



ETHICS ADVISORY OPINION 2009-2

Lead Generation State Licensing Requirements and Ethical Advertising

June 16, 2009

The Ethics and Standards Committee (the “Committee”) of the National Reverse Mortgage Lenders Association (“NRMLA”), the trade association of the reverse mortgage lending industry, enforces the NRMLA Code of Ethics and Professional Responsibility (the “Code of Ethics”). All NRMLA Members are required to comply with the Code of Ethics as a condition of their continued membership in NRMLA. If the Committee determines that a NRMLA Member has not complied with the Code of Ethics, sanctions may be imposed, up to and including the termination of NRMLA Membership. Committee decisions enforcing the Code of Ethics may be made public.

The Committee also interprets the Code of Ethics, and, from time to time, proposes changes to it for consideration and approval by the NRMLA Board of Directors.

This is one of a series of formal Committee interpretations of the NRMLA Code of Ethics. It is Ethics Advisory Opinion 2009-2 (Lead Generation State Licensing Requirements and Ethical Advertising).

Introduction. This Ethics Advisory Opinion 2009-2 (Lead Generation State Licensing Requirements and Ethical Advertising) serves as a reminder to NRMLA Members that reverse mortgage lead generation services generally are considered to be licensable activity in many states, and that, accordingly, NRMLA Members engaged in providing lead generation services in such states, without also being appropriately licensed to do so, may also violate express provisions of the NRMLA Code of Ethics.

Under a “typical” lead generation service arrangement of the type referred to in this Ethics Advisory Opinion, a company (“Lead Generation Provider”) assists reverse mortgage brokers, correspondents, lenders, or others in identifying consumers who may be considering or interested in a reverse mortgage loan for themselves or for others. The Lead Generation Provider may primarily provide information about reverse mortgage loans to the consumer; may not directly be involved in the reverse mortgage loan application process for the consumer; or may not originate reverse mortgage loans. However, the Lead Generation Provider also directly or indirectly solicits such consumers (generally through its website, or through other media or outreach initiatives) to provide

information about themselves (such as their names, addresses, contact information, property locations, ages) (collectively “Lead Information”); collects that information; and provides that information to reverse mortgage brokers, lenders, or others. Generally, but not always, Lead Generation Providers are compensated for providing Lead Information.

Lead Generation Providers, and the NRMLA Lender Members who work with them, are also the subject of NRMLA Ethics Advisory Opinion 2008-1 (Ethical Advertising).

The NRMLA Code of Ethics The NRMLA Code of Ethics applies to Lead Generation Providers that are NRMLA Members.

The first **Value** that the NRMLA Code of Ethics embraces is **Fairness**. Fairness under the Code of Ethics requires that NRMLA Members treat seniors with “respect and dignity, and in a manner that is fair, reasonable, and as they would want to be treated.” Additional **Values** embraced under the Code of Ethics require **Integrity, Competence, Diligence, and Professionalism**.

Rule 103 of the Code of Ethics states that NRMLA Members directly or indirectly offering or providing goods or services to seniors (including, for example, insurance or investment products) in conjunction with or that are related to their reverse mortgage lending activities for such seniors, shall do so only in a manner consistent with applicable law and under terms and conditions that are clearly and timely described to seniors.

Rule 104 of the Code of Ethics states, in pertinent part, that NRMLA Members shall not, directly or indirectly, solicit or communicate with consumers through false or misleading or deceptive or unfair communications or advertisements or in any manner inconsistent with applicable law.

Rule 401 of the Code of Ethics requires NRMLA Members to acquire and maintain the necessary and appropriate knowledge, skills and experience required to competently offer and provide their products and services in a manner consistent with this Code of Ethics and applicable law, including, as applicable, in the origination, processing, underwriting, closing and servicing of reverse mortgage loans.

Rule 602 of the Code of Ethics requires NRMLA Members to neither accept nor condone actions or failures to act of other NRMLA Members that are inconsistent with this Code of Conduct. NRMLA Members knowledgeable about potential material violations of this Code of Ethics by others subject to its provisions strongly are encouraged to bring such potential violations to the attention of NRMLA in the manner described in this Code of Ethics.

Rule 605 of the Code of Ethics generally requires NRMLA Members to comply with all applicable regulatory requirements include provisions of the Federal Real Estate Settlement Procedures Act barring among other things referral fees and kickbacks, state mortgage regulatory provisions requiring licensing, and, with respect to FHA-insured HECM reverse mortgage loans, FHA requirements regarding licensing and employees and restricting arrangements with third parties.

Applicable State Law. It is the Committee’s understanding that many states require that Lead Generation Providers engaged in soliciting and collecting such Lead Information from residents of their states be licensed to do so (or exempt from such licensing requirements), generally as “mortgage brokers,” and that they comply with applicable state requirements as they engage in that business.

It is the Committee’s understanding, for example, that Arizona generally is of the view that a company is engaged in such licensable activity if it directly or indirectly provides consulting or advisory services to a borrower concerning the identity of potential lenders,¹ and that the Arizona Department of Financial Institutions has cited a number of mortgage lenders for purchasing leads from unlicensed lead generators.

Similarly, the Committee understands that the Virginia Bureau of Financial Institutions generally takes the position that any person who refers an individual seeking a loan to a lender or lenders is engaged in the business of a mortgage broker.²

Other states in which licensing appears to be required to provide such lead generation services include or may include, among others, California (under its Real Estate Law), Connecticut, Georgia, Idaho, Indiana, Maryland, Missouri, Ohio, Utah, and Washington.

In describing and listing these states, or in listing some states and not others, the Committee is not intending to and is not providing legal advice to Lead Generation Providers about their actual or potential licensing obligations in the states in which they do business, or the NRMLA Lender Members. Determinations in that regard need be made by such Lead Generation Providers, in consultation with their own counsel.

Given the prevalence of such state licensing requirements, however, and provisions of the NRMLA Code of Ethics requiring that NRMLA Members comply with applicable law, the Committee respectfully recommends that all NRMLA Member Lead Generation Providers consider with care their obligations in this regard.

Through this Ethics Advisory Opinion, the Committee also provides express notice of its intent to inquire, under the Policies and Procedures applicable to its NRMLA Code of Ethics enforcement work, as to the duly licensed status of Lead Generation Providers brought to its attention.

¹ See Ariz. Admin. Code R20-4-102.

² Administrative Letter BFI-AL-1603.

The Committee further intends, in appropriate circumstances and based in part upon the responses of such Lead Generation Providers to its inquiries, to refer such Lead Generation Providers, whether or not NRMLA Members, to appropriate licensing and regulatory authorities. The Committee also intends, in appropriate circumstances and as permitted under its Policies and Procedures, to make public its determinations and actions with respect to Lead Generation Providers, particularly in circumstances involving NRMLA Members providing Lead Generation services determined by the Committee to also violate other provisions of the NRMLA Code of Ethics including but not limited to those described in Ethics Advisory Opinion 2008-1 (Ethical Advertising).

Indirect NRMLA Code of Ethics Violations. NRMLA Members may not engage in conduct violative of the NRMLA Code of Ethics, including but not limited to providing Lead Generation services, either directly or indirectly through Lead Generation Providers that do not themselves comply with the provisions of law and of the NRMLA Code of Ethics applicable to them.

Conclusion. Lead generation services provided in a manner that does not comply with applicable law and, with respect to NRMLA Members, provisions of the NRMLA Code of Conduct and its Ethics Advisory Opinions, are inconsistent with the Values of our industry and the interests of the seniors they serve. Those engaged in such conduct have no place in NRMLA. NRMLA Members, consumers, and others are urged to bring to the attention of NRMLA's President and the Committee concerns they may have about potential unethical lead generation services, for consideration and action by President and Committee in accordance with the Policies and Procedures described in the NRMLA Code of Ethics and in this Ethics Advisory Opinion. Contact information for NRMLA may be found at its website at www.NRMLAOnline.com.