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Top Stories

What makes up predatory lending practices

Morning Journal Staff

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Predatory lending is a collection of fraudulent and manipulative tactics used by lenders, brokers and appraisers to extract exorbitant fees and interest from debtors' home equity, according to Policy Matters Ohio, a non-profit research institute based in Cleveland.

Though no standard legislative definition for predatory lending exists, Policy Matters Ohio says it tends to be associated with one or more of the following tactics:

n Lending without regard to a borrower's capacity to repay a loan or deliberately overvaluing a property or loan in anticipation of default.

n "Packing" extra costs for associated services from mortgage brokers, home improvement contractors or other third parties without clear disclosure.

n Lumping single premium life insurance (which ensures loan repayment in the event of death or disability) into loan costs. This usually occurs without full or clear disclosure of the costs involved over the lifetime of the loan, and is sometimes a required condition of securing the loan.

n "Flipping" loans, or repeatedly refinancing a loan to the detriment of the borrower, often when the borrower is already having difficulty making payments.

n Including prepayment penalties, which are fees required of a borrower who pays off loan terms early, and can be used as pressure to refinance a loan on worse terms.

n Including balloon payments -- in which scheduled payment rates will not fully

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pay off the loan -- meaning that the borrower will be required to pay a huge lump sum at some future date.

n Preventing a borrower from taking legal action against a lender through mandatory arbitration clauses.

n Engaging in outright fraud: doctoring documents, falsifying income, overvaluing properties, siphoning loan money directly to contractors who do not complete the contracted work, or similar practices.

n Using aggressive sales tactics, and high-pressure door-to-door or telephone solicitations, that are often targeted to financially underserved minority and low-income neighborhoods, and to elderly homeowners who have built up years of equity.

Although about 30 states are considering legislation to regulate the worst predatory practices, including "flipping" and "packing," there have been few recent legislative actions in Ohio.

Senate Bill 76, which went into effect on May 2, 2002, modified the Ohio Mortgage Broker Act, tightening some lending practices and requiring the individual licensing of loan officers for the first time in Ohio.

House Bill 386, passed in February 2002, brought state law into line with federal restrictions on certain high-cost loans, while barring cities and localities from passing piecemeal regulations until the state received more data from a long-term study of the problem.

Consumer advocates say the state should adopt a comprehensive definition of predatory lending practices, fund an enforcement agency to aggressively investigate and handle complaints against lenders and empower cities and localities to pursue actions against predatory lenders.

Although a weak economy and fewer jobs may be impacting the situation, the foreclosure rate has been increasing in both strong and weak economies, according to Amy Hanauer, executive director of Policy Matters Ohio, a Cleveland nonprofit research institute. She suggested that an improved economy as well as regulating predatory lending would help turn the tide on the situation.

In Ohio there is a higher volume of subprime lending that can fall into the category of predatory lending than the rest of the country, according to Hanauer, who didn't have a reason for why this is the case.

When subprime lending is honestly practiced, there is a place for it in the lending industry, according to Paul Bellamy, executive director of the Lorain County Reinvestment Coalition. However, the products being sold now in the subprime industry are designed to increase volume and profit, he said.

To improve the situation, the same products with the equivalent price for the same amount of risk should be sold from both banks and brokers, according to Bellamy.

It's when banks and brokers are selling products at different rates and with different terms that things get confusing and the "shenanigans" happen, creating a situation that needs to be regulated, he said.

Predatory lending cases fall under the jurisdiction of the Ohio Department of Commerce, according to Ohio Attorney General Jim Petro's office. The department of commerce then refers cases to the appropriate prosecuting agency, according to Dennis Ginty, spokesman for the department.

Lorain County cases would fall under the U.S. District Court, Northern District of Ohio, an agency that hasn't prosecuted any predatory lending cases, according to Dave Sierleja, chief of the criminal division for the northern district.

In 2002, the department of commerce set up an Office of Consumer Affairs specifically for helping potential borrowers understand the mortgage process and help prevent predatory lending within the state.

Since the office of consumer affairs opened, 2,916 requests for complaint forms have been logged, Ginty said, adding that those seeking forms may not have actually filed a complaint.

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