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Ethics Advisory Opinion 2011-01

Wholesale Lenders, TPOs and Ethical Advertising

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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 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.

On February 28, 2008, over two years ago, the Committee issued its first formal interpretation of the then new NRMLA Code of Ethics, Ethics Advisory Opinion 2008-01 (Ethical Advertising). The following year, on June 16, 2009, the Committee issued a related and follow-up interpretation, Ethics Advisory Opinion 2009-02 (Lead Generation State Licensing Requirements and Ethical Advertising). On October 15, 2010, through Ethics Advisory Opinion 2010-2 (Additional Ethical Advertising Practice Requirements), the Committee published additional and detailed guidance for NRMLA Members in the ethical advertising area.

Each of these NRMLA Ethics Advisory Opinions are published and may be found on the NRMLA website at NRMLAOnline.org.

The three earlier Ethics Advisory Opinions rely on and cite to a series of Values and Rules described in the NRMLA Code of Ethics that address what Ethics Advisory Opinion 2008-01 characterized as a very important aspect of the relationship between NRMLA Members and the seniors whose interests they are pledged to serve: the manner in which NRMLA Members make, advertise and make known to seniors the reverse mortgage loans and programs they offer to them.

These Ethics Advisory Opinions noted the growing concern among seniors and their advocates and legislators, and among NRMLA Members and NRMLA itself, that some NRMLA Members are engaging , participating, or tolerating marketing and advertising practices that are false, misleading, deceptive or unfair--referred to in that Opinion, collectively, as "Unethical Advertising." These earlier Ethics Advisory Opinions made clear and declared that "Unethical Advertising expressly violates the NRMLA Codes of Ethics," and added: "There is no place in NRMLA for NRMLA Members who engage in Unethical Advertising."

As described in its Policies and Procedures (Appendix A to the NRMLA Code of Ethics), the Committee is permitted to impose sanctions upon (and has so disciplined) NRMLA Members determined by the Committee to have engaged in Unethical Advertising in violation of the requirements of the NRMLA Code of Ethics and its Ethics Advisory Opinions, including by placing such NRMLA Members on Probation, Suspending their NRMLA Membership, and Withdrawing their NRMLA Membership (collectively, the Committee's NRMLA Membership Sanctions).

The Committee, upon following certain Additional Safeguards further described in the Policies and Procedures, also may, itself, publicly identify such NRMLA Members and the conduct that resulted in the imposition by NRMLA of such sanctions upon them (in Committee parlance, "Naming the Respondent"), and the Committee may and has referred NRMLA Members and non-Members to law enforcement authorities (including but not limited to HUD, the Federal Trade Commission and Attorneys General) for appropriate action by them (the Committee's Outside Referral Option).

Relying on these same Values and Rules in the NRMLA Code of Ethics, and building upon the guidance provided through its Ethics Advisory Opinions 2008-1, 2009-2 and 2010-2, the Committee has decided to go further, by capitalizing upon the willingness of the members of the NRMLA Wholesale Lenders Council (further described below) to work cooperatively with it

and NRMLA to help stamp out Unethical Advertising practices. Its enhanced process for doing so is described in this Ethics Advisory Opinion 2011-01: Wholesale Lenders, TPOs and Ethical Advertising. It establishes an additional remedy available to the Committee for Unethical Advertising violations of its Code of Ethics, and it is referred in this Ethics Advisory Opinion as the Committee's "Inside Referral Option."

The members of the NRMLA Wholesale Lenders Council are NRMLA Lender Members that work with third party originators (TPOs) to originate reverse mortgage loans and that have agreed to and do support NRMLA and its mission through additional contributions and resources.

Under the NRMLA Code of Ethics, NRMLA Members, including Council Members, may not engage, either directly or indirectly, in conduct that violates the Code. Accordingly, and for example, a NRMLA Member that retains or arranges with a third party (including a TPO) to assist in the origination or marketing of reverse mortgage loans, or in the generation of leads for reverse mortgage loans, is and will be held responsible under the NRMLA Code of Ethics for the actions of such third parties undertaken on its behalf or for its benefit that involve Unethical Advertising or other violations of the NRMLA Code of Ethics and its Ethics Advisory Opinions to the same extent as if it was the NRMLA Member itself, rather than such third party, that undertook such actions.

NRMLA Members that are Council Members have agreed to go further, however, in support of this ongoing effort by NRMLA and the Committee to root out Unethical Advertising and the Committee's Inside Referral Option for doing so. Council Members also have agreed to include, in due course, within their agreements with each TPO or other third party with which they work, a requirement that each such TPO and third party also comply with relevant provisions of the NRMLA Code of Ethics and its Ethics Advisory Opinions, whether or not such TPO or third party is, itself, a NRMLA Member.

This, then, is the first part of the Committee's Inside Referral Option for helping to root out Unethical Advertising—the adoption by members of the NRMLA Wholesale Lenders Council of the NRMLA Code of Ethics as a requirement applicable to the third parties (including TPOs) with which such Council Members work.

The second part of the Committee's Inside Referral Option involves the decisions the Committee itself may make when it encounters Unethical Advertising by either NRMLA Members or non-Members. In such situations, in addition or as an alternative to its options of imposing Membership Sanctions, Naming the Respondent, and exercising its Outside Referral Option (as described above), the Committee, at its option, also may describe to Council Members such particular Unethical Advertising practices, including with such descriptions examples of the text and substance of those practices, advertising and marketing materials, but in each case having the NRMLA staff also suitably redact such materials to remove the identity (name or other identifying characteristics) of the company or person associated with such materials.

Upon receipt of such redacted descriptions, Council Members have agreed to undertake appropriate and reasonable efforts to determine, if possible, if any of the third parties (including TPOs) with which they work is engaging or may have engaged in the particular Unethical Advertising practices described by the Committee, and, if so, then to take appropriate and reasonable action in response thereto as may be permitted under that Council Member's agreement with such third party.

The Committee, NRMLA, and the members of the NRMLA Wholesale Lenders Council, have concluded that adding this Inside Referral Option can have a material and positive impact upon their shared goal of eliminating Unethical Advertising, for the benefit of all industry members who engage only in Ethical Advertising practices and of the seniors whose interests they are pledged to and do serve.

NRMLA Members, seniors, and others are urged to bring to the attention of NRMLA's President and the Committee concerns they may have about potential Unethical Advertising directly or indirectly by NRMLA Members, for consideration and action by President and Committee in accordance with the procedures described in the Code of Ethics. Contact information for NRMLA may be found at its website at NRMLAOnline.org.