

OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

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T-28 TIMELINESS OF CHARGES ALLEGING PREDATORY LENDING PRACTICES

T-28.1 The Statute of Limitations Applicable to Predatory Lending Housing Cases

When investigating a housing discrimination charge that contains allegations of predatory lending practices, it is first necessary to determine whether the charge was timely filed. Under R.C.4112.05(B)(1), a person claiming to be aggrieved by a discriminatory housing practice has one year from the date that the alleged unlawful discriminatory practice was committed to file a charge with the Commission. This period is known as a “statute of limitation.” A statute of limitations generally begins to run when the charging party knows, or has reason to know, of the injury that is the basis of his or her action.¹ In a predatory lending or reverse redlining case, the question becomes what is the date that a borrower knows, or through the exercise of due diligence, should know that he or she has been the victim of unlawful discrimination.

For charges alleging predatory lending housing practices, the statute of limitations begins to run one year from the date the borrower signs the final loan papers or becomes liable for repayment of the loan, absent evidence of fraud, concealment, or a pattern and practice of unlawful discrimination. Notwithstanding the exceptions noted below, if the facts in a housing charge or the investigation reveal that the final loan papers were signed more than one year before the charge was filed, the Commission will deem the charge untimely and non-jurisdictional.

In enacting this policy, the Commission adopts the view that a majority of the courts² and the U.S. Department of Housing and Urban Development³ have taken when analyzing the issue under other

1 *Hughes v. Vanderbilt Univ.* (6th Cir. 2000), 215 F.3d 543, 548.

2 *See, e.g. Associates Home Equity Services v. Troup* (N.J. Ct. App. 2001), 343 N.J. Super. 254, 778 A.2d 529; *Pantoja v. Kiska Const. Corp. of USA* (S.D. N.Y. 2001), No. 96 Civ. 8593, unreported, 2001 U.S. Dist. LEXIS 17374; *DeBerry v. First Gov't Mtg. & Investors Corp.* (D.C.C. 1999), 170 F.3d 1105.

3 “It is our belief (HUD) that in the absence of additional acts by the lender, the actionable act in a predatory lending case is *inducing the victim to sign the loan...*” Letter from Barbara M. Knox, Director Midwest HUB of HUD, to G. Michael Payton, Executive Director, Ohio Civil Rights Commission (6/10/02).

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fair housing laws. In addition, this position is consistent with general principles underlying statutes of limitations, which are to ensure fairness and to prevent stale claims.⁴

T-28.2 Use of the Continuing Violations Theory in Predatory Lending Cases

If the Commission receives or initiates a charge alleging that a particular lender engaged in a pattern or practice of discriminatory conduct by targeting specific classes or neighborhoods (i.e., predatory lending or reverse redlining), as long as one of the loan closings fell within the one-year limitations period, the Commission will consider the charge jurisdictional to investigate. Under such a situation, the Commission could possibly effectuate remedies for persons whose loans were made outside of the one-year period as part of a global settlement, as long as they were subjected to the same discriminatory pattern as a person whose loan was made within the limitation period.

To invoke this principle, facts must show that a respondent has a policy of discrimination, whether on the basis of solicitation, procurement, or distribution of loans, and that a respondent subjected a number of persons (generally more than two or three) or the same person to a repeated course of the discriminatory policy. Finally, the facts must demonstrate that at least one of the events fell within one-year from the time the charge was filed.⁵

The one-year limitations period for filing a predatory lending charge is not “continued” each time a monthly mortgage payment is made. The U.S. Department of Housing and Urban Development rejected this exact argument.⁶ In enacting this policy, the Commission adopts the same position. Similarly, the Commission adopts the policy that the one-year limitations period for filing a predatory lending charge is not “continued” until the completion of foreclosure proceedings.

4 *O’Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84.

5 *Bell v. Chesapeake & Ohio Railway Co.* (6th Cir. 1991), 929 F.2d 220, 223.

6 According to HUD, the making of a monthly mortgage payment on an alleged predatory loan is not a separate and actionable act of discrimination. “The continuing violation theory requires continuing unlawful acts.” The monthly mortgage payments are “*merely continuing consequences of an old violation.*” *Id.*, f.n. 3.