 1322.99(C).)

### Good faith estimate statement

The Mortgage Brokers Law requires a registrant or licensee to deliver to the buyer, at the same time that the registrant or licensee delivers the residential mortgage loan origination disclosure statement, a good faith estimate statement that discloses the amount of or range of charges for the specific settlement services the buyer is likely to incur in connection with the residential mortgage loan. The good faith estimate



statement, under a former provision, was required to meet the requirements of the "Real Estate Settlement Procedures Act" and, under a former provision, was required to include the underlined notice specified in that Law in at least ten-point type, new Roman style.

The act requires a registrant or licensee to deliver to the buyer, at the same time that the registrant or licensee delivers the residential mortgage loan origination disclosure statement, *both of the following documents: (1) a good faith estimate statement as in the law described above, and (2) an underlined notice in at least ten-point type, new Roman style, as follows (notice specified in the law is unchanged). (Modified language and restructuring are in italics.)* (R.C. 1322.062(D).)

### **Renewal of loan originator license**

The Mortgage Brokers Law provides that a loan originator license may be renewed annually on or before the 31st day of December if the Superintendent finds that all of specified conditions are met. One of these conditions under former law was that the applicant met the conditions set forth in the Mortgage Brokers Law for the initial issuance of a loan originator license. The act provides that an applicant who was issued a loan officer license prior to January 1, 2010, and has continuously maintained that license is not required to meet the condition described in R.C. 1322.031(B)(1)(b) (successful completion of four hours of instruction in a course or program of study reviewed and approved by the Superintendent concerning state lending laws and the Ohio Consumer Sales Practices Act, as it applies to registrants and licensees). (R.C. 1322.041(B)(3).)

## **Consumer Sales Practices Act**

### **Former and continuing law**

For purposes of the Consumer Sales Practices Act (CSPA), "loan originator,"<sup>1</sup> under former law, had the same meaning as in R.C. 1322.01, and included a "mortgage loan originator" as defined in R.C. 1321.51 (see **COMMENT 1**), except that, under continuing law, it does not include: (1) an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of Ohio, another state, or the United States, (2) an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union, or (3) an employee of an affiliate that (a) controls, is controlled by, or is under common control

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<sup>1</sup> Am. Sub. H.B. 1 if the 128th General Assembly eliminated the "loan officer" license and created the "mortgage loan originator" and "loan originator" license. It made conforming changes in other areas of law, including the Consumer Sales Practices Act, by replacing references to "loan officer" to "loan originator."

with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration. The prior CSPA defined "mortgage broker" as having the same meaning as in R.C. 1322.01 (see **COMMENT 2**), with substantially the same exceptions as in the definition of "loan originator" in this paragraph. (R.C. 1345.01(H) and (J).)

### **Operation of the act**

The act replaces the term "loan originator" in the CSPA with "loan officer" and defines the "loan officer" as an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; 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; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a loan originator as defined in R.C. 1322.01(E)(1) (Mortgage Brokers Law) and excludes the same persons as in continuing law above. The act defines "mortgage broker" for purposes of the CSPA as any of the following: (1) a person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance, (2) a person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information, or (3) a person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans. It retains the same exceptions as in continuing law. (R.C. 1345.01(H) and (J).)

The act replaces "loan originator" with "loan officer" in other provisions of the CSPA (R.C. 1345.01(A) and (C), 1345.05(G), and 1345.09(C)(2)), in R.C. 1343.011(C)(2)(a) (interest in residential mortgage loans), and in R.C. 1349.31(B) and 1349.43(A) and (B) (consumer protection laws).

### **Credit unions' compliance with S.A.F.E. Act**

Former law provided that compliance by a credit union insured by a credit union share guaranty corporation established under R.C. Chapter 1761., the subsidiaries of the credit union, and the loan originators employed by the credit union was required to be determined by rules adopted by the Superintendent of Financial Institutions in

accordance with the Administrative Procedure Act. The act provides for such compliance to be determined by the rules adopted by the Superintendent, *unless otherwise preempted by federal law* (added by the act). (R.C. 1733.252(C).)

### **Transition provisions of Am. Sub. H.B. 1 of the 128th General Assembly**

Under former uncodified law, the provisions of Am. Sub. H.B. 1 amending or enacting various sections in the Mortgage Loan Law and Mortgage Brokers Law and related laws applied on and after January 1, 2010. The Division of Financial Institutions is required to begin accepting applications for a mortgage loan originator license, and applications for an exemption from registration under the Mortgage Loan Law or the Mortgage Brokers Law on the effective date of Am. Sub. H.B. 1 (October 16, 2009). Individuals holding a valid mortgage lender certificate of registration, mortgage broker certificate of registration, or loan officer license as of January 1, 2010, are not required to be in compliance with the requirements of Am. Sub. H.B. 1 until the first renewal of that certificate or license after that date. (Section 745.60 of Am. Sub. H.B. 1.)

The act modifies the transition provisions described in the first sentence of the preceding paragraph by providing that the provisions of Am. Sub. H.B. 1 amending or enacting various sections in the Mortgage Loan Law and Mortgage Brokers Law and related laws apply on and after January 1, 2010 (continuing law), *unless otherwise provided as described in this paragraph*. The Division of Financial Institutions is required to begin accepting applications for a mortgage loan originator license, and applications for an exemption from registration under the Mortgage Loan Law or Mortgage Brokers Law on October 16, 2009 (continuing law). In order to continue to operate as an exempt entity, any credit union service organization in operation as of January 1, 2010, that seeks exemption from registration under the Mortgage Loan Law must obtain a valid letter of exemption issued by the Superintendent of Financial Institutions not later than July 1, 2010. Any person performing the duties of a mortgage loan originator as of January 1, 2010, must obtain a mortgage loan originator license from the Division not later than January 1, 2011, in order to continue to perform those duties. In order to continue to operate as an exempt entity, any mortgage banker or credit union service organization in operation as of January 1, 2010, that seeks exemption from registration under the Mortgage Brokers Law must obtain a valid letter of exemption issued by the Superintendent not later than May 1, 2010. Any individual who, as of January 1, 2010, performs the duties of a loan originator and is employed by or associated with any person or entity listed in R.C. 1322.01(G)(2) must obtain a loan originator license from the Superintendent not later than May 1, 2010, in order to continue to perform those duties. (Section 3, amending Section 745.60(A) and (B) of Am. Sub. H.B. 1.)

Under former section 745.60 of Am. Sub. H.B. 1, R.C. 1733.252 (compliance with the S.A.F.E. Act by credit unions, subsidiaries of credit unions, and loan originators

employed by credit unions) and R.C. 1733.26 (loan officers of credit unions), as amended or enacted by Am. Sub. H.B. 1, applied on and after January 1, 2010. Under the act, those sections instead apply on and after January 1, 2011. (Section 3, amending Section 745.60(D) of Am. Sub. H.B. 1.)

### **Emergency clause**

The act provides that the act is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the act makes changes to the sections amended or enacted by Am. Sub. H.B. 1 of the 128th General Assembly in the implementation of the S.A.F.E. Act, and those sections apply on and after January 1, 2010. (Section 7.)

### **Applicability of sections**

The act provides that the sections in the Mortgage Loan Law and the Mortgage Brokers Law that are amended by the act apply on and after January 1, 2010. It further provides that R.C. 1733.252 (see "**Credit unions' compliance with S.A.F.E. Act,**" above), as amended by the act, applies on and after January 1, 2011. (Section 5.)

## **DELINQUENT TAX AND ASSESSMENT COLLECTION FUND**

### **Continuing law**

Under continuing law, a Delinquent Tax and Assessment Collection (DTAC) Fund is established in each county treasury. The Fund receives 5% of collections of delinquent property taxes, manufactured home taxes, and special assessments. In most counties, the Fund can be used only to pay the expenses of the county prosecuting attorney and treasurer in collecting additional delinquent taxes and assessments, including proceedings related to foreclosure of the state's lien for such taxes. In any county with a 2006 population of more than 100,000, the treasurer and prosecuting attorney can spend any DTAC Fund money not needed for delinquent tax collection to assist townships and municipal corporations to abate foreclosed residential nuisances; the prosecuting attorney also can spend excess DTAC Fund money to prosecute violations of criminal and civil laws governing real estate and related transactions, including fraud and abuse. The total amount spent for purposes other than delinquent tax collection cannot exceed \$3 million per year. In Cuyahoga County, which is the only county authorized to create a county land reutilization corporation (see R.C. Chapter 1724.), DTAC Fund money can be used to fund the corporation. (R.C. 321.261(A) and (C)--not in the act.)

Additionally, as amended by Am. Sub. H.B. 1 of the 128th General Assembly, continuing law permits the treasurer or prosecuting attorney of any county to use

certain excess money in the DTAC Fund to prevent residential mortgage foreclosures in the county and to address problems associated with other foreclosed real property. Specifically, the DTAC money can be used to provide financial assistance in the form of loans to borrowers in default on their home mortgages, including for the payment of late fees, to clear arrearage balances, and to augment moneys used in the county's foreclosure prevention program. The amount spent for those purposes in any year cannot exceed the amount that would result in the DTAC Fund reserve falling below 20% of the amount spent the preceding year on collecting delinquent taxes. DTAC money also may be spent to assist cities, villages, and townships in nuisance abatement of "deteriorated residential buildings in foreclosure" or "vacant, abandoned, tax-delinquent, or blighted real property." (R.C. 321.261(D)--not in the act.)

### **Operation of the act**

The act permits a prosecuting attorney or treasurer of a county with a population of greater than 800,000 but less than 900,000 to determine that the amount of money appropriated to the respective office from the DTAC Fund exceeds the amount required to be used by that office in collecting additional delinquent taxes and assessments, including proceedings related to foreclosure of the state's lien for such taxes, as prescribed under continuing law. If a prosecuting attorney or treasurer of a county with that population makes such a determination, the prosecuting attorney or treasurer may expend up to 50% of the excess to pay the expenses of operating the respective office that otherwise would be payable from appropriations from the county general fund. (Section 6.) The act provides that this section expires December 31, 2011.

### **REQUIREMENTS FOR INSTRUMENTS OR DOCUMENTS RECORDED WITH COUNTY RECORDER**

Under preexisting law, except for certain exceptions described below, an instrument or document that was presented for recording was required to comply with specified standard format requirements, among which were: (1) print size not smaller than a computer font size of ten, and (2) a one and one-half inch margin across the top of each of the remaining pages of the instrument or document. The act modifies that law by instead requiring: (1) *legible* print size not smaller than a font (instead of computer font) size of ten, and (2) a one and one-half inch margin of *blank space* across the top of each of the remaining pages of the instrument or document *to accommodate any certification or indorsement of the county engineer, county auditor, or county recorder, as may be required by law* (modifications made by the act are italicized). (R.C. 317.114(A)(1) and (9).)

Prior law required the county recorder to accept for recording an instrument or document that did not conform to the format requirements and required the county

recorder to charge and collect the following additional fees for each such instrument or document: an additional base fee for the recorder's services of \$10 and a housing trust fund fee of \$10 (R.C. 317.114(B)). The act provides that the county recorder must accept for recording an instrument or document that does not conform to the format requirements but prohibits the county recorder from charging and collecting the additional fees specified above for page numbers, hand-written, typed, or printed initials, bar codes, copyright information, trailing portions of signatures, plat description of any oil and gas well location or drilling unit or lease, or any other incidental information that is not essential to the recording process or to the legal validity of the instrument or document and that may appear in either of the side margins or in the bottom margin. The act additionally provides that notary stamps and seals and any signatures and initials that may appear within the instrument or document need not satisfy the font size requirement and that no additional fees may be charged or collected by the county recorder for such a nonconformance. (R.C. 317.114(B)(2).)

## **OTHER PROVISIONS**

### **Leases to take and remove halite and coal**

Under continuing law, the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, the Attorney General, and the Governor, may make leases to parties making application for leases granting permission to take and remove halite from beneath the surface of Headlands State Park in Lake County, and coal by underground mining methods from beneath the surface of Jefferson State Park in Jefferson County if the Chief finds that such taking and removal will in no way affect the surface of the land or the use of the land as a public park. As the Chief deems in the best interest of the state, those leases may be made either upon a royalty or rental basis, and may be either for a term of years or until the economic extraction of the mineral covered by the lease has been completed. Upon request from the lessee of any such lease, the Chief may consent to its cancellation, but any equipment or improvement thereon owned by the lessee may be held as security by the Chief for payment of all rentals, royalties, and damages due the state at the time of cancellation.

The act applies the above authority of the Chief of the Division of Parks and Recreation to make leases to parties making application for leases granting permission to take and remove coal by underground mining methods from beneath the surface of Burr Oak State Park in Athens and Morgan counties pursuant to lease agreements and real estate transactions that have been entered into not later than January 1, 2011, if the Chief finds that such taking and removal will in no way affect the surface of the land or the use of the land as a public park. (R.C. 1541.083.)

## Release of reversionary interest--real estate in Auglaize County

The act authorizes the Governor to execute a release of reversionary interest in the name of the state of Ohio releasing the state's reversionary interest retained in the Governor's Deed dated August 2, 1978, and authorized by Sub. H.B. 489 of the 108th General Assembly. That deed was recorded on June 29, 1979, at Deed Volume 248, Page 193 in the records of the Auglaize County Recorder and was a corrective deed to a Governor's Deed dated November 20, 1969, which was recorded on January 20, 1970, at Deed Volume 207, Page 157 in the records of the Auglaize County Recorder. The reversionary interest retained by the state in these deeds provided for the real estate to revert to the state if the real estate ceased to be used for youth recreation center purposes or related civic purposes.

The act requires the Auditor of State, with the assistance of the Attorney General, to prepare a release of reversionary interest to the above-described real estate. The release must be executed by the Governor in the name of the state of Ohio, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the Wapakoneta Family Young Men's Christian Association, Inc. The Wapakoneta Family Young Men's Christian Association, Inc., must present the release for recording in the Office of the Auglaize County Recorder. (Section 8.)

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### COMMENT

1. R.C. 1322.01(E)(1) (Mortgage Brokers Law) defines "loan originator" as 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 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.

"Loan originator" does not include any of the following (R.C. 1322.01(E)(2)):

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

(b) A person licensed under R.C. Chapter 4735., 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, 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) An employee of a registrant 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 person can or will perform any of the activities of a loan originator;

(e) A mortgage loan originator licensed under R.C. 1321.51 to 1321.60 (Mortgage Loan Law), 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 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 to obtain or apply for financing to purchase the manufactured home, mobile home, or industrialized unit, or (iv) assist the borrower in completing a residential mortgage loan application.

(h) 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.



R.C. 1321.51(P)(1) and (2) (Mortgage Loan Law) defines "mortgage loan originator" in substantially the same manner as in the Mortgage Brokers Law, above, excludes substantially the same individuals excluded from the definition of "loan originator" in the Mortgage Brokers Law, but does not exclude an individual described in (h) in the preceding paragraph.

R.C. 1321.51(P)(3) provides that an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to existing mortgage transactions is not considered a mortgage loan originator for purposes of the Mortgage Loan Law until July 1, 2011, unless such delay is denied by the United States Department of Housing and Urban Development.

2. Subject to certain exceptions, R.C. 1322.01(G)(1) defines "mortgage broker" as any of the following:

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien residential mortgage loans.

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## HISTORY

ACTION	DATE
Introduced	04-30-09
Reported, S. Judiciary - Civil Justice	10-06-09
Passed Senate (32-0)	10-28-09
Reported, H. Civil & Commercial Law	12-10-09
Passed House (91-7)	12-16-09
Senate concurred in House amendments (31-1)	12-17-09