

Vermont Banking Division

REGULATION B-96-1

Mortgage Brokers

Section 1. Authority and Purpose

This regulation is promulgated pursuant to Title 8 Section 75, and Section 2214 (which was 8 V.S.A. § 2231 prior to January 1, 1997). Its purpose is to set forth rules for the licensing and regulation of Mortgage Brokers.

Section 2. Licensing

(a) No person may act as a mortgage broker in Vermont without a license from the Commissioner. The definition of "mortgage broker" is found at 8 V.S.A. § 2200(7). The definition of "mortgage loan" is found at 8 V.S.A. § 2200(8).

(b) A license may be issued to a partnership, corporation or other legal entity, as well as to an individual. In the case of a partnership, corporation or other legal entity, the license shall authorize all partners, officers, managers and designated employees who were identified in the application and approved by the Commissioner to act as Mortgage Brokers under the license. The Commissioner shall be notified of any changes to the list of individuals authorized to act on behalf of the Mortgage Broker. No individual may act as a Mortgage Broker under the license without prior approval of the Commissioner.

(c) The license fee for a mortgage broker's license is \$250.00, and the application and investigation fee is \$250.00. An applicant must also file with the Commissioner, and maintain in effect for as long as the license remains in effect, a surety bond in the amount of at least \$10,000. The bond must be in a form approved by the Commissioner. The Commissioner may require a larger bond. On or before December 1 of each year, the mortgage broker must apply for renewal of the license for the following calendar year. The renewal application must be accompanied by a fee of \$250.00.

Section 3. Location of the Business; Management and Control

(a) A mortgage broker must notify the Commissioner at least 30 days before it changes location or closes a location. The notice of a change in location must be accompanied by a fee of \$100.00. Upon receipt of the notice and fee and approval of the proposed change, the Commissioner shall amend the license to authorize the change.

(b) A mortgage broker must notify the Commissioner within 30 days of any change in control of the business, change in senior management personnel, and change on the board

of directors or other similar governing body of the entity. The definition of "control" is found at 8 V.S.A. § 2200(4).

Section 4. Contract Requirements

Before a mortgage broker takes any fee or collects any charges, or at the time the prospective borrower submits a signed application, the mortgage broker and the prospective borrower must both sign a contract which sets forth:

- (a) 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;
- (b) that the mortgage broker shall represent the interests of the prospective borrower rather than those of any lender; and
- (c) the fee for services.

The Mortgage Broker shall retain a copy of the fully executed contracts for at least 6 years. The form of the contract must be approved by the Commissioner. The Appendix contains a form which is approved by the Commissioner.

Section 5. Segregated Accounts

(a) Any money collected from the applicant by the Mortgage Broker must be deposited in one or more accounts in a federally insured bank. The Mortgage Broker will have a fiduciary duty with respect to the funds in the account(s), and shall use the funds only for the purposes consistent with the contract required under 8 V.S.A. § 2219, 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 applicants are not required to be segregated from the funds of other applicants.

(b) The Mortgage Broker may withdraw funds from the account for payment directly to third parties for authorized fees, and for payment to the Mortgage Broker as set forth at 8 V.S.A. § 2218(c).

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

(d) The Mortgage Broker shall maintain complete and accurate account records, as set forth at 8 V.S.A. § 2218(e).

Section 6. Authorized Lenders

A Mortgage Broker shall only negotiate, place, assist in placement or find Vermont mortgage loans for others to be made by lenders authorized to make such loans in Vermont.

Section 7. Records and Examination, Annual Report

(a) A Mortgage Broker must maintain and make available to the Commissioner upon request, such records as are required under 8 V.S.A. chapter 73, and applicable federal law.

(b) A Mortgage Broker shall be subject to examination by the Commissioner and responsible for the costs thereof, as set forth under 8 V.S.A. chapter 73.

(c) For years beginning on or after January 1, 1998, a Mortgage Broker must report annually to the Commissioner, on or before March 1, with respect to Vermont business, the number of applications taken during the calendar year, the number of loans closed as a result, a list of the lenders making such loans, and the aggregate amount of loans closed, and such other information as the Commissioner may require.

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. §§ 1021-1025 (financial privacy). The loans placed may be subject to all or part of the requirements of 8 V.S.A. §§ 1211 (prohibition against discrimination), 1256 (alternative mortgage transactions), 1260 (mortgage loan escrow accounts) and 9 V.S.A. chapter 4 (permitted charges, actuarial method, prohibition against prepayment penalties). 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 which violate Vermont law. This is not intended to be an exhaustive list; other laws may also apply.

Section 9. Effective Date

This Regulation shall become effective on January 1, 1997.

APPENDIX: Regulation B-96-1

BROKER/PROSPECTIVE BORROWER AGREEMENT

Prospective
Borrower _____

Property
Address _____

1. [Mortgage broker], acting in a brokerage capacity will provide the following services in assisting Prospective Borrower(s) to secure financing for the above-referenced property: mortgage program explanations; application completion assistance; loan commitment acceptance coordination. [Mortgage broker] will not be making the loan to Prospective Borrower(s).

2. [Mortgage broker] represents the interests of Prospective Borrower(s) while performing the above services. The services are consultative only. Prospective Borrower(s) will rely on his/her/their own judgment in deciding which available loan product best suits Prospective Borrower's(s') needs and financial means. Prospective Borrower(s) is/are not relying on [mortgage broker] to select a product for him/her/them.

3. [Mortgage broker] is charging Prospective Borrower(s) a fee to arrange a mortgage loan from a mortgage lender. [Mortgage broker]'s maximum fee that Prospective Borrower(s) will pay will be \$_____ or _____% of the loan amount. Prospective Borrower(s) will also pay an application fee of \$_____ and fees for other services. These fees will/will not be refunded.

4. [Mortgage broker] will be receiving a fee or other compensation from the lender for arranging this loan. The fee will be not more than ____% of the loan amount.

5. Prospective Borrower(s) and [mortgage broker] agree to the above terms and conditions. Prospective Borrower(s) authorize(s) the release of all information required by the lender relating to the disposition and status of the mortgage application.

Prospective Borrower Date

Prospective Borrower Date

[Mortgage Broker] Date