

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 3. BANKING DEPARTMENT

CHAPTER I. GENERAL REGULATIONS OF THE BANKING BOARD  
PART 38. DEFINITIONS OF TERMS; ADVERTISING; APPLICATION AND COMMITMENT  
DISCLOSURES AND PROCEDURES; IMPROPER CONDUCT UNDER ARTICLE 12-D  
Text is current through August 31, 2006.

Section 38.7 Prohibited conduct.

(a) No mortgage broker, mortgage banker or exempt organization, as is applicable to each entity, shall:

(1) misrepresent or conceal material loan terms, or make false promises to induce an applicant to apply for a mortgage loan. For purposes of this Part, a *material term* shall mean any item required to be disclosed pursuant to this Part which is likely to influence, persuade or induce an applicant for a mortgage loan to take particular action;

(2) conduct business with an entity which it knows or should know is an unregistered mortgage broker or an unlicensed mortgage banker;

(3) fail to display a copy of a license or a certificate of registration. Licenses and certificates shall be prominently displayed in every public business office frequented by mortgage loan applicants;

(4) fail to provide any of the disclosures in the manner and at the times required by this Part;

(5) fail to make good faith efforts to issue commitments and effect closing in a timely manner;

(6) fail to disclose additional settlement costs or items necessary to close a loan in a reasonable and timely manner;

(7) disburse the mortgage loan proceeds in any form other than, as applicable, direct deposit to customer's account, wire, bank or certified check, or attorney's check drawn on a trust account. Any entity may apply to the superintendent for a waiver of the requirements of this provision by demonstrating, in a letter application, that it has or shall adopt any other method of disbursement of loan proceeds which shall satisfy the purposes of this paragraph;

(8) fail to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;

(9) accept any fees at closing which were not disclosed in accordance with this Part;

(10) accept attorney's fees at closing in excess of the fees that have been or will be remitted to its attorneys;

(11) refuse to permit the borrower to be represented by the attorney of his choice;

(12) unreasonably refuse to issue or unreasonably delay the issuance of a satisfaction of mortgage after the mortgage has been fully satisfied;

(13) impose a charge on a mortgagor for establishing or maintaining an escrow account or for waiving the establishment or maintenance of an escrow account, provided however, that nothing herein shall prohibit a mortgage banker or exempt organization from imposing a one-time charge to pay the actual cost of an independent tax reporting service, provided such cost is disclosed prior to or at commitment;

(14) include any provision in the mortgage brokerage agreement that is intended to limit or prevent a consumer from submitting an application(s) to obtain a mortgage loan through another mortgage broker(s) or mortgage banker(s) or exempt organization(s) or impose a fee on the applicant should he/she do so; or

(15) accept a good faith deposit or any other deposit to induce the lender to process the loan, whether or not the deposit is refundable.

(b) In addition, non-compliance with the following shall also constitute prohibited conduct:

(1) only one application fee and only one processing fee, if any, can be taken in any residential mortgage loan transaction irrespective of whether one or more than one mortgage broker, mortgage banker or exempt organization is involved in the transaction; and

(2) an undertaking of accountability for each independent contractor must be filed with the superintendent by the employer in such form as may be prescribed within ten days of commencement of employment. In addition, notification of the termination of any independent contractor shall be made to the superintendent within 10 days of such termination.