

In the
Supreme Court of Ohio

SONDRA ANDERSON,

Plaintiff- Respondent,

v.

BARCLAYS CAPITAL REAL ESTATE
INC. d/b/a HOMEQ SERVICING,

Defendant- Petitioner.

: Case No. 2011-0908
:
:
: On Review of Certified Questions
: from the United States District Court
: Northern District of Ohio,
: Western Division
:
: Case No. 3:09-cv-02335-JGC
:
:
:

**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO
IN SUPPORT OF RESPONDENT SONDRA ANDERSON**

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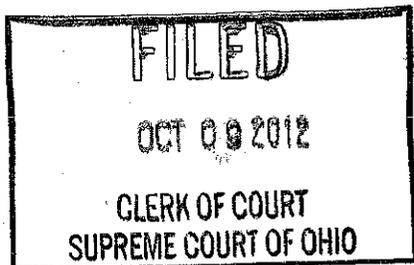


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INTRODUCTION

This case asks whether Ohio's primary consumer protection statute, the Consumer Sales Practices Act ("CSPA") applies to mortgage servicing. It does.

That question comes to this Court with the following facts (true for these purposes because the federal court is considering a motion to dismiss). Defendant HomEq was responsible for servicing the residential mortgage of Plaintiff Sondra Anderson. HomEq performed that role because the mortgage was held by a paper entity with no offices or employees (the mortgage is held by Morgan Stanley Home Equity Loan Trust 2005-2 Mortgage Pass Through Certificates, Series 2005-2, after transfer from Meritage Mortgage Corporation). All of Anderson's interactions about her mortgage were with HomEq. HomEq took her payments and answered any questions she had about the loan. The problem is that HomEq took over \$2,500 of payments, but did not apply them to the outstanding balances for various loan obligations. Sec. Am. Compl. ¶¶ 23, 25. That allegation states a CSPA claim.

The CSPA is designed to "protect consumers from unscrupulous suppliers in a manner not afforded under the common law." *Elder v. Fischer* 129 Ohio App. 3d 209, 214 (1st Dist. 1998). It is a remedial law that must be construed liberally in favor of consumers. *Einhorn v. Ford Motor Co.*, 48 Ohio St. 3d 27, 29 (1990). The CSPA broadly prohibits unfair or deceptive acts or practices in connection with the sale or transfer of goods or services for personal, family, or household purposes. The certified questions ask only whether HomEq was engaged in a consumer transaction, leaving for later whether it acted unfairly or deceptively. HomEq's actions comfortably fit that definition—it processed homeowner payments and offered customers other related services. Like any business that makes money from consumers by handling money for consumers, HomEq is subject to the CSPA.

STATEMENT OF AMICUS INTEREST

The State has a strong interest in the rigorous and consistent enforcement of Ohio's consumer protection laws. The State has a particular interest in ensuring that Ohio homeowners are afforded all protections they are due under the law. Mortgage servicing is a business that affects thousands of Ohio homeowners. And it is an industry recently under scrutiny by federal regulators. The same conduct at issue here—misdirecting homeowners' payments—has been the subject of two recent Federal Trade Commission settlements. The State has a co-equal interest in regulating bad actors in the mortgage servicing industry.

STATEMENT OF THE CASE AND FACTS

Sondra Anderson bought a house in Norwalk, Ohio in 2005 and financed the purchase through Meritage Mortgage Corporation. Sec. Am. Compl. ¶ 8. Meritage sold the mortgage to a holding entity that pools mortgages. *Id.* ¶ 16; HomEq Br. at 2. Because the pooling entity existed only on paper, HomEq supplied the servicing. HomEq collected Anderson's payments and distributed the money to the noteholder, the property insurer, the taxing authorities, and others. *Id.* ¶¶ 14-16. HomEq provided a helpline and is also responsible for handling Anderson's questions about the mortgage. *Id.* ¶ 71. And HomEq had the power to purchase homeowners' insurance for Anderson if she failed to do so (because it is an obligation she assumed by taking the mortgage). *Id.*

These obligations made HomEq, not the noteholder, Anderson's only point of contact about her mortgage. When Anderson raised concerns about how her money was applied to various mortgage obligations, she contacted HomEq. *Id.* at Ex. 3. Anderson has two specific concerns. One, that HomEq applied her mortgage payments—contrary to law—to mysterious purposes such as “additional payments” or “other” instead of to her mortgage obligations such as

principal, interest, and taxes. *Id.* at ¶ 23. And two, that HomEq cannot even account for \$2,500 entrusted to it for distribution according to her mortgage obligations. *Id.* at ¶ 25.

Anderson's efforts to sort out these problems with HomEq were met mostly with silence. *Id.* at ¶ 22. Anderson then sued, raising claims under the CSPA and other theories. After removal to federal court, HomEq moved to dismiss the CSPA claim. Following some additional briefing, Judge Carr certified the following questions to this Court:

1. Does the servicing of a borrower's residential mortgage loan constitute a "consumer transaction" as defined in the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01(A); and
2. Are entities that service residential mortgage loans "suppliers... engaged in the business of effecting or soliciting consumer transactions" within the meaning of the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01(C).

Certification Order, at 4.

The question of whether HomEq's actions were unfair or deceptive is not currently before the Court. Rather, the certified questions ask whether mortgage servicing and mortgage servicers are covered by the CSPA.

ARGUMENT

Ohio's Proposition of Law No. I:

The servicing of a residential mortgage loan is a "consumer transaction" under the Ohio Consumer Sales Practices Act.

A. Mortgage servicing meets the plain definition of a consumer transaction.

A CSPA "consumer transaction" includes "transfer of . . . a service . . . to an individual for . . . personal use." R.C. 1345.01(A). The facts alleged here—true in the posture of the case—reveal several services that HomEq provided to Anderson for her personal use.

- HomEq accepted and distributed Anderson's mortgage payments while retaining discretion regarding applicable fees and penalties. Certification Order, at 2-3.
- HomEq had the power to purchase homeowners' insurance for Anderson. *Id.*

- HomEq maintained a call center to answer questions. *Id.*
- HomEq “held itself out” as having the power to select which customers facing possible default would get loan modifications. *Id.*

All of these are services “transferred” to Anderson and for which HomEq was compensated out of the stream of Anderson’s mortgage payments. Certification Order at 3. When HomEq processed Anderson’s mortgage payments by distributing them to the noteholder, the taxing authorities, and others, it transferred a service to her. Sec. Am. Compl. ¶¶ 16-18. And when HomEq responded to Anderson’s inquiries about her payment history, it transferred a service to her. *Id.* ¶¶ 22-23. When HomEq offered a helpline, it offered Anderson a service. *Id.* ¶ 71. Anderson’s allegations match the statutory requirement that an entity subject to the CSPA must “transfer . . . services” to a consumer. R.C. 1345.01(A).

HomEq eventually sold its servicing rights to another company. Sec. Am. Compl. ¶ 73. The successor’s description of how it continued HomEq’s business confirms that the business offered services to customers like Anderson. The successor details a 15-point “loan servicing customer commitment plan.” Sec. Am. Compl. at Ex. 5. Among these commitments are promises that it serves customers by:

- posting customer payments “timely”;
- providing information about credit counseling services;
- encouraging customers to use its escrowing “service”; and
- offering “flexible options” for making payments.

Id.

All of these services are part of what the successor offers customers when it has the “privilege” of servicing a loan. *Id.* These descriptions underscore the conclusion that mortgage servicing “transfer[s] . . . service[s]” to consumers, and therefore fits the CSPA’s defined scope.

The close fit of mortgage servicers with the statutory text—covering “transfers . . . of services . . . to consumers”—equals a yes answer to the first certified question. That is why four federal courts in Ohio that have answered the question side with the consumer and the State here. Those courts have concluded that mortgage servicing “involve[s] a provision of servicing and payment collection services, to which the” Act applies. *Jent v. BAC Home Loans Servicing, LP*, No. 1:10-cv-783, 2011 U.S. Dist. LEXIS 79652, *10 (N.D. Ohio July 21, 2011). And that mortgage servicers do not fall “within the class of persons whose business dealings with consumers do not constitute ‘consumer transactions’” under the Act. *Kline v. Mortgage Electronic Registration System*, No. 3:08-cv-408, 2011 U.S. Dist. LEXIS 60733, *16 (S.D. Ohio March 29, 2011); *see also Munger v. Deutsche Bank*, No. 11-CV-00585, 2011 U.S. Dist. LEXIS 77790 at *30-31 (N.D. Ohio July 18, 2011); *Dowling v. Litton Loan Servicing*, No. 2:05-0098, 2006 U.S. Dist. LEXIS 87098, *43-44 (S.D. Ohio Dec. 1, 2006).

This straightforward analysis that the CSPA applies because HomEq “transfer[ed]” “services” to Anderson is further confirmed by the types of transactions that do not duck CSPA scrutiny.

The CSPA covers transactions “whether or not the person deals directly with the consumer.” R.C. 1345.01(C). Even though HomEq and Anderson did not directly negotiate price and services as would, for example, a car buyer and a dealer, the CSPA still governs the transfer of services. Ohio authority is plentiful that the CSPA covers indirect transactions. An assignee of a mortgage can be liable for its own unfair practices even though, by definition, it did not have the initial contact with the consumer. *See* R.C. 1345.091(A). A towing company engaged in a consumer transaction when it removed a customer’s vehicle despite no direct contact between the two. *Estep v. Johnson*, 123 Ohio App. 3d 307, 319 (10th Dist. 1998). And a

manufacturer fell within the Act despite an intervening supplier that had the direct customer contact. *Miner v. Jayco, Inc.*, 6th Dist. No. F-99-001, 1999 Ohio App. LEXIS 3944, *15 (Aug. 27, 1999). Car dealers also can face CSPA liability even when they are not the final link in the chain reaching the consumer. See, e.g., *Garner v. Borcharding Buick, Inc.*, 84 Ohio App. 3d 61, 64 (1st Dist. 1992).

The CSPA even reaches commercial conduct when the consumer is forced into the transaction. The unwilling tow truck customer is protected from the unscrupulous operator. *Estep*, 123 Ohio App. 3d 307. And debt collectors are not immune from the CSPA merely because their actions are at the behest of another commercial enterprise (what consumer ever hired a debt collector). *Broadnax v. Green Credit Serv.*, 118 Ohio App. 3d 881, 893 (2d Dist. 1997) (“debt collection actions . . . are subject to the provisions of the OCSA”); *Celebrezze v. United Research, Inc.*, 19 Ohio App. 3d 49, 51 (9th Dist. 1984) (debt collector “engaged in . . . consumer transactions (i.e. payment)”); *Liggins v. May Co.*, 337 N.E.2d 816, 818 (Ohio C.P. 1975) (same); *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 977 (N.D. Ohio 2009) (“the act of collecting a debt is considered a consumer transaction for the purposes” of the CSPA).

Despite all of this, HomEq protests that it is beyond the reach of the CSPA because it contracted only with the noteholders and never transferred services to its customers. HomEq Br. at 10. That is blind to the services—funded by customers’ own money—that HomEq provided. Some of those services, like the helpline, were primarily for the benefit of customers, not noteholders. Other services, like paying property taxes or homeowner’s insurance, benefit both, but are more fairly categorized as services to the customer because many mortgage contracts leave to the customer the option of how to pay these costs (escrow or direct payment). HomEq’s insistence that it worked only for the noteholders also sidesteps the debt collection cases, which

place CSPA liability on entities with even less connection to the consumer than mortgage servicers.

HomEq's efforts to avoid CSPA coverage are especially troubling because the mortgage servicing industry leaves consumers with no choice about its services. The CSPA's protective role is at its apex when the consumer does not choose the partner. With voluntary transactions, the consumer has the ability to walk away from the supplier if it breaches the CSPA and at least limit the damage to the initial breach. But no matter how often a consumer's mortgage servicer breaches the Act—misapplying a payment or charging an illegal fee—the consumer is stuck with that servicer. The CSPA's statutory protection is especially important when the customer has no options for disengaging from the wayward servicer. The statute's plain text covers the services HomEq provided here, and the animating policy of the statute is conspicuous in these forced relationships.

The CSPA protects consumers from deceptive acts by those who receive consumer money in exchange for consumer services. HomEq fits that mold. It earns money from consumer's mortgage payments. And it provides services that primarily benefit the consumer, such as call-center help and payment distribution.

B. The CSPA's exemption for pure real estate transactions does not exclude mortgage servicing.

HomEq resists the conclusion of the statutory text by pointing to one narrow exemption (HomEq does not, though, claim the financial-institutions exemption, which the federal court has already ruled out, *see* Cert. Or. at 2). The CSPA "has no application in a 'pure' real estate transaction," *Brown v. Liberty Clubs, Inc.*, 45 Ohio St. 3d 191, 193 (1989), because "[r]eal estate . . . does not fall within the definition of a good, service, franchise or intangible as provided by the statute," *Elder*, 129 Ohio App. 3d at 216-17.

HomEq tries to squeeze into this exemption. But the corset is drawn too tight. The pure-real-estate exemption carves out only those transactions that are “necessary to effectuate a ‘pure’ real estate transaction.” *United States Bank v. Amir*, 8th Dist. No. 97438, 2012-Ohio-2772, ¶ 42 (collecting cases). Mortgage servicing is hardly necessary to a pure real estate transaction. Mortgages themselves are not needed to transfer real property interests. Mortgages are only a convenience that makes these transfers more accessible. And we know that mortgages are not exempt as part of pure real-estate transactions because the statute tells us so. “[T]ransactions in connection with residential mortgages” are specifically covered under the CSPA (unless exempted by an *entity* exemption if, for example, the loan is from a bank). R.C. 1345.01(A). If mortgages do not qualify for this exception, mortgage servicing cannot.

HomEq lists case after case about the real-estate exemption, but never confronts the statute’s plain rebuttal of the argument that mortgage servicing cannot qualify for this exemption because mortgaging itself does not qualify. Indeed, the listed cases prove the State’s point, not HomEq’s.

Cases applying the real estate exception mostly track whether the service was “necessary” for the sale of real estate. The CSPA thus applies to “title companies in the productions of the closing documents” for a real estate transaction. *Prop. Asset Mgmt. v. Shaffer*, 3d Dist. No. 14-08-06, 2008-Ohio-4645, ¶ 11; *see also ABN AMRO Mortgage Group, Inc. v. Arnold*, 2d Dist. No. 20530, 2005-Ohio-925, ¶ 33. And the CSPA governs mortgage brokers who arrange mortgages (even before the General Assembly added them explicitly in 2007). *Guth v Allied Home Mortg. Capital Corp.*, 12th Dist. No. CA2007-02-029, 2008-Ohio-3386, ¶ 49; *Equicredit Corp. of Am. v. Jackson*, 7th Dist. No. 03-MA-191, 2004-Ohio-6376, ¶ 46. The CSPA also covers developers who sell both a plot and an agreement to build a house (again,

before the General Assembly explicitly dealt with this category in 2012). *Frazier v. Rodgers Builders*, 8th Dist. No. 91987, 2010-Ohio-3058, ¶ 43; *Saraf v. Maronda Homes, Inc.*, 10th Dist. No. 02AP-461, 2002-Ohio-6741, ¶ 41; *Fesman v. Berger*, 1st Dist. No. C-940400, 1995 Ohio App. LEXIS 5327, *10-11 (Dec. 6, 1995); *Keiber v. Spicer Constr. Co.*, 85 Ohio App. 3d 391, 396 (2d Dist. 1993). All of these activities are proximate to a real estate transaction, but not necessary. Mortgage servicing is no closer to the pure buy-sell activity than title work, mortgage brokering, or house construction.

HomEq lists decisions applying the real-estate exception to closing, escrow, auctioneering, appraisal, and title services. HomEq Br. at 7-9. But those cases simply reinforce the insight that only services “necessary” to a real estate transaction are exempt from the CSPA. At best, the real-estate exception reaches services necessary to complete the sale of property. A mortgage is not necessary to transfer real property. Therefore mortgage servicing is not necessary.

HomEq’s cases and those we cite do disclose some disagreement in the lower appellate courts about the status of title work (is it necessary to the real-estate transfer), but even that divide reinforces the State’s point. Even the most expansive appellate court readings of the real-estate exemption reach only title work. That is, even title work may not be necessary to a real estate transaction. But accepting the side of the split favorable to HomEq, a mortgage, unlike title work, is not always needed for the transaction. And mortgage servicing is not always necessary for a mortgage. HomEq’s position is even worse—some of the servicing it provided, for example paying taxes on behalf of homeowners, is not even necessary to mortgage servicing.

The pure-real-estate exemption fails HomEq for another reason—if a “transaction involv[es] both the transfer of . . . services, and the transfer of real property,” the CSPA “is

applicable to the . . . services portion” of the transaction. *Brown*, 45 Ohio St. 3d at 195. The CSPA applies to any “portion of the[] agreement that involve[s] . . . provision of services,” *DeLutis v. Ashworth Home Builders, Inc.*, 9th Dist. No. 24302, 2009-Ohio-1052, ¶ 14, even if those services are “inextricably intertwined” with “the sale of real estate.” *Brown*, 45 Ohio St. 3d at 194.

So even if HomEq’s services were “intertwined” with the real-estate transfer they would not qualify for the exemption. And, of course, HomEq was hardly intertwined with Anderson’s house purchase. HomEq only arrived on the scene after the original mortgagee sold the mortgage and after the new mortgagee delegated the servicing duties to HomEq. *See* Sec. Am. Compl. ¶ 13. HomEq’s servicing was distant and incidental to the real-estate sale, not intertwined or necessary.

Mortgage servicing—especially the flavor HomEq practiced here—is far removed from the buy-sell transaction for real property. The plain text covers HomEq’s servicing and the real-estate carve-out does not exempt it.

C. HomEq’s legislative history, out-of-state cases, and policy arguments are irrelevant and mistaken.

HomEq’s assorted attacks on the plain conclusion from the statute’s plain language all fall short. None undermines the bottom line that transferring services like payment processing, helplines, and foreclosure assistance are within the CSPA’s reach (liability, of course, is something to be litigated later).

1. Even if relevant, legislative history confirms that the CSPA covers mortgage servicing.

The Act’s plain language tells us both that the CSPA covers mortgage servicing and that no exemption changes that conclusion. Legislative history is therefore irrelevant. *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St. 3d 234, 2009-Ohio-2610, ¶ 27. HomEq

nonetheless insists on browsing legislative history, but that investigation only highlights the validity of the State's position.

First, HomEq references the 2007 amendment to the CSPA that narrowed the exemption for financial institutions. By narrowing the exemption, the General Assembly extended the CSPA to previously exempt entities, such as mortgage brokers. *See* R.C. 1345.01(A). But both before and after that expansion, mortgage servicers were covered unless exempted as financial institutions (an exemption HomEq disclaims). *See, e.g., Dowling*, 2006 U.S. Dist. LEXIS 87098, at *43-44 (“If the legislature intended to exempt all loan servicing agents from coverage under the OCSPA, it would have done so.”). The General Assembly did not expand the CSPA to reach mortgage servicers in 2007 because servicers were already covered.

HomEq's legislative history tour extends to failed legislation. But the request that the Court examine 2010 Amended Substituted House Bill 3 only further confirms that the CSPA has long covered mortgage servicing. That bill would have defined certain mortgage servicing practices as violating the CSPA (in addition to a new cause of action)—including for the very allegation of untimely escrow payments alleged here—but would not have altered the definition of “consumer transaction” or “supplier.” *See* proposed sections 1323.34(A)(7), 1323.34(H), and 1323.361 [Appx. 57-61]. The only fair implication: The drafters believed that the CSPA already reached mortgage servicers and they were merely making more specific the species of prohibited conduct.

Of course, in Ohio, the “act of refusing to enact a law . . . has utterly no legal effect, and thus has utterly no place in a serious discussion of the law.” *Rice v. CertainTeed Corp.*, 84 Ohio St. 3d 417, 421 (1999) (alteration in original and citation omitted); *see also Wallace v. Ohio Dep't of Commerce*, 96 Ohio St. 3d 266, 2002-Ohio-4210, ¶ 29 n.8 (“[a] legislature does not . . .

express its will by *failing* to legislate”) (emphasis sic). But HomEq is the one that insists on reviewing failed legislation.

2. HomEq’s featured non-Ohio authorities draw on dissimilar statutes, and authorities in still other states hold mortgage servicers liable.

HomEq largely dodges Ohio authority, pointing instead to “well-reasoned” opinions out of Minnesota. HomEq Br. at 11. But the Minnesota statute limits consumer transactions to “the sale of any merchandise,” Minn. Stat. § 325F.69, while Ohio includes the sale or transfer of services or goods. R.C. 1345.01(A). The Minnesota statute is narrower because it arguably excludes transaction with no direct consumer-seller interface. Those decisions should not guide an Ohio court.

Similar statutory differences undercut HomEq’s citations to Texas and Virginia decisions. See Tex. Bus. & Comm. Code Ann. § 17.45 (“Consumer” defined as one who “seeks or acquires by purchase or lease”); Va. Code Ann. § 59.1-198 (consumer transaction means “the advertisement, sale, lease, license or offering for sale, lease or license”). Plus, the Texas decision rests on an exception not shared by Ohio—that loans are exempt from the statute. See, e.g., *Federal Deposit Ins. Corp. v. Munn*, 804 F.2d 860, 864 (5th Cir. 1986).

These out-of-state cases are poor guides for Ohio. Still, if HomEq wants to compare non-Ohio authorities, there are plenty holding that mortgage servicers are subject to state consumer-protection statutes. See e.g. *Gonzalez v. Wilshire Credit Corp.*, 25 A.3d 1103 (N.J. 2011) (servicer is subject to New Jersey Consumer Frauds Act when negotiating loan modifications); *Vassalotti v. Wells Fargo Bank*, 732 F. Supp. 2d 503, 510-11 (E.D. Pa. 2010) (servicer can be liable under Pennsylvania Unfair Trade Practice and Consumer Protection Law); *Young v. Wells Fargo & Co.*, 671 F. Supp. 2d 1006, 1023-24 (S.D. Iowa 2009) (servicer can be liable under California Unfair Competition Law); *Birkholm v. Washington Mutual Bank*, 447 F. Supp. 2d

1158, 1165-66 (W.D. Wash 2006) (mortgage holder acting as a servicer can be liable under Washington Consumer Protection Act); *In re Hart*, 246 B.R. 709, 734-36 (Bankr. D. Mass. 2000) (servicer can be liable under Massachusetts Consumer Protection Act).

The appropriate guide here is the text of the CSPA. The text confirms that the Act reaches the kinds of transactions in the complaint.

3. Other regulation of mortgage servicing is irrelevant, but supports the State's position nonetheless.

HomEq suggests that other regulation of its industry is a reason to read the CSPA narrowly. Not so. Tellingly, HomEq never argues that any state or federal law preempts the CSPA's regulation of mortgage servicers. And both state and federal law actually disclaim preemption. Revised Code 1345.95 is explicit that CSPA remedies "are in addition to remedies otherwise available for the same conduct." And federal law notes that a Consumer Financial Protection Bureau rule does not preempt a state law if the state law provides greater consumer protection. 12 U.S.C. 5551(a)(2). Because HomEq is unwilling to suggest state or federal preemption, its catalogue of other regulations is window dressing—it has no legal consequence to this case.

HomEq's catalogue—meant to suggest that this Court read the CSPA narrowly—also butts up against numerous examples of industries regulated both by the CSPA and other state or federal law. Examples include car dealers, hospitals, nursing homes, and for-profit schools. All are subject to the CSPA despite other significant regulation. *See Whitaker v. M.T. Auto., Inc.*, 111 Ohio St. 3d 177, 185, 2006-Ohio-5481, ¶ 32 (applying CSPA to automobile dealer); *Curl v. Volkswagen of America, Inc.*, 114 Ohio St. 3d 266, 2007-Ohio-3609, ¶¶ 22-24 ("longstanding Ohio jurisprudence provides that purchasers of automobiles may assert a contract claim" against automobile dealers under federal law); *Summa Health System v. Viningre*, 140 Ohio App. 3d

780, 795 (9th Dist. 2000) (holding that “[w]hile transactions with physicians are exempted from the CSPA, a transaction between a service provider *such as a hospital* and the consumer is not clearly exempted.”); *Bramberger v. Toledo Hosp.*, No. 3:10-cv-1626, 2012 U.S. Dist. LEXIS 136486, *1 (S.D. Ohio Sept. 24, 2012) (federal law also regulates hospitals); *Dayspring of Miami Valley v. James Carmean*, 2d Dist. No. 2007 CA 28, 2007-Ohio-7159, ¶ 37 (CSPA applies to nursing homes); R.C. 3721, *et. seq.* (regulating nursing homes); *Malone v. Academy of Court Reporting*, 64 Ohio App. 3d 588, 594 (10th Dist.1990) (CSPA is “applicable by its own terms” to misrepresentations by educational institutions); 34 C.F.R. 668.71 (also regulating misrepresentation by educational institutions).

If there is any lesson to draw from the federal regulation of mortgage servicing, it is that the CSPA compliments federal regulation of mortgage servicers. The CSPA points to federal law (and the Federal Trade Commission) as a guide for deciding which practices are unfair or deceptive. *See* R.C 1345.02(C). And the Federal Trade Commission has sued and settled with several mortgage servicers for the same conduct alleged here—misstating accounts and not properly applying payments. *Fed. Trade Comm’n v. EMC Mortgage Corp.*, E.D. Texas No. 4:08-cv-338, available at: <http://www.ftc.gov/os/caselist/0623031/index.shtm> (last visited Oct. 4, 2012); *U.S. v. Fairbanks Capital Corp, et al.*, D. Mass No. 03-12219, available at: <http://www.ftc.gov/os/caselist/0323014.shtm> (last visited Oct. 4, 2012).

Other regulations compliment, but do not crowd out, the CSPA. HomeEq does not seriously contend otherwise.

Ohio's Proposition of Law No. II:

A company that offers mortgage servicing to homeowners is a "supplier" under the Ohio Consumer Sales Practices Act

The analysis of the second certified question hinges almost entirely on the answer to the first. If mortgage servicing is a consumer transaction, HomEq is certainly a supplier as it is in the business of effecting those consumer transactions. HomEq at least seems to agree that question two turns on the answer to question one, as it devotes only a few paragraphs to the second certified question.

HomEq's lone stand-alone argument on this question contends that the mortgage originator—not the servicer—effects (that is, achieves or brings about) the mortgage servicing transaction. HomEq Br. at 14-15. That makes little sense. If the mortgage originator kept the servicing in house, it would effect (bring about) consumer transactions when it, for example, set up escrow payments or initiated loan modifications. That the originator delegated the servicing to a third party like HomEq does not change the analysis. HomEq effected consumer transactions when it processed consumers' payments, set up help lines, and initiated loan modifications.

Cases considering whether debt collectors effect a transaction further rebut HomEq's argument. Those decisions treat debt collectors as entities "engaged in the business of effecting consumer transactions." *E.g., Celebrezze*, 19 Ohio App. 3d at 51.

HomEq's argument is simply another way of saying that it does not fit the statute because it works for the noteholder, not the customer. But that argument has been rebutted above, as the CSPA text (the transaction needs only provide a service to the customer and the provision need not be direct), the cases (involuntary transactions like debt collection are still covered), and the

policy (commercial enterprises cannot duck CSPA liability by subcontracting consumer transactions) all run the other way.

CONCLUSION

The Court should answer “yes” to the two certified questions and confirm that mortgage servicers are “suppliers” engaged in a “consumer transaction.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio was served by U.S. mail this 9th day of October, 2012 upon the following:

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Appx. A

As Passed by the House

**128th General Assembly
Regular Session
2009-2010**

Am. Sub. H. B. No. 3

Representatives Foley, Driehaus

**Cosponsors: Representatives Heard, Skindell, Stewart, Yuko, Hagan, Harris,
Williams, B., Williams, S., Yates, Luckie, Patten, Slesnick, Ujvagi, Letson,
Harwood, Boyd, Weddington, Winburn, Pryor, Murray, Mallory, Domenick,
DeBose, Brown, Chandler, DeGeeter, Dyer, Gerberry, Koziura, Lundy, Pillich**

A B I L L

To amend sections 109.572, 1181.05, 1181.21, 1321.52,
1322.05, and 5713.03 and to enact sections
1323.01, 1323.02, 1323.04 to 1323.11, 1323.20 to
1323.36, 1323.361, 1323.37, 1323.99, 2303.33,
2308.01, 2308.02, 2308.021, and 2308.03 of the
Revised Code to declare a six-month moratorium on
mortgage foreclosures, to require registration of
residential mortgage servicers, to regulate
residential mortgage servicers, to establish a
database to track foreclosures, to adopt
procedures and requirements related to residential
foreclosure actions, to adopt civil and criminal
penalties for violations of the bill's provisions,
and to terminate the moratorium provisions of this
act six months after its effective date by
repealing section 2308.03 of the Revised Code on
that date.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 109.572, 1181.05, 1181.21, 1321.52, 18
1322.05, and 5713.03 be amended and sections 1323.01, 1323.02, 19
1323.04, 1323.05, 1323.06, 1323.07, 1323.08, 1323.09, 1323.10, 20
1323.11, 1323.20, 1323.21, 1323.22, 1323.23, 1323.24, 1323.25, 21
1323.26, 1323.27, 1323.28, 1323.29, 1323.30, 1323.31, 1323.32, 22
1323.33, 1323.34, 1323.35, 1323.36, 1323.361, 1323.37, 1323.99, 23
2303.33, 2308.01, 2308.02, 2308.021, and 2308.03 of the Revised 24
Code be enacted to read as follows: 25

Sec. 109.572. (A) (1) Upon receipt of a request pursuant to 26
section 121.08, 3301.32, 3301.541, or 3319.39 of the Revised Code, 27
a completed form prescribed pursuant to division (C) (1) of this 28
section, and a set of fingerprint impressions obtained in the 29
manner described in division (C) (2) of this section, the 30
superintendent of the bureau of criminal identification and 31
investigation shall conduct a criminal records check in the manner 32
described in division (B) of this section to determine whether any 33
information exists that indicates that the person who is the 34
subject of the request previously has been convicted of or pleaded 35
guilty to any of the following: 36

(a) A violation of section 2903.01, 2903.02, 2903.03, 37
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 38
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 39
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 40
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 41
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 42
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 43
2925.06, or 3716.11 of the Revised Code, felonious sexual 44
penetration in violation of former section 2907.12 of the Revised 45
Code, a violation of section 2905.04 of the Revised Code as it 46
existed prior to July 1, 1996, a violation of section 2919.23 of 47
the Revised Code that would have been a violation of section 48

2905.04 of the Revised Code as it existed prior to July 1, 1996, 49
had the violation been committed prior to that date, or a 50
violation of section 2925.11 of the Revised Code that is not a 51
minor drug possession offense; 52

(b) A violation of an existing or former law of this state, 53
any other state, or the United States that is substantially 54
equivalent to any of the offenses listed in division (A)(1)(a) of 55
this section. 56

(2) On receipt of a request pursuant to section 5123.081 of 57
the Revised Code with respect to an applicant for employment in 58
any position with the department of mental retardation and 59
developmental disabilities, pursuant to section 5126.28 of the 60
Revised Code with respect to an applicant for employment in any 61
position with a county board of mental retardation and 62
developmental disabilities, or pursuant to section 5126.281 of the 63
Revised Code with respect to an applicant for employment in a 64
direct services position with an entity contracting with a county 65
board for employment, a completed form prescribed pursuant to 66
division (C)(1) of this section, and a set of fingerprint 67
impressions obtained in the manner described in division (C)(2) of 68
this section, the superintendent of the bureau of criminal 69
identification and investigation shall conduct a criminal records 70
check. The superintendent shall conduct the criminal records check 71
in the manner described in division (B) of this section to 72
determine whether any information exists that indicates that the 73
person who is the subject of the request has been convicted of or 74
pleaded guilty to any of the following: 75

(a) A violation of section 2903.01, 2903.02, 2903.03, 76
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 77
2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 78
2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 79
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 80

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2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 81
2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 82
2925.03, or 3716.11 of the Revised Code; 83

(b) An existing or former municipal ordinance or law of this 84
state, any other state, or the United States that is substantially 85
equivalent to any of the offenses listed in division (A)(2)(a) of 86
this section. 87

(3) On receipt of a request pursuant to section 173.27, 88
173.394, 3712.09, 3721.121, or 3722.151 of the Revised Code, a 89
completed form prescribed pursuant to division (C)(1) of this 90
section, and a set of fingerprint impressions obtained in the 91
manner described in division (C)(2) of this section, the 92
superintendent of the bureau of criminal identification and 93
investigation shall conduct a criminal records check with respect 94
to any person who has applied for employment in a position for 95
which a criminal records check is required by those sections. The 96
superintendent shall conduct the criminal records check in the 97
manner described in division (B) of this section to determine 98
whether any information exists that indicates that the person who 99
is the subject of the request previously has been convicted of or 100
pleaded guilty to any of the following: 101

(a) A violation of section 2903.01, 2903.02, 2903.03, 102
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 103
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 104
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 105
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 106
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 107
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 108
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 109
2925.22, 2925.23, or 3716.11 of the Revised Code; 110

(b) An existing or former law of this state, any other state, 111
or the United States that is substantially equivalent to any of 112

the offenses listed in division (A) (3) (a) of this section. 113

(4) On receipt of a request pursuant to section 3701.881 of 114
the Revised Code with respect to an applicant for employment with 115
a home health agency as a person responsible for the care, 116
custody, or control of a child, a completed form prescribed 117
pursuant to division (C) (1) of this section, and a set of 118
fingerprint impressions obtained in the manner described in 119
division (C) (2) of this section, the superintendent of the bureau 120
of criminal identification and investigation shall conduct a 121
criminal records check. The superintendent shall conduct the 122
criminal records check in the manner described in division (B) of 123
this section to determine whether any information exists that 124
indicates that the person who is the subject of the request 125
previously has been convicted of or pleaded guilty to any of the 126
following: 127

(a) A violation of section 2903.01, 2903.02, 2903.03, 128
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 129
2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 130
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 131
2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 132
2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 133
2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 134
2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a 135
violation of section 2925.11 of the Revised Code that is not a 136
minor drug possession offense; 137

(b) An existing or former law of this state, any other state, 138
or the United States that is substantially equivalent to any of 139
the offenses listed in division (A) (4) (a) of this section. 140

(5) On receipt of a request pursuant to section 5111.032, 141
5111.033, or 5111.034 of the Revised Code, a completed form 142
prescribed pursuant to division (C) (1) of this section, and a set 143
of fingerprint impressions obtained in the manner described in 144

division (C) (2) of this section, the superintendent of the bureau 145
of criminal identification and investigation shall conduct a 146
criminal records check. The superintendent shall conduct the 147
criminal records check in the manner described in division (B) of 148
this section to determine whether any information exists that 149
indicates that the person who is the subject of the request 150
previously has been convicted of, has pleaded guilty to, or has 151
been found eligible for intervention in lieu of conviction for any 152
of the following: 153

(a) A violation of section 2903.01, 2903.02, 2903.03, 154
2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 155
2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 156
2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 157
2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 158
2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 159
2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 160
2913.40, 2913.43, 2913.47, 2913.48, 2913.49, 2913.51, 2917.11, 161
2919.12, 2919.22, 2919.24, 2919.25, 2921.13, 2921.36, 2923.02, 162
2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 163
2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, or 164
3716.11 of the Revised Code, felonious sexual penetration in 165
violation of former section 2907.12 of the Revised Code, a 166
violation of section 2905.04 of the Revised Code as it existed 167
prior to July 1, 1996, a violation of section 2919.23 of the 168
Revised Code that would have been a violation of section 2905.04 169
of the Revised Code as it existed prior to July 1, 1996, had the 170
violation been committed prior to that date; 171

(b) An existing or former law of this state, any other state, 172
or the United States that is substantially equivalent to any of 173
the offenses listed in division (A) (5) (a) of this section. 174

(6) On receipt of a request pursuant to section 3701.881 of 175
the Revised Code with respect to an applicant for employment with 176

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a home health agency in a position that involves providing direct care to an older adult, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

- (a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(6)(a) of this section.

(7) When conducting a criminal records check upon a request pursuant to section 3319.39 of the Revised Code for an applicant who is a teacher, in addition to the determination made under division (A)(1) of this section, the superintendent shall determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any offense specified in section 3319.31 of the Revised Code.

(8) On receipt of a request pursuant to section 2151.86 of

the Revised Code, a completed form prescribed pursuant to division 209
(C)(1) of this section, and a set of fingerprint impressions 210
obtained in the manner described in division (C)(2) of this 211
section, the superintendent of the bureau of criminal 212
identification and investigation shall conduct a criminal records 213
check in the manner described in division (B) of this section to 214
determine whether any information exists that indicates that the 215
person who is the subject of the request previously has been 216
convicted of or pleaded guilty to any of the following: 217

(a) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 218
2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 219
2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 220
2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 221
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 222
2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 223
2911.01, 2911.02, 2911.11, 2911.12, 2913.49, 2917.01, 2917.02, 224
2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 225
2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12, or 3716.11 226
of the Revised Code, a violation of section 2905.04 of the Revised 227
Code as it existed prior to July 1, 1996, a violation of section 228
2919.23 of the Revised Code that would have been a violation of 229
section 2905.04 of the Revised Code as it existed prior to July 1, 230
1996, had the violation been committed prior to that date, a 231
violation of section 2925.11 of the Revised Code that is not a 232
minor drug possession offense, two or more OVI or OVUAC violations 233
committed within the three years immediately preceding the 234
submission of the application or petition that is the basis of the 235
request, or felonious sexual penetration in violation of former 236
section 2907.12 of the Revised Code; 237

(b) A violation of an existing or former law of this state, 238
any other state, or the United States that is substantially 239
equivalent to any of the offenses listed in division (A)(8)(a) of 240

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this section. 241

(9) Upon receipt of a request pursuant to section 5104.012 or 242
5104.013 of the Revised Code, a completed form prescribed pursuant 243
to division (C)(1) of this section, and a set of fingerprint 244
impressions obtained in the manner described in division (C)(2) of 245
this section, the superintendent of the bureau of criminal 246
identification and investigation shall conduct a criminal records 247
check in the manner described in division (B) of this section to 248
determine whether any information exists that indicates that the 249
person who is the subject of the request has been convicted of or 250
pleaded guilty to any of the following: 251

(a) A violation of section 2903.01, 2903.02, 2903.03, 252
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.22, 253
2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 254
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 255
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 256
2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.03, 2913.04, 257
2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 258
2913.33, 2913.34, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 259
2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2919.12, 260
2919.22, 2919.24, 2919.25, 2921.11, 2921.13, 2923.01, 2923.12, 261
2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 262
3716.11 of the Revised Code, felonious sexual penetration in 263
violation of former section 2907.12 of the Revised Code, a 264
violation of section 2905.04 of the Revised Code as it existed 265
prior to July 1, 1996, a violation of section 2919.23 of the 266
Revised Code that would have been a violation of section 2905.04 267
of the Revised Code as it existed prior to July 1, 1996, had the 268
violation been committed prior to that date, a violation of 269
section 2925.11 of the Revised Code that is not a minor drug 270
possession offense, a violation of section 2923.02 or 2923.03 of 271
the Revised Code that relates to a crime specified in this 272

division, or a second violation of section 4511.19 of the Revised Code within five years of the date of application for licensure or certification. 273
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(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in division (A) (9) (a) of this section. 276
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(10) Upon receipt of a request pursuant to section 5153.111 of the Revised Code, a completed form prescribed pursuant to division (C) (1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C) (2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following: 280
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(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code 290
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that is not a minor drug possession offense; 305

(b) A violation of an existing or former law of this state, 306
any other state, or the United States that is substantially 307
equivalent to any of the offenses listed in division (A)(10)(a) of 308
this section. 309

(11) On receipt of a request for a criminal records check 310
from an individual pursuant to section 4749.03 or 4749.06 of the 311
Revised Code, accompanied by a completed copy of the form 312
prescribed in division (C)(1) of this section and a set of 313
fingerprint impressions obtained in a manner described in division 314
(C)(2) of this section, the superintendent of the bureau of 315
criminal identification and investigation shall conduct a criminal 316
records check in the manner described in division (B) of this 317
section to determine whether any information exists indicating 318
that the person who is the subject of the request has been 319
convicted of or pleaded guilty to a felony in this state or in any 320
other state. If the individual indicates that a firearm will be 321
carried in the course of business, the superintendent shall 322
require information from the federal bureau of investigation as 323
described in division (B)(2) of this section. The superintendent 324
shall report the findings of the criminal records check and any 325
information the federal bureau of investigation provides to the 326
director of public safety. 327

(12) On receipt of a request pursuant to section 1321.37, 328
1322.03, 1322.031, 1323.23, or 4763.05 of the Revised Code, a 329
completed form prescribed pursuant to division (C)(1) of this 330
section, and a set of fingerprint impressions obtained in the 331
manner described in division (C)(2) of this section, the 332
superintendent of the bureau of criminal identification and 333
investigation shall conduct a criminal records check with respect 334
to any person who has applied for a license, permit, or 335
certification from the department of commerce or a division in the 336

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department. The superintendent shall conduct the criminal records 337
check in the manner described in division (B) of this section to 338
determine whether any information exists that indicates that the 339
person who is the subject of the request previously has been 340
convicted of or pleaded guilty to any of the following: a 341
violation of section 2913.02, 2913.11, 2913.31, 2913.51, or 342
2925.03 of the Revised Code; any other criminal offense involving 343
theft, receiving stolen property, embezzlement, forgery, fraud, 344
passing bad checks, money laundering, or drug trafficking, or any 345
criminal offense involving money or securities, as set forth in 346
Chapters 2909., 2911., 2913., 2915., 2921., 2923., and 2925. of 347
the Revised Code; or any existing or former law of this state, any 348
other state, or the United States that is substantially equivalent 349
to those offenses. 350

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(13) On receipt of a request for a criminal records check 353
from the treasurer of state under section 113.041 of the Revised 354
Code or from an individual under section 4701.08, 4715.101, 355
4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 356
4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 357
4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 358
4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 359
4762.031, 4762.06, or 4779.091 of the Revised Code, accompanied by 360
a completed form prescribed under division (C)(1) of this section 361
and a set of fingerprint impressions obtained in the manner 362
described in division (C)(2) of this section, the superintendent 363
of the bureau of criminal identification and investigation shall 364
conduct a criminal records check in the manner described in 365
division (B) of this section to determine whether any information 366
exists that indicates that the person who is the subject of the 367
request has been convicted of or pleaded guilty to any criminal 368
offense in this state or any other state. The superintendent shall 369
send the results of a check requested under section 113.041 of the

Revised Code to the treasurer of state and shall send the results 370
of a check requested under any of the other listed sections to the 371
licensing board specified by the individual in the request. 372
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(14) On receipt of a request pursuant to section 1121.23, 374
1155.03, 1163.05, 1315.141, 1733.47, or 1761.26 of the Revised 375
Code, a completed form prescribed pursuant to division (C)(1) of 376
this section, and a set of fingerprint impressions obtained in the 377
manner described in division (C)(2) of this section, the 378
superintendent of the bureau of criminal identification and 379
investigation shall conduct a criminal records check in the manner 380
described in division (B) of this section to determine whether any 381
information exists that indicates that the person who is the 382
subject of the request previously has been convicted of or pleaded 383
guilty to any criminal offense under any existing or former law of 384
this state, any other state, or the United States. 385

(15) Not later than thirty days after the date the 386
superintendent receives a request of a type described in division 387
(A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), 388
or (14) of this section, the completed form, and the fingerprint 389
impressions, the superintendent shall send the person, board, or 390
entity that made the request any information, other than 391
information the dissemination of which is prohibited by federal 392
law, the superintendent determines exists with respect to the 393
person who is the subject of the request that indicates that the 394
person previously has been convicted of or pleaded guilty to any 395
offense listed or described in division (A)(1), (2), (3), (4), 396
(5), (6), (7), (8), (9), (10), (11), (12), or (14) of this 397
section, as appropriate. The superintendent shall send the person, 398
board, or entity that made the request a copy of the list of 399
offenses specified in division (A)(1), (2), (3), (4), (5), (6), 400
(7), (8), (9), (10), (11), (12), or (14) of this section, as 401

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appropriate. If the request was made under section 3701.881 of the Revised Code with regard to an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult, the superintendent shall provide a list of the offenses specified in divisions (A) (4) and (6) of this section.

Not later than thirty days after the superintendent receives a request for a criminal records check pursuant to section 113.041 of the Revised Code, the completed form, and the fingerprint impressions, the superintendent shall send the treasurer of state any information, other than information the dissemination of which is prohibited by federal law, the superintendent determines exist with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any criminal offense in this state or any other state.

(B) The superintendent shall conduct any criminal records check requested under section 113.041, 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1323.23, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code as follows:

(1) The superintendent shall review or cause to be reviewed any relevant information gathered and compiled by the bureau under division (A) of section 109.57 of the Revised Code that relates to the person who is the subject of the request, including, if the

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criminal records check was requested under section 113.041, 434
 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 435
1321.37, 1322.03, 1322.031, 1323.23, 1733.47, 1761.26, 2151.86, 436
 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 437
 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.032, 5111.033, 438
 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised 439
 Code, any relevant information contained in records that have been 440
 sealed under section 2953.32 of the Revised Code; 441
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(2) If the request received by the superintendent asks for 443
 information from the federal bureau of investigation, the 444
 superintendent shall request from the federal bureau of 445
 investigation any information it has with respect to the person 446
 who is the subject of the request, including fingerprint-based 447
 checks of national crime information databases as described in 42 448
 U.S.C. 671 if the request is made pursuant to section 2151.86, 449
 5104.012, or 5104.013 of the Revised Code or if any other Revised 450
 Code section requires fingerprint-based checks of that nature, and 451
 shall review or cause to be reviewed any information the 452
 superintendent receives from that bureau. 453

(3) The superintendent or the superintendent's designee may 454
 request criminal history records from other states or the federal 455
 government pursuant to the national crime prevention and privacy 456
 compact set forth in section 109.571 of the Revised Code. 457

(C) (1) The superintendent shall prescribe a form to obtain 458
 the information necessary to conduct a criminal records check from 459
 any person for whom a criminal records check is requested under 460
 section 113.041 of the Revised Code or required by section 121.08, 461
 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 462
 1322.031, 1323.23, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 463
 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 464
 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 465

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4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 466
 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 467
 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 468
 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 469
 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 470
 5126.281, or 5153.111 of the Revised Code. The form that the 471
 superintendent prescribes pursuant to this division may be in a 472
 tangible format, in an electronic format, or in both tangible and 473
 electronic formats. 474

(2) The superintendent shall prescribe standard impression 475
 sheets to obtain the fingerprint impressions of any person for 476
 whom a criminal records check is requested under section 113.041 477
 of the Revised Code or required by section 121.08, 173.27, 478
 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 479
1323.23, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 480
 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 481
 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 482
 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 483
 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 484
 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 485
 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 486
 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 487
 5126.281, or 5153.111 of the Revised Code. Any person for whom a 488
 records check is requested under or required by any of those 489
 sections shall obtain the fingerprint impressions at a county 490
 sheriff's office, municipal police department, or any other entity 491
 with the ability to make fingerprint impressions on the standard 492
 impression sheets prescribed by the superintendent. The office, 493
 department, or entity may charge the person a reasonable fee for 494
 making the impressions. The standard impression sheets the 495
 superintendent prescribes pursuant to this division may be in a 496
 tangible format, in an electronic format, or in both tangible and 497
 electronic formats. 498

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(3) Subject to division (D) of this section, the superintendent shall prescribe and charge a reasonable fee for providing a criminal records check requested under section 113.041, 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1323.23, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The person making a criminal records request under any of those sections shall pay the fee prescribed pursuant to this division. A person making a request under section 3701.881 of the Revised Code for a criminal records check for an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult shall pay one fee for the request. In the case of a request under section 1121.23, 1155.03, 1163.05, 1315.141, 1733.47, 1761.26, or 5111.032 of the Revised Code, the fee shall be paid in the manner specified in that section.

(4) The superintendent of the bureau of criminal identification and investigation may prescribe methods of forwarding fingerprint impressions and information necessary to conduct a criminal records check, which methods shall include, but not be limited to, an electronic method.

(D) A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any offense listed or described in division (A) (1) (a) or (b), (A) (2) (a) or (b), (A) (3) (a) or (b), (A) (4) (a) or

(b), (A) (5) (a) or (b), (A) (6) (a) or (b), (A) (7), (A) (8) (a) or (b), 531
(A) (9) (a) or (b), (A) (10) (a) or (b), (A) (12), or (A) (14) of this 532
section, or that indicates that a person previously has been 533
convicted of or pleaded guilty to any criminal offense in this 534
state or any other state regarding a criminal records check of a 535
type described in division (A) (13) of this section, and that is 536
made by the superintendent with respect to information considered 537
in a criminal records check in accordance with this section is 538
valid for the person who is the subject of the criminal records 539
check for a period of one year from the date upon which the 540
superintendent makes the determination. During the period in which 541
the determination in regard to a person is valid, if another 542
request under this section is made for a criminal records check 543
for that person, the superintendent shall provide the information 544
that is the basis for the superintendent's initial determination 545
at a lower fee than the fee prescribed for the initial criminal 546
records check. 547

(E) As used in this section: 548

(1) "Criminal records check" means any criminal records check 549
conducted by the superintendent of the bureau of criminal 550
identification and investigation in accordance with division (B) 551
of this section. 552

(2) "Minor drug possession offense" has the same meaning as 553
in section 2925.01 of the Revised Code. 554

(3) "Older adult" means a person age sixty or older. 555

(4) "OVI or OVUAC violation" means a violation of section 556
4511.19 of the Revised Code or a violation of an existing or 557
former law of this state, any other state, or the United States 558
that is substantially equivalent to section 4511.19 of the Revised 559
Code. 560

Sec. 1181.05. (A) As used in this section, "consumer finance company" means any person required to be licensed or registered under Chapter 1321., 1322., 1323., 4712., 4727., or 4728. or sections 1315.21 to 1315.30 of the Revised Code.

(B) Neither the superintendent of financial institutions nor any other employee of the division of financial institutions shall do any of the following: be interested, directly or indirectly, in any bank, savings and loan association, savings bank, credit union, or consumer finance company, that is under the supervision of the superintendent of financial institutions; directly or indirectly borrow money from any such financial institution or company; serve as a director or officer of or be employed by any such financial institution or company; or own an equity interest in any such financial institution or company. For purposes of this section, an equity interest does not include the ownership of an account in a mutual savings and loan association or in a savings bank that does not have permanent stock or the ownership of a share account in a credit union.

(C) Subject to division (G) of this section, an employee of the division of financial institutions may retain any extension of credit that otherwise would be prohibited by division (B) of this section if both of the following apply:

(1) The employee obtained the extension of credit prior to October 29, 1995, or the commencement of the employee's employment with the division, or as a result of a change in the employee's marital status, the consummation of a merger, acquisition, transfer of assets, or other change in corporate ownership beyond the employee's control, or the sale of the extension of credit in the secondary market or other business transaction beyond the employee's control.

(2) The employee liquidates the extension of credit under its

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original terms and without renegotiation. 592

If the employee chooses to retain the extension of credit, 593
the employee shall immediately provide written notice of the 594
retention to the employee's supervisor. Thereafter, the employee 595
shall be disqualified from participating in any decision, 596
examination, audit, or other action that may affect that 597
particular creditor. 598

(D) Subject to division (G) of this section, an employee of 599
the division of financial institutions may retain any ownership of 600
or beneficial interest in the securities of a financial 601
institution or consumer finance company that is under the 602
supervision of the division of financial institutions, or of a 603
holding company or subsidiary of such a financial institution or 604
company, which ownership or beneficial interest otherwise would be 605
prohibited by division (B) of this section, if the ownership or 606
beneficial interest is acquired by the employee through 607
inheritance or gift, prior to October 29, 1995, or the 608
commencement of the employee's employment with the division, or as 609
a result of a change in the employee's marital status or the 610
consummation of a merger, acquisition, transfer of assets, or 611
other change in corporate ownership beyond the employee's control. 612

If the employee chooses to retain the ownership or beneficial 613
interest, the employee shall immediately provide written notice of 614
the retention to the employee's supervisor. Thereafter, the 615
employee shall be disqualified from participating in any decision, 616
examination, audit, or other action that may affect the issuer of 617
the securities. However, if the ownership of or beneficial 618
interest in the securities and the subsequent disqualification 619
required by this division impair the employee's ability to perform 620
the employee's duties, the employee may be ordered to divest self 621
of the ownership of or beneficial interest in the securities. 622

(E) Notwithstanding division (B) of this section, an employee 623

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of the division of financial institutions may have an indirect 624
interest in the securities of a financial institution or consumer 625
finance company that is under the supervision of the division of 626
financial institutions, which interest arises through ownership of 627
or beneficial interest in the securities of a publicly held mutual 628
fund or investment trust, if the employee owns or has a beneficial 629
interest in less than five per cent of the securities of the 630
mutual fund or investment trust, and the mutual fund or investment 631
trust is not advised or sponsored by a financial institution or 632
consumer finance company that is under the supervision of the 633
division of financial institutions. If the mutual fund or 634
investment trust is subsequently advised or sponsored by a 635
financial institution or consumer finance company that is under 636
the supervision of the division of financial institutions, the 637
employee shall immediately provide written notice of the ownership 638
of or beneficial interest in the securities to the employee's 639
supervisor. Thereafter, the employee shall be disqualified from 640
participating in any decision, examination, audit, or other action 641
that may affect the financial institution or consumer finance 642
company. However, if the ownership of or beneficial interest in 643
the securities and the subsequent disqualification required by 644
this division impair the employee's ability to perform the 645
employee's duties, the employee may be ordered to divest self of 646
the ownership of or beneficial interest in the securities. 647

(F) (1) For purposes of this section, the interests of an 648
employee's spouse or dependent child arising through the ownership 649
or control of securities shall be considered the interests of the 650
employee, unless the interests are solely the financial interest 651
and responsibility of the spouse or dependent child, the interests 652
are not in any way derived from the income, assets, or activity of 653
the employee, and any financial or economic benefit from the 654
interests is for the personal use of the spouse or dependent 655
child. 656

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(2) If an employee's spouse or dependent child obtains 657
interests arising through the ownership or control of securities 658
and, pursuant to division (F) (1) of this section, the interests 659
are not considered the interests of the employee, the employee 660
shall immediately provide written notice of the interests to the 661
employee's supervisor. Thereafter, the employee shall be 662
disqualified from participating in any decision, examination, 663
audit, or other action that may affect the issuer of the 664
securities. 665

(G) For purposes of divisions (C) and (D) of this section, 666
both of the following apply: 667

(1) With respect to any employee of the former division of 668
consumer finance who, on the first day of the first pay period 669
commencing after the effective date of this section, becomes an 670
employee of the division of financial institutions, the employee's 671
employment with the division of financial institutions is deemed 672
to commence on the first day of the first pay period commencing 673
after the effective date of this section. 674

(2) With respect to any employee who, on October 29, 1995, 675
became an employee of the division of financial institutions, the 676
employee may, notwithstanding divisions (C) and (D) of this 677
section, retain any extension of credit by a consumer finance 678
company that was obtained at any time prior to the first day of 679
the first pay period commencing after the effective date of this 680
section, or retain any ownership of or beneficial interest in the 681
securities of a consumer finance company, or of a holding company 682
or subsidiary of such a company, that was acquired at any time 683
prior to the first day of the first pay period commencing after 684
the effective date of this section. If the employee chooses to 685
retain the extension of credit or the ownership or beneficial 686
interest, the employee shall comply with divisions (C) and (D) of 687
this section. 688

Sec. 1181.21. (A) As used in this section, "consumer finance company" has the same meaning as in section 1181.05 of the Revised Code. 689
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(B) The superintendent of financial institutions shall see that the laws relating to consumer finance companies are executed and enforced. 692
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(C) The deputy superintendent for consumer finance shall be the principal supervisor of consumer finance companies. In that position the deputy superintendent for consumer finance shall, notwithstanding section 1321.421, division (A) of section 1321.76, and sections 1321.07, 1321.55, 1322.06, 1323.30, 4727.05, and 4728.05 of the Revised Code, be responsible for conducting examinations and preparing examination reports under those sections. In addition, the deputy superintendent for consumer finance shall, notwithstanding sections 1315.27, 1321.10, 1321.43, 1321.54, 1321.77, 1322.12, 1323.29, 4712.14, 4727.13, and 4728.10 of the Revised Code, have the authority to adopt rules and standards in accordance with those sections. In performing or exercising any of the examination, rule-making, or other regulatory functions, powers, or duties vested by this division in the deputy superintendent for consumer finance, the deputy superintendent for consumer finance shall be subject to the control of the superintendent of financial institutions and the director of commerce. 695
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Sec. 1321.52. (A) (1) No person, on that person's own behalf or on behalf of any other person, ~~shall do either of the following~~ without having first obtained a certificate of registration from the division of financial institutions+ 713
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~~(a) Advertise, shall advertise,~~ solicit, or hold out that the person is engaged in the business of making loans secured by a 717
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mortgage on a borrower's real estate which is other than a first lien on the real estate. 719
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~~(b) Engage in the business of lending or collecting the person's own or another person's money, credit, or choses in action for such loans.~~ 721
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(2) Each person issued a certificate of registration is subject to all the rules prescribed under sections 1321.51 to 1321.60 of the Revised Code. 724
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(B) All loans (1) Except as otherwise provided in division (B) (2) of this section, any loan made to persons a person who at the time are residents of the loan is a resident of this state are is considered as made within this state and subject to the laws of this state, regardless of any statement in the contract or note to the contrary. 727
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(2) If a loan is primarily secured by a lien on real property in another state and that loan is arranged by a mortgage loan originator licensed by another state, the borrower may designate the transaction be governed by the law where the real property is located if the other state has consumer protection laws covering the borrower that are applicable to the transaction. 733
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(C) A registrant may make unsecured loans, loans secured by a mortgage on a borrower's real estate which is a first lien or other than a first lien on the real estate, loans secured by other than real estate, and loans secured by any combination of mortgages and security interests, on terms and conditions provided by sections 1321.51 to 1321.60 of the Revised Code. 739
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(D) (1) If a lender that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A) (1) of this section, the lender has no right to collect, receive, or retain any interest or charges on that loan. 745
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(2) If a registrant applies to the division for a renewal of 749

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the registrant's certificate after the date required by division 750
(A) (4) of section 1321.53 of the Revised Code, but prior to the 751
first day of August of that year, and the division approves the 752
application, division (D) (1) of this section does not apply with 753
respect to any loan made by the registrant while the registrant's 754
certificate was expired. 755

Sec. 1322.05. (A) No registrant shall conduct business in 756
this state, unless the registrant maintains a net worth of at 757
least fifty thousand dollars and has obtained and maintains in 758
effect at all times a corporate surety bond issued by a bonding 759
company or insurance company authorized to do business in this 760
state. The bond shall be in favor of the superintendent of 761
financial institutions and in the penal sum of at least fifty one 762
hundred thousand dollars and an additional penal sum of ten 763
thousand dollars for each location, in excess of one, at which the 764
registrant conducts business. The term of the bond shall coincide 765
with the term of registration. A copy of the bond shall be filed 766
with the superintendent. The bond shall be for the exclusive 767
benefit of any buyer injured by a violation by an employee, 768
licensee, or registrant of any provision of sections 1322.01 to 769
1322.12 of the Revised Code. The aggregate liability of the 770
corporate surety for any and all breaches of the conditions of the 771
bond shall not exceed the penal sum of the bond. 772

(B) (1) The registrant shall give notice to the superintendent 773
by certified mail of any action that is brought by a buyer against 774
the registrant or loan officer of the registrant alleging injury 775
by a violation of any provision of sections 1322.01 to 1322.12 of 776
the Revised Code, and of any judgment that is entered against the 777
registrant or loan officer of the registrant by a buyer injured by 778
a violation of any provision of sections 1322.01 to 1322.12 of the 779
Revised Code. The notice shall provide details sufficient to 780
identify the action or judgment, and shall be filed with the 781

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superintendent within ten days after the commencement of the 782
 action or notice to the registrant of entry of a judgment. 783

(2) A corporate surety, within ten days after it pays any 784
 claim or judgment, shall give notice to the superintendent by 785
 certified mail of the payment, with details sufficient to identify 786
 the person and the claim or judgment paid. 787

(C) Whenever the penal sum of the corporate surety bond is 788
 reduced by one or more recoveries or payments, the registrant 789
 shall furnish a new or additional bond under this section, so that 790
 the total or aggregate penal sum of the bond or bonds equals the 791
 sum required by this section, or shall furnish an endorsement 792
 executed by the corporate surety reinstating the bond to the 793
 required penal sum of it. 794

(D) The liability of the corporate surety on the bond to the 795
 superintendent and to any buyer injured by a violation of any 796
 provision of sections 1322.01 to 1322.12 of the Revised Code shall 797
 not be affected in any way by any misrepresentation, breach of 798
 warranty, or failure to pay the premium, by any act or omission 799
 upon the part of the registrant, by the insolvency or bankruptcy 800
 of the registrant, or by the insolvency of the registrant's 801
 estate. The liability for any act or omission that occurs during 802
 the term of the corporate surety bond shall be maintained and in 803
 effect for at least two years after the date on which the 804
 corporate surety bond is terminated or canceled. 805

(E) The corporate surety bond shall not be canceled by the 806
 registrant or the corporate surety except upon notice to the 807
 superintendent by certified mail, return receipt requested. The 808
 cancellation shall not be effective prior to thirty days after the 809
 superintendent receives the notice. 810

(F) No registrant shall fail to comply with this section. Any 811
 registrant that fails to comply with this section shall cease all 812

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mortgage broker activity in this state until the registrant 813
complies with this section. 814

Sec. 1323.01. (A) As used in this chapter: 815

(1) "Mortgage servicer" or "servicer" means a person who 816
engages directly or indirectly, whether for compensation, gain for 817
another, or on the person's own behalf, in the business of 818
receiving scheduled periodic payments from a borrower pursuant to 819
the terms of a residential mortgage loan, including amounts 820
received for deposit in an escrow account, and applying those 821
payments received toward principal, interest, and other 822
obligations of the borrower including amounts to be paid from an 823
escrow account. 824

"Mortgage servicer" includes a person who makes or holds a 825
loan if that person also services the loan. 826

"Mortgage servicer" does not include any of the following: 827

(a) The federal deposit insurance corporation or the 828
resolution trust corporation, in connection with assets acquired, 829
assigned, sold, or transferred pursuant to the "Federal Deposit 830
Insurance Corporation Act," 64 Stat. 873 (1950), 12 U.S.C. 831
1823(c), or as receiver or conservator of an insured depository 832
institution; 833

(b) The government national mortgage association, the federal 834
national mortgage association, the federal home loan mortgage 835
corporation, the resolution trust corporation, or the federal 836
deposit insurance corporation, in any case in which the 837
assignment, sale, or transfer of the servicing of the mortgage 838
loan is preceded by: 839

(i) Termination of the contract for servicing the loan for 840
cause; 841

(ii) Commencement of proceedings for bankruptcy of the 842

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- servicer; 843
- (iii) Commencement of proceedings by the federal deposit insurance corporation or the resolution trust corporation for conservatorship or receivership of the servicer or an entity by which the servicer is owned or controlled. 844
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- (c) The national credit union administration, in connection with assets acquired, assigned, sold, or transferred pursuant to federal law, or as a receiver or conservator of an insured credit union; 848
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- (d) Any political subdivision or any public agency of the United States or any state. 852
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- (2) "Mortgage lender" means a person engaged in the business of making residential mortgage loans for compensation or gain. 854
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- (3) "Residential mortgage" and "residential mortgage loan" mean an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing four or fewer residential units and includes such an obligation on a residential condominium or cooperative unit. 856
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- (4) "Employee" means an individual for whom a person pays a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" includes any individual who acts as an operations manager of a registered mortgage servicer, but for whom the servicer is prevented by law from making income tax withholdings. 861
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- (5) "Operations manager" means the employee or owner responsible for the everyday operations, compliance requirements, and management of a registrant or applicant. 868
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- (6) "Subprime loan" or "subprime mortgage" means a residential mortgage loan originated between January 1, 2001, and 871
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- January 1, 2009, in which the difference between the annual 873
percentage rate for the loan and the federal home loan mortgage 874
corporation primary mortgage market survey rate for a comparable 875
transaction, as of the date the interest rate is set, is greater 876
than one and one-half percentage points if the loan is a first 877
mortgage loan or three and one-half percentage points if the loan 878
is a mortgage loan in a subordinate position. 879
- (7) "Unoccupied property" means a property intended for 880
residential occupancy that is not occupied by the owner of the 881
property or the owner's tenant. 882
- (8) "Superintendent of financial institutions" or 883
"superintendent" includes the deputy superintendent for consumer 884
finance as provided in section 1181.21 of the Revised Code. 885
- (9) "Short sale" means a transaction in which the property 886
that is the subject of a mortgage transaction is sold for an 887
amount that is less than the amount of the debtor's outstanding 888
obligation under the mortgage transaction. 889
- (10) "Depository institution" means an entity chartered and 890
lawfully doing business under the authority of any law of this 891
state, another state, or the United States as a bank, savings 892
bank, trust company, or savings and loan association. "Depository 893
institution" does not mean the holding company of such an 894
institution. 895
- (11) "Credit union" means an entity chartered under Chapter 896
1733. of the Revised Code or under similar laws of another state 897
or the United States. "Credit union" includes a credit union 898
service organization consisting of multiple credit unions. 899
- (B) Sections 1323.01 to 1323.11 of the Revised Code shall be 900
known as the "special program to reduce foreclosures act." 901
- (C) (1) The director of commerce may act through staff and 902
those under the director's control, including the deputy 903

superintendent for consumer finance as provided in section 1181.21 904
of the Revised Code. 905

(2) The director may adopt rules pursuant to Chapter 119. Of 906
the Revised Code for the administration and enforcement of 907
sections 1323.02, 1323.05, and 1323.06 of the Revised Code. 908

Sec. 1323.02. (A) At least sixty days prior to filing a 909
complaint to initiate a foreclosure action that involves a 910
residential mortgage loan on property occupied by an owner or a 911
tenant of that owner, a mortgage servicer shall provide the 912
borrower with a notice to inform the borrower of the amount due to 913
the lender and the availability of resources to avoid foreclosure. 914
This notice shall be on a form the director of commerce prescribes 915
and shall include all of the following: 916

(1) An itemization of all past due amounts causing the loan 917
to be in default; 918

(2) An itemization of any other charges that the borrower 919
must pay in order to be current on loan payments; 920

(3) A statement that the borrower may have options available 921
other than foreclosure, and that the borrower may discuss 922
available options with the mortgage lender, the mortgage servicer, 923
or a counselor approved by the United States department of housing 924
and urban development; 925

(4) The address, telephone number, and other contact 926
information for the mortgage lender, the mortgage servicer, or an 927
agent for either of them who is authorized to work with the 928
borrower to avoid foreclosure; 929

(5) The address, telephone number, and other contact 930
information for the department of job and family services, 931
including the following web site address: www.OhioMeansJobs.com; 932

(6) The name, address, telephone number, and other contact 933

information for one or more United States department of housing 934
and urban development-approved counseling agencies operating to 935
assist borrowers in Ohio to avoid foreclosure; 936

(7) The address, telephone number, and other contact 937
information for the consumer complaint sections of the division of 938
financial institutions in the Ohio department of commerce and the 939
Ohio attorney general; 940

(8) The following information prominently displayed: 941

"YOU HAVE THE RIGHT TO REMAIN IN THIS PROPERTY DURING THE 942
FORECLOSURE PROCEEDINGS AND AFTER THE SHERIFF'S SALE UNTIL A COURT 943
CONFIRMS THE SALE. 944

ADDRESS OF PROPERTY:" 945

(9) Other information the director considers necessary and 946
includes on the form. 947

(B) The mortgage servicer shall mail the notice this section 948
requires to the last known address of the borrower and shall 949
evidence the mailing by a certificate of mailing from the United 950
States postal service. 951

Sec. 1323.04. (A) Within three business days after mailing 952
the notice section 1323.02 of the Revised Code requires, a 953
mortgage servicer shall file with the administrative director of 954
the Ohio supreme court the date the notice was mailed to the 955
borrower and, unless prohibited by state or federal law, any 956
additional information the administrative director requests. 957

(B) Within seven days after entering into a modification 958
agreement, a mortgage servicer shall notify the administrative 959
director of the nature and terms of an agreement with a borrower 960
to do any of the following: 961

(1) Reduce or forego any fees or arrearages, including 962
acceptance of a deed in lieu of foreclosure; 963

- (2) Alter the terms of the residential mortgage loan 964
agreement by a reduction in interest rate, lessening of monthly 965
payment, increase in the term for repayment, deferment of interest 966
or other payment, or alteration of a variable rate adjustment 967
date: 968
- (3) Refinance the loan under new terms. 969
- (C) Any notice or filing this section requires shall be made 970
in an electronic format as the administrative director prescribes, 971
and contain the name and address of the borrower, the name and 972
address of the mortgage servicer, and the name and address of the 973
holder of the mortgage. 974
- (D) The administrative director shall include all information 975
received pursuant to this section in the state foreclosure 976
database developed and maintained pursuant to section 1323.07 of 977
the Revised Code. This information shall be available for review 978
by the state foreclosure prevention project as described in 979
section 1323.06 of the Revised Code. 980
- Sec. 1323.05. (A) The director of commerce shall adopt 981
comprehensive minimum loan modification standards by rule to 982
advise mortgage servicers of modification alternatives and to use 983
to evaluate the loan modification efforts of mortgage servicers. 984
The director shall design the standards to reflect modification 985
alternatives that would keep a borrower in the borrower's home 986
when the anticipated recovery under a loan modification or workout 987
plan is greater than the anticipated recovery through foreclosure, 988
on a net present value basis. 989
- (B) The loan modification standards adopted pursuant to this 990
section shall include some combination of the following features: 991
- (1) An interest rate reduction, as needed, for a fixed term 992
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<u>of at least five years;</u>	994
<u>(2) An extension of the amortization period for the loan term, to not more than forty years from the original date of the loan;</u>	995 996 997
<u>(3) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan;</u>	998 999
<u>(4) Reduction of principal;</u>	1000
<u>(5) Compliance with a federally mandated loan modification program;</u>	1001 1002
<u>(6) Other factors the director determines are appropriate, which may include efforts implemented in other states that have resulted in a reduction in foreclosures.</u>	1003 1004 1005
<u>Sec. 1323.06. The director of commerce shall establish the "state foreclosure prevention project" to collect residential mortgage foreclosure information, track loss mitigation efforts, encourage viable loan modifications, and seek solutions to avoid foreclosures for residential mortgage loans. In developing the project, the director may include input from the United States department of housing and urban development-approved housing counselors, community organizations, state agencies including the Ohio attorney general, mortgage lenders, mortgage servicers, and any other appropriate persons.</u>	1006 1007 1008 1009 1010 1011 1012 1013 1014 1015
<u>Sec. 1323.07. (A) The director of commerce shall design and develop, in consultation with the administrative director of the Ohio supreme court, the state foreclosure database to track residential mortgage foreclosure information and to promote the efforts of the state foreclosure prevention project. Not later than October 1, 2009, the administrative director of the Ohio supreme court shall implement the database.</u>	1016 1017 1018 1019 1020 1021 1022

(B) No person shall have access to the state foreclosure database except the following individuals or the individual's designated representative: the administrative director of the Ohio supreme court, the director of commerce, the superintendent of financial institutions, the Ohio attorney general, and the clerk of a court of common pleas for the purposes described in section 2303.33 of the Revised Code.

(C) Any information provided for inclusion in the state foreclosure database is exclusively for the use and purposes of the state foreclosure prevention project. The database is not a public record subject to section 149.43 of the Revised Code and the information provided for and included in the database may not be disclosed except as this section provides. Any mortgage servicer shall have access only to the information submitted with respect to its own loans.

(D) Providing information as this chapter requires for inclusion in the state foreclosure database does not violate any state law pertaining to financial privacy. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of a borrower with respect to the information the mortgage servicer provides in accordance with this chapter.

Sec. 1323.08. (A) The director of commerce annually shall submit a report to the general assembly describing the operation of the state foreclosure prevention project. The director shall present information in the report in aggregate form, and may include the number of borrowers helped, the effectiveness of the funds in preventing foreclosure, recommendations for further efforts needed to reduce foreclosures, and any other aggregated information the director determines is pertinent or that the general assembly requests.

(B) In preparing the report, the director shall review

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<u>information provided in the state foreclosure database to</u>	1054
<u>determine all of the following:</u>	1055
<u>(1) Whether the loss mitigation programs and efforts</u>	1056
<u>effectively address loan default issues;</u>	1057
<u>(2) The most effective means for establishing successful</u>	1058
<u>foreclosure alternatives including loan modification programs;</u>	1059
<u>(3) Which procedures best comport with a servicer's</u>	1060
<u>obligation to investors to lessen losses resulting from borrower</u>	1061
<u>defaults.</u>	1062
<u>Sec. 1323.09. The superintendent of financial institutions in</u>	1063
<u>the department of commerce shall review the information in the</u>	1064
<u>state foreclosure database to determine whether any mortgage</u>	1065
<u>servicer has failed to provide disclosures or information this</u>	1066
<u>chapter requires or is not acting in good faith to provide</u>	1067
<u>borrowers with an effective method to discuss payment options for</u>	1068
<u>past due amounts and alternatives to foreclosure. If the</u>	1069
<u>superintendent determines that a mortgage servicer has violated</u>	1070
<u>any of these requirements, the superintendent may consider that</u>	1071
<u>conduct or failure when determining the character and general</u>	1072
<u>fitness of the mortgage servicer for its licensure or certificate</u>	1073
<u>of registration as a mortgage servicer under this chapter or</u>	1074
<u>Chapter 1321. of the Revised Code.</u>	1075
<u>Sec. 1323.10. (A) There is hereby established in the state</u>	1076
<u>treasury the foreclosure prevention revolving trust fund,</u>	1077
<u>comprised of moneys collected or accruing to the trust fund.</u>	1078
<u>(B) Each fiscal quarter the director of commerce shall</u>	1079
<u>distribute the amounts in the foreclosure prevention revolving</u>	1080
<u>trust fund as follows:</u>	1081
<u>(1) Ten per cent to the administrative director of the</u>	1082
<u>supreme court, to establish, operate, and maintain the state</u>	1083

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<u>foreclosure database established pursuant to section 1323.07 of</u>	1084
<u>the Revised Code and to fund foreclosure mediation programs in the</u>	1085
<u>state;</u>	1086
<u>(2) Ten per cent to the department of commerce, which may be</u>	1087
<u>used for the following purposes:</u>	1088
<u>(a) Grants to counseling foreclosure prevention entities for</u>	1089
<u>the purpose of maintaining or expanding foreclosure prevention</u>	1090
<u>counseling and related services and activities to assist</u>	1091
<u>homeowners to prevent foreclosure;</u>	1092
<u>(b) Grants to individuals or counseling entities for the</u>	1093
<u>purpose of providing emergency foreclosure prevention assistance</u>	1094
<u>loans;</u>	1095
<u>(c) Loans and grants to nonprofit or local government</u>	1096
<u>entities to provide relocation assistance or acquire mortgage</u>	1097
<u>loans or properties from creditors in order to restructure the</u>	1098
<u>mortgage loans or restore the properties to productive use;</u>	1099
<u>(d) Funding to establish, operate, and maintain the state</u>	1100
<u>foreclosure database established pursuant to section 1323.07 of</u>	1101
<u>the Revised Code;</u>	1102
<u>(e) Funding for the expenses of the state foreclosure</u>	1103
<u>prevention project and the associated costs the superintendent of</u>	1104
<u>financial institutions of the department of commerce and the</u>	1105
<u>director of commerce incur related to outreach and education and</u>	1106
<u>to support investigation of mortgage fraud and fraudulent</u>	1107
<u>foreclosure prevention schemes in the state of Ohio.</u>	1108
<u>(3) Five per cent to the attorney general for investigation</u>	1109
<u>of illegal activities associated with mortgage fraud and</u>	1110
<u>foreclosure prevention fraud, which funds the attorney general may</u>	1111
<u>use to contract with local public prosecutors engaged in the</u>	1112
<u>investigation of foreclosure prevention fraud;</u>	1113

(4) Thirty-seven and a half per cent to the department of 1114
development for deposit into the Ohio housing trust fund, and 1115
thirty-seven and a half per cent to the boards of county 1116
commissioners, to be distributed on a pro rata basis of the funds 1117
submitted with respect to foreclosure filings in each county under 1118
section 1323.11 of the Revised Code. The funds provided to the 1119
department of development and the boards of county commissioners 1120
under this division shall be used to provide the following: 1121

(a) Grants to counseling foreclosure prevention entities for 1122
the purpose of maintaining or expanding foreclosure prevention 1123
counseling and related services and activities to assist 1124
homeowners to prevent foreclosure; 1125

(b) Grants to individuals or counseling entities for the 1126
purpose of providing emergency foreclosure prevention assistance 1127
loans; 1128

(c) Loans and grants to nonprofit or local government 1129
entities to provide relocation assistance or acquire mortgage 1130
loans or properties from creditors in order to restructure the 1131
mortgage loans or restore the properties to productive use; 1132

(d) Foreclosure prevention services; 1133

(e) Amelioration of dilapidated and vacant properties; 1134

(f) Assistance with the development of county land banks; 1135

(g) Other activities as they relate to foreclosure. 1136

(C) For the purposes of division (B) of this section, the 1137
director of development and boards of county commissioners shall 1138
establish rules governing the procedures to qualify counseling and 1139
foreclosure prevention entities, nonprofit entities, and 1140
individuals for loan assistance to receive moneys from the 1141
revolving trust fund to carry out the purposes of division (B) (4) 1142
of this section. 1143

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<u>(D) Any moneys distributed to the supreme court but not used</u>	1144
<u>for the purposes stated in division (B)(1) of this section shall</u>	1145
<u>be reallocated to the department of commerce for deposit into the</u>	1146
<u>foreclosure prevention revolving trust fund.</u>	1147
<u>(E) Any moneys collected under this section but not allocated</u>	1148
<u>by the end of the fiscal year shall be available for allocation in</u>	1149
<u>the subsequent fiscal year.</u>	1150
<u>Sec. 1323.11. (A) In addition to any filing fee required by</u>	1151
<u>law, a mortgage servicer that files a complaint to initiate a</u>	1152
<u>foreclosure action involving a residential mortgage loan</u>	1153
<u>simultaneously shall transmit a check in the amount of seven</u>	1154
<u>hundred fifty dollars payable to the department of commerce for</u>	1155
<u>deposit into the trust fund established under section 1323.10 of</u>	1156
<u>the Revised Code. The servicer may not in any manner add the</u>	1157
<u>amount paid pursuant to this division to the amount the borrower</u>	1158
<u>owes or seek to recover this cost from the borrower.</u>	1159
<u>(B) No court shall permit the filing of an action for a</u>	1160
<u>mortgage foreclosure or grant a judgment of foreclosure to any</u>	1161
<u>servicer of a residential loan unless that servicer provides</u>	1162
<u>evidence to the court that the servicer has complied with this</u>	1163
<u>section.</u>	1164
<u>(C) The director of commerce shall establish an accounting</u>	1165
<u>system to track the county that corresponds to each fee that is</u>	1166
<u>paid pursuant to this section. The accounting system shall be used</u>	1167
<u>to determine the share of the funds to be distributed to each</u>	1168
<u>county pursuant to section 1323.10 of the Revised Code.</u>	1169
<u>(D) The fee this section requires shall not be charged with</u>	1170
<u>respect to a filing for a foreclosure action that meets any of the</u>	1171
<u>following criteria:</u>	1172
<u>(1) A filing on an unoccupied property;</u>	1173

<u>(2) A filing on a property for which a filing fee was paid</u>	1174
<u>during the past twenty-four months with respect to the same</u>	1175
<u>mortgage loan;</u>	1176
<u>(3) A filing by a credit union;</u>	1177
<u>(4) A filing by a depository institution if that depository</u>	1178
<u>institution is headquartered in Ohio, has two and one-half billion</u>	1179
<u>dollars or less in total assets, and originated and services the</u>	1180
<u>mortgage loan being foreclosed.</u>	1181
<u>Sec. 1323.20. (A) Sections 1323.20 to 1323.37 of the Revised</u>	1182
<u>Code shall be known as the "residential mortgage servicers</u>	1183
<u>registration act."</u>	1184
<u>(B) Sections 1323.20 to 1323.37 of the Revised Code do not</u>	1185
<u>apply to any of the following:</u>	1186
<u>(1) Any entity that is chartered and lawfully doing business</u>	1187
<u>as a bank, savings bank, trust company, savings and loan</u>	1188
<u>association, or credit union under the authority of any law of</u>	1189
<u>this state, another state, or the United States;</u>	1190
<u>(2) Life, property, or casualty insurance companies licensed</u>	1191
<u>to do business in this state;</u>	1192
<u>(3) Any attorney or law firm acting on behalf of any mortgage</u>	1193
<u>note holder or mortgage servicer when acting in connection with</u>	1194
<u>the practice of law in this state, except as otherwise provided in</u>	1195
<u>division (D) of this section;</u>	1196
<u>(4) Any political subdivision, or any governmental or other</u>	1197
<u>public agency, corporation, or instrumentality in or of the United</u>	1198
<u>States or any state;</u>	1199
<u>(5) An institution of higher education as defined in section</u>	1200
<u>1713.01 of the Revised Code;</u>	1201
<u>(6) A debt collector acting under the name of, and as agent</u>	1202

for, a mortgage servicer registrant to collect a debt in default. 1203

(C) Mortgage lenders registered under section 1321.52 of the 1204
Revised Code and mortgage brokers registered under section 1322.02 1205
of the Revised Code are exempt from the registration requirements 1206
of section 1323.21 of the Revised Code but shall comply with 1207
divisions (C), (D), (F), and (G) of section 1323.33, and sections 1208
1323.34, 1323.35, and 1323.36 of the Revised Code in connection 1209
with the servicing of residential mortgage loans. Any violation of 1210
these sections is an unfair and deceptive practice in violation of 1211
section 1345.02 of the Revised Code and may result in 1212
administrative action and penalties the superintendent of 1213
financial institutions of the department of commerce imposes 1214
pursuant to sections 1321.54 and 1322.10 of the Revised Code. 1215

(D) Any attorney or law firm primarily engaged in debt 1216
collection shall comply with division (D) of section 1323.33 and 1217
section 1323.36 of the Revised Code when acting as a mortgage 1218
servicer, notwithstanding the general exemption from sections 1219
1323.20 to 1323.37 of the Revised Code. Any violation by an 1220
attorney of division (D) of section 1323.33 or section 1323.36 of 1221
the Revised Code, in connection with any debt collection activity 1222
that is not considered the practice of law, is deemed to be an 1223
unfair and deceptive practice in violation of section 1345.02 of 1224
the Revised Code. 1225

Sec. 1323.21. (A) No person, on that person's own behalf or 1226
on behalf of any other person, shall do either of the following 1227
unless that person is registered as a mortgage servicer and has a 1228
certificate of registration from the superintendent of financial 1229
institutions of the department of commerce: 1230

(1) Engage in the business of collecting money, credit, or 1231
choses in action for residential mortgage loans or otherwise act 1232
as a mortgage servicer; 1233

(2) Collect accelerated mortgage payments from a biweekly or other accelerated payment plan that the person operates, arranges, or offers to arrange for compensation or gain in connection with a residential mortgage loan. 1234
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(B) Any person who acts in willful violation of division (A) of this section, after receiving written notice of the violation from the superintendent or a court, may not collect any amounts as interest or charges on that loan. Any amounts collected shall be credited as a principal reduction to the loan. 1238
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(C) (1) When a registration expires for any reason and the former registrant continues to service residential mortgage loans in violation of division (A) of this section, the superintendent may take administrative action, including action on any subsequent application for a certificate of registration. 1243
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(2) A servicer with an expired registration may not collect, charge, or retain any late fee, bad check charge except as incurred, charge related to default, cost to realize on its security interest, or prepayment penalty on any residential mortgage loan unless that servicer applies to the superintendent for a registration renewal and a certificate of registration prior to the first day of August of the year the registration expires and the superintendent approves that application. 1248
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(D) No person shall conduct the business of a mortgage servicer in association with any exempt business if the superintendent has ordered that exempt business, in writing, to desist from conduct that the superintendent found to be a mere conduit for the mortgage servicer and that the association of the servicer and the exempt business is intended to conceal an evasion of sections 1323.20 to 1323.37 of the Revised Code or the rules adopted pursuant to those sections. Any determination made pursuant to this division shall be made in accordance with Chapter 119. of the Revised Code. 1256
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Sec. 1323.22. (A) Any application for registration as a mortgage servicer shall be in writing, under oath, and in the form the superintendent of financial institutions of the department of commerce prescribes. It shall contain an undertaking by the applicant to abide by this chapter and any other information that the superintendent requires. Applicants that are foreign corporations shall obtain and maintain a license pursuant to Chapter 1703. of the Revised Code before seeking registration or registration renewal as a mortgage servicer.

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(B) Upon an applicant's filing an application and paying a nonrefundable two-hundred-dollar investigation fee, a nonrefundable one-thousand-dollar annual registration fee, and any additional fee required by law, the superintendent shall investigate the relevant facts. If the application requires investigation outside this state, the applicant may be required to advance sufficient funds to pay any of the actual expenses when it appears that these expenses will exceed two hundred dollars. The superintendent shall furnish an itemized statement of any expenses the applicant is required to pay. The superintendent shall not issue any certificate of registration unless all the required fees have been paid.

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(C) An applicant shall designate an employee or owner who has at least three years' experience in the mortgage, collections, servicing, or lending field as the applicant's operations manager. No operations manager shall be employed by any other mortgage servicer while acting as an operations manager. Any operations manager must be acceptable to the superintendent.

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(D) The superintendent may consider an application for registration as a mortgage servicer withdrawn if that application does not contain all of the information required under division (A) of this section and the applicant does not submit that

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information within ninety days after the superintendent requests 1297
the information in writing. 1298

(E) The superintendent of financial institutions shall 1299
deposit any licensing fee, charge, or fine received pursuant to 1300
sections 1323.20 to 1323.37 of the Revised Code into the consumer 1301
finance fund in the state treasury, created under section 1321.21 1302
of the Revised Code, unless otherwise specified by law. 1303

Sec. 1323.23. (A) (1) Any investigation the superintendent of 1304
financial institutions of the department of commerce undertakes 1305
with respect to an application for registration as a mortgage 1306
servicer shall include a civil records check of the applicant, 1307
including any individual whose identity is required to be 1308
disclosed in the application, and criminal records check at the 1309
time of the initial application and every five years thereafter, 1310
or upon a change of control of the registrant if the persons 1311
acquiring control have not had a criminal records check submitted 1312
to the superintendent within the past five years. 1313

(2) Where the applicant is a business entity, the 1314
superintendent may require a civil and criminal background check 1315
of those persons that the superintendent determines have the 1316
authority to direct and control the operations of the applicant. 1317
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(B) When conducting a criminal background check, the 1319
superintendent shall request the superintendent of the bureau of 1320
criminal identification and investigation, or a vendor the 1321
superintendent approves, to conduct a criminal records check based 1322
on the applicant's fingerprints or if fingerprints are unreadable, 1323
based on the applicant's social security number in accordance with 1324
division (A) (12) of section 109.572 of the Revised Code. 1325
Notwithstanding division (K) of section 121.08 of the Revised 1326
Code, the superintendent of financial institutions shall request 1327

<u>that criminal record information from the federal bureau of</u>	1328
<u>investigation be obtained as part of the criminal records check.</u>	1329
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<u>(C) The applicant shall pay any fee required under division</u>	1331
<u>(C) (3) of section 109.572 of the Revised Code.</u>	1332
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<u>Sec. 1323.24. (A) The superintendent of financial</u>	1333
<u>institutions of the department of commerce shall issue a</u>	1334
<u>certificate of registration as a mortgage servicer to an applicant</u>	1335
<u>if the superintendent finds that the applicant's financial</u>	1336
<u>responsibility, experience, character, and general fitness command</u>	1337
<u>the confidence of the public and warrant the belief that the</u>	1338
<u>business will be operated honestly and fairly in compliance with</u>	1339
<u>the purposes of this chapter and the rules promulgated under it,</u>	1340
<u>and that the applicant has the requisite bond or applicable net</u>	1341
<u>worth as this chapter requires.</u>	1342
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<u>(B) Upon finding an applicant does not meet the conditions</u>	1343
<u>set forth in this chapter, the superintendent shall issue a notice</u>	1344
<u>of intent to deny an application for registration or renewal. The</u>	1345
<u>superintendent forthwith shall notify the applicant of the denial,</u>	1346
<u>the grounds for the denial, and the applicant's opportunity to be</u>	1347
<u>heard on the action in accordance with Chapter 119. of the Revised</u>	1348
<u>Code.</u>	1349
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<u>(C) Any certificate issued pursuant to this section shall</u>	1350
<u>expire on the first day of July next after its issue, and on the</u>	1351
<u>first day of July in each succeeding year unless renewed by filing</u>	1352
<u>a renewal application and payment of an annual fee and any</u>	1353
<u>additional fee required by law, on or before the last day of June</u>	1354
<u>of each year.</u>	1355
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<u>Sec. 1323.25. (A) To renew a registration as a mortgage</u>	1356
<u>servicer, a registrant shall timely file a renewal application on</u>	1357

a form the superintendent of financial institutions of the 1358
department of commerce prescribes, along with any additional 1359
information that the superintendent requires. 1360

(B) As a condition of renewal, a registrant must provide 1361
proof that the designated operation manager meets the criteria for 1362
initial approval set forth in section 1323.23 of the Revised Code 1363
and that the mortgage servicer meets the minimum standards for the 1364
issuance of the certificate of registration under sections 1323.22 1365
to 1323.24 of the Revised Code. 1366

(C) The superintendent shall not grant any renewal if the 1367
applicant's certificate of registration is subject to an order of 1368
suspension, revocation, or an unpaid and past due fine the 1369
superintendent has imposed. 1370

(D) If an application for renewal of a certificate of 1371
registration does not contain all the information this section 1372
requires, and if the registrant does not submit that information 1373
to the superintendent within ninety days after the superintendent 1374
requests the information in writing, the superintendent may 1375
consider the application withdrawn. 1376

Sec. 1323.26. At any time there is a change of five per cent 1377
or more in the ownership of a registrant, the superintendent of 1378
financial institutions of the department of commerce may make any 1379
investigation necessary to determine whether any fact or condition 1380
presently exists that would have warranted the superintendent 1381
denying the original application had the fact or condition existed 1382
at the time of that application. If the superintendent finds such 1383
a fact or condition, the superintendent may revoke the 1384
registrant's registration and certificate pursuant to Chapter 119. 1385
of the Revised Code. 1386

Sec. 1323.27. (A) Each place of business to which borrowers 1387

are regularly directed to remit payment shall display its own 1388
certificate of registration. The superintendent of financial 1389
institutions of the department of commerce may issue additional 1390
certificates of registration to the same person for additional 1391
places of business upon compliance with the requirements governing 1392
the issuance of a single certificate. 1393

(B) (1) Any change in the place of business to a location 1394
outside the original municipal corporation requires a new 1395
certificate of registration. A registrant who makes such a change 1396
of location shall submit a new application, pay the registration 1397
fee and, if the superintendent requires, pay an investigation fee 1398
of two hundred dollars. The registrant must have the new 1399
certificate before operating in the new location. 1400

(2) A registrant who wishes to change its place of business 1401
within the same municipal corporation shall give written notice of 1402
the change in advance to the superintendent, who shall provide a 1403
certificate for the new address without cost. 1404

(C) A registrant that changes its name shall give written 1405
notice of the change to the superintendent prior to acting as a 1406
mortgage servicer under the new name. The superintendent shall 1407
provide a certificate in the new name without cost. 1408

(D) A registrant shall keep each certificate conspicuously 1409
posted in each place of business. A certificate of registration is 1410
not transferable or assignable. 1411

Sec. 1323.28. (A) Any person who acts as a mortgage servicer, 1412
if not bonded pursuant to division (B) of this section, shall 1413
maintain at all times both of the following: 1414

(1) A net worth of at least two hundred fifty thousand 1415
dollars; 1416

(2) For each additional certificate of registration beyond 1417

the first, assets of at least fifty thousand dollars either in use 1418
or readily available for use in the conduct of the business. 1419

(B) Any person acting as a mortgage servicer by arranging 1420
biweekly or other accelerated payment plans and collecting those 1421
payments shall obtain and maintain in effect at all times a 1422
corporate surety bond issued by a bonding company or insurance 1423
company authorized to do business in this state. The servicer 1424
shall file a copy of the bond with the superintendent of financial 1425
institutions of the department of commerce. The bond shall meet 1426
all of the following conditions: 1427

(1) Be in favor of the superintendent; 1428

(2) Have a base penal sum of two hundred fifty thousand 1429
dollars for the first location and an additional penal sum of ten 1430
thousand dollars for each additional location that requires a 1431
separate certificate of registration; 1432

(3) Have a term that coincides with the term of registration; 1433
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(4) Be for the exclusive benefit of any individual borrower 1435
injured by any violation of sections 1323.20 to 1323.37 of the 1436
Revised Code or the rules promulgated thereunder by a servicer, 1437
its employees, or agent; 1438

(5) Have an aggregate liability of the corporate surety for 1439
any and all breaches of the conditions of the bond not to exceed 1440
the penal sum of the bond. 1441

(C) (1) A mortgage servicer shall give notice to the 1442
superintendent by certified mail of any action that is brought by 1443
a borrower against the servicer alleging injury by a violation of 1444
sections 1323.20 to 1323.37 of the Revised Code and of any 1445
judgment that is entered against the servicer by a borrower 1446
injured by a violation of those sections. The notice shall provide 1447
details sufficient to identify the action or judgment. The 1448

servicer shall file the notice with the superintendent within ten days after the commencement of the action or receipt of the notice of entry of a judgment. 1449
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(2) A corporate surety shall give notice of any payment to the superintendent by certified mail within ten days after it pays any claim or judgment, with details sufficient to identify the person and the claim or judgment paid. 1452
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(D) Whenever the penal sum of the corporate surety bond is reduced by one or more recoveries or payments, a servicer shall furnish a new or additional bond under this section, so that the total or aggregate penal sum of the bond or bonds equals the sum required by this section, or shall furnish an endorsement executed by the corporate surety reinstating the bond to the required penal sum set forth in division (B) of this section. 1456
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(E) The liability of the corporate surety on the bond to the superintendent and to any borrower injured by a violation of sections 1323.20 to 1323.37 of the Revised Code is not affected in any way by any misrepresentation, breach of warranty, or failure to pay the premium, by any act or omission upon the part of the servicer, by the insolvency or bankruptcy of the servicer, or by the insolvency of the servicer's estate. The servicer shall maintain in effect liability for any act or omission that occurs during the term of the corporate surety bond for at least two years after the date on which the corporate surety bond is terminated or canceled. 1463
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(F) Neither the servicer nor the corporate surety shall cancel a corporate surety bond except upon notice to the superintendent by certified mail, return receipt requested. A cancellation is not effective until thirty days after the superintendent receives the notice. 1474
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(G) No servicer shall fail to comply with this section. Any 1479

servicer that fails to comply shall cease acting as a mortgage 1480
servicer in this state until that servicer complies with this 1481
section. 1482

Sec. 1323.29. (A) The superintendent of financial 1483
institutions of the department of commerce may adopt, in 1484
accordance with Chapter 119. of the Revised Code, rules to 1485
administer and enforce sections 1323.20 to 1323.99 of the Revised 1486
Code and to carry out the purposes of those sections. 1487

(B) The superintendent may investigate alleged violations of 1488
sections 1323.20 to 1323.37 of the Revised Code or the rules 1489
adopted thereunder, or complaints concerning any violation. In 1490
conducting an investigation, the superintendent, by subpoena, may 1491
compel witnesses to testify in relation to any matter over which 1492
the superintendent has jurisdiction, and may require the 1493
production or photocopying of any book, record, or other document 1494
pertaining to such matter. If a person fails to comply with the 1495
subpoena, or permit photocopying of any document subpoenaed, a 1496
court of common pleas, upon the superintendent's application, 1497
shall compel obedience by attachment proceedings for contempt or a 1498
refusal to testify. 1499

(C) (1) In accordance with Chapter 119. of the Revised Code, 1500
the superintendent may revoke, suspend, or refuse to renew any 1501
registration and certificate issued under this chapter if the 1502
superintendent finds any of the following: 1503

(a) A violation of or failure to comply with any provision of 1504
sections 1323.20 to 1323.37 of the Revised Code or the rules 1505
adopted under those sections, under Chapter 1345. of the Revised 1506
Code, federal debt collection laws, or any other law applicable to 1507
the business the registrant conducts under the registrant's 1508
certificate of registration: 1509

(b) The registrant has been convicted of or pleads guilty or 1510

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nolo contendere in a domestic, foreign, or military court to any 1511
felony or any criminal offense involving theft, receiving stolen 1512
property, embezzlement, forgery, fraud, passing bad checks, money 1513
laundering, breach of trust, dishonesty, or drug trafficking, or 1514
any criminal offense involving money or securities; 1515
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(c) The registrant's certificate of registration, license, or 1517
comparable authority as a mortgage servicer has been revoked in 1518
any other state. 1519

(2) The superintendent may impose a monetary fine pursuant to 1520
division (F) of this section in addition to, or instead of, any 1521
revocation, suspension, or denial or in settlement of matters 1522
subject to claims under division (C)(1)(a) of this section. 1523

(3) Except as otherwise provided in section 1323.21 of the 1524
Revised Code, the revocation, suspension, or refusal to renew a 1525
registration does not impair the obligation of any pre-existing 1526
lawful contract made under this chapter if a mortgage servicer 1527
makes a good faith effort to promptly transfer its collection 1528
rights to a registrant or person exempt from registration. A 1529
servicer that does not make the requisite good faith effort is 1530
subject to additional monetary fines and legal or administrative 1531
action by the superintendent. 1532

(4) Nothing in this division limits a court's ability to 1533
impose a cease and desist order preventing any further business or 1534
servicing activity. 1535

(D) The superintendent may apply to the court of common pleas 1536
for an order enjoining any violation of sections 1323.20 to 1537
1323.37 of the Revised Code. Upon a showing that a person has 1538
committed or is about to commit a violation of sections 1323.20 to 1539
1323.37 of the Revised Code, the court shall grant an injunction, 1540
restraining order, or other appropriate relief. If the application 1541

to a court is for an order enjoining a person from acting as a 1542
registrant or mortgage servicer in violation of division (A) of 1543
section 1323.21 of the Revised Code, the superintendent may 1544
request, and the court may impose, a civil penalty for that 1545
unregistered or unlicensed conduct in an amount not to exceed five 1546
thousand dollars per violation. 1547

(E) The superintendent may issue a cease and desist order if 1548
the superintendent determines that a person is engaged in or may 1549
be engaged in activities that violate sections 1323.20 to 1323.37 1550
of the Revised Code or the rules adopted thereunder, after notice 1551
and a hearing conducted in accordance with Chapter 119. of the 1552
Revised Code. 1553

(F) (1) The superintendent may impose a fine of not more than 1554
one thousand dollars for each day a violation of this chapter or 1555
the rules adopted under it is committed, repeated, or continued. 1556
In determining the amount of a fine to impose, the superintendent 1557
may consider all of the following: 1558

(a) The seriousness of the violation; 1559

(b) The servicer's good faith efforts to prevent the 1560
violation; 1561

(c) The servicer's history regarding violations and 1562
compliance with the superintendent's orders; 1563

(d) The servicer's financial resources; 1564

(e) Any other matters the superintendent considers 1565
appropriate in enforcing this chapter. 1566

(2) Monetary fines imposed under this section do not preclude 1567
any criminal fine described in section 1323.99 of the Revised 1568
Code. 1569

(G) All fines collected pursuant to this section shall be 1570
paid to the treasurer of state to the credit of the consumer 1571

<u>finance fund created in section 1321.21 of the Revised Code.</u>	1572
<u>Sec. 1323.30. (A) (1) A mortgage servicer shall keep separate records pertaining to each loan serviced. The servicer shall preserve those records for so long as the servicer has responsibility for the loan and retain copies of those records for at least four years even if the servicer transfers the original copies for any reason. At any time responsibility for the loan is transferred to another servicer, the servicer who is ceasing responsibility shall transfer all original loan documents and records to the servicer who is assuming responsibility for the loan. Any system of electronic imaging of required records shall be approved by the superintendent of financial institutions of the department of commerce prior to its use but at no time shall such a system be a substitute for maintaining original documents as this section requires.</u>	1573 1574 1575 1576 1577 1578 1579 1580 1581 1582
<u>(2) As often as necessary, the superintendent may make or cause to be made an examination of records pertaining to loans serviced for the purpose of determining whether the servicer is complying with sections 1323.20 to 1323.37 of the Revised Code and of verifying any registrant's annual report.</u>	1583 1584 1585 1586
<u>(B) (1) The superintendent may require each servicer to file each year a report under oath or affirmation, on forms the superintendent supplies, concerning the business and operations for the preceding calendar year. A servicer that operates two or more registered offices or who operates registered offices with one or more affiliated servicers, may file a composite report of the group of registered offices in lieu of individual reports.</u>	1587 1588 1589 1590 1591
<u>(2) The reports provided under division (B) (1) of this section are not public records and are not open to public inspection.</u>	1592 1593 1594 1595 1596 1597 1598
<u>(C) (1) The following information is confidential:</u>	1599 1600 1601 1602

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- (a) Examination information, and any information leading to or arising from an examination; 1603
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- (b) Investigation information, and any information arising from or leading to an investigation. 1605
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- (2) The information described in this division is confidential for all purposes except when it is necessary for the superintendent to take official action regarding the affairs of a servicer or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the attorney general. This information may be introduced into evidence or disclosed pursuant to section 1181.25 of the Revised Code. 1607
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- (D) All application information is a public record as defined in section 149.43 of the Revised Code, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information. 1614
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- (E) Nothing in this section prevents the superintendent from releasing information relating to servicers or exchanging that information with other financial institution regulatory authorities. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a servicer is engaged or has applied to engage, to the extent that the regulator has jurisdiction over a servicer engaged in that business activity. A servicer is engaged in a business activity, and a regulator of that business activity has jurisdiction over the servicer, whether the servicer conducts the activity directly or a subsidiary or affiliate of the servicer conducts the activity. 1621
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- (F) Nothing in this section prevents the superintendent of 1633

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financial institutions from releasing information relating to 1634
mortgage servicers to the attorney general, to the superintendent 1635
of real estate and professional licensing of the department of 1636
commerce for purposes relating to the administration of Chapters 1637
4735. and 4763. of the Revised Code, to the superintendent of 1638
insurance for purposes relating to the administration of Chapter 1639
3953. of the Revised Code, to the commissioner of securities of 1640
the department of commerce for purposes relating to the 1641
administration of Chapter 1707. of the Revised Code, or to local 1642
law enforcement agencies and local prosecutors. Information 1643
released pursuant to this section remains confidential. The 1644
superintendent of financial institutions, by rule, may designate 1645
additional state agencies and regulatory authorities as entities 1646
with which to share this confidential information. 1647

Sec. 1323.31. No person, in connection with any examination 1648
or investigation conducted by the superintendent of financial 1649
institutions of the department of commerce under this chapter, 1650
shall knowingly do any of the following: 1651

(A) Circumvent, interfere with, obstruct, or fail to 1652
cooperate, including making a false or misleading statement, 1653
failing to produce records, or intimidating or suborning any 1654
witness; 1655

(B) Withhold, abstract, remove, mutilate, destroy, or secrete 1656
any books, records, computer records, or other information; 1657

(C) Tamper with, alter, or manufacture any evidence. 1658

Sec. 1323.32. (A) No mortgage servicer, through its 1659
operations manager or otherwise, shall fail to reasonably 1660
supervise persons the servicer employs or associates with, or to 1661
establish reasonable procedures to avoid violations of sections 1662
1323.20 to 1323.37 of the Revised Code or the rules adopted 1663

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thereunder, violations of applicable state and federal consumer
and lending laws or rules by persons the servicer employs or
associates with. 1664
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(B) Within ten business days of any change in a mortgage
servicer's statutory agent designation or address, the servicer
shall file with the superintendent of financial institutions of
the department of commerce evidence that the servicer has filed
such changes with the secretary of state. 1667
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(C) (1) At least thirty days prior to the closure of a
registered office location, a mortgage servicer shall notify the
superintendent by filing a notice of closure on a form approved by
the superintendent. The notice shall indicate the custodian of the
records and where the records will be maintained. Within five
business days after the closure, the servicer shall surrender the
certificate of registration issued to that location by returning
it to the superintendent. 1672
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(2) The closure of an office and the surrender of a
certificate does not affect a mortgage servicer's civil or
criminal liability for acts committed before the surrender. 1680
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(D) A mortgage servicer shall maintain books and records in
compliance with this chapter and make them available to the
superintendent of financial institutions of the department of
commerce. After any closure, records remain subject to examination
and or investigation. The servicer shall send the superintendent
written notice of any change in the location of the records or the
custodian of those records. 1683
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Sec. 1323.33. (A) No mortgage servicer shall refuse to
provide information regarding the amount required to pay in full a
residential mortgage loan when the borrower or a person the
borrower designates makes that request in writing. The servicer 1690
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shall provide the requested payoff statement without charge one 1694
time during any twelve-month period. If additional payoff 1695
statements are requested, the servicer may charge an amount not in 1696
excess of three dollars for each additional statement. The 1697
servicer shall provide any payoff statement within five business 1698
days of the request. 1699

(B) No mortgage servicer shall obtain a certificate of 1700
registration through any false or fraudulent representation of a 1701
material fact or any omission of a material fact required by state 1702
or federal law, or make any substantial misrepresentation in the 1703
registration application. 1704

(C) No mortgage servicer shall make false or misleading 1705
statements of a material fact, omissions of statements required by 1706
state or federal law, or false promises regarding a material fact, 1707
through advertising or other means, or engage in a continued 1708
course of misrepresentations. 1709

(D) No mortgage servicer shall engage in conduct that 1710
constitutes improper, fraudulent, or dishonest dealings. 1711

(E) No mortgage servicer or applicant for registration shall 1712
fail to notify the superintendent of financial institutions of the 1713
department of commerce within thirty days after the servicer or 1714
applicant has: 1715

(1) Been convicted of or pleads guilty or nolo contendere in 1716
a domestic, foreign, or military court to any felony; 1717

(2) Been convicted of or pleads guilty or nolo contendere in 1718
a domestic, foreign, or military court to any criminal offense 1719
involving theft, receiving stolen property, embezzlement, forgery, 1720
fraud, passing bad checks, money laundering, breach of trust, 1721
dishonesty, or drug trafficking, or any criminal offense involving 1722
money or securities; 1723

- (3) Had a mortgage servicer registration, license, or comparable authority revoked in any other state. 1724
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- (F) No mortgage servicer shall knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage servicing document or on any document related to an accounting of payments remitted or disbursed. For purposes of this division, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error. 1726
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- (G) No mortgage servicer shall knowingly instruct, solicit, propose, or otherwise cause a borrower to sign in blank a document. 1733
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- (H) Any violation of division (C), (D), (F), or (G) of this section, or section 1323.34, 1323.35, or 1323.36 of the Revised Code is an unfair and deceptive act or practice in violation of section 1345.02 of the Revised Code. 1736
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- Sec. 1323.34. (A) In addition to the duties imposed by common law or state or federal law, in the course of servicing residential mortgage loans in Ohio, a mortgage servicer shall do all of the following: 1740
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- (1) Act with good faith and fair dealing in any transaction, practice, or course of business associated with servicing; 1744
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- (2) Act with reasonable skill, care, and diligence; 1746
- (3) Act in good faith to provide the borrower with the facts relating to the nature and extent of any delinquency or default and the amounts owed or necessary to reinstate the loan or cure the default; 1747
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- (4) Subject to the servicer's duties and obligations under its mortgage servicing contract, attempt a resolution, modification, or workout to the delinquency of a borrower who 1751
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<u>requests assistance;</u>	1754
<u>(5) Make a good faith effort to correct any erroneous information it has provided to any credit reporting agency;</u>	1755
<u>(6) Provide information regarding the amount required to pay in full a residential mortgage loan within five business days when requested by the borrower or by another person designated in writing by the borrower. The servicer shall provide the requested payoff statement without charge once during any twelve-month period. If additional payoff statements are requested, the servicer may charge an amount not in excess of three dollars for each additional statement.</u>	1756
<u>(7) Make all payments from any escrow account in a timely manner, so as to avoid the assessment of late fees, penalties, or consequential damages, notwithstanding any loan delinquency, unless there are insufficient funds in the escrow account to cover the payments;</u>	1757
<u>(8) Accept and credit each residential mortgage loan payment received on the date received;</u>	1758
<u>(9) Take all steps necessary to terminate a foreclosure action when the condition giving rise to action has been fully cured. Upon cure of a default, the servicer shall reinstate the borrower to the same position as if the default had not occurred, and nullify, as of the date of the cure, any acceleration of any obligation under the residential mortgage loan or note arising from the default.</u>	1759
<u>(10) In addition to the duties enumerated in sections 1323.20 to 1323.37 of the Revised Code, any mortgage servicer for a government-insured loan shall comply with the loss mitigation standards and guidelines as required by the insuring entity.</u>	1760
<u>(B) When establishing a loan modification solution for a borrower, a mortgage servicer shall seek to achieve long-term</u>	1761
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<u>sustainability for the borrower and adhere to the loan</u>	1785
<u>modification standards established under section 1323.05 of the</u>	1786
<u>Revised Code.</u>	1787
<u>Sec. 1323.35. No mortgage servicer shall do any of the</u>	1788
<u>following in connection with a residential mortgage loan:</u>	1789
<u>(A) Collect, charge, or retain any fee from the borrower</u>	1790
<u>unless the fee is reasonable, for a bona fide service rendered,</u>	1791
<u>and specifically authorized by the residential mortgage loan and</u>	1792
<u>permitted by law:</u>	1793
<u>(B) Initiate a foreclosure action without proof of ownership</u>	1794
<u>as evidenced by a declaration signed under penalty of perjury,</u>	1795
<u>stating that the party in interest has reviewed the original note</u>	1796
<u>and all subsequent assignments and has concluded that the party in</u>	1797
<u>interest owns the note or mortgage:</u>	1798
<u>(C) Fail to provide written notice to the borrower before</u>	1799
<u>acquiring and placing hazard, homeowner's, or flood insurance on a</u>	1800
<u>property or acquiring and placing such insurance if the mortgage</u>	1801
<u>servicer knows, or has reason to know, that a policy for such</u>	1802
<u>insurance is in effect:</u>	1803
<u>(D) Acquire and place hazard, homeowner's, or flood insurance</u>	1804
<u>on a property for an amount that exceeds the greater of the</u>	1805
<u>insurable improvements to the property, the last known coverage</u>	1806
<u>amount that was sufficient to meet the borrower's insurance</u>	1807
<u>obligations, or the unpaid balance owed by the borrower:</u>	1808
<u>(E) Fail to refund unearned premiums for insurance the</u>	1809
<u>mortgage servicer or its agents placed upon the borrower,</u>	1810
<u>providing there is reasonable evidence that the needed coverage</u>	1811
<u>had been obtained, the forced placement is not necessary, and the</u>	1812
<u>property is properly insured in accordance with the loan or note.</u>	1813
<u>Sec. 1323.36. (A) No mortgage servicer shall use unfair,</u>	1814

deceptive or unconscionable means to collect or attempt to collect 1815
any claim in connection with a residential mortgage loan. Without 1816
limiting the general application of the foregoing, the following 1817
actions violate this section: 1818

(1) The collection or the attempt to collect any interest or 1819
other charge, fee, or expense that is incidental to the principal 1820
obligation, unless expressly authorized by the agreement creating 1821
the obligation and by law, including division (A) of section 1822
1323.35 of the Revised Code: 1823

(2) Any communication with a borrower if the mortgage 1824
servicer knows that the borrower is represented by an attorney and 1825
the attorney's name and address are known or could be easily 1826
ascertained. This prohibition does not apply if the borrower's 1827
attorney fails to respond within thirty days to answer 1828
correspondence, return phone calls, or discuss the obligation in 1829
question, or the attorney consents to the servicer having direct 1830
communication with the borrower: 1831

(3) Placing a telephone call or otherwise communicating by 1832
telephone with a borrower or third party, at any place including a 1833
place of employment, and falsely stating that the call is "urgent" 1834
or an "emergency": 1835

(4) Using profane or obscene language or language that is 1836
intended to unreasonably abuse the listener or reader: 1837

(5) Placing telephone calls without disclosure of the 1838
caller's identity and with the intent to annoy, harass, or 1839
threaten any person at the number called: 1840

(6) Causing expense to any person in the form of long 1841
distance telephone tolls, text messaging fees, or other charges 1842
the servicer causes by concealing the true purpose of the 1843
communication: 1844

(7) Causing a telephone to ring or engaging any person in a telephone conversation repeatedly or continuously, or at unusual times or times known to be inconvenient, with the intent to annoy, abuse, oppress, or threaten any person at the called number.

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(B) The requirements set forth in this section are in addition to any other requirement set forth in federal or state law regulating the conduct of collection activities, including the Federal Fair Debt Collection Practices Act, 91 Stat. 874 (1977), 15 U.S.C. 1692 et seq.

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Sec. 1323.361. (A) No mortgage servicer, in conducting a mortgage servicer business, shall engage in any unfair, deceptive or unconscionable act in violation of Chapter 1345. of the Revised Code. Any violation of the sections set forth in division (H) of section 1323.33 or section 1323.34, 1323.35, or 1323.36 of the Revised Code is an unfair and deceptive act or practice in violation of section 1345.02 of the Revised Code. The attorney general may take enforcement action and a borrower may seek recovery under Chapter 1345. of the Revised Code for the violations set forth in this division.

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(B) A borrower injured by a violation of division (A) of this section may not recover damages, attorney's fees, and costs under Chapter 1345. of the Revised Code if the borrower has recovered damages in a cause of action initiated under section 1323.37 of the Revised Code and the damages sought under Chapter 1345. of the Revised Code are based on the same acts or circumstances as the damages awarded under section 1323.37 of the Revised Code.

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Sec. 1323.37. (A) A borrower injured by a violation of sections 1323.20 to 1323.37 of the Revised Code may recover damages in an amount not less than all improper charges or fees

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<u>paid to the mortgage servicer, plus reasonable attorney's fees and</u>	1875
<u>court costs and also may be awarded punitive damages.</u>	1876
<u>(B) Nothing in this section prevents recovery under division</u>	1877
<u>(B) or (C) (2) of section 1323.21 of the Revised Code.</u>	1878
<u>(C) A borrower may not recover damages, attorney's fees, or</u>	1879
<u>costs under this section if the borrower also recovered damages in</u>	1880
<u>an action initiated under any section of Chapter 1321, or 1345. of</u>	1881
<u>the Revised Code and the damages so awarded were based on the same</u>	1882
<u>acts or circumstances as the damages sought under this section.</u>	1883
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<u>Sec. 1323.99. (A) Whoever violates division (A) (1) or (2) of</u>	1885
<u>section 1323.21, or division (F) or (G) of section 1323.33 of the</u>	1886
<u>Revised Code is guilty of a felony of the fifth degree.</u>	1887
<u>(B) Whoever violates section 1323.31 of the Revised Code with</u>	1888
<u>the intent to interfere or obstruct an examination or</u>	1889
<u>investigation is guilty of a felony of the fourth degree.</u>	1890
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<u>Sec. 2303.33. (A) No court shall accept a complaint to</u>	1892
<u>initiate a foreclosure on a residential mortgage loan unless the</u>	1893
<u>filing contains a copy of the notice and information required by</u>	1894
<u>section 1323.02 of the Revised Code, a copy of the writing that</u>	1895
<u>section 2308.02 of the Revised Code requires, which shall be filed</u>	1896
<u>under seal in connection with the foreclosure, and a certification</u>	1897
<u>by the filer that all notices and information required by Chapter</u>	1898
<u>1323. of the Revised Code have been provided, and the requisite</u>	1899
<u>periods of time have elapsed.</u>	
<u>(B) A court or judicial officer may access the state</u>	1900
<u>foreclosure database established pursuant to section 1323.07 of</u>	1901
<u>the Revised Code to confirm information provided pursuant to this</u>	1902
<u>section. A materially inaccurate statement in the filer's</u>	1903

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<u>certification is cause for dismissal of the action without</u>	1904
<u>prejudice and for payment by the filing party of costs the</u>	1905
<u>borrower incurs in defending the foreclosure proceeding.</u>	1906
<u>(C) Along with the summons that the clerk of courts issues to</u>	1907
<u>the owner of a property when a residential mortgage foreclosure</u>	1908
<u>action is filed, the clerk shall provide a notice of the six-month</u>	1909
<u>moratorium that section 2308.03 of the Revised Code establishes,</u>	1910
<u>so long as the moratorium remains in effect.</u>	1911
<u>(D) Within three business days after issuing a writ of</u>	1912
<u>execution in a residential foreclosure action as described in</u>	1913
<u>section 2329.091 of the Revised Code, the clerk of court shall</u>	1914
<u>file information of that action with the administrative director</u>	1915
<u>of the Ohio supreme court for inclusion in the state foreclosure</u>	1916
<u>database. The filing shall contain the name and address of the</u>	1917
<u>borrower, the date of the writ, and the name of the mortgage</u>	1918
<u>servicer or mortgage holder that filed the complaint to initiate</u>	1919
<u>the foreclosure action.</u>	1920
<u>(E) As used in this section, "residential mortgage,"</u>	1921
<u>"residential mortgage loan," and "mortgage servicer" have the same</u>	1922
<u>meanings as in section 1323.01 of the Revised Code.</u>	1923
<u>Sec. 2308.01. (A) As used in this chapter, "residential</u>	1924
<u>mortgage," "residential mortgage loan," "mortgage servicer,"</u>	1925
<u>"subprime mortgage loan," "unoccupied," "depository institution,"</u>	1926
<u>and "credit union" have the same meanings as in section 1323.01 of</u>	1927
<u>the Revised Code.</u>	1928
<u>(B) Nothing in this chapter limits a court's inherent</u>	1929
<u>equitable jurisdiction.</u>	1930
<u>Sec. 2308.02. (A) No person shall file a complaint to</u>	1931
<u>initiate a residential mortgage foreclosure action unless that</u>	1932
<u>complaint is accompanied by a writing that contains all of the</u>	1933

following:

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(1) A statement setting forth the name of the holder of the note and asserting that the named holder is the true party in interest with a right to file the action;

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(2) A statement as to whether the mortgage note has been securitized and if so, the identity of any mortgage-backed security that holds the loan and the name of the trustee of that mortgage-backed security;

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(3) A statement as to whether the residential property is occupied and the date that its occupancy status last was assessed;

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(4) Evidence that a check for seven hundred fifty dollars has been transmitted to the department of commerce as required under section 1323.11 of the Revised Code, or evidence that the person is exempt from the filing fee pursuant to section 1323.11 of the Revised Code.

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(B) By filing a foreclosure action, an attorney avers that the attorney has a direct line of communication with the plaintiff and the plaintiff's loan servicer and can negotiate on behalf of the plaintiff and the plaintiff's loan servicer.

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(C) Any complaint to initiate a residential mortgage foreclosure action shall be accompanied by a copy of an appraisal of the property, conducted within the prior three months by an appraiser who is certified or licensed pursuant to Chapter 4763. of the Revised Code to perform residential appraisals.

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Sec. 2308.021. (A) (1) If a plaintiff in a foreclosure suit has a reasonable suspicion that the property which is the subject of the foreclosure has been vacated, the plaintiff may request that a law enforcement officer having jurisdiction over the subject property inspect the property and take any other

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<u>reasonable action to ascertain if the property has been vacated.</u>	1964
<u>(2) A village, city, township, or county may set a fee for the property inspection described in division (A) (1) of this section.</u>	1965 1966 1967
<u>(3) Any law enforcement officer conducting an inspection under division (A) (1) of this section and acting in good faith is immune from suit for any actions undertaken during such inspection.</u>	1968 1969 1970 1971
<u>(4) A law enforcement officer who conducts an inspection pursuant to division (A) (1) of this section shall issue a written report to the plaintiff stating an opinion as to whether or not the property has been vacated.</u>	1972 1973 1974 1975
<u>(5) After the property is inspected, the plaintiff may request an ex parte order or other order from the court granting plaintiff sole possession of the property. If the inspection report indicates that the property has been vacated, the plaintiff may take immediate possession of the property, but shall request an order of possession from the court within five business days after taking possession.</u>	1976 1977 1978 1979 1980 1981 1982
<u>(B) The remedies set out in division (A) of this section are in addition to any other rights or remedies a party to a foreclosure suit may have.</u>	1983 1984 1985
<u>Sec. 2308.03. (A) (1) There is hereby declared a six-month moratorium during which mortgage foreclosure proceedings are stayed on residential properties occupied by the owner of the property or the tenant of that owner, to commence on the effective date of this section.</u>	1986 1987 1988 1989 1990
<u>(2) The moratorium this section establishes does not apply to any of the following:</u>	1991 1992
<u>(a) Unoccupied properties;</u>	1993

<u>(b) Foreclosed properties that have been sold at auction and are awaiting a court's confirmation of the sale;</u>	1994
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<u>(c) A foreclosure action that a depository institutions files if that depository institution is headquartered in Ohio, has two and one-half billion dollars or less in total assets, and originated and services the mortgage loan being foreclosed;</u>	1996
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<u>(d) A foreclosure action that a credit union files.</u>	2000
<u>(3) The moratorium this section establishes does not prohibit the filing of new foreclosure actions.</u>	2001
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<u>(B) Upon the filing of a residential mortgage foreclosure action, the clerk of courts shall send with the summons to the borrower a notice that a moratorium is in effect and that proceedings have been stayed to give the borrower an opportunity to negotiate a workout or modification of the mortgage loan with the mortgage servicer. The clerk shall send the same notice to all qualified defendants in foreclosure actions currently pending as of the effective date of this bill.</u>	2003
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<u>(C) (1) During the moratorium, a foreclosed borrower shall make payments each month in an amount equal to one-half of the monthly payment that was in effect at the time the foreclosure action was filed, or other amount that the judge determines is just and equitable. The payments shall be allocated first for taxes and insurance, if the borrower's mortgage loan required such payments into escrow, then to interest and any remaining amounts to principal. The borrower shall make the payments to the mortgage servicer to whom the borrower made payments at the time the foreclosure action was filed.</u>	2011
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<u>(2) No mortgage servicer shall refuse to accept the payments that this section describes.</u>	2021
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<u>(D) If a borrower fails to make the payments that this section requires, thirty days after a missed payment, the party</u>	2023
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who filed the action may petition the court for the foreclosure 2025
action to resume and that action shall resume as if there were no 2026
moratorium. 2027

(E) At any time during the moratorium, a borrower may 2028
petition the court to request that the foreclosure action on the 2029
borrower's property proceed as if there were no moratorium. 2030

(F) Nothing in this section prevents the clerk of courts or 2031
the plaintiff from taking any action to perfect service of the 2032
summons. 2033

(G) During the time of the moratorium, the borrower shall 2034
make a good faith effort to maintain the property and shall grant 2035
entry to inspect the property to the servicer or other 2036
representative of the servicer or mortgagee, upon a 2037
twenty-four-hour written notice from the servicer. 2038

Sec. 5713.03. The county auditor, from the best sources of 2039
information available, shall determine, as nearly as practicable, 2040
the true value of each separate tract, lot, or parcel of real 2041
property and of buildings, structures, and improvements located 2042
thereon and the current agricultural use value of land valued for 2043
tax purposes in accordance with section 5713.31 of the Revised 2044
Code, in every district, according to the rules prescribed by this 2045
chapter and section 5715.01 of the Revised Code, and in accordance 2046
with the uniform rules and methods of valuing and assessing real 2047
property as adopted, prescribed, and promulgated by the tax 2048
commissioner. ~~He~~ The auditor shall determine the taxable value of 2049
all real property by reducing its true or current agricultural use 2050
value by the percentage ordered by the commissioner. In 2051
determining the true value of any tract, lot, or parcel of real 2052
estate under this section, if such tract, lot, or parcel has been 2053
the subject of an arm's length sale between a willing seller and a 2054
willing buyer within a reasonable length of time, either before or 2055

after the tax lien date, the auditor shall consider the sale price 2056
of such tract, lot, or parcel to be the true value for taxation 2057
purposes. The auditor shall treat a short sale, as defined in 2058
section 1323.01 of the Revised Code, as an arm's length sale for 2059
taxation purposes. However, the sale price in an arm's length 2060
transaction between a willing seller and a willing buyer shall not 2061
be considered the true value of the property sold if subsequent to 2062
the sale: 2063

(A) The tract, lot, or parcel of real estate loses value due 2064
to some casualty; 2065

(B) An improvement is added to the property. Nothing in this 2066
section or section 5713.01 of the Revised Code and no rule adopted 2067
under section 5715.01 of the Revised Code shall require the county 2068
auditor to change the true value in money of any property in any 2069
year except a year in which the tax commissioner is required to 2070
determine under section 5715.24 of the Revised Code whether the 2071
property has been assessed as required by law. 2072

The county auditor shall adopt and use a real property record 2073
approved by the commissioner for each tract, lot, or parcel of 2074
real property, setting forth the true and taxable value of land 2075
and, in the case of land valued in accordance with section 5713.31 2076
of the Revised Code, its current agricultural use value, the 2077
number of acres of arable land, permanent pasture land, woodland, 2078
and wasteland in each tract, lot, or parcel. ~~He~~ The auditor shall 2079
record pertinent information and the true and taxable value of 2080
each building, structure, or improvement to land, which value 2081
shall be included as a separate part of the total value of each 2082
tract, lot, or parcel of real property. 2083

Section 2. That existing sections 109.572, 1181.05, 1181.21, 2084
1321.52, 1322.05, and 5713.03 of the Revised Code are hereby 2085
repealed. 2086

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Section 3. Section 2308.03 of the Revised Code is hereby	2087
repealed, effective six months after the effective date of this	2088
act.	2089
Section 4. Section 109.572 of the Revised Code is presented	2090
in this act as a composite of the section as amended by Sub. H.B.	2091
195, Sub. H.B. 545, and Sub. S.B. 247, all of the 127th General	2092
Assembly. The General Assembly, applying the principle stated in	2093
division (B) of section 1.52 of the Revised Code that amendments	2094
are to be harmonized if reasonably capable of simultaneous	2095
operation, finds that the composite is the resulting version of	2096
the section in effect prior to the effective date of the section	2097
as presented in this act.	2098
Section 5. The General Assembly enacts section 2308.03 of the	2099
Revised Code as an extraordinary measure necessary to respond to	2100
an emergency situation created by the mortgage foreclosure crisis	2101
in this state. The high rate of residential mortgage foreclosures	2102
is proving harmful to families, lenders, and communities alike.	2103
The purpose of enacting this section is to mitigate the very	2104
negative impact of the current situation and to preserve property	2105
values by providing time for solutions to begin to have an impact.	2106
These solutions that need time to be effective include	2107
implementing federal and state initiatives that provide assistance	2108
and guidance to homeowners, lenders, and communities.	2109
Section 6. Section 1323.21 of the Revised Code takes effect	2110
six months after the effective date of this act. During that	2111
six-month period, the Superintendent of Financial Institutions of	2112
the Department of Commerce may take applications for registration	2113
as a mortgage servicer, process the applications, and issue	2114
certificates of registration as the Superintendent is able. During	2115
that time, no mortgage servicer is required to have a certificate	2116

of registration and the Superintendent is not obligated to issue
certificates until the Superintendent is able.

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