

**WEINER
BRODSKY
KIDER_{PC}**

Advertising & Ethics

NRMLA 2022 Eastern Regional Meeting

Baltimore Marriott Waterfront

Baltimore, MD

July 11-12, 2022

Ads & Ethics

- What is Advertising?
 - Marketing
 - Solicitation
 - Advertising

Ads & Ethics

- Rules
 - Federal
 - State
 - Types of Rules
- Enforcement Actions
- Trade Association Best Practices

The Law

- Federal
 - FTC Act
 - UDAP Standard
 - FTC Views – The “Fours P’s”
 - TILA
 - ECOA
 - Discrimination in Advertising
 - MAPS Act
 - UDAAP
 - CFPB CMS (Vendor Management)
- Types of Laws / Regulations
 - Trigger requirements (if you do / say this .. You must do / say more)
 - Example - TILA Trigger Terms
 - Prohibitions – You cannot do this ...

The Law

- MAPS Act

- Enacted as a stand along mortgage advertising law by Congress and effective on July 21, 2011
- Authority Given to the FTC
- Before Law went into effect, Authority Transferred to the CFPB
- Provides that certain things Violate the Act, and gives Illustrative list of Prohibited Practices
- Applies to “Communications” which is broader than Advertising Includes specific references to Reverse Mortgages in some of its examples
 - Misrepresentations about any payments or that **no payments are required in a reverse mortgage** or other mortgage credit product
 - Right of consumer to reside in dwelling subject mortgage, or duration of such right, including but not limited to misrepresentations concerning **how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling**
 - The potential for default under mortgage, including but not limited to **misrepresentations** concerning circumstances under which consumer **could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations**

The Law

- States Federal
 - NMLS ID
 - Mortgage Lending and Brokerage Law Specifics
 - “Tag Lines”
 - General UDAP

Enforcement Actions

- States
 - Florida
 - Illinois
 - Massachusetts
 - Minnesota
 - Washington
 - Virginia
 - Issues focus mostly on mailers, impersonating the government, other Reverse Mortgage *faux pas* (you can never lose your home, without any mention of T&I defaults)
 - Various companies, and Dates range from 2010 to 2017
 - Fines ranged from \$5,000 to \$500,000
- Federal
 - CFPB
 - Over one half dozen settlements re: Reverse Mortgage Advertising since 2015
 - FTC
 - Banking Agencies

NRMLA Code of Conduct

- NRMLA Code of Ethics and Professional Responsibility
- NRMLA Ethics Committee
 - Complaint Process
- Ethics Advisories Opinions
 - The Dirty Dozen
 - Advisory Opinion 2008-01
 - Advisory Opinion 2010-02
 - Advisory Opinion 2022-01

The Dirty Dozen

- HECMs as a “Government Loan” or “Government Benefit,” or HUD or AARP “approved.”
- Failure to respond may result in the loss of a consumer benefit.
- Exaggerated benefits without describing related risks.
- Celebrity endorsements without disclosure of paid nature of the arrangement.
- Advertising other products or services must be purchased to obtain a reverse mortgage loan
- Advertising unreasonably high compensation to business partners from reverse mortgage proceeds

The Dirty Dozen

- Advertising, reverse mortgages as “no cost,” or “no fee,” or “no risk,” or “no expense,” or “require no payments.”
- Endorsements that do not reflect the honest opinions and experiences of the endorsers.
- Advertising that consumers are “pre-approved” or “pre-qualified.”
- False sense of urgency.
- Simulated checks or currency
- Use of HUD or FHA logos or names.

Advisory Opinion 2022-01

Responsible Information Sharing of Mortgage Professional Adverse Activity

- Risk of fraud & material misrepresentation in reverse mortgage transactions
- Related Values and Rules under Code of Ethics
- Due diligence for mortgage brokers, correspondent lenders, appraisers, and more.
- Mortgage Industry Data Exchange (MIDEX®) available through the LexisNexis® Mortgage Asset Research Institute
- Use of additional or alternative tools

In Conclusion ...

- Many Different Laws apply at Different Levels
- Know the Rules that Apply to You
- Know that You are Responsible
 - For Your Vendors
 - For Your Employees
- Know the NRMLA Code of Ethics and Ethics Advisories
- If you see Something, say Something

Resources

- CFPB Advertising Examination Guide
 - https://files.consumerfinance.gov/f/documents/cfpb_mortgage-origination-examination-procedures_2021-12.pdf,
Module 2
 - Enforcements - <https://www.consumerfinance.gov/enforcement/actions/> -
 - Go to Filter (+) and Use “reverse mortgage” as a Search Term
- State Regulator Websites
 - <https://www.aarmr.org/general-members>
- FTC
 - <https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business>
- MAPS Act Rule
 - <https://www.govinfo.gov/content/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1014.pdf>
- NRMLA Code of Conduct
 - <https://www.nrmlaonline.org/about/nrmla-code-of-ethics-professional-responsibility>

Questions

James A. (“Jim”) Brodsky

Weiner Brodsky Kider PC

1300 19th Street NW 5th Floor
Washington DC 20036

office: 202 628 2000

direct: 202 557 3518

brodsky@thewbkfirm.com

James M. (“Jim”) Milano

Weiner Brodsky Kider PC

1300 19th Street NW 5th Floor
Washington DC 20036

office: 202 628 2000

direct: 202 557 3529

mobile: 571 214 5255

milano@thewbkfirm.com

www.thewbkfirm.com