



Kansas

Office of the State Bank Commissioner

Regulatory Mailing

MRM2004-01

TO: All Licensees
FROM: Kevin Glendening, Deputy Commissioner
Division of Consumer and Mortgage Lending
DATE: December 17, 2004
RE: Advertising Practices

The Office of the State Bank Commissioner ("OSBC") has recently received complaints from consumers and lenders regarding written advertising solicitations being sent by some Kansas Mortgage Business Act ("KMBA") and Kansas Supervised Lender Licensees. These solicitations are being sent to consumers with existing mortgage loans whose names are derived, either directly or indirectly, from public records (specifically, County Register of Deeds' offices). The solicitations often list such other information as the current mortgagee, the consumer's outstanding mortgage amount, their current payment amount, and other information. Many times the solicitations infer an affiliation between the licensee and the existing mortgagee when none exists. Such an inference may be drawn by references to "your loan at [Existing Mortgagee]" on the outside of the envelope, or the letterhead on the solicitation in the envelope may simply reference "Loan Department" or something similar.

Licensees who engage in these practices and other such misrepresentations are subjecting themselves to possible administrative actions against their licenses for violations of the KMBA and the Kansas Uniform Consumer Credit Code ("UCCC") for engaging in deceptive business practices. Violations of the KMBA and the UCCC carry monetary penalties of up to \$5,000 per violation.

The purpose of this mailing is to advise licensees of the following:

1. It is a violation of the Kansas Open Records, K.S.A. 45-220 et seq. ("KORA"), to use names derived from public records to solicit business. K.S.A. 2003 Supp. 45-230(a) prohibits any person from selling, giving or receiving, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records. Violations of K.S.A. 45-230(a) provide for a civil penalty of up to \$500.00 per violation in an action brought by the attorney general or county or district attorney. Both marketing companies who are selling the list to licensees and the licensees who are receiving such lists in order to solicit mortgage business are in violation of the KORA. The OSBC will scrutinize advertisements that appear to use information derived from public records, and review such information with the county or district attorney where the licensee is located for further investigation and possible legal action. Further, the OSBC will treat any use of public information that is in violation of the KORA as a deceptive business practice and/or business conduct that is not in good faith, in violation of the KMBA and the UCCC.
2. Regulation Z of the Federal Reserve requires that certain disclosures be provided in advertisements. Licensees should refer to Regulation Z for specific advertising requirements applicable to the loan products they offer. Features common to many of the advertisements we have reviewed include statements regarding terms of repayment, or specifying the amount of a payment. Such statements trigger additional disclosures that must be made pursuant to Regulation Z. The OSBC expects all licensees to familiarize themselves with Regulation Z's advertising provisions, and to seek legal counsel when necessary to ensure compliance. Licensees should not rely on marketing companies offering form solicitations to have knowledge of the requirements of Regulation Z.
3. For KMBA Licensees, K.S.A. 9-2208 requires that all solicitations directed at Kansas residents contain the words "Kansas Licensed Mortgage Company", and the name, address and license number of the licensee.

Failure of Licensees to take corrective action with regard to their advertising practices may lead to administrative actions being taken by the OSBC, including license suspension or revocation, and imposition of monetary penalties. If you have questions regarding this matter, please contact our office.