



STATE OF ALABAMA STATE BANKING DEPARTMENT



Vol. 1

FAQs For Mortgage Brokers

Here are some Frequently Asked Questions about operating under Alabama's Mortgage Brokers Licensing Act:

- 1. Do we have to lump our settlement charges into one broker fee?** *No, as long as the total of all related charges paid to the lender and broker do not exceed 5% of the loan amount.*
- 2. Can we 1099 our employees?** *Yes, if done in accordance with the requirements of Revenue Department. However, each licensee is responsible for all their employee's work, whether they are W-2 or 1099 employees. Licensees are reminded that each licensee is responsible for adequately training all staff, whether W-2 or 1099. Licensees are also warned to thoroughly investigate prior employment references for anyone working on their behalf—the Department will not condone employment of anyone caught perpetuating fraud.*
- 3. Can we co-broker a loan?** *Yes, as long as the other broker is licensed; if the other broker is not licensed, then you cannot co-broker the loan. Licensed, as used here pertains to a broker's license issued by any state that permits mortgage brokering. A Co-brokering Agreement, which clearly delineates each broker's duties and responsibilities, must be executed by both brokers. A copy of the other broker's license (or exemption letter) and the Co-broker Agreement must be maintained in the loan file. Licensees are reminded that co-brokering fees are allowed only for bona fide services; Referral Fees are prohibited by RESPA.*
- 4. Do we need a separate escrow account for third party expenses?** *The Department does not require an escrow account at the present time, but we may in the future if necessary. However, licensees are expected to keep copies of checks written for third-party services in each loan file.*
- 5. Do we have to keep our files by your exact stacking order?** *No, but the loan files should contain all the information included in our stacking order, and should be organized so that documents can be easily found.*
- 6. What do we do if we find that one of our employees has committed fraud?** *Contact this Department immediately, so that we do not hear about it from someone else first. Licensees are advised that the following examples of fraud are strictly prohibited: forgery of signatures; altering documents to hide or omit material facts; creating false income verification forms; failing to inform a prospective lender that the borrower or seller is an employee of the broker; co-brokering a loan to evade the law; concealing a broker's payment of a borrower's past-due rent from a prospective lender; etc. If you see something that doesn't look quite right, then contact this office.*

7. How do I change the name on my Broker's License? *Simple name changes are not allowed. Licensees must transact all business using the name designated on the license. If a licensee wishes to change its name, then it must re-apply and submit a completely new application package. Be aware that a thorough investigation will be conducted before another license will be issued.*

8. May I broker loans out of the same office as my real estate and/or appraisal business? *Yes. There is no flat prohibition against holding multiple licenses. However, use of these other services on behalf of the same borrower must be disclosed to the borrower and is strictly voluntary, i.e. the borrower is free to choose. If a borrower chooses to use the broker for another service, then a copy of the Affiliated Business Arrangement Disclosure must be in the file and must be submitted to the lender as part of the loan package.*

9. May I tell an appraiser what the contract sale price for a borrower's home is? *Yes, but licensees may not demand that an appraisal come back at a predetermined value, nor threaten to withhold payment of the appraisal if it comes back at less than the sale price.*

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STATE OF ALABAMA STATE BANKING DEPARTMENT



Vol. 2

FAQs For Mortgage Brokers

Here are some more Frequently Asked Questions about operating under Alabama's Mortgage Brokers Licensing "Act" that have come up since Volume 1, containing Questions #1-9, was issued:

10. Are mortgage broker fees limited to 5% even when the lender is not? *Yes, Mini-Code section 5-19-4(g) generally allows lenders to charge and collect from consumers at closing up to an additional 5% points of the original principal balance in real property transactions. Any fees paid to mortgage brokers are subject to this 5% points limitation, such that the total fees collected by both the lender and the mortgage broker cannot exceed 5% points. However, the Mini-Code provides a limited exception to this general rule. Namely, banks and HUD-approved lenders are exempt from the 5% points limitation, pursuant to Mini-Code section 5-19-31(a). However, this exemption does not extend to mortgage brokers. For example, if a HUD-approved lender wants to charge 7.99% in points on a real estate mortgage, then it may do so, but it may not pay any mortgage broker more than 5% points.*

11. Must I give a Special Information Booklet to our customers? *Yes, HUD requires mortgage brokers – not just lenders -- to give their customers who are buying a home a copy of the Special Information Booklet within 3 days of preparing their application. A booklet does not have to be provided for refinancing transactions or for subordinate lien mortgage loans. The Department expects all licensees to go over the principles in the booklet with each homebuyer, i.e. to explain the settlement process and the costs associated with financing a home purchase. A copy of the booklet can be downloaded from HUD's website at www.hudclips.org*

12. Must I provide a Good Faith Estimate to all our customers? *Yes, HUD requires mortgage brokers – not just lenders -- to provide a GFE to all borrowers within 3 days after a loan application is prepared. A yield-spread premium (YSP) must be disclosed in the GFE if the broker usually collects one from the lender. HUD expects brokers to provide borrowers a new GFE for known significant differences when a final loan product is determined. A good guideline to use is to provide a new GFE when there is a 1/8 of 1% change in the APR, as required by TILA.*

13. Can I collect a broker's fee from a borrower on a loan that doesn't close? *Section 12(b)(5) of the Act prohibits licensees from collecting a broker fee upfront before a conditional commitment is obtained from a lender for a borrower. Moreover, the Department believes it is not a prudent business practice for brokers to collect a fee thereafter when the borrower chooses not to close on the loan because it is a foreseeable risk of doing business.*

14. Can I mark-up the cost of a third-party service, such as appraisal, courier fee or credit report? *No, HUD believes "upcharges" are illegal fee-splitting arrangements in violation of RESPA. The actual costs charged by third-parties must be disclosed on the HUD-1.*

15. What kinds of penalties will be assessed for violations? *Section 16(b) of the Act allows the Supervisor to assess a civil penalty of not more than \$3,000 for all violations of a similar nature, and not more than \$15,000 for knowing violations. “Knowing” violations are violations that a licensee does in deliberate disregard for the law, such as repeat violations. Usually there is no fine assessed for minor violations if promptly corrected. The Supervisor may also order a licensee to refund to a borrower any fees collected in excess of the Mini-Code’s 5% points limitation, or for any other overcharges. A license can be revoked for very serious violations, such as fraud. All licensees will be given an opportunity for a hearing before penalties are assessed.*

16. When must a “vendor preference form” be used? *If the lender or mortgage broker requires a particular provider of settlement services, then HUD requires this to be disclosed on the Good Faith Estimate. Often, a broker will not require a particular provider, but winds up using the same reliable provider for most loans when the borrower doesn’t have a preference. Therefore to protect oneself from a possible GFE violation, a vendor preference form is suggested to be used whenever the same third-party provider of settlement services is used for more than approximately 60% of borrowers.*

17. What do I do when an applicant has a low credit score that no lender would accept? *The Fair Credit Reporting Act requires users of consumer credit reports to disclose to applicants why they can’t get a loan. Such disclosures must include the name, address and toll-free telephone number of the credit reporting agency and the consumer’s right to receive a free copy of their credit report from the credit reporting agency and their right to dispute any inaccuracy. For more information, access the Federal Trade Commission’s website at www.ftc.gov*

18. Must I pay for an appraisal that comes back at less than the sale price? *Yes. The MBLA requires licensees to pay for appraisals regardless of the value determined by the appraiser. Nor may licensees threaten to withhold payment of an appraisal. Licensees should only be using the services of properly licensed appraisers. Mortgage brokers can determine if an appraiser’s license is currently in good standing by contacting the Alabama Real Estate Appraisers Board at 334/242-8747 or from their website at www.reab.state.al.us*

19. What do I do if I am getting conflicting advice about what to do? *Contact this office. If it’s an issue that we’ve seen before, then we’ll be happy to explain what we know. If it’s a new issue that we haven’t seen before, then we’ll ask you to put the question in writing so that we can research it to provide a written response or to refer you to the appropriate agency. Sometimes it may be inappropriate for the Department to provide any guidance. These questions are a good way for us to understand the issues important to you. After we’ve received several questions, we’ll distribute another issue of FAQ for Mortgage Brokers to share with other brokers.*

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