



## Residential Mortgage Lending Letter 2024-01

June 7, 2024

TO: Ohio Mortgage Brokers, Mortgage Lenders, and Licensed Mortgage Loan Originators

SUBJECT: Dual Capacity

SUMMARY: This letter is intended to alert Ohio mortgage brokers, mortgage lenders, and licensed mortgage loan originators (collectively, mortgage professionals) that the Ohio Division of Financial Institutions (Division) is repealing its prior guidance, which prohibited mortgage professionals from acting as both a mortgage professional and a real estate broker or agent (collectively, realtor) in the same transaction. The Division no longer prohibits dual capacity, but any mortgage professional engaging in dual capacity is subject to disclosure requirements.

In its Mortgage Brokers & Lenders Letter 2006-1 (Division Letter), published in 2006 and revised in 2010, the Division advised Ohio mortgage professionals that dual capacity is prohibited as “improper and dishonest conduct in violation of Ohio [Revised Code (O.R.C.) Sections] 1322.07(C) and 1321.59(G).” By doing so, the Division intended to prevent conflicts of interest that might arise when the person seeking to complete the sale of the property is also the person seeking to obtain financing for the sale. The Division Letter states, “Chief among those conflicts is the pressure to promote purchases of properties that have a maximum loan to value ratio and thereby increase the fees generated to the [mortgage professional and realtor].”

Upon review of federal law and the law of other states, the Division has repealed the prohibition set forth in Mortgage Brokers & Lenders Letter 2006-1. To guard against potential conflicts of interest, the Division now requires a licensed Mortgage Loan Originator (MLO) to disclose when the MLO or an associate of the MLO has acted as a realtor in connection with the sale of the property, and to inform the buyer that the buyer is not required to use the MLO’s services. The MLO must obtain the buyer’s signature on a Dual Capacity Disclosure Form, a sample of which has been created by the Division. Failure to do so constitutes improper, fraudulent, or dishonest dealings under O.R.C. § 1322.40(C) and Ohio Administrative Code 1301:8-7-16(A).

Mortgage professionals must review their procedures to ensure compliance as it relates to acting as both the realtor and MLO in the same transaction, and adjust their policies and practices to conform with this letter.

An example of the Dual Capacity Disclosure Form and the most up-to-date information may be found on the Division’s website at <https://com.ohio.gov/divisions-and-programs/financial-institutions/consumer-finance/alertsandnotices/dual-capacity-realtor-broker>.