NRMLA ETHICS ADVISORY OPINION 2012-1
2012 Update: Ethical Advertising Practice Requirements
September 20, 2012

The Ethics and Standards Committee (the “Committee”) of the National Reverse Mortgage Lenders Association, the trade association of the reverse mortgage lending industry, enforces the NRMLA Code of Ethics and Responsibility (the “Code of Ethics”). All NRMLA Members are required to comply with the Code of Ethics as a condition of their continued membership in NRMLA. If the Committee determines that a NRMLA Member has not complied with the Code of Ethics, sanctions may be imposed, up to and including the termination of its NRMLA membership. Committee decisions enforcing the Code of Ethics may be made public.

The Code of Ethics may be found at www.NRMLAOnline.org.

The Committee also interprets the Code of Ethics and, from time to time, may propose changes to it for consideration and approval by the NRMLA Board of Directors.

Finally, the Committee periodically issues formal interpretations of the Code of Ethics (“Ethics Advisory Opinions”) for the guidance of NRMLA Members. This Ethics Advisory Opinion 2012-1 is the Committee’s 2012 Update to NRMLA Members with respect to their ongoing Ethical Advertising obligations under the Code of Ethics.

The Committee’s Ethics Advisory Opinions may also be found at www.NRMLAOnline.org.

This NRMLA Ethics Advisory Opinion 2012-1 has two main objectives.

First, through it, and as further explained below, the Committee makes plain its view that the false or misleading advertising by a NRMLA Member or on its behalf that there is “no fee” or “no cost” to the senior in obtaining a reverse mortgage loan is Unethical Advertising, barred under the Code.

Second, this Ethics Advisory Opinion 2012-01 updates and re-iterates the Committee’s commitment to helping assure that NRMLA Member only engage in Ethical Advertising, and, accordingly, the Committee re-publishes its prior guidance in this area and also appends a list of the NRMLA “Dirty Dozen” Unethical Advertising Practices drawn from and based upon it.

The Committee issued its first Ethics Advisory Opinion (2008-1) on February 28, 2008, shortly after NRMLA first promulgated its revised Code of Ethics in its current form. It is noteworthy that the subject matter of that first Ethics Advisory Opinion was “Ethical Advertising.”
In this very first of its Ethics Advisory Opinion, issued by the Committee over four years ago, the Committee explained its rationale for placing ethical advertising requirements at the top of its Code of Ethics enforcement priorities for all NRMLA Members. It stated:

Ethics Advisory Opinion 2008-01 (Ethical Advertising) addresses a very important aspect of the relationship between NRMLA Members and the seniors whose interests they are pledged to serve: the manner in which NRMLA Members market, advertise and make known to seniors the reverse mortgage loans and programs they offer to them.

There is a growing concern among seniors and their advocates and legislators, and among NRMLA Members and NRMLA itself, that some NRMLA Members are engaging, participating or tolerating marketing and advertising practices that are false, misleading, deceptive or unfair. In this Ethics Advisory Opinion we refer to such practices, collectively, as “Unethical Advertising.”

Unethical Advertising expressly violates the NRMLA Code of Ethics. (A complete copy of the Code of Ethics may be found at www.NRMLAOnline.org.) There is no place in NRMLA for NRMLA Members who engage in Unethical Advertising (emphasis added).

To help provide specific guidance to NRMLA Members as to what the Code of Ethics required of them in the Ethical Advertising arena, Ethics Advisory Opinion 2008-01 described and listed six specific practices that the Committee determined violated the Code of Ethics, because they constituted Unethical Advertising, and thus effectively barred NRMLA Members from engaging in them upon pain of the loss of their NRMLA membership and/or the imposition of other sanctions available to the Committee for those who violate the Code of Ethics.

That initial listing of the “dirty half-dozen” Unethical Advertising practices (each accompanied in the Ethics Advisory Opinion by examples of what not to do) included the following:

First, it is a violation of the NRMLA Code of Ethics for a NRMLA Member to market or advertise its particular FHA-insured HEMC loan programs as “Government Loan Programs,” or as a “Government Benefit” or as “Government Supported” or as one from or offered by a “Government Loan Division” or as “Official Business” or as “Endorsed” or “Approved” by the Government, by the Federal Government, by HUD, by the FHA, by AARP, or by NRMLA.

Second, it is a violation of the NRMLA Code of Ethics for a NRMLA Member directly or indirectly to state or suggest that a failure to respond to its marketing or advertising will or may result in a loss to the consumer of any consumer benefit to which the consumer is or may be entitled or enjoying.

Third, it is a violation of the NRMLA Code of Ethics for a NRMLA Member to make misleading or unfair or exaggerated claims of benefits to consumers, particularly if coupled with inadequate (or with no) description of related costs or risks [citing as an example a claim that “We (the lender)” pay off your mortgage”].

Fourth, it is a violation of the NRMLA Code of Ethics for a NRMLA Member to provide or arrange for a testimonial or endorsement or infomercial that fails clearly to disclose the nature of the relationship (including, if applicable, that a payment had been made as part of the relationship) between the NRMLA Member and the person or entity providing the testimonial or endorsement or infomercial.
Fifth, it is a violation of the NRMLA Code of Ethics for a NRMLA Member to require or suggest that a product or service (such as an annuity or investment product or life or long-term care insurance), other than the reverse mortgage loan, also must be purchased in order to obtain the reverse mortgage loan, or if such product or service (if offered by the NRMLA Member) may not, itself, provide a bona fide advantage to the consumer, or if the NRMLA Member’s compensation in connection with all such products and services is unreasonable in amount or not clearly and timely described to the consumer.

Sixth, it is a violation of the NRMLA Code of Ethics for a NRMLA Member to market or advertise to a business partner unreasonably high compensation, even if such compensation clearly and timely is disclosed to the consumer who pays it directly or through reverse mortgage loan proceeds.

Again, this effectively is the “law” of reverse mortgage Ethical Advertising (as enforced by their own trade association’s Code of Ethics and the Committee) that expressly has been applicable to NRMLA Members since early 2008.

In the intervening years, as well, the Committee returned, repeatedly, to the requirement that all NRMLA Members engage only in Ethical Advertising practices, as described in the Code of Ethics. Fourteen months later, for example, on June 16, 2009, the Committee issued Ethics Advisory Opinion 2009-2 (Lead Generation State Licensing Requirements and Ethical Advertising). In that Opinion, the Committee made plain its intent fully to enforce the provisions of the Code of Ethics against NRMLA Members that engage in Unethical Advertising, even indirectly, through the actions of the lead generation companies they engage to provide senior reverse mortgage leads to them. It stated:

NRMLA Members may not engage in conduct violative of the NRMLA Code of Ethics, including but not limited to providing Lead Generation services, either directly or indirectly through Lead Generation Providers that do not themselves comply with the provisions of law and of the NRMLA Code of Ethics applicable to them.

Lead generation services provided in a manner that does not comply with applicable law and, with respect to NRMLA Members, provisions of the NRMLA Code and its Ethics Advisory Opinions, are inconsistent with the Values of our Industry and the interests of the seniors they serve. Those engaged in such conduct have no place in NRMLA. NRMLA Members, consumers, and others are urged to bring to the attention of NRMLA’s President and the Committee concerns they may have about potential unethical lead generation services (emphasis added) . . . .

On October 15, 2010, the Committee, through Ethics Advisory Opinion 2010-2, described “Additional Ethical Advertising Practice Requirements.” In that Ethics Advisory Opinion, the Committee “expressly re-affirmed” the Ethical Advertising interpretations of the Code of Ethics of its previously published Opinions (including its earlier listing of the “dirty half-dozen” of Unethical Advertising practices), and re-emphasized that it would continue to take vigorous action against NRMLA Members and others who failed to conform to these requirements.

To underscore that point, the Committee, through Ethics Advisory Opinion 2010-2, added a description of six additional practices it had determined also constituted Unethical Advertising, bringing its listed total, through that date, to an even “dirty dozen” of Unethical Advertising practices. It stated:
It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to seniors or others that reverse mortgage loans either are “no cost” loans or “require no payments,” or that seniors need not repay a reverse mortgage “during their lifetime” or that a senior “cannot lose” or that there is “no risk” to a senior’s home with a reverse mortgage loan, at least without also explaining, in an equally prominent and conspicuous manner in such advertising or marketing, that Reverse Mortgage loans do require seniors to make certain specified payments and meet other specified obligations.

It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to use a celebrity’s image or likeness without that person’s express, written and documented permission, or to provide celebrity endorsements that do not reflect the honest opinions, findings, beliefs, or experiences of the endorsers. Further, an endorsement may not convey any express or implied representation that would be unfair, misleading or deceptive if made directly by the NRMLA Member.

It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to seniors or others that an applicant or borrower is “pre-approved” or “pre-qualified” for a reverse mortgage loan without also fully and clearly disclosing approval or qualification conditions or other criteria that apply.

It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to senior or others, that “recent” federal legislation or HUD action provides more money for seniors, if such legislation or action, if any, is not recent, or if such funds have not been appropriated for seniors, especially if coupled with a sense of urgency or call to action stating or implying that if the senior does not promptly respond, he or she may or will lose or miss out on this or related “limited” opportunities.

It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to include as part of its advertising or marketing to seniors or others, simulated checks or currency.

It is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to use the names or logos of the U.S. Department of Housing and Urban Development (“HUD”) or Federal Housing Administration (“FHA”), or names or logos confusingly similar in appearance, in its advertising or marketing of reverse mortgages to seniors or others, except as otherwise expressly may be permitted under applicable law.

The Committee has always intended that this list and description of the “dirty dozen” Unethical Advertising practices be considered by NRMLA Members to be simply illustrative of the requirements of the Code of Ethics, and not exhaustive. Thus, and for example, by including on this list the false or misleading advertising or marketing of reverse mortgages as “no cost” (see above), the Committee similarly intends to bar the similarly misleading advertising or marketing of them as “no fee” or “no expense.”

In this respect, the Committee also is underscoring many of these same points made more recently by the Consumer Financial Protection Bureau, in its June 28, 2012 Report to the Congress on Reverse Mortgages, and reflected in NRMLA’s Borrow with Confidence Program and in the accompanying Pledge to Consumers that every NRMLA Member also is bound to honor as a condition of its continuing NRMLA membership.
In conclusion, and it is the encouraging experience of the Committee that NRMLA Members routinely and overwhelmingly engage in Ethical Advertising for the benefit of the seniors they are pledged to serve. All the more reason, then, that there remains no place in NRMLA for NRMLA Members who engage in Unethical Advertising.

NRMLA Members, seniors, and others are urged to bring to the attention of NRMLA's President and the Committee concerns they may have about potential Unethical Advertising directly or indirectly by NRMLA Members, for consideration and action by the President and Committee in accordance with the procedures described in the Code of Ethics. Contact information for NRMLA may be found at its website at www.NRMLAOnline.com.
NRMLA Dirty Dozen Unethical Advertising Practices
Attachment A to NRMLA Ethics Advisory Opinion 2012-1

The following are unethical advertising practices that have been expressly addressed by the NRMLA Ethics and Standards and Ethics Committee, though its Ethics Advisory Opinions and under the NRMLA Code of Ethics and Responsibility (the Code of Ethics). All NRMLA Members are required to and do subscribe to the Code of Ethics. Code of Ethics requirements apply to NRMLA Members directly, and NRMLA Members also are held accountable under the Code of Ethics for the indirect actions of the vendors (including advertising and lead generation providers) they engage.

This list of the NRMLA Dirty Dozen of Unethical Advertising practices is illustrative of the requirements of the Code of Ethics in this area, and not exhaustive. Additional information about the Code of Ethics and its requirements, and the Committee's Ethics Advisory Opinions, and this Dirty Dozen list, may be found at www.NRMLAOnline.org.

The NRMLA Dirty Dozen Unethical Advertising Practices List:

1. Advertising HECM loan programs as a “Government Loan” or “Government Benefit,” or the lender's loan as HUD or AARP “approved.”

2. Advertising that a failure of a senior to respond will or may result in the loss of a consumer benefit to which the consumer is entitled.

3. Advertising exaggerated or misleading benefits (such as “We (the lender) pay off your loan”), particularly without fairly describing related risks.

4. Advertising celebrity testimonials or endorsements without disclosing the paid nature of the arrangement.

5. Advertising a requirement that another product or service (such as an annuity) also must be purchased from the lender in order to obtain a reverse mortgage loan, particularly if such other product or service also does not provide a bona fide advantage to the consumer.

6. Advertising to a business partner unreasonably high compensation paid to it by the consumer through reverse mortgage loan proceeds, even if such compensation clearly and timely is disclosed to the consumer.
7. Advertising, without equally prominent and conspicuous and accurate explanations and qualifications, that reverse mortgage loans are “no cost,” or “no fee,” or “no risk,” or “no expense,” or “require no payments.”

8. Advertising celebrity testimonials or endorsements that do not reflect the honest opinions and experiences of the endorsers.

9. Advertising that consumers are “pre-approved” or “pre-qualified” without also fully and clearly disclosing applicable approval and qualification conditions.

10. Advertising in a misleading way that if a consumer does not promptly respond, he or she may or will lose or miss out on a limited opportunity.

11. Advertising using simulated checks or currency.

12. Advertising using HUD or FHA logos or names.