

## **MORTGAGE LENDING PRACTICES**

### **Act 135 of 1977**

An act to prohibit certain mortgage lending practices by a credit granting institution; to prescribe the powers and duties of the commissioner of the financial institutions bureau in relation to those practices; to permit the establishment of local mortgage review boards; and to provide remedies and penalties.

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

*The People of the State of Michigan enact:*

#### **445.1601 Definitions.**

Sec. 1. As used in this act:

(a) "Annual percentage rate" means that term as defined in and determined under the truth in lending act, 15 USC 1601 to 1667f.

(b) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of licensing and regulatory affairs.

(c) "Credit granting institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, a state or federally chartered credit union, the Michigan state housing development authority, or a business entity making or purchasing mortgage loans, that has a main office, branch office, or service center in the state of Michigan at which it conducts that business.

(d) "Home improvement loan" means a secured or unsecured loan used for the purpose of repairing, rehabilitating, or remodeling an existing residential dwelling designed for occupancy by 4 or fewer families, as stated by the borrower in the loan application and as recorded on the books of the credit granting institution.

(e) "Loan application" means a written application for a mortgage loan or home improvement loan.

(f) "Loan contract" means a contract for a mortgage loan or home improvement loan.

(g) "Mortgage loan" means a loan secured by a mortgage on real property designed for occupancy by 4 or fewer families, including an individual unit of a condominium or cooperative, a refinancing of an existing mortgage loan on real property designed for occupancy by 4 or fewer families involving an increase in the outstanding balance of the principal due, or a loan secured by a junior lien on real property designed for occupancy by 4 or fewer families undertaken for any purpose. Mortgage loan does not include any of the following:

(i) Construction financing.

(ii) A purchase of an interest in a pool of mortgage loans.

(iii) An extension of the maturity of an existing mortgage loan that does not include an increase in the unpaid principal due.

(iv) A loan transaction in which the proceeds are not used primarily for a personal, family, or household purpose.

(h) "Neighborhood" means either of the following:

(i) A census tract as defined by the United States bureau of the census in census of population, if located within a standard metropolitan statistical area as defined by the United States office of management and budget.

(ii) An area that is designated by a single zip code number under the zoning improvement plan of the United States postal service, if located outside a standard metropolitan statistical area as defined by the United States office of management and budget.

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 2012, Act 444, Imd. Eff. Dec. 27, 2012.

**Compiler's note:** 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.

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**445.1602 Denying loan application or varying terms or conditions of loan contract; uniform application of policy or criteria; basis for consideration of loan application; minimum mortgage amount; minimum loan amount; opportunity to submit loan application; credit unions; written statement; compliance with equal credit opportunity act; application fee; copy of appraisal; copies of forms, reports, and correspondence; liability for error or omission; loan inquiry; pamphlet or document explaining criteria.**

Sec. 2. (1) Except on the basis of written policies or criteria uniformly applied to all neighborhoods within a particular standard metropolitan statistical area or within the county in areas outside a standard metropolitan statistical area, a credit granting institution shall not deny a loan application or vary the interest rate, the term to maturity, the percentage required for a down payment, the application and appraisal procedures, or other terms or conditions of a loan contract for either of the following:

(a) Due to racial or ethnic characteristics or trends in the neighborhood in which the real estate is located.

(b) Due to the age of the structure on the real estate proposed as security or the age of other structures in the neighborhood in which the real estate is located. This subdivision does not preclude a credit granting institution from considering the physical condition and probable remaining useful life of the structure and all structures within a radius of 750 feet.

(2) A policy or criteria used by a credit granting institution is considered to be uniformly applied, even if a credit granting institution grants exceptions to the policy or criteria in favor of a loan applicant in not more than 5% of the loan applications submitted to the credit granting institution.

(3) Each loan application shall be individually considered on the basis of a factually supportable analysis of the lending risks associated with the proposed loan.

(4) A credit granting institution shall not impose a minimum mortgage amount greater than \$10,000.00, and a credit granting institution shall not impose a minimum loan amount of greater than \$1,000.00 for a home improvement loan.

(5) A credit granting institution shall not deny an individual an opportunity to submit a loan application. This act shall not be construed to require a credit union to allow loan inquiry or application by a person who is not a member or eligible to be a member of the credit union.

(6) A person who makes a loan application for a mortgage loan or home improvement loan that is denied or the terms of which are varied and not accepted by the applicant shall receive from the credit granting institution a written statement of the reasons for the rejection or variation of terms. A credit granting institution that complies with the requirements of the equal credit opportunity act, title VII of Public Law 90-321, 15 U.S.C. 1691 to 1691f, and the regulations promulgated under that act, is considered to have complied with the requirements of this subsection.

(7) A credit granting institution, unless otherwise prohibited by law, may charge an application fee uniform as to type of loan. If a credit granting institution includes appraisal in its written statement of reasons for rejection or variance or collects an application appraisal fee, then upon the request of a person making a loan application that is denied or the terms of which are varied and not accepted by the applicant, a credit granting institution shall provide the person, without additional charge, with a copy of the appraisal made in connection with the loan application. If an application appraisal fee is not collected, the copy may be made usable only for purposes related to this act. Copies of other completed forms, reports, and correspondence, except a credit report or correspondence pertaining to a credit report, used by the credit granting institution in reaching its decision shall be provided, on request and without charge, to a person making a loan application that is denied or the terms of which are varied and not accepted by the applicant.

(8) Except for an error or omission that is a violation of this act, a credit granting institution is not liable to an applicant or any other person for an error or omission in an appraisal or other supporting documents made available to an applicant.

(9) If a person makes a loan inquiry relating to the prospects of obtaining a loan, the credit granting institution shall respond to the inquiry and shall send or cause to be delivered to the person making the inquiry a copy of the pamphlet or other documents prepared pursuant to subsection (10).

(10) Each credit granting institution shall make available for public distribution at the institution's principal office and each branch office or service center a pamphlet or document explaining in general terms the credit granting institution's criteria for the approval or denial of a loan application. The pamphlet or other document shall prominently state that a person has the right to make a loan inquiry and to file a written application for a mortgage loan or home improvement loan and to receive a written response to the application. A credit granting institution may use a separate pamphlet or document for mortgage loans and home improvement loans, and the pamphlet or document may contain additional material as well as the material required by this subsection. A copy of the pamphlet or other document shall be filed with the commissioner.

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

#### **445.1602a Property/casualty insurance as condition to loan; limitation on amount required; amount as condition of sale, transfer, or assignment.**

Sec. 2a. (1) Except as provided in subsection (2), a credit granting institution that requires a mortgagor to maintain property/casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property/casualty insurance to be greater than the replacement cost of the mortgaged building or

buildings.

(2) A credit granting institution may require an amount of property/casualty insurance that is required of the credit granting institution as a condition of a sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the credit granting institution anticipate a sale, transfer, or assignment at the time the mortgage loan is made.

**History:** Add. 1995, Act 214, Imd. Eff. Nov. 29, 1995.

#### **445.1603 Lending policies and criteria; loan application procedures and contract terms.**

Sec. 3. (1) Except as otherwise prohibited in section 2, lending policies and criteria of a credit granting institution used in the consideration of a loan application shall include without limitation the following:

(a) Consideration of the credit eligibility of the applicant and the market value of a proposed security.

(b) Consideration of those factors, known to the credit granting institution, as the presence of active community and neighborhood organization, the presence of government, nonprofit, and private programs in the neighborhood intended to eliminate negative environmental influences, other revitalization efforts, and any other factors potentially mitigating the effect of physical decline.

(2) A credit granting institution may employ different loan application procedures and contract terms for loans to construct new dwellings as compared to loans to purchase existing dwellings.

**History:** 1977, Act 135, Eff. July 1, 1978.

#### **445.1604 Advantageous loan terms.**

Sec. 4. This act shall not be construed to prohibit the United States, this state, a local governmental entity, an agency or instrumentality of any of the preceding entities, a nonprofit organization, or a credit granting institution acting with the permission of the commissioner, from offering more advantageous loan terms to a person, corporation, partnership, or other entity, or from making advantageous terms available on the basis of location in a specific geographic area when made available under the auspices of an organized housing program operated by the United States, this state, a local governmental entity, an agency or instrumentality of any of the preceding entities, a nonprofit corporation, or a credit granting institution.

**History:** 1977, Act 135, Eff. July 1, 1978.

#### **445.1605 Notice to loan inquirers or applicants; posting; contents.**

Sec. 5. (1) A credit granting institution shall post a written notice in a conspicuous place to reasonably apprise a loan inquirer or applicant of his or her rights under this act in the institution's main office and each branch office or service center in the following language:

##### **Notice to inquirers and loan applicants**

You have a right to submit a written application for a mortgage loan or a home improvement loan or to request written information concerning typical loan terms that we are currently offering on mortgage loans and home improvement loans. It is illegal to establish a minimum mortgage amount of more than \$10,000.00 or a minimum home improvement loan of more than \$1,000.00. It is illegal to deny a loan or vary the terms and conditions of a loan because of the racial or ethnic trends or characteristics of the neighborhood or the age of the structure, but not because of its physical condition. If your application for a loan is rejected, you have a right to a written statement of the reason for the rejection. If you are granted a loan but the amount required for down payment, the interest rate, term to maturity, application procedure, or other terms or conditions of the loan vary from terms or conditions offered in other neighborhoods, you have a right to a written statement of the reasons for the variation. The rights described in this notice are set forth in and limited by (cite this act). If you believe that your rights under this act have been violated, you should contact the financial institutions bureau of the Michigan department of commerce.

(2) The current telephone number of the financial institutions bureau shall be included in the notice set forth in subsection (1).

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 1996, Act 337, Imd. Eff. June 26, 1996.

#### **445.1606 Repealed. 2002, Act 692, Eff. Mar. 31, 2003.**

**Compiler's note:** The repealed section pertained to institution subject to Federal Home Mortgage Disclosure Act of 1975.

#### **445.1607 Retention of records and documents.**

Sec. 7. A credit granting institution shall retain, for a period of 25 months after a loan application has been submitted or until the loan is repaid, whichever is earlier, a complete record of each loan application which has been accepted, rejected, or varied and the reason for the application's rejection or variation, together with any other documents relating to the application. Records and documents retained under this section shall be maintained in a reasonable manner to enable the commissioner or the commissioner's representatives to locate

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information pertinent to a given complaint.

**History:** 1977, Act 135, Eff. July 1, 1978.

#### **445.1608 Violation; investigation; progress report; hearing; report; availability of information.**

Sec. 8. (1) If in the opinion of the commissioner a credit granting institution is violating or has violated this act, or upon receipt of a written complaint of an alleged violation of this act by a credit granting institution, the commissioner shall investigate the alleged violation by the institution. The investigation shall commence within 15 days after the receipt of a complaint, and the commissioner shall report on the progress of the investigation to the affected parties within 30 days. The investigation shall be completed within 60 days after receipt of the complaint, and the commissioner shall report the findings to the affected parties. The commissioner may conduct a hearing on a complaint pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The commissioner shall report annually to the house and senate committees overseeing civil rights and housing issues regarding the enforcement of this act. The commissioner shall provide written testimony summarizing activities taken in the previous year to achieve the purposes of this act, and such testimony shall be made available to the public upon request.

(3) The commissioner shall inform the governor, the legislature, and the press annually of the availability of information collected pursuant to the federal home mortgage disclosure act of 1975, title III of Public Law 94-200, 12 U.S.C. 2801 to 2810, including the methods by which both summary information and institution-specific information may be obtained. The commissioner shall maintain either an electronic or hard copy file of the standard metropolitan statistical area summaries of the information described in this subsection and shall ensure the availability of these summaries to the legislature and other persons upon request. The commissioner may impose a reasonable charge for providing the information.

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

#### **445.1609 Voluntary mortgage review boards; mandatory mortgage review boards.**

Sec. 9. (1) The commissioner shall encourage credit granting institutions to cooperate with local citizen's groups and governing bodies of local units of government in the formation and operation of voluntary mortgage review boards. The purpose of voluntary local mortgage review boards is to review complaints of rejected loan applicants, attempt to place loans for rejected applicants, or any other purpose to which the persons forming the mortgage review board may agree.

(2) The commissioner may assist loan applicants and credit granting institutions in the placement of loans.

(3) If a mortgage review board is unable to successfully place the loan for the rejected applicant, the board shall notify the applicant in writing of the applicant's right to file a complaint with the commissioner or other governmental agency, or both, that has regulatory authority over the institution that denied the loan.

(4) Voluntary mortgage review boards shall not be subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, and the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The material furnished to the board by the loan applicant or by the financial institution at the applicant's request and other material relating to an applicant shall be kept confidential. Before a financial institution may release records and documents pertaining to the loan application to the mortgage review board, the applicant shall sign a release form. A financial institution may not release a credit report.

(6) A mortgage review board shall maintain minutes which reflect the number of cases appealed to the board, the disposition of each case, the persons present at each proceeding, and if closed to the public, the party requesting the closing.

(7) Meetings of mandatory mortgage review boards shall be open to the public unless the rejected applicant or the disapproving financial institution requests a closed session to discuss material concerning the rejected application. In cases of closed meetings, only members of the mortgage review board, the disapproving financial institution or the institution's representatives, or both, and the rejected applicant or the applicant's representatives, or both, shall attend.

**History:** 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

#### **445.1610 Rules.**

Sec. 10. The commissioner may promulgate rules as to the form of information required to be given, disclosed, or maintained under this act and as to the enforcement provisions of sections 8, 11, and 12.

**History:** 1977, Act 135, Eff. July 1, 1978.

**445.1611 Injunction; damages; commissioner as party plaintiff; class actions prohibited.**

Sec. 11. (1) A person may commence an action in the circuit court to seek an injunction for a violation or to seek damages for a violation of this act, or both. The commissioner may join as a party plaintiff in an action. A person shall not be entitled to damages under this act unless that person has made a written loan application which has been denied or the terms of which have been varied by the credit granting institution against whom the action is filed. Class actions shall not be permitted under this act.

(2) A person injured by a credit granting institution in violation of this act shall be entitled to those damages as the court determines appropriate, but not to exceed \$2,000.00 or actual damages plus reasonable attorney's fees, whichever is greater, for each violation of this act.

**History:** 1977, Act 135, Eff. July 1, 1978.

**445.1612 Violation; fine; costs of investigation; proceedings.**

Sec. 12. If the commissioner finds that a credit granting institution has violated this act, the commissioner may assess a fine of not more than \$2,000.00 for each violation, except that a credit granting institution which has violated section 2 shall be fined not more than \$10,000.00 plus the costs of the investigation. Each person injured by a violation of this act shall constitute a separate violation. However, a violation of this act resulting from the inclusion of prohibited language in, or the exclusion of required language from, a form or other general publication used in the ordinary course of business of a credit granting institution shall constitute a single violation and not several violations for each copy or use of the form or publication. In determining a fine the commissioner shall consider the extent to which the violation was a knowing and wilful violation, the extent of injury suffered because of the violation, the corrective action taken by the institution to insure that the violation will not be repeated, and the record of the institution in complying with this act. Any proceedings under this section shall be subject to the procedures of Act No. 306 of the Public Acts of 1969, as amended.

**History:** 1977, Act 135, Eff. July 1, 1978.

**445.1613 Commencement of action; limitation.**

Sec. 13. An action shall not be commenced under this act more than 2 years after the occurrence giving rise to the cause of action.

**History:** 1977, Act 135, Eff. July 1, 1978.

**445.1614 Effective date.**

Sec. 14. This act shall not take effect until July 1, 1978.

**History:** 1977, Act 135, Eff. July 1, 1978.