

## CONSUMER MORTGAGE PROTECTION ACT

### Act 660 of 2002

AN ACT to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide for remedies.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

*The People of the State of Michigan enact:*

#### 445.1631 Short title.

##### Sec. 1.

This act shall be known and may be cited as the "consumer mortgage protection act".

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### 445.1632 Definitions.

##### Sec. 2.

As used in this act:

- (a) "Commissioner" or "director" means the director of the department of insurance and financial services.
- (b) "Depository institution" means a bank, savings and loan association, savings bank, or credit union that is chartered under state or federal law.
- (c) "Home improvement installment contract" means an agreement consisting of 1 or more documents that covers the sale of goods or furnishing of services to a buyer for improvements to the buyer's principal dwelling, if that dwelling is located in this state and used for occupancy of 4 or fewer families, under which the buyer promises to pay in installments all or any part of the price of the goods or services.
- (d) "Mortgage loan" means a loan or home improvement installment contract secured by a first or subordinate mortgage or any other form of lien or a land contract that covers real property located in this state that is used as the borrower's principal dwelling and is designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:
  - (i) A loan transaction in which the proceeds are used to acquire the borrower's principal dwelling.
  - (ii) A reverse-mortgage transaction.
  - (iii) An open-end credit plan. As used in this subparagraph, "open-end credit plan" means a loan in which the lender reasonably contemplates repeated advances.
  - (iv) A loan transaction in which the proceeds are not used primarily for a personal, family, or household purpose.
- (e) "Person" means an individual, corporation, limited liability company, partnership, association, governmental entity, or any other legal entity.
- (f) "Reverse-mortgage" means a nonrecourse loan under which both of the following apply:
  - (i) A mortgage or other form of lien securing 1 or more advances is created in the borrower's principal dwelling.
  - (ii) The principal, interest, or shared appreciation or equity is payable only after the borrower dies, the dwelling is transferred, or the borrower ceases to occupy the dwelling as a principal dwelling.
- (g) "Regulated lender" means a depository institution; a licensee or a registrant under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684; or a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.
- (h) "State and federal laws" means, individually and collectively, 1 or more of the laws or regulations of this state

or the federal government which regulate or are applicable to a mortgage loan or a person that is brokering, making, servicing, or collecting a mortgage loan, including, without limitation, the truth in lending act, 15 USC 1601 to 1667f, real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724, equal credit opportunity act, 15 USC 1691 to 1691f, fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 82 Stat. 81, fair credit reporting act, 15 USC 1681 to 1681x, the homeowners protection act of 1998, Public Law 105-216, 112 Stat. 897, fair debt collection practices act, 15 USC 1601nt and 1692 to 1692o, Dodd-Frank Wall Street reform and consumer protection act, Public Law 111-203, consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to 445.1614, and home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002 ;-- Am. 2012, Act 443, Imd. Eff. Dec. 27, 2012 ;-- Am. 2016, Act 44, Eff. June 13, 2016

**Compiler's Notes:** For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991. For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

#### **445.1633 Compliance with state and federal laws.**

Sec. 3.

A person shall broker, make, or service mortgage loans in accordance with all applicable state and federal laws.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### **445.1634 Person making mortgage loan; prohibited conduct.**

Sec. 4.

- (1) A person offering to make or making a mortgage loan shall not do either of the following:
  - (a) Charge a fee for a product or service if the product or service is not actually provided to the customer.
  - (b) Misrepresent the amount charged by or paid to a third party for a product or service.
- (2) A lender in making a mortgage loan shall not finance as part of the loan single premium coverage for any credit life, credit disability, or credit unemployment.
- (3) A person, appraiser, or real estate agent shall not make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a mortgage loan including, but not limited to, the borrower's ability to qualify for a mortgage loan or the value of the dwelling that will secure repayment of the mortgage loan.
- (4) A lender shall not insert or change information on an application for a mortgage loan if the lender knows that the information is false and misleading and intended to deceive a third party that the borrower is qualified for the loan when in fact the third party would not approve the loan without the insertion or change.
- (5) A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider any of the following factors in deciding whether a statement or misrepresentation is deceptive or misleading:
  - (a) The overall impression that the statement or representation reasonably creates.
  - (b) The particular type of audience to which the statement is directed.
  - (c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.
- (6) A lender shall not condition the payment of an appraisal upon a predetermined value or the closing of the mortgage loan which is the basis of the appraisal.
- (7) A person shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the dwelling offered as security for repayment of the mortgage loan.
- (8) A mortgage loan note shall not contain blanks regarding payments, interest rates, maturity date, or amount

borrowed to be filled in after the note is signed by the borrower.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

**445.1635 Mortgage loan with term less than 5 years; payment schedule.**

Sec. 5.

A mortgage loan with a term of less than 5 years shall not have a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance. This section does not apply to loans with maturities of less than 1 year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

**445.1636 Federal special information booklet; document to be prepared by department.**

Sec. 6.

(1) Subject to subsection (2), at the time a person applies for a mortgage loan, the lender shall provide the applicant with a copy of the special information booklet described in 12 CFR 1024.6, issued under the authority of the real estate settlement procedures act of 1974, Public Law 93-533.

(2) If the federal government repeals or amends 12 CFR 1024.6 or otherwise ceases publication of the special information booklet described in subsection (1), the department of insurance and financial services shall prepare a document that describes the rights of borrowers in mortgage loan transactions; annually review the document to ensure the accuracy of any telephone numbers, Internet website addresses, or other information included in the document; and make the document available to lenders and the public. If the document described in this subsection is available to a lender under this subsection at the time a person applies for a mortgage loan, the lender shall provide the applicant with a copy of that document.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002 ;-- Am. 2016, Act 44, Eff. June 13, 2016

**445.1637 Repealed. 2016, Act 44, Eff. June 13, 2016.**

**Compiler's Notes:** The repealed section pertained to written notice regarding credit counseling.

**445.1638 Examinations and investigations by commissioner.**

Sec. 8.

The commissioner may conduct examinations and investigations of a person over whom the commissioner has regulatory authority as necessary to determine whether the person is brokering, making, servicing, or collecting mortgage loans as required by this act.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### **445.1639 Violation of act.**

##### **Sec. 9.**

If the commissioner determines that a person is brokering, making, servicing, or collecting mortgage loans in violation of this act, the commissioner shall do 1 or more of the following:

- (a) Initiate a cause of action under section 10.
- (b) If the person is chartered, licensed, registered, regulated, or administered by the commissioner under a law of this state, the commissioner shall enforce the penalties and remedies under that law.
- (c) Forward a complaint to the appropriate regulatory or investigatory authority.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### **445.1640 Action by attorney general or prosecuting attorney.**

##### **Sec. 10.**

The attorney general or the prosecuting attorney for the county where an alleged violation occurred may bring an action against a person to do 1 or more of the following:

- (a) Obtain a declaratory judgment that a method, act, or practice of the person is a violation of this act.
- (b) Enjoin a person who is engaging or about to engage in a method, act, or practice that is a violation of this act.
- (c) Obtain a civil fine of not more than \$10,000.00 for the first offense and not more than \$20,000.00 for the second and any subsequent offense.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### **445.1641 Unintentional and bona fide error.**

##### **Sec. 11.**

(1) A person is not liable for a violation under section 10 if the person shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error.

(2) A person is not liable for a violation under section 10 if, within 60 days after discovery of the violation and before the institution of an action under section 10, the person notifies the borrower or buyer of the violation and corrects the violation in a manner that, to the extent it is reasonably possible to do so, restores the borrower or buyer to the position in which the borrower or buyer would have been if the violation had not occurred.

(3) The person alleged to have violated this act has the burden of proving that he or she is not liable as provided under this section.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

#### **445.1642 Enforcement not limited.**

Sec. 12.

This act does not limit the authority of the commissioner, the attorney general, or a county prosecutor to enforce any law under which a person is chartered, organized, licensed, registered, regulated, or otherwise authorized to do business in this state.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

**445.1643 Model programs for financial education.**

Sec. 13.

(1) The department of insurance and financial services shall develop and make available to local units of government, financial institutions, and other interested persons 1 or more model programs for financial education.

(2) The program required under this section shall be designed to teach personal financial management skills and the basic principles involved with saving, borrowing, investing, and protection against predatory and other fraudulent lending practices.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002 ;-- Am. 2016, Act 44, Eff. June 13, 2016

**445.1644 Municipal actions; statutory conflict; preemption; severability.**

Sec. 14.

(1) The federal government and state solely regulate the business of brokering, making, servicing, and collecting mortgage loans in this state and the manner in which any such business is conducted.

(2) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to regulate, directly or indirectly, the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict with the uniform operation throughout the state of residential mortgage lending and is preempted.

(3) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to collect information about, require reporting of, pledges regarding, notices, or certifications concerning loans, lenders, applicants, deposits, or credit experiences, character, and criminal background checks of employees, agents, customers, or other persons is preempted by this act.

(4) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state that attempts to regulate the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict and is preempted, including, without limitation, if the ordinance, resolution, regulation, or other action does either of the following:

(a) Disqualifies a person, or its subsidiaries or affiliates, from doing business with the municipal corporation or other political subdivision based upon the acts or practices of the person or its subsidiaries or affiliates in brokering, making, servicing, or collecting mortgage loans.

(b) Imposes reporting requirements or other obligations upon a person, or its subsidiaries or affiliates, based upon the person's, or its subsidiaries' or affiliates', acts or practices in brokering, making, servicing, or collecting mortgage loans.

(5) If any provision of this section, or any application of any provision of this section, is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the provisions and applications of this section shall be severable.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002

**445.1645 Standards; uniformity; preemption.**

Sec. 15.

(1) The laws of this state relating to the brokering, making, servicing, and collecting of mortgage loans prescribe rules of conduct upon citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constitute general laws of this state.

(2) Silence in the statutes of this state with respect to any act or practice in the brokering, making, servicing, or collecting of mortgage loans shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, making, servicing, or collecting of mortgage loans.

(3) It is the intent of the legislature to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of persons engaged in the brokering, making, servicing, or collecting of mortgage loans in this state.

**History:** 2002, Act 660, Imd. Eff. Dec. 23, 2002