



TEXAS DEPARTMENT OF SAVINGS & MORTGAGE LENDING

POLICY STATEMENT REGARDING INTERNET ACTIVITIES OF MORTGAGE BROKERS AND LOAN OFFICERS

A number of mortgage brokerage operations that solicit loan applications over the Internet have asked for the Department's position on licensing and regulation of Internet brokerage activities. It is our position that if a mortgage broker or loan officer solicits Texas consumers over the Internet, that broker or loan officer has submitted to the laws of the State of Texas. Accordingly, unless the broker or loan officer qualifies for an exemption, he or she must be licensed under the Mortgage Broker License Act ("MBLA").

Although the MBLA would, generally, apply to a broker or loan officer utilizing the Internet, without distinguishing that broker or loan officer from one utilizing more conventional or traditional loan solicitation methods, this Department is mindful of the fact that Internet activities present some logistical differences. In that regard:

- Mortgage brokers utilizing the Internet to conduct activities in Texas still need to maintain a physical office in Texas in order to be properly licensed. In the event of a complaint or other investigation, this will be the location at which the licensed broker may be required to produce required records.
- Loan officers utilizing the Internet to conduct activities in Texas still need to have a licensed sponsoring broker.
- Section 80.12(b) of the Regulations that implement the MBLA specifically address the display of MBLA licenses on the Internet.
- The advertising requirements set forth in Section 80.11 of the Regulations apply to advertisements over the Internet.
- The disclosure required by Section 80.9 of the regulations to be given at the time of application must be given at that time in Internet transactions as well as in face-to-face transactions. The form to be used for such disclosures does have a space for the applicant(s) to sign it, but a signature is not required. Absent a signature to prove that the disclosure was timely given, an Internet-based brokerage entity should adopt other procedures to be able to document that it gave the required disclosures on a timely basis. For example, electronic signatures could be utilized, or the broker or loan officer could require a return e-mail to confirm that the disclosure was given and received. A "system" report from the sender of the disclosure indicating that it had been electronically delivered would not suffice because of the inability of the electronic medium to ensure that the recipient was able to open attachments or otherwise ensure that the disclosure was actually seen by the recipient.