

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. M2008-695
)	
MARK D. BERTKE)	Notice of Intent to Revoke Loan Officer License
3937 Eagle Stone Court)	and Notice of Intent to Fine
Dayton, Ohio 45440)	&
)	Notice of Opportunity for a Hearing
)	

JURISDICTION

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322, and the rules adopted thereunder.

RESPONDENT

MARK D. BERTKE ("Respondent") is an individual who holds a loan officer license issued by the Division to originate residential mortgage loans pursuant to R.C. Chapter 1322. His address of record is 3937 Eagle Stone Court, Dayton, Ohio 45440, and his date of birth is November 4, 1954. Respondent's employer of record is Mark I. Mortgage, Co., 159 West Franklin Street, Bellbrook, Ohio 45305.

NOTICE OF PROPOSED ACTION

In accordance with R.C. sections 1322.041 and 1322.10, and R.C. Chapter 119, the Division intends to REVOKE Respondent's loan officer license IMPOSE A FINE of three thousand six hundred twenty-five dollars (\$3,625.00) upon Respondent.

BASIS FOR PROPOSED ACTION

The Division has conducted an investigation of Respondent, pursuant to R.C. 1322.031(B), and has found the following:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to revoke a loan officer license if the Division finds that the licensee has "violat[ed] or fail[ed] to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code[.]"
- B. The Division is authorized by R.C. 1322.10(A)(2) to impose a fine upon Respondent for his violations of a law or rule.
- C. The Division is authorized by R.C. 1322.06(A) to examine mortgage broker records that "[pertain] to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code."
- D. Ohio Admin. Code 1301:8-7-13(F) provides that if, "[a]s part or in the furtherance of any examination pursuant to division (A) of section 1322.06[,]" . . . the superintendent or his authorized representatives requests a written response . . . the . . . registrant, licensee . . .

shall deliver a written response and any requested information with the time period specified in the request.”

- E. R.C. 1322.072 prohibits a registrant from knowingly failing to cooperate with an investigation.
- F. R.C. 1322.06(B) requires registrants to “maintain records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code” and prohibits registrants from failing to comply.
- G. Since at least 2001, Respondent has been the President, fifty percent (50%) shareholder and designated operations manager of Mark I. Mortgage, Co. (“Mark I. Mortgage”), MB.800133.
- H. As the operations manager of Mark I. Mortgage, Respondent was responsible for the day to day operations of Mark I. Mortgage and compliance with R.C. Chapter 1322 and the rules adopted thereunder. See, R.C. 1322.01(H), R.C. 1322.03(A)(3) and Ohio Admin. Code 1301:8-7-02(L).
- I. In a compliance examination conducted pursuant to R.C. 1322.06 on February 6, 2007, it was determined that Mark I. Mortgage failed to use a special account as required by R.C. 1322.08 and Ohio Admin. 1301: 8-7-05(B).
- J. In a compliance examination conducted pursuant to R.C. 1322.06 on February 6, 2007, it was determined that Mark I. Mortgage’s mortgage loan origination disclosure statements failed to disclose all the information required by R.C. 1322.062(A).
- K. In a compliance examination conducted pursuant to R.C. 1322.06 on February 6, 2007, it was determined that Mark I. Mortgage failed to accurately disclose mortgage broker compensation in violation of R.C. 1322.062.
- L. On April 11, 2007, the Division issued a compliance examination letter to Respondent at Mark I. Mortgage’s address of record outlining the issues uncovered in the February 6, 2007 compliance examination and requesting a written response within thirty days. Respondent failed to respond to the Division’s April 11, 2007 letter, which was not returned by the U.S. Postal Service to the Division.
- M. In a compliance examination conducted pursuant to R.C. 1322.06 on February 14, 2008, it was determined that Mark I. Mortgage failed to use a special account as required by R.C. 1322.08.
- N. In a compliance examination conducted pursuant to R.C. 1322.06 on February 14, 2008, it was determined that Mark I. Mortgage’s mortgage loan origination disclosure statements failed to disclose all the information required by R.C. 1322.062(A).
- O. In a compliance examination conducted pursuant to R.C. 1322.06 on February 14, 2008, it was determined that Mark I. Mortgage failed to disclose all fees subsequently charged at closing on mortgage loan origination disclosure statements and Good Faith Estimates as required by R.C. 1322.062.
- P. In a compliance examination conducted pursuant to R.C. 1322.06 on February 14, 2008, it was determined that Mark I. Mortgage allowed an unlicensed employee, loan processor

Pam Bertke, to engage in activities that require a loan officer license in violation of R.C. 1322.02(B) and Ohio Admin. Code 1301: 8-7-08(B).

- Q. On May 13, 2008, the Division issued a compliance examination letter to Respondent at Mark I. Mortgage's address of record outlining the issues uncovered in the February 14, 2008 compliance examination and requesting a written response within thirty days. Respondent failed to respond to the Division's May 13, 2008 letter, which was not returned by the U.S. Postal Service to the Division.
- R. On August 20, 2008, the Division issued a warning letter by certified mail to Respondent for failure to respond to the May 13, 2008 compliance examination letter. The August 20, 2008 letter requested a response by September 3, 2008 and warned Respondent of the consequences of a continued failure to cooperate with the examination and to correct the violations determined in the compliance examination. Respondent failed to respond to the Division's August 20, 2008 letter, which was received by Respondent on August 22, 2008.

As a result of the findings listed above, the Division has determined that:

1. Respondent was responsible for compliance with Chapter 1322 at Mark I. Mortgage.
2. Respondent failed to deliver a written response to a compliance examination letters as requested by the Division within the time frame specified in violation of Ohio Admin. Code 1301: 8-7-13(F).
3. Respondent's failure to respond to the compliance examination letters issued by the Division constitutes a violation of R.C. 1322.072.
4. Because Respondent violated R.C. 1322.02(B), R.C. 1322.06, R.C. 1322.062, R.C. 1322.08(B), Ohio Admin. Code 1301: 8-7-05, Ohio Admin. Code 1301: 8-7-13(F), and R.C. 1322.072, the Division is authorized under R.C. 1322.10(A)(1) to revoke Respondent's loan officer license and to impose a fine upon Respondent pursuant to R.C. 1322.10(A)(2).
5. A fine in the amount of three thousand six hundred twenty-five dollars (\$3,625.00) is reasonable, appropriate and necessary for his violations of R.C. Chapter 1322.

NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an order revoking Respondent's loan officer license and imposing a fine of three thousand six hundred twenty-five dollars (\$3,625.00) upon Respondent.

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed: Ohio Division of Financial Institutions, Attn: Lori Massey, Consumer Finance Attorney, 77 South High Street, 21st Floor, Columbus, Ohio 43215-6120.

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an order revoking Respondent's loan officer license and imposing a fine of three thousand six hundred twenty-five dollars (\$3,625.00) upon Respondent.

Signed and sealed this 14th day of November, 2008.

LEIGH A. WILLIS

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce