

**Vermont Department of Banking, Insurance, Securities
& Health Care Administration
Banking Division
BANKING BULLETIN # 26
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MORTGAGE BROKER ISSUES

This Bulletin is provided to clarify some issues that have surfaced recently as the Mortgage Broker business adjusts to the changes in the national lending market.

1. Prior to taking any fee or collecting any charges, a Mortgage Broker licensed in Vermont must provide a prospective borrower with a Mortgage Broker Agreement. The Commissioner must approve the form and content of the Mortgage Broker Agreement in writing before the Mortgage Broker uses such Mortgage Broker Agreement. A Mortgage Broker may not use any form of Mortgage Broker Agreement other than the form of Mortgage Broker Agreement that has been approved by the Commissioner for use by that specific Mortgage Broker. Notwithstanding the foregoing, a Vermont licensed Mortgage Broker may use the pre-approved form of Mortgage Broker Agreement attached to Regulation B-96-1 without the Commissioner's prior approval. 8 V.S.A. § 2219; Reg. B-96-1.
2. The Mortgage Broker Agreement must be signed and dated by both the Mortgage Broker and prospective borrower and must disclose to the prospective borrower the amount of money that will be paid to the Mortgage Broker by the prospective borrower and by the lender (usually called a yield-spread-premium) for securing financing for a residential mortgage loan. Any amount collected by the Mortgage Broker from the prospective borrower or from the lender in excess of the amount disclosed in the Mortgage Broker Agreement is reimbursable to the borrower. 8 V.S.A. § 2219.
3. A Mortgage Broker licensed in Vermont must place loans only with lenders licensed by the State of Vermont or with lenders specifically exempt from Vermont's licensed lender statute, such as nationally or state chartered banks or federally or state chartered credit unions. Vermont law does not contemplate the exemption of subsidiaries of nationally or state chartered banks from the licensing requirements of Title 8, Chapter 73, Vermont Statutes Annotated (V.S.A.). Consequently, unlicensed subsidiaries of nationally or state chartered banks do not fit within any of the categories of lenders with which a Mortgage Broker may place a loan. A Mortgage Broker that places a loan with a lender that is not within the permitted categories of lenders is in violation of Title 8, Chapter 73 V.S.A. Additionally, ramifications are significant for any lender that should be licensed and knowingly and willfully lends in Vermont without a license. 8 V.S.A. §2217 (c).

4. A Mortgage Broker licensed in Vermont may not provide a client 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 on a residential mortgage loan. Only a lender can offer a rate lock, accept discount points, or accept funds to reduce an interest rate (known as a buy-down). 8 V.S.A. § 2200 (8) and 8 V.S.A. §2217 (a).
5. A Mortgage Broker licensed in Vermont may not accept and keep escrow waiver fees or any other fees that are associated with the terms and conditions of a loan and typically are charged by the lender on a residential mortgage loan. 8 V.S.A. § 2200 (8) and 8 V.S.A. §2217 (a).
6. A Mortgage Broker who desires to authorize individuals to act on behalf of the Mortgage Broker must notify the Commissioner of the individuals who will be authorized to act on behalf of the Mortgage Broker and must receive the Commissioner's approval before the individual may act under the Mortgage Broker's license. It is a violation of Title 8, Chapter 73 V.S.A. and Regulation B-96-1 to engage in Mortgage Broker activities, either individually or as an authorized agent of a Mortgage Broker, without first obtaining the prior approval of the Commissioner. 8 V.S.A. § 2201; Regulation B-96-1 §2 (b).

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