

Vermont Banking Division

REGULATION B-2014-02

Mortgage Brokers

INTRODUCTION: Regulation B-2014-02 supersedes and replaces Mortgage Broker Regulation B-96-1.

Section 1. Authority and Purpose

This regulation is promulgated pursuant to Title 8 V.S.A. Section 15 and Section 2214. Its purpose is to set forth rules for the licensing and regulation of Mortgage Brokers.

Section 2. Individuals Authorized to Act as Mortgage Loan Originators under the Mortgage Broker's License.

(a) A Mortgage Broker license may be issued to a partnership, corporation, or other legal entity, as well as to an individual.

(b) The licensee must identify in the Nationwide Mortgage Licensing System and Registry ("NMLS"), and sponsor, all employees who are authorized to act as a mortgage loan originator on behalf of the licensee. Such individuals must have a mortgage loan originator license in an "approved" status and must have his/her sponsorship accepted by the Commissioner prior to acting as a mortgage loan originator under the Mortgage Broker's license. The Commissioner shall be notified immediately of any changes to the individuals authorized to act as mortgage loan originators on behalf of the Mortgage Broker.

(c) No individual may act as a mortgage loan originator under the Mortgage Broker's license without the prior approval of the Commissioner.

(d) All individuals authorized to act as a mortgage loan originator under the Mortgage Broker's license must be assigned to a licensed location of the Mortgage Broker. All mortgage loan originators must live within a reasonable commuting distance from the licensed location to which they are assigned. All advertisements and solicitations must use a licensed location. (For example, an authorized mortgage loan originator may not use a home address for advertisements, solicitations, business cards, or correspondence *unless* such home address is one of the Mortgage Broker's licensed locations.)

(e) All authorized individuals must be an employee of the Mortgage Broker (i.e., a W-2 employee) and not an independent contractor (i.e., a 1099 independent contractor).

(f) An independent contractor must obtain his/her/its own Mortgage Broker license.

(g) No individual may be authorized to act as a mortgage loan originator under more than one Mortgage Broker license at any one time.

Section 3. Surrender of Mortgage Broker License

(a) A licensee that does not intend to renew a Mortgage Broker license must surrender the license by filing a request for surrender through the NMLS and by delivering the original Mortgage Broker license to the Commissioner. Failure to renew the license (or surrender the license) in a timely manner may result in the suspension, termination, or refusal to renew the license and may result in the imposition of administrative fines and penalties.

(b) A Mortgage Broker that surrenders its license is still obligated to file: (i) a quarterly mortgage call report for the last quarter in which the licensee is active; and (ii) a final annual report. Failure to deliver the reports to the Commissioner in a timely manner may result in the suspension, termination, or refusal to renew the license and may result in the imposition of administrative fines and penalties.

Section 4. Contract Requirements

(a) Before a Mortgage Broker takes any fee or collects any charges, or at the time the prospective borrower submits a signed application, whichever first occurs, the Mortgage Broker and the prospective borrower must both sign a contract that sets forth:

(i) the particulars of the service to be performed by the Mortgage Broker, including specifics as to what shall constitute reasonable efforts on the part of the Mortgage Broker to perform the agreed upon service;

(ii) that the Mortgage Broker shall represent the interests of the prospective borrower rather than those of any lender; and

(iii) all fees received by the Mortgage Broker for services.

(b) Any amount received by the Mortgage Broker in excess of the amount set forth in the approved form of the Mortgage Broker contract shall be reimbursed to the prospective borrower.

(c) The form of the contract must be approved by the Commissioner prior to use by the Mortgage Broker. The Appendix contains a sample form of Mortgage Broker contract that is approved by the Commissioner.

(d) The Mortgage Broker shall not use any form of Mortgage Broker contract that has not been approved by the Commissioner for use by the Mortgage Broker.

Section 5. Segregated Accounts

(a) Any money collected from the prospective borrower by the Mortgage Broker must be deposited in one or more accounts in a federally insured bank. The Mortgage Broker has a fiduciary duty with respect to the funds in the account(s), and shall use the funds only for purposes consistent with the contract required under 8 V.S.A. § 2219, consistent with 8 V.S.A. §2218, and consistent with this regulation. The account(s) must be segregated from the personal accounts and operating or other business accounts of the Mortgage Broker. The funds of prospective borrowers are not required to be segregated from the funds of other prospective borrowers.

(b) Repayment of charges collected from the prospective borrower shall be governed by the application, the contract, and applicable state and federal law.

Section 6. Quarterly Mortgage Call Reports

Each Mortgage Broker shall file a quarterly mortgage call report through the NMLS. The quarterly mortgage call report shall be in such form, shall contain such information, and shall be filed with such frequency as the NMLS may require.

Currently, the NMLS requires that quarterly mortgage call reports shall be filed within 45 days of the end of each calendar quarter:

Quarter 1 data (January 1 – March 31) is due by May 15;

Quarter 2 data (April 1 – June 30) is due by August 14;

Quarter 3 data (July 1 – September 30) is due by November 14;

Quarter 4 data (October 1 – December 31) is due by February 14.

Failure to file accurate and timely reports may result in the suspension, termination, or refusal to renew the license and may result in the imposition of administrative fines and penalties.

Section 7. Prohibited Mortgage Broker Activities

A Mortgage Broker may not act as the lender in connection with any loan closing including, without limitation:

(a) A Mortgage Broker may not, in its own name, provide a prospective borrower with a rate lock, extend a rate lock, or accept discount points or any other funds from a prospective borrower for the purpose of buying down a rate of interest. A Mortgage Broker may, however, forward a lender's rate lock to a prospective borrower provided the rate lock is on behalf of the lender and is in the lender's name.

(b) A Mortgage Broker may not accept and keep escrow waiver fees or other fees that are associated with the terms and conditions of the loan.

(c) A Mortgage Broker may not issue a commitment letter or be identified as the lender in any commitment letter.

(d) A Mortgage Broker may not close a loan in its own name.

Section 8. Other Vermont Law

In addition to the requirements of 8 V.S.A. chapter 73, Mortgage Brokers are subject to the requirements of 8 V.S.A. §§ 10201-10205 (financial privacy). The loans placed by the Mortgage Broker may be subject to all or part of the requirements of 8 V.S.A. §§ 10403 (prohibition against discrimination), 10404 (mortgage loan escrow accounts), 9 V.S.A. chapter 4 (permitted charges, actuarial method, prohibition against prepayment penalties), Banking Bulletin 29 (nontraditional lending), and Banking Bulletin 32 (subprime lending). Pursuant to a Mortgage Broker's obligation to represent the interests of the borrower, Mortgage Brokers shall not knowingly negotiate, place, assist in placement, or find Vermont mortgage loans that violate Vermont or federal laws or regulations. This is not intended to be an exhaustive list; other laws and regulations may also apply.

Section 9. Effective Date

This Regulation shall become effective on October 1, 2014.

APPENDIX: Regulation B-2014-02

BROKER/PROSPECTIVE BORROWER AGREEMENT

This agreement is between [name of prospective borrower(s)] (individually and jointly the "Borrower" or "you") and [name of mortgage broker] ("Mortgage Broker") located at [address of mortgage broker].

Property to be financed: _____

1. Mortgage Broker will assist Borrower in securing financing for the above-referenced property. Mortgage Broker's services include, but are not limited to, the following (*check appropriate boxes*):

Counseling on available mortgage products; Counseling on general mortgage qualification procedures and requirements; Assistance in obtaining information required to complete the mortgage application; Assistance in processing the loan application and in meeting conditions of the loan commitment; and Coordinating the closing.

Other (*describe*) _____

Mortgage Broker represents your interests while performing the above services. The services are consultative only. You will rely on your own judgment in deciding which available loan product best suits your needs and financial means.

2. You agree to provide true, complete, and accurate information to Mortgage Broker.

3. Mortgage Broker is compensated for arranging a mortgage loan. Mortgage Broker's compensation may be paid either by you or by the lender, **but not by both**.

SELECT ONE:

The maximum fee **you** will pay Mortgage Broker will not be more than (*check appropriate box*):

\$ _____

_____% of the loan amount.

OR

The maximum fee or other compensation Mortgage Broker will receive from the **lender** will be not more than _____% of the loan amount.

4. All fees and charges payable to any third party will be disclosed on the federal Good Faith Estimate and on the federal HUD-1 Settlement Statement. Effective August 1, 2015, all fees and charges payable to any third party will be disclosed on the federally required Loan Estimate disclosure and the federally required Closing Disclosure.

5. Mortgage Broker does not distribute the products of all lenders and cannot guarantee the lowest price or the best terms.

6. Mortgage Broker will not be making the loan to you. The lender, not the Mortgage Broker, underwrites your loan application, approves or denies your loan application, and sets the terms and conditions of your loan. Mortgage Broker acts only to facilitate your mortgage loan application.
7. Signing this contract does not obligate you to obtain a mortgage loan through this Mortgage Broker nor does it constitute a mortgage loan approval.
8. In the event you terminate your relationship with Mortgage Broker prior to the closing of any loan, you are relieved from all obligations under this Agreement, other than the payment of any actual third party fees disclosed on the Good Faith Estimate or the federally required Loan Estimate, as applicable, and actually incurred by the Mortgage Broker.
9. There is no other mortgage broker agreement between the Borrower and the Mortgage Broker.

Borrower and Mortgage Broker agree to the above terms and conditions. **Borrower authorizes the release of all information (including the release of credit reports to the lender) required by the lender relating to the disposition and status of the mortgage application.**

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You are entitled to a copy of this agreement.

Borrower

Date

Borrower

Date

Mortgage Broker

Date

Mortgage Broker NMLS number: _____

Mortgage Loan Originator NMLS number: _____