



MORTGAGE COMPLIANCE FORUM is a unique website, devoted to providing articles written by professionals and featured contributors who specialize in the area of residential mortgage compliance. Comments are encouraged!

[HOME](#)

[FREE NEWSLETTER](#)

[RECENT ARTICLES](#)

[CONTACT US](#)

Friday, August 21, 2015

A Hermeneutical Approach to State Advertising

[Jonathan Foxx](#)

President & Managing Director
Lenders Compliance Group

We are often asked about what is or is not permitted in nonbank advertisements. Many people are aware of the federal guidelines set forth in Regulation Z, the implementation regulation of the Truth in Lending Act. However, some people are not familiar with the state requirements. The lack of familiarity with state advertising requirements happens a lot with multi-state lenders. They have a good grasp of their home state advertising rules, but this becomes less so as they add more and more states to their geographical footprint. They do alright in home state banking examinations in the review of advertisements, but advertising in other states can, and often does, pose a threat to a clean examination audit in this category.

In our Advertising Manual, we have a whole section devoted to “Do’s” and “Don’ts” relating to advertisements. But it might be helpful to look at one state in particular, as a kind of guide, to see how that state’s advertising rules stack up against similar rules in other states. Of course, taking one state’s guidelines as a template is not suggested. Many states differ from one another with respect to advertising requirements. So, a licensee should research the statutory mandates in each state.

Advertising covers a very broad array of media, including Social Media. The range includes, but is certainly not limited to, any written or verbal message, such as:

- Newspapers, magazines, or catalog advertisements
- Brochures, direct mail literature, messages on customer

SUITE OF SERVICES



FORUMS



SUBSCRIBE - FREE

[Subscribe Now](#)

ARCHIVE

[August 2015](#) (2)

[July 2015](#) (4)

[June 2015](#) (2)

[June 2014](#) (1)

statements, or other printed materials, including applications

- Electronic media, including Internet home pages and electronic billboards
- Signs, either interior or exterior, and displays, and billboards
- Radio, television, or public address system broadcasts
- Oral communications between financial institution employees and actual or potential customers, including telephonic and face-to-face solicitations or response to inquiries
- Communications made through Facebook, LinkedIn, Twitter, text messaging, and other social media avenues

Under Regulation Z, an advertisement is “a commercial message in any medium that promotes, directly or indirectly, a credit transaction.”[i]

Additionally, there are so-called “triggering terms,” which are specific terms used in various advertising media that “trigger” additional disclosure mandates.

Regulatory frameworks and rules most associated with advertising are the Fair Housing Act, Equal Credit Opportunity Act, Truth in Lending Act, Fair Credit Reporting Act, Federal Trade Commission rules, Mortgage Advertising Rules, FHA Regulations, Real Estate Settlement Procedures Act, and, of course, state requirements.

I could pick a bevy of states that have comprehensive and nuanced advertising guidelines. I thought it might be worthwhile to look at Virginia’s requirements, as a hermeneutical exercise in getting a sense for what to consider as possible *de minimis* guidelines. Requirements may vary from state to state. For instance, a state may require an advertisement to have a specific licensee category and the state’s own banking department name (i.e., “Licensed Mortgage Banker, [Name of] State Banking Department”). Doing more disclosure than is minimally required by the applicable statute, in order to ensure proper disclosure to the consumer, is a fine way to ensure a ‘best efforts’ approach toward a financial institution’s safety and soundness.

Virginia’s advertising statute goes back a long way.[ii] For our purposes of extracting some interpretive applications for other states’ advertising guidelines, let’s take a look at Virginia’s guidelines.

There are nine separate categories in Virginia’s statute, and I will paraphrase and describe each of them. Assume that the requirements must be met by mortgage lenders and mortgage brokers alike, which I will refer to as “RMLO,” for Residential Mortgage Loan Originator. Use the categories as a basic checklist and then go to each state’s advertising statute to do a comparative analysis.

1. Every advertisement used by, or published on behalf of an RMLO must clearly and conspicuously disclose the following information:
 - a. The name of the RMLO as set forth in the license issued by the banking department.
 - b. The abbreviation “NMLS ID #” followed immediately by both the unique identifier assigned by the Registry to the RMLO and the

[April 2013](#) (1)

[June 2012](#) (1)

[March 2012](#) (2)

[January 2012](#) (1)

[November 2011](#) (2)

POWERED BY



TEAM TRID™



TRID HOTLINE - FREE

hotline
t r i d

NEWSLETTER ARCHIVE



address for the NMLS Consumer Access website in parenthesis. For example: NMLS ID # 999999 (www.nmlsconsumeraccess.org).

- c. If an advertisement contains a rate of interest, a statement that the stated rate may change or not be available at the time of the loan commitment or lock-in.
 - d. If an advertisement contains specific information about a consumer's existing mortgage loan and such information was not obtained from the consumer, a statement identifying the source of such information (i.e., public court records, credit reporting agency, and so forth).
2. The RMLO may not deceptively advertise a mortgage loan, make false or misleading statements or representations, or misrepresent the terms, conditions, or charges incident to obtaining a mortgage loan.
 3. An RMLO may not use or cause to be published an advertisement that states or implies the following:
 - a. It is affiliated with, or an agent or division of, a governmental agency, depository institution, or other entity with which no such relationship exists; or
 - b. A consumer has been or will be "preapproved" or "pre-approved" for a mortgage loan, unless the RMLO
 - i. discloses on the face of the advertisement in at least 14-point bold type that "THIS IS NOT A LOAN APPROVAL" and
 - ii. clearly and conspicuously discloses the conditions and/or qualifications associated with such preapproval. This provision is intended to supplement the requirements of the Fair Credit Reporting Act (FCRA),^[iii] relating to firm offers of credit.
 4. The RMLO is not permitted to use or cause to be published any advertisement that gives a consumer the false impression that the advertisement is being sent by the consumer's current noteholder or lienholder. If an advertisement contains the name of the consumer's current noteholder or lienholder, it may not be more conspicuous than the name of the RMLO using the advertisement.
 5. An RMLO may not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.
 6. If an advertisement states or implies that a consumer can reduce the monthly payment by refinancing the current mortgage loan, but as a result of such refinancing, the consumer's total finance charges may be higher over the life of the loan, an RMLO must clearly and conspicuously disclose to the consumer that by refinancing the consumer's existing loan, the consumer's total finance charges may be higher over the life of the loan.
 7. Every advertisement used by, or published on behalf of, an RMLO must comply with the disclosure requirements for advertisements contained in the Truth in Lending Act and Regulation Z.^[iv]
 8. For purposes of advertising, the term "clearly and conspicuously" means that a required disclosure is reasonably understandable, prominently located, and readily noticeable by a potential borrower of ordinary intelligence.

9. Every RMLO must retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

Note that this state's statute invokes the application of Regulation Z's advertising rules as well as the FCRA's guidelines relating to Firm Offers of Credit. In conducting a thorough review of advertising requirements state by state, it is tempting to see a state's rules as an overlay to the federal rules. They are not overlays at all, but carefully promulgated guidelines that are enforced meticulously by state banking departments.

Where there is a difference between the state and federal rules, the rule that is more restrictive will prevail. Always go beyond the minimum advertising requirements, as the best protection to the nonbank financial institution and the consumer is based on comprehensive disclosure.

[i] 12 CFR, PART 226, Subpart A, §226.2(a)(1)(2)

[ii] 10 VAC 5-160-60. Advertising, Official Virginia Administrative Code, current through 31:22 VA.R June 15, 2015. Fast-track regulations current through 31:11, January 26, 2015 [§§ 6.2-1613 and 12.1-13, Code of Virginia] Virginia Register, Volume 22, Issue 18, which was first effective on September 1, 2006, then amended on January 28, 2013, in Virginia Register, Volume 29, Issue 12. January 26, 2015 it was continued.

[iii] 15 USC § 1681 et seq.

[iv] 12 CFR, Part 226



Labels: [Advertising](#), [Equal Credit Opportunities Act](#), [Fair Housing Act](#), [Federal Trade Commission](#), [FHA](#), [FHA Regulations](#), [Mortgage Advertising Rules](#), [Regulation X](#), [Regulation Z](#), [RESPA](#), [Truth in Lending](#)

[Home](#)

[Older Post](#)

Subscribe to: [Post Comments \(Atom\)](#)

Notice to Visitors

Information contained in this website is not intended to be and is not a source of legal advice. The views expressed are those of the contributing authors and commentators, as well as news services and websites linked hereto, and do not necessarily reflect the views or policies of any governmental agency, business entity, organization, or institution. Mortgage Compliance Forum makes no representation concerning and does not guarantee the source, originality, accuracy, completeness, or reliability of any statement, information, data, finding, interpretation, advice, opinion, or view presented herein.

Mortgage Compliance Forum is a "discussion venue" that is designed to share information about residential mortgage compliance.

The discussions on Mortgage Compliance Forum do not constitute legal advice from or to other Mortgage Compliance Forum members or any other person. Mortgage Compliance Forum encourages an exchange of information and views, but is not responsible for the information, comments, advertising, products, resources or other materials of this site, any linked site, or any link contained in a linked site. The inclusion of any link does not imply endorsement. Your use of any linked site is subject to the terms and conditions applicable to that site. Mortgage Compliance Forum may be used for lawful purposes only. Please do not post content that is obscene, otherwise objectionable, in violation of federal or state law, or that encourages conduct that could constitute a criminal offense or give rise to civil liability; that discloses any non-public transactions, business intentions, or other confidential information; and, that infringes the intellectual property, privacy, or other rights of third parties. Material

protected by restricted copyright, use, or other proprietary right may not be uploaded, posted, or otherwise made available to Mortgage Compliance Forum participants without the permission of the copyright owner, if such permission is required. The Mortgage Compliance Forum administrator reserves the right to remove content at any time and without notice that is deemed to be inappropriate and/or in violation of comment rules.

Ethereal template. Template images by [A330Pilot](#). Powered by [Blogger](#).