

TITLE NINE – CONSUMER AFFAIRS

Chapter 201 Consumer Affairs Board

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CROSS REFERENCES

Foreclosure education and prevention fee allocated to Office of Consumer Affairs – see ADM. 113.11(b)

Consumer protection – see BUS. REG. Title Five

201.01 DEFINITIONS.

As used in this Chapter, certain terms are defined as follows:

- (a) "Board" means the eleven member Board that oversees the Office of Consumer Affairs and supervises the Director of the Office of Consumer Affairs and other personnel in effectively protecting the consumer public in the County.
- (b) "Consumer" means a person who seeks or acquires real or personal property, goods, or services, primarily for personal, family, or household purposes.
- (c) "Consumer Transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer Transaction" does not include transactions between persons defined in section 4905.03 of the Ohio Revised Code and their customers; transactions between certified public accountants or public accountants; transactions between attorneys, physicians, or dentists, and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services. "Consumer transaction" also does not include transactions between persons, defined in 5725.01 of the Ohio Revised Code, including FDIC insured depository institutions and their operating subsidiaries, and their customers unless otherwise provided by federal or state law, statute, or rule.
- (d) "Director" means the Director of the Office of Consumer Affairs wherever used in this Chapter, unless specifically defined otherwise.
- (e) "Office" means the Office of Consumer Affairs.
- (f) "Person" means any individual, partnership, partner, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, assigns, employees, or successors.
- (g) "Predatory Lending" means lending or lending related practices that are unlawful under Federal and/or State law, including but not limited to Ohio Revised Code Sections 1349.26 and 1349.27.
- (h) "Services" means and includes, but is not limited to, work, labor, consumer transactions, privileges, and all other accommodations which are primarily for personal, family, or household purposes.
- (i) "Unconscionable consumer sales practices" means practices in connection with a consumer transaction which unfairly takes advantage of the lack of knowledge, ability, experience, or capacity, of a consumer, or results in a gross disparity between the value received by a consumer and the price paid to the consumer's detriment. In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:
 - (1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect his interests because of his physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;
 - (2) Whether the supplier knew at the time of the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;
 - (3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;
 - (4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;
 - (5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;
 - (6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to his detriment;
 - (7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

(j) "Unfair or deceptive consumer sales practices" means and includes, but is not limited to:

- (1) Representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;
- (2) Representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;
- (3) Representing that the subject of a consumer transaction is new, or unused, if it is not;
- (4) Representing that the subject of a consumer transaction is available to the consumer for a reason that does not exist;
- (5) Representing that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;
- (6) Representing that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
- (7) Representing that replacement or repair is needed, if it is not;
- (8) Representing that a specific price advantage exists, if it does not;
- (9) Representing that the supplier has a sponsorship, approval, or affiliation that the supplier does not have;
- (10) Representing that a consumer transactions involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false. (Ord. 2004-618. Adopted 11-22-04.)

201.02 CONSUMER AFFAIRS BOARD.

(a) Membership and Purpose. A Consumer Affairs Board is hereby created to promote the enforcement of laws relating to unfair, deceptive, or unconscionable sales practices and predatory lending practices and to educate consumers and businesses about laws relating to such practices. The Board shall do any and all acts which may be necessary to assist the Director in the mediation of complaints filed in the Consumer Affairs Office. The Board shall consist of:

- (1) The County Executive or their designee.
- (2) The President of County Council or their designee.
- (3) Prosecuting Attorney or their designee.
- (4) Eight other representatives appointed by the Executive subject to confirmation by County Council, hereinafter described:

Membership of the eight (8) representatives appointed by the County Executive and subject to confirmation by County Council shall reflect a cross-section of consumer and business or financial interests.

- A. Three (3) members shall represent a business/financial interest group. One member shall serve a two (2) year term. One member shall serve a three (3) year term. One member shall serve a four (4) year term.
- B. Three (3) members shall represent a consumer interest group. One member shall serve a two (2) year term. One member shall serve a three (3) year term. One member shall serve a four (4) year term.
- C. Two (2) members shall represent an economically disadvantaged interest group. One member shall serve a two (2) year term. One member shall serve a three (3) year term.
- D. A member appointed to fill a vacancy serves the rest of the unexpired term.
- E. The Board shall elect one member as Chair and another as vice chair, each to serve at the pleasure of the Board, and such other offices as it determines.
- F. The Director of the Office of Consumer Affairs or their designee shall attend all meetings.

(b) Compensation. Members of the Board receive no compensation for their services.

(c) Meetings. The Board shall meet regularly.

(d) Duties and Responsibilities:

- (1) Annually review of the programs of the Office of Consumer Affairs and make recommendations to the Director prior to the submitting of the annual budget;
- (2) Prepare an annual budget and work program which shall be submitted to County Council;
- (3) Submit an annual report to the County Executive and to the County Council;
- (4) Direct the Office of Consumer Affairs in carrying out its duties;
- (5) At the direction of the County Executive or by legislation of the County Council, the Board shall review and make recommendations on any matter related to consumer protection.
- (6) The first board meeting shall initially convene no later than October 15, 2004. (Ord. 2004-618. Adopted 11-22-04.)

201.03 OFFICE OF CONSUMER AFFAIRS.

There is hereby created an Office of Consumer Affairs, which shall serve under the direction of, and perform such functions on behalf of, the Consumer Affairs Board as the Board shall prescribe. (Ord. 2004-618. Adopted 11-22-04.)

201.04 JURISDICTION.

The Office of Consumer Affairs shall have jurisdiction over all consumer transaction which take place within the County of Summit, regardless of the residence of any of the persons directly or indirectly affected by such transaction. (Ord. 2004-618. Adopted 11-22-04.)

201.05 DIRECTOR OF THE OFFICE OF CONSUMER AFFAIRS.

There shall be a Director of Consumer Affairs who shall be head of the Office of Consumer Affairs. The Director shall have thorough knowledge of county, state, and federal consumer protection laws. The Consumer Affairs Board shall recommend the hiring or dismissal of the Director of Consumer Affairs upon approval of the County Council. The Director shall have the following powers and duties which include but are not limited to:

- (a) Hiring personnel in the Office of Consumer Affairs to aid and assist the Director in the proper discharge of his or her duties and powers. Such personnel shall include but is not limited to:

- (1) Outreach Specialist who shall work cooperatively with consumer agencies, schools, media, and community organizations to educate consumers and businesses about consumer issues and predatory lending and who shall provide consumers with information and referral services to appropriate agencies for mortgage loan review and counseling services. For the purpose of educating consumers and businesses about predatory lending practices, indicators of predatory lending may include: failure to appropriately disclose required information, terms under which the outstanding principal balance will increase, financing excessive fees into loans, refinancing low interest mortgages at higher interest rates, loan flipping, charging higher interest rates than a borrower's credit warrants, loans made without regard to a borrower's ability to repay, prepayment penalties, falsely promising to provide additional financing in the future or to refinance at a lower rate, preying on the emotional needs of the borrower, property flipping, shifting unsecured debt into mortgages, balloon payments, and yield spread premiums.
 - (2) An Investigator who shall investigate complaints to determine violations of consumer laws, conciliate matters between conflicting parties, and refer irreconcilable matters to the Director; and
 - (3) An Administrative Secretary who shall respond to complaints, perform complex secretarial functions, and relieve the Office of routine administrative tasks;
- (b) Promoting the enforcement of all laws, rules, and regulations pertaining to consumer affairs and predatory lending as provided in the Codified Ordinances of the County of Summit, the Ohio Revised Code, and other applicable consumer law;
 - (c) Referring to appropriate governmental or regulatory agencies, either public or private, having jurisdiction over consumer protection matters, any information concerning an apparent or potential violation of any consumer protection laws;
 - (d) Undertaking activities to encourage local business and industry to maintain high standards of honesty, fair consumer sales practices and public responsibility in the production, promotion and sale of merchandise, goods and services and the extension of credit;
 - (e) Investigating and mediating complaints referred from the Investigator and referring to the Summit County Prosecutor, Ohio Attorney General, or other appropriate person for suitable action if necessary;
 - (f) Receiving moneys and issuing vouchers for the disbursement of moneys in accordance with the terms of any stipulated settlement agreement made pursuant to Section 201.07(c);
 - (g) Holding hearings, compelling the attendance of witnesses, administering oaths, taking the testimony of any person under oath and, in connection therewith, requiring the production of any evidence relating to any matter under investigation by the office. At any hearing, a witness has the right to be advised by counsel present during the hearing;
 - (h) Issuing summons to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence;
 - (i) Issuing cease and desist orders with respect to consumer violations which violate the consumer law in the Codified Ordinances of the County of Summit;
 - (j) Conducting studies and tests and establishing programs to inform consumers of practices and problems and representing the interest of consumers before administrative and regulatory agencies;
 - (k) Working with other city, county, state, and federal governmental agencies, professional associations and private consumer groups to insure the protection of consumers;
 - (l) Contracting with other agencies for mediation if necessary;
 - (m) Running quarterly reports of cases filed within Summit County under consumer protection statutes for the development of a research database;
 - (n) Making an annual report enumerating the activities and recommendations of the Office of Consumer Affairs to the public via presentation at a Regular Council Meeting;
 - (o) Partnering with other county-based agencies and non-profit agencies for swift resolution of consumer-related problems;
 - (p) Attending regular meetings of the Consumer Affairs Board. (Ord. 2004-618. Adopted 11-22-04.)

201.06 FILING OF COMPLAINTS.

Any consumer who feels they have been subjected to an unfair, deceptive, or unconscionable consumer sales practice or predatory lending practice may file a complaint in writing with the Office of Consumer Affairs. The complaint should state enough details of the incident so as to allow the Office of Consumer Affairs to investigate the circumstances surrounding the incident, and at the minimum, the complaint should state the name and address of the person alleged to have committed the violation, the details of the violation, and any other information the Board deems necessary. (Ord. 2004-618. Adopted 11-22-04.)

201.07 PROCEDURES AND ENFORCEMENT.

(a) After receiving a complaint under Section 201.06, the Office shall investigate the facts and issues. If the Office finds reasonable grounds to believe an unfair, deceptive, or unconscionable consumer sales practice has occurred, the Office must attempt to mediate the matter with all interested parties and any representatives the parties choose to assist them. If the Office has reason to believe an act of predatory lending has occurred, the Director may then refer the matter to the Ohio Attorney General's Office, the Ohio Department of Commerce, the Federal Trade Commission or other appropriate person for suitable action if necessary.

(b) If the Office is unable to reconcile the parties' differences concerning any complaint of unfair, deceptive, or unconscionable consumer sales practice, the Director may then mediate and use the authority granted in Section 201.05 and assist the parties in coming to a settlement agreement. Whenever appropriate, the Director may refer a complaint to an appropriate person including but not limited to the following: the Consumer Protection Division of the Ohio Attorney General's Office, the Ohio Department of Commerce, the Federal Trade Commission, or the Summit County Prosecutor.

(c) The terms of mediation agreed to by the parties must be reduced to writing and incorporated into a written assurance of discontinuance or settlement agreement to be signed by the parties. A written assurance of discontinuance or settlement agreement must be signed by the Director of Consumer Affairs.

(d) If the Director is unable to mediate a complaint, does not effect an assurance of discontinuance or settlement agreement, or finds that a complaint is not susceptible of mediation, the Director may transmit the matter to the County Prosecutor, or other appropriate person for suitable action. In addition to recovery of fines, as provided by the Codified Ordinances of the County of Summit and the Ohio Revised Code, actions may be brought for injunctive relief in any court of competent jurisdiction to restrain a person from violating applicable law and to restrain a person from engaging in unfair, deceptive, or unconscionable consumer sales practices.

(e) If the Director finds that a complaint lacks reasonable grounds upon which to base a violation, the Director may dismiss the complaint or order further investigation.

(f) Nothing in this Section prevents any person from exercising any right to seeking any remedy to which the person might otherwise be entitled, or from filing any complaint with any other person, agency or court. (Ord. 2004-618. Adopted 11-22-04.)

201.08 PERSONNEL.

All Office hiring, dismissals, promotion, reductions, classifications, reclassifications, disciplinary actions, and other personnel actions shall comply with the Codified Ordinances of the County of Summit and the rules of the County Human Resource Commission as each exist and as each may be amended in the future. The Office of Consumer Affairs shall be subject to the Summit County's Classification and Compensation Plan as it exists and may be amended in the future (Ord. 2004-618. Adopted 11-22-04.)

201.09 CODE OF REGULATIONS.

The Board shall adopt rules and regulations for the Consumer Affairs Board and the Office of Consumer Affairs, and in conjunction with the Department of Human Resources, shall establish classification and job descriptions for the Director of Consumer Affairs and any necessary staff by December 31, 2004. The Consumer Affairs Board shall submit a recommendation for the position of Director of Consumer Affairs to the County Council by February 1, 2005. (Ord. 2004-618. Adopted 11-22-04.)

CODIFIED ORDINANCES OF SUMMIT COUNTY