

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

AN ALT & ASSOCIATES NEWSLETTER

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ADVERTISING REGULATIONS

Last week we presented the first of two discussions devoted to general disclosure requirements for advertising Mortgage Loan products. The topics of that Update were requirements imposed by the Federal Truth in Lending Act and Reg. Z.

As we also mentioned, each state has its own regulatory scheme. These can be reasonably straight forward or complex. While the state regulations have many similarities, each state is unique and must be reviewed and complied with if you plan on advertising in that state. Obviously summarizing each of 50 state's regulatory schemes is well beyond the scope of this article. However, we thought it would be helpful to discuss the requirements of 4 sample states to give you a general idea of the types of regulations involved and to point out similarities and differences.

The states were picked at random with the exception of California which, we are sure to no one's surprise, has the most complex regulatory requirements and restrictions.

FLORIDA

Florida statutes set out some specific prohibitions, among them:

- **Advertising an applicant's ability to have unqualified access to credit without disclosing the conditions under which that credit will be granted,**
- **Advertising an interest rate unless the advertisement states that the rate could change or not be available at commitment or at closing,**
- **Advertising mortgage loan terms unless the lender makes those terms available to a reasonable number of qualified applicants,**
- **Advertising which misuses names of a federal agency,**
- **Engaging in misleading or deceptive advertising regarding mortgage loans, and**
- **Advertisements using the name or trademark of a financial institution, when marketing to existing customers of that financial institution, if the marketing material is used without the financial institution's written consent and/or used in a manner that would lead a reasonable person to conclude the material was endorsed or originated by that financial institution.**

It is unlawful for Florida licensees to knowingly or willfully defraud any consumers or engage in any transactions which operate as a fraud in conjunction with a mortgage loan or further, to make any false or fraudulent statement. This applies to advertisements.

As an aside, the precise words change with each state, but each prohibits false, misleading or deceptive advertising.

ILLINOIS

The Illinois Residential Mortgage Licensing Act sets forth a number of restrictions:

- **Advertisements must comply with applicable federal and state law,**
- **Illinois residential advertisements must include the words *Illinois Residential Mortgage Licensee*,**
- **Licensee's advertisements must include the office address and name of the licensee, conforming to those records maintained with the Illinois regulator.**
- **Advertising that loans are approved, recommended, or established by the federal or state government or any agency thereof, is prohibited.**

- **Advertisements must include the unique NMLS identifier number.**

In addition, a number of restrictions can be found in the Illinois Consumer Fraud and Deceptive Business Practices Act. This Act prohibits, among other things:

- **The use of the term bank rates, bank financing or similar terms unless the lender is in fact a bank,**
- **The use of marketing materials that indicate a connection with the borrower's mortgage company or that provide other information concerning the consumer's mortgage unless the entity sending the advertisement is an employee of that mortgage company or an affiliate, and**
- **Soliciting persons who have filed bankruptcy by advertising that loans will be made available to bankrupts.**

WASHINGTON

As we know, there are two licenses under which a company may make mortgage loans in Washington. One is issued under the Consumer Loan Act and the other is issued under the Mortgage Broker Practices Act.

The Consumer Loan Act, aside from forbidding false or misleading or deceptive advertisement, has few restrictions.

More restrictions applicable to lenders are found in the Mortgage Broker Practices Act. These restrictions are:

- **A broker may not advertise a loan with specific terms unless those terms are actually available,**
- **Originators may not advertise a rate of interest without also disclosing the APR. The law further requires compliance with the Federal Truth in Lending Act, ECOA, RESPA and other federal statutes and regulations,**
- **Licenses may advertise only under their own name,**
- **Advertising records must be maintained for at least 25 months, including the precise script, the date of the publication or use, copies of flyers, and other relative material,**
- **Solicit, or advertise specific interest rates, points or other financing terms unless the terms are actually available at the time of advertising,**

- **Make any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or**
- **Engage in bait and switch advertising.**

CALIFORNIA

Our last state is California which has the most complex regulatory scheme for advertising. This is because there are 3 licenses under which one can lend in California; the Real Estate Broker's License issued by the California Department of Real Estate ("DRE"), the California Finance Lenders License ("CFL") and the Residential Lenders License ("RML"), both issued by the California Department of Corporations ("DOC"). Each of these licenses has its own regulations and peculiarities. We will review each of them briefly.

DRE

California Code of Regulations, Title 10 Section 2770 sets out detailed regulations for advertising on the internet. Perhaps the most important, to avoid being required to be licensed by DRE, a lender should include the phrase:

"the services referred to herein are not available to persons located within the State of California".

Title 10, Section 2848 provides an expanded definition of false, misleading or deceptive advertising relative to mortgage lending. This section sets out 18 criteria which DRE considers to be illustrative of false, misleading or deceptive advertising. We advise that no advertisement be used by a DRE licensee without the review of this section.

There are also notification provisions to be included in advertisements concerning licensing. Advertisements published by a DRE licensee must disclose that the licensee is performing acts for which a real estate license is required and must disclose its license identification number, and if the licensee is a loan originator, the unique identifier assigned by the NMLS.

Finally, DRE has issued rules regulating the making of non-traditional and sub-prime loans including detailed information about the advertisement

and disclosure of the loan's costs, terms, features and risks, including potential payment shock, negative amortization, prepayment penalties, balloon payments, and responsibility for taxes and insurance. These are contained in California Code of Regulations, Title 10, Section 2844.

CFL

The DOC has adopted new and more detailed regulations concerning the use of advertising in California Code of Regulations, Title 10, Section 1550 et seq. Every licensee must submit a copy of any proposed advertising to the Commissioner for examination. The advertisement may be used if the licensee does not receive a "non-disapproval" of the advertisement. The DOC may, and does, exempt lenders from the provisions of this section, by written exemption when the lender's advertising has been found to be in substantial compliance with the provisions of law, for a period of not less than 12 months.

The licensee must disclose in its advertisements that the loan is made under the California Financial Lender's Act. The unique NMLS identifier of the mortgage lender must also be included in the advertisement.

Finally, as with many states, "blind advertisements" are prohibited (i.e. an advertisement that provides only a telephone number, post office box, or newspaper box but not the name of the licensee).

RML

Residential Mortgage Lenders (RML) must refer to their license advertisements but only by using the following statement:

"Licensed by the Department of Corporations under the California Residential Mortgage Lending Act."

Licensed mortgage loan originators must clearly show, in all their loan advertisements, their unique NMLS identifier.

When discussed, Residential Mortgage Lenders must clearly and completely identify interest rates and charges and other loan terms. However, compliance with the Federal Truth in Lending Act and Reg. Z is presumed to satisfy these requirements.

An RML lender is prohibited from advertising itself as a mortgage broker. As we know, an RML lender can only broker loans in certain limited circumstances.

Finally, the DOC also has regulations regarding non-traditional mortgage loans and sub-prime loans. These regulations are detailed and will not be set forth here. However, they can be found in the California Code of Regulations in Title 10, Section 1950.314. These regulations primarily deal with the disclosure and method of disclosure of the terms of the non-traditional loan product.

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ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations. If you have any questions please contact:

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