



**Payday Lending
under the
Uniform Consumer Credit Code
(UCCC)**

**Kansas House Financial Institutions and Rural Development
February 22, 2021**



Office of the State Bank Commissioner

Role of the Consumer and Mortgage Lending Division

The Consumer and Mortgage Lending (CML) Division has the following responsibilities:

- License non-depository entities that conduct mortgage business, extend consumer credit, or provide debt management services. The CML Division is fully funded through licensing application/renewal fees and annual report/volume fees.
- Examine entities licensed by the Division for compliance with state and federal law and regulation.
- Administer grants to support consumer education and awareness.
- Respond to consumer questions and concerns.

A list of entities licensed with the Office of the State Bank Commissioner (OSBC) is available on the agency's website www.osbckansas.org.



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CML Consumer Credit Law

Kansas Uniform Consumer Credit Code (UCCC):

- The UCCC is the primary state law that governs consumer loans and credit sales, or, as stated in the UCCC “any loan for personal, family or household use.”
- This coverage includes payday, title and installment loans (also referred to as “small dollar loans”), auto loans and sales, open-end lines of credit such as HELOCs, consumer credit sales such as furniture, jewelry, and other types of credit sales.
- The UCCC defines how credit transactions may be structured, specifies what information must be provided to the consumer, and sets limitations on fees, interest and other charges.



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Payday Loans

- Payday loans are governed by the UCCC.
- Payday lenders that operate in Kansas are required by state law (UCCC) to license with the OSBC.
- K.S.A. sections 16a-2-404 and 16a-2-405 govern payday lending.



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Payday Loans

Terms of a Payday Loan:

- A payday loan may not exceed \$500.
- The loan term must be between 7 and 30 days.
- Repayment in a single payment is anticipated.



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Fees Permitted for Payday Loans

(K.S.A. 16a-2-404(5) and K.S.A. 16a-2-501)

The UCCC permits lenders to collect the following fees for a payday loan:

- Finance Charge (cannot exceed 15% of amount borrowed -- \$15 for every \$100 borrowed).
- A lender may assess and collect no more than 3% per month of the loan proceeds after the maturity date of the payday loan.
- A \$10 charge is permitted for an insufficient check; however, statute permits a lender to contract for up to \$30 for an insufficient check.



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Required Disclosures

(K.S.A. 16a-2-404(4))

- The loan contract must contain two notices.
 - **NOTICE TO CONSUMER:** 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.
 - **NOTICE TO BORROWER:** KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN TWO LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.
- The Notice must be disclosed in both English and Spanish in at least 10-point font.
- The borrower must sign or initial by the language in which they are most fluent.



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Right to Rescind

(K.S.A. 16a-2-404(9))

- A borrower may rescind a payday loan transaction without having to pay any finance charge so long as the borrower rescinds the loan no later than the end of the business day immediately following the day on which the loan was made.
- A borrower must inform the lender that he/she wants to rescind the loan.
- A borrower must return any cash amount of the principal of the loan to the lender.
- The lender must return any fees to the borrower (i.e. finance charges) that have been collected on the loan.



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Repayment Plan

- Kansas law does not require a repayment plan. Kansas law also doesn't prohibit the use of a repayment plan on a payday advance. However, any repayment plan must conform to the laws of the UCCC and may only be an amendment to the original transaction (not a new transaction).
- No additional fees may be charged in connection with a repayment plan.



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Prohibitions

(K.S.A. 16a-2-404)

- A lender and related interest cannot have more than two loans to the same borrower at any one time.
- A borrower cannot obtain a new loan from the same lender or related interest to pay off an existing loan.
- A lender cannot make more than three loans to the same borrower within a 30-day period.
- No insurance charges or any other charges are permitted, except an insufficient funds fee.
- A lender is prohibited from seeking civil penalties allowed by K.S.A. 60-2610 for a returned check written in exchange for a payday loan.



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Prohibitions

(K.S.A. 16a-2-404)

- A lender may not sell any other product in connection with making or collecting a payday loan.
- A lender may not include any of the following provisions in a payday loan document:
 - A hold harmless clause
 - A confession of judgment clause
 - A provision in which the consumer agrees not to assert a claim or defense arising out of the loan contract

Criminal Prosecution Not Allowed

(K.S.A. 16a-2-404 (10))

- The lender is not allowed to use or threaten to use the criminal process in any state to collect on the loan.



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Lender Requirements

- Each lender must keep a journal of loan transactions for each borrower containing the borrower's name, address, phone number, the date the loan was made, and the loan due date.
- Records must be retained for 36 months after the last entry on the account.
- An annual report must be submitted to the OSBC regarding dollar amount and loan volume for the previous calendar year.



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Payday Loans to Military Borrowers

(K.S.A. 16a-2-405)

- A lender may not garnish any wages or salary paid to a military borrower for service in armed forces.
- A lender may not contact any person in the military chain of command of a military borrower in an attempt to collect such a loan.
- A lender must defer all collections against a military borrower who has been deployed and for the entire duration of deployment.
- A lender may not make a payday loan to any military borrower whenever the base commander has declared such place of business off limits to military personnel.
- The federal Military Lending Act (MLA) also applies.



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Agency Authority

- The target examination schedule for regulated entities is approximately every 36-40 months. Exams are conducted both on-site and off-site. More frequent exams are conducted if necessary. Exams review transactions for compliance with state and federal law as well as review of management, and company policies and procedures.
- The agency has statutory authority to take a range of enforcement actions as needed for companies not in compliance.
- Enforcement actions may include consumer restitution, fines, and license revocation or bar from state.



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CML Licensing Activity

Entity Type	Entities on 12/31/19	Surrenders	Newly Licensed	Entities on 12/31/20	Net Changes	
					(#)	(%)
Mortgage Companies	457	37	43	463	6	1%
Mortgage Company Branches	930	166	337	1,101	171	18%
Supervised Lenders ¹	324	30	32	326	2	1%
Supervised Lender Branches	328	21	34	341	13	4%
Mortgage Loan Originators	6,485	1,352	2,853	7,986	1,501	23%
Money Transmitters	138	3	19	154	16	12%
Credit Services Organizations	27	0	0	27	0	0%
Notification Filers ²	2,016	76	95	2,035	19	1%
Total Entities:	10,705			12,433		

¹Lenders that make or take assignment of loans with an APR that exceeds 12%. Includes finance companies, small dollar lenders, and debt buyers.

²Creditors that enter into consumer credit transactions (credit loan, sale or lease), take assignment of and undertake collection of payments, or take assignment of and enforce rights against debtors arising from the consumer credit transactions. Loans must be less than 12% APR. Notification filers include buy here/pay here auto dealers, furniture stores, jewelry stores, and funeral homes.



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Small Dollar Lending in Kansas

Companies providing payday and title loans are required to license with the OSBC and comply with the provisions of the UCCC.

Payday and Title Loan - Total Locations

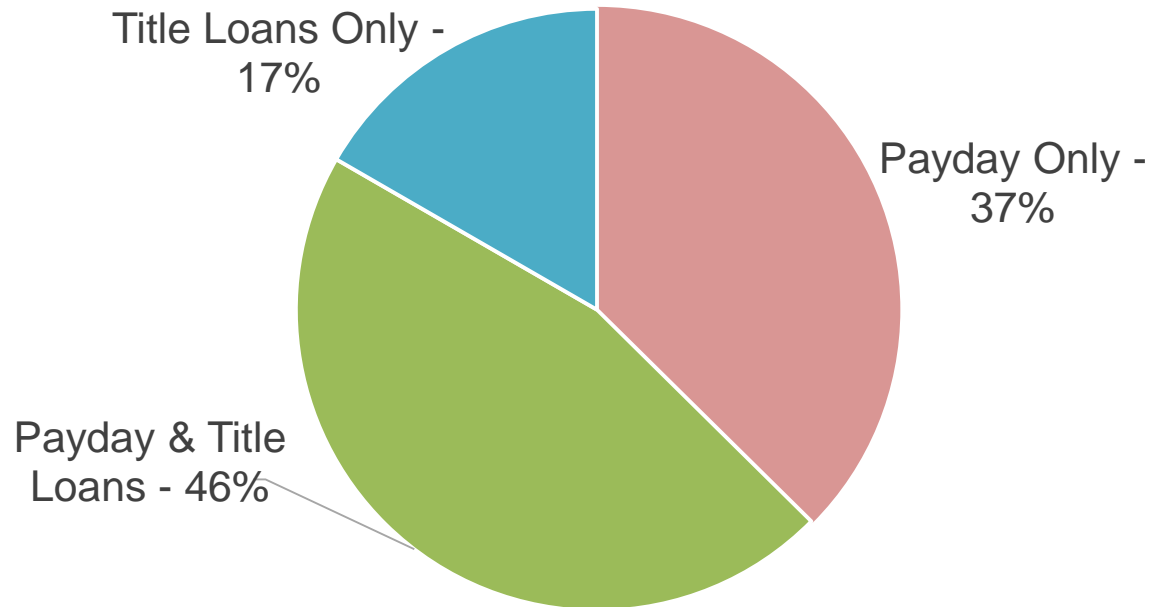
Companies:

Payday Only 39
Payday & Title Loans 10
Title Loans Only 4

Branches:

Payday Only 62
Payday & Title Loans 114
Title Loans Only 41

Total Companies 53
Total Branches 217
Total Locations 270





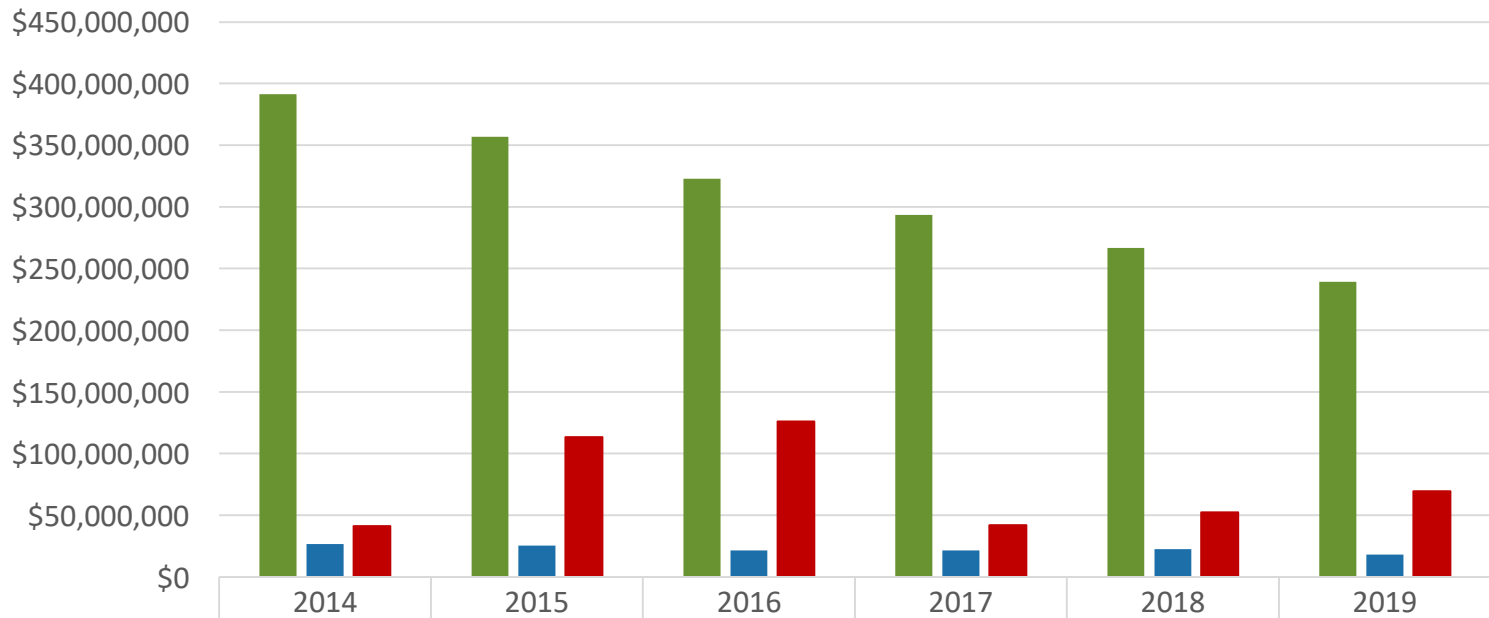
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Trends in Small Dollar Lending

- Just as the previous year, the OSBC notes a decline in traditional payday loan originations and an increase in an open-end loans.
- A growing challenge for both state and federal regulators is unlicensed lenders that operate primarily, or only, online.



Consumer Loan Volume by Type



■ Payday Loans	\$391,225,006	\$356,891,926	\$322,816,183	\$293,595,579	\$266,623,933	\$239,180,969
■ Title Loans	\$26,577,978	\$25,337,527	\$21,536,112	\$21,536,112	\$22,475,714	\$18,068,607
■ Other High-Rate Loans	\$41,186,963	\$113,071,862	\$126,046,650	\$41,893,706	\$52,177,609	\$69,440,926

Note: Other High-Rate Loans includes all loans other than Payday and Title Loans that exceeds 36% APR.



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Largest Payday Loan Companies

<u>Company Name</u>	<u>Amount (\$)</u>	<u>Kansas Market (%)</u>
Advance America, Cash Advance Centers of Kansas, Inc.	\$ 68,246,800	28.5%
QC Financial Services, Inc. (LendNation/Quik Cash)	37,356,697	15.6%
Populus Financial Group, Inc. (ACE Cash Express)	33,474,760	14.0%
Check into Cash of Kansas, LLC	28,869,990	12.1%
Great Plains Specialty Finance, Inc. (Check 'n Go)	23,745,677	9.9%
All Other Payday Loan Companies	<u>47,487,045</u>	<u>19.9%</u>
	239,180,969	100%



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Largest Title Loan Companies

<u>Company Name</u>	<u>Amount (\$)</u>	<u>Kansas Market (%)</u>
Anderson Financial Services, LLC (LoanMax)	8,146,632	45.1%
Galt Ventures, LLC (Speedy Cash)	5,759,856	31.9%
Check into Cash of Kansas, LLC	1,780,473	9.9%
Hardee Financial Group, Inc. (American Title Loans)	847,928	4.7%
All Other Title Loan Companies	<u>1,533,715</u>	<u>8.5%</u>
	18,068,607	100%



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Largest Other High-Rate Loan Companies

Company Name	Amount (\$)	Kansas Market (%)
CNU of Kansas, LLC (CashNetUSA)	31,760,213	45.7%
Galt Ventures, LLC (Speedy Cash)	10,398,401	15.0%
QC Financial Services, Inc. (LendNation/Quik Cash)	5,977,225	8.6%
Jora Credit of Kansas, LLC	3,240,973	4.7%
Applied Data Finance, LLC (Personify Financial)	3,054,129	4.4%
Integra Credit Five, LLC	2,950,659	4.2%
All Other High-Rate Loan Companies	<u>12,059,326</u>	<u>17.4%</u>
	69,440,926	100%



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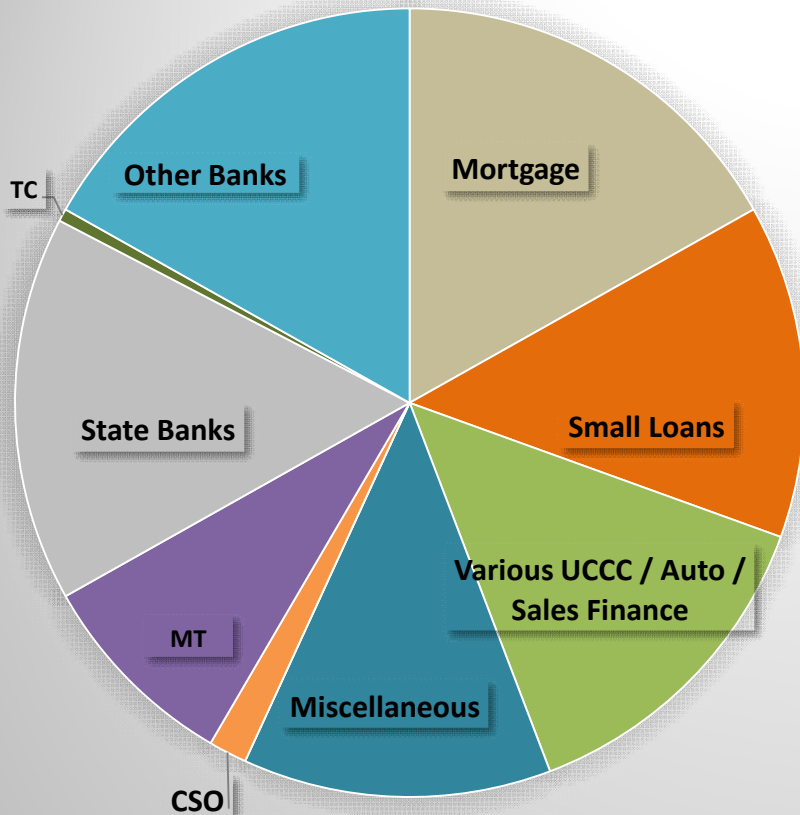
Consumer Assistance

- The OSBC responds to consumer inquiries and investigates consumer complaints.
- When a consumer has questions or concerns about small dollar loans, the OSBC will assist in various ways:
 - Verify whether a company is licensed
 - Explain applicable statutes regarding allowable interest and fees
 - Encourage them to file an OSBC Consumer Assistance Form
 - Provide additional resources for assistance
- When a consumer completes a Consumer Assistance Form, the OSBC takes the following steps:
 - Research the Company to determine license status
 - Obtain relevant documents and review for violations
 - Communicate with Consumer and Company to resolve complaint

Consumer Inquiries and Complaints in 2020

The OSBC receives approximately 1,500 inquiries per year
 Total Consumer Complaints in 2020: 190

2020 Written Complaints by Topic



- Mortgage - 32
- Small Loans (Payday/Title/OELOC) - 26
- Various UCCC / Auto / Sales Finance - 26
- Miscellaneous - 24
- CSO - 3
- Money Transmitters - 16
- State Banks - 30
- Trust Companies - 1
- Other Banks (NA/SBO/CU) - 32

Numbers may change. For cases that remain open, the alleged topic is used for this chart. The found topic recorded upon closing the case may differ.



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OSBC Small Dollar Loan Complaints

Total of All Consumer Complaints per year:

2016 – 217

2017 – 240

2018 – 204

2019 – 212

2020 - 190

OSBC Small Dollar Loan Complaint 5-year Data Summary

Year	Payday	Title	OELOC	UCCC Small Loan	Tribal	Yearly Small Dollar Total	Total Year's Complaints	Percent of Yearly Total
2016	5	8	12	2	4	31	217	14.29%
2017	0	5	12	2	2	21	240	8.75%
2018	4	11	8	5	7	35	204	17.16%
2019	3	5	13	1	0	22	212	10.85%
2020	1	2	16	2	4	25	190	13.16%
5-year Topic Total	13	31	61	12	17	134	1063	12.61%

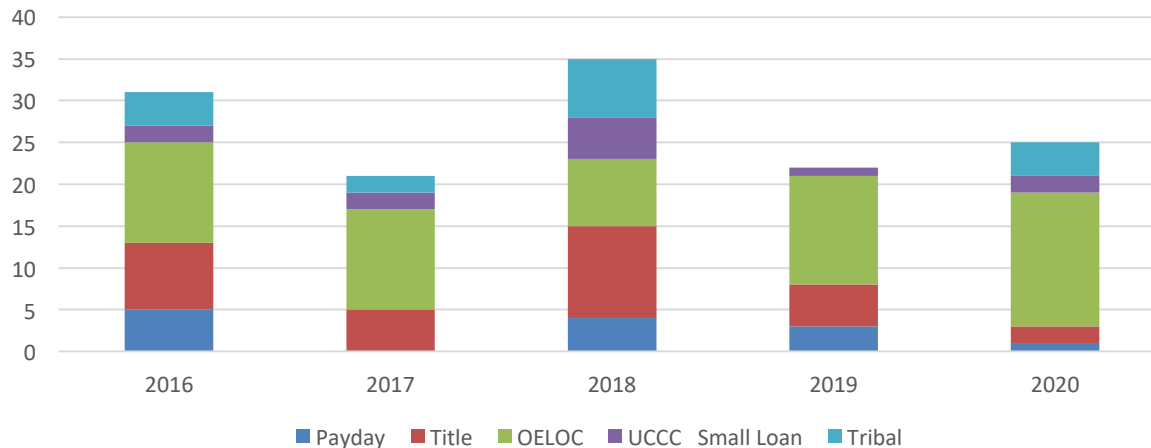


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OSBC Small Dollar Loan Complaints

OSBC Small Dollar Loan Complaint 5-year Data Summary						
	2016	2017	2018	2019	2020	5-year Topic Total
Payday	5	0	4	3	1	13
Title	8	5	11	5	2	31
OELOC	12	12	8	13	16	61
UCCC Small Loan	2	2	5	1	2	12
Tribal	4	2	7	0	4	17
Yearly Total	31	21	35	22	25	134

Small Dollar Loan Complaints





Consumer Education Initiatives

- The OSBC provides grants to support consumer education programs statewide. Grants support programs for children and adults.
 - Fines and penalties collected as a result of enforcement actions are deposited in the Consumer Education Settlement Fund and used to fund grants for consumer education.
 - The OSBC has provided approximately \$5 million in grants for consumer education since 1999, awarding an average of \$250,000 annually.
 - Grantees served more than 18,000 consumers/students in FY2020.
- The OSBC collaborates to sponsor other consumer education initiatives including a Kansas Financial Scholars Essay Scholarship Contest that rewards high school seniors for financial knowledge, and financial literacy focused events available to the public.
- Educational features are provided on the OSBC website including FAQs, educational resources and literature, links to OSBC sponsored programs, and free online money management courses and tools.



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HB 2189

- The proposed installment bill would require an alternative product to payday loans that has a longer term and lower rates and fees.
- The proposed installment bill requires more extensive annual reporting by the lenders to the state.
- The proposed installment bill places a cap on interest rates for open-end loans under the UCCC.
- Another option that has been discussed is to adjust the UCCC to allow other alternative products, including a longer-term product at a fixed 36% interest rate. This approach would allow lenders an option to offer a product to assist consumers who cannot afford to repay the short-term payday loans in their current financial situation.



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Questions?

Contact:

Mike Enzbrenner, Deputy Commissioner
Consumer and Mortgage Lending Division
785-379-3761

Mike.Enzbrenner@osbckansas.org

Melissa Wangemann
General Counsel
785-379-3569

Melissa.Wangemann@osbckansas.org