



ADMINISTRATIVE RULES OF MONTANA

2.59.1758 FALSE, DECEPTIVE, OR MISLEADING ADVERTISING

- (1) False, deceptive, or misleading advertising includes but is not limited to advertising or marketing that:
 - (a) is defined by this rule as false, deceptive, or misleading;
 - (b) violates 32-9-149, MCA, or this rule;
 - (c) violates any applicable state or federal unfair, deceptive, or abusive acts or practices laws or other laws applicable to advertising services authorized by or conducted under the Montana Mortgage Act.
- (2) An advertisement is false, deceptive, or misleading, if it:
 - (a) describes rates or fees as "lowest," "best," or other similar words unless the statement is objectively true;
 - (b) uses the term "free," or any other similar term or phrase that implies there is no cost to the applicant;
 - (c) offers to procure, arrange, or otherwise assist a borrower to obtain a mortgage loan on terms which the person cannot, does not intend, or does not want to provide, or which the person knows or should know cannot be reasonably provided;
 - (d) suggests or represents that all or most borrowers may or will qualify for a loan or that persons with bad credit histories or no credit histories may or will qualify for this loan unless the person can demonstrate that borrowers with bad credit or no credit have been routinely and successfully qualified for loans by that licensee; or
 - (e) fails to disclose that a loan has the potential for negative amortization. If a loan has the potential for negative amortization, the advertisement shall clearly identify that potential and shall prominently disclose the:
 - (i) market or fully indexed rate;
 - (ii) term of the reduced payments;
 - (iii) term of the entire loan; and
 - (iv) annual percentage rate (APR).
- (3) A licensee shall not use advertising materials for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by a federal, state, or local government agency or in a manner that suggests any affiliation that does not exist. Such

advertising is considered false, deceptive, or misleading. Prohibited advertising materials include but are not limited to advertisements that include:

- (a) an official-looking emblem, logo, crest, or seal that resembles one used by any state or federal government agency. Such emblems may include an eagle, flag, the Statue of Liberty, or a crest or seal used by any state or the United States or used by any government agency or political subdivision;
 - (b) images, including those in electronic format, designed to resemble official government communications, such as communications from the Internal Revenue Service or U.S. Treasury, a state taxing authority, or other government agencies;
 - (c) warnings or notices citing government codes or form numbers not required by the United States Postal Service to be shown on the mailing;
 - (d) the term "official business," or similar language implying official or government business, without also including the name of the sender;
 - (e) any suggestion or representation that the solicitor is affiliated with any state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity that it does not actually represent;
 - (f) any suggestion or representation that the solicitor is any entity other than the sender itself; or
 - (g) any other materials that violate state or federal laws pertaining to advertising or unfair, deceptive, or abusive acts or practices.
- (4) When an advertisement includes information about a borrower's current loan that the licensee did not obtain from a solicitation, application, or loan, a licensee must provide the borrower with the following information, in the same size type font as the rest of the information in the advertisement:
- (a) the name of the source of the information; and
 - (b) a statement that:
 - (i) this is an advertisement;
 - (ii) this is an offer for a new loan;
 - (iii) the licensee is not affiliated with the borrower's lender; and
 - (iv) this offer is not related to the consumer's existing mortgage lender or holder of the loan.
- (5) A licensee shall not advertise an interest rate unless that rate is actually available at the time of the advertisement. Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's rate sheet, or other supporting rate information, and the APR calculation for the advertised interest rate.
- (6) Licensees are responsible for the legality, accuracy, and reliability of their advertising.

Implementing statute(s): 32-9-124, 32-9-149, MCA

History: NEW, 2019 MAR p. 2338, Eff. 12/28/19.