



NRMLA Ethics Advisory Opinion 2018-1

Re-Affirming the Code of Ethics' Consumer Bona Fide Advantage Requirement

June 29, 2018

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 termination of NRMLA Membership.

The Committee also interprets the Code of Ethics. This Ethics Advisory Opinion 2018-1 (Re-Affirming the Code of Ethics' Bona Fide Advantage Requirement) is such an interpretation of the Code of Ethics.

In the course of the last decade, the Committee has issued almost twenty Ethics Advisory Opinions addressing issues arising under the Code of Ethics as diverse as Advertising (its first such opinion in 2008), Offers of Other Financial and Insurance Products, Lead Generation, Consumer Freedom of Choice, HECM-TO-HECM Refinances, and Planned HECM Loan Prepayments (its most recent such opinion in 2016). A common and central element in all of the Committee's Opinions is the importance under Rule 107 of the Code of Ethics of NRMLA Members providing a "bona fide advantage" to consumers through the range of programs and products NRMLA Members describe and offer to consumers. NRMLA Members are required, under the express Values of the Code of Ethics, to act with "honor and integrity" for the benefit of "the seniors whose interests they serve." They only do so if they provide such a bona fide advantage to such consumers.

Recently, questions have been raised by some NRMLA Members as to the relationship between their obligation under the Code of Ethics to serve the interests of seniors and always provide a bona fide advantage to them, and the particular “requirements” of certain of the Committee’s Ethics Advisory Opinions that, in some circumstances and for some seniors, if strictly adhered to by such NRMLA Members, may not provide such an advantage or serve their interests. This Ethics Advisory Opinion responds to such questions by re-affirming the importance of providing such a bona fide advantage to consumers and servicing their interests in all such circumstances as well.

That guidance as how to balance the particular requirements of various Ethics Advisory Opinions with this more general and overarching requirement that a bona fide advantage always be provided by NRMLA Members to consumers has been described repeatedly in the Committee’s Ethics Advisory Opinions. In Ethics Advisory Opinion 2010-1 (Ethical HECM-TO-HECM Refinancing and Anti-Churning Practices), to cite just one such example, the Committee expressly noted that although in general “the bona fide advantage standard of the Code of Ethics may not be met unless a HECM-to-HECM refinance occurs after six (6) months of the closing of the prior HECM loan being refinanced,” it adopted that “requirement” under the Code of Ethics because in its view that was the “essence,” in this context, “of the bona fide advantage requirement of Rule 107 and the NRMLA Code of Ethics.”

However, and most importantly in this same context, it immediately also went on to say that complying with this requirement “is not the only way for a NRMLA Member to establish that it meets its obligations under the Code of Ethics to provide a bona fide advantage to the consumer as they make such choices.” If a NRMLA Member, instead, chooses to meet this Code of Ethics obligation in this context in some other way than as described in this Ethics Advisory Opinion, that NRMLA Member then also needed to be able to “demonstrate” to the Committee (if called upon to do so in accordance with the Committee’s procedures and following the lodging of a complaint against it) that it nevertheless still complied in some other way with the bona fide advantage requirement for that particular consumer and in those particular circumstances lest it otherwise be subject to permissible sanctions for a failure to meet the requirements of the Code of Ethics the NRMLA Member promised to honor when it chose to become and remain a NRMLA Member.

NRMLA Members routinely and overwhelmingly engage in ethical HECM loan activities for the benefit of the seniors they are pledged to serve. By continuing to adhere to this central and important consumer bona fide advantage of the Code of Ethics—a requirement that through this Ethics Advisory Opinion the Committee expressly re-affirms—they will continue to do so.