

October 3, 2007

To: Mortgage Broker Licensees

From: Division of Mortgage Lending

Re: Assembly Bill No. 375
Advertising

Effective October 1, 2007, Assembly Bill No. 375 of the 2007 Legislative Session changed the advertising requirements applicable to all mortgage broker licensees.

On and after this date, only mortgage broker licensees who have received their initial broker [note: not branch] license *within the past 12 month period* are required to submit any proposed advertisement to the Division for review and approval. Consequently, once the first anniversary date of the broker's license issuance has passed, no advertisement need be submitted to the Division. For existing licensees who have already passed this 12-month period as of October 1, 2007, no further advertisements need be submitted.

Effective immediately, the Division will no longer review advertisements submitted to it by licensees who have passed their one year anniversary date.

This change in the law and the Division's review policy does not negate the fact that a licensee may be held accountable for any false or misleading advertising that comes to the attention of the Division. Additionally, this change in the law and policy does not negate any other existing federal or state law or regulation that pertains to advertising in general, the advertising of consumer credit in particular, or the record retention of all advertisements. Licensees are directed to review the Division's general advertising requirements located at NRS 645B.189 and NAC 645B.240.

The Division is aware that due to the ongoing changes in the mortgage industry, advertisements have started to appear that are targeted to borrowers who have adjustable rate mortgage loans that are going to reset. Many of these advertisements specifically refer to individual borrower loan terms, repayment amounts and dates, and some attach copies of purported borrower loan documents to the advertisement piece.

The advertising pieces of this nature that the Division has reviewed to date are being disapproved, since the Division believes they are all misleading as written. The following guidelines are being suggested until the Division adopts appropriate regulations:

Any advertisement, whether or not submitted to the Division for approval, that specifically references a particular borrower's loan terms, or includes a copy of a particular borrower's loan documents, should include a statement in the text of the

advertisement, as a separate paragraph but in no less than the same font and print style as the remaining text, that the information contained in the letter, or that the copy of the attached document, was obtained from public record sources and not from the borrower's actual lender. Brokers should also state that they are not affiliated with the borrower's actual lender and that the borrower's lender did not authorize the solicitation. Additionally, every copy of a borrower's loan document that is included with the advertisement should have the public source's document number, recorder stamp or similar identification imprinted on the document. A bar code only form of identification is insufficient.

Advertisements of the above nature that do not include these items may be deemed to be deceptive by the Division, and may subject the licensee to disciplinary action.

The Division also understands that some title companies are offering for sale copies of borrower loan documents that have been recorded and that are public records. Other title companies may provide the actual borrower information without providing copies of the documents. Mortgage broker licensees who purchase such documents or information should have written contracts with those title companies [or others, such as lead generators, if not title companies] and require certification from them that the records are, in fact, public. *No licensee may utilize borrower specific loan information unless such information is public.*

If the Division becomes aware that a mortgage broker licensee is advertising in the format above, the Division's examiners may ask to review any contract the licensee has with the respective title company or other furnisher of the information. If the licensee cannot prove to the satisfaction of the Division that the information in the advertisement is public information, whether or not such a contract exists, the licensee may be subject to disciplinary action.

Questions about this letter may be directed to the Division in writing.

Joseph L. Waltuch
Commissioner