

Ohio Division of Financial Institutions

Mortgage Brokers & Lenders Letter 2004-1

TO: Ohio Registered Mortgage Brokers & Lenders

SUBJECT: Prohibition of False Sales Price Transactions
Violation of Ohio R.C. §1322.07(C)

SUMMARY: This letter is intended to alert mortgage brokers and lenders in Ohio of the position of the Ohio Division of Financial Institutions that it is improper and dishonest conduct, in violation of Ohio R.C. §1322.07(C), to knowingly participate in obtaining a loan to finance a sales price that has been falsified.

DATE: April 15, 2004

Ohio Revised Code § 1322.07(C)

This provision of the Mortgage Broker Act is intended to broadly prevent dishonest conduct that unfairly misleads borrowers or is otherwise improper.

False Sales Price Financing as Dishonest and Improper Conduct

Ohio R.C.1322.07(c) prohibits mortgage lenders and brokers from knowingly participating in obtaining a loan to finance a sales price that has been falsified. Recent inquiries to the Division have brought to our attention a dishonest practice utilizing false sales prices for the purpose of stripping non-existing equity from properties. An example of this scheme would be as follows: A seller is offered 50% more than the asking price (e.g., \$75,000 v. \$50,000), which price is purportedly supported by a grossly inflated appraisal. This new sales price results in the mortgage company lending the purchaser \$60,000 v. \$40,000 in a standard 80% to value mortgage-financing program. However, the additional loan amount created by this excess sales amount (e.g. \$20,000) is credited as cash at closing to some company who is to assist the buyer in managing or repairing the property.

The ultimate holder of the note is being defrauded, in that the property's real value is significantly below the mortgage note amount. If the buyer and the entity collecting the management fee are truly separate and unconnected, then the buyer is also a likely potential victim who is left owing more on a piece of property than it is actually worth. Where the buyer is connected to the entity collecting the repair/management fee, then the buyer is attempting to receive cash derived from the inflated equity.

Knowingly participating in such financing defrauds the eventual holder of the note and thus is an improper and dishonest practice, which this office believes is a violation of Ohio R.C. §1322.07.

ACTION: Registrants and licensees must review their procedures to ensure compliance with current state law prohibiting improper or dishonest conduct in mortgage brokering and lending as it relates to knowingly participating in real estate sales involving inflated prices and appraisals for the purpose of removing false equity, and adjust their policies and practices accordingly to conform with this letter.

Please contact the Division at (614) 728-8400 should you have questions.