

**CHAPTER 47. MORTGAGE LOAN MODIFICATIONS—
STATEMENT OF POLICY**

- Sec.
47.1. Definitions.
47.2. Purpose.
47.3. Provision of mortgage loan modification counseling to borrowers.
47.4. Options other than licensee mortgage loan modification.
47.5. Improper activities regarding mortgage loan modifications.
47.6. Credit Services Act applicability to mortgage loan modifications.

Authority

The provisions of this Chapter 47 issued under section 12 of the Consumer Discount Company Act (7 P. S. § 6212) and section 202.D of the Department of Banking Code (71 P. S. § 733-202.D), unless otherwise noted.

Source

The provisions of this Chapter 47 adopted July 9, 2010, effective July 10, 2010, 40 Pa.B. 3868, unless otherwise noted.

§ 47.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Acts—The MLA and the CDCA.

Advance fee—Any funds requested by or to be paid to a licensee in advance of or during the processing of a mortgage loan modification.

CDCA—The Consumer Discount Company Act (7 P. S. §§ 6201—6221).

Government agency—A Federal, State or local government agency, including the United States Department of Housing and Urban Development and the Pennsylvania Housing Finance Agency.

Licensee—A licensee under the MLA or CDCA or partially exempt entity under the MLA.

MLA—The Mortgage Licensing Act (7 Pa.C.S. Chapter 61).

Mortgage broker—The term as defined in section 6102 of the MLA (relating to definitions).

Mortgage loan—The term as defined in section 6102 of the MLA.

Mortgage loan modification—An agreement which revises the terms of an existing mortgage loan, including an agreement to reduce mortgage loan payment amounts, balance or interest rate. A mortgage loan modification may also include an agreement to waive any accrued or prospective mortgage loan charges.

Mortgage originator—The term as defined in section 6102 of the MLA.

§ 47.2. Purpose.

This chapter provides guidance to licensees under the acts who wish to engage in mortgage loan modification activities. Many licensees have expressed a belief that their experience and expertise in the business of originating mortgage loans equates to a similar expertise regarding mortgage loan modifications. However, modifying a mortgage loan is not the same as brokering or originating a mortgage loan. A licensee experienced in making or brokering loans may not have the necessary training or experience related to mortgage loan modifications to appropriately negotiate a mortgage loan modification on behalf of a borrower. The guidance expressed in this chapter should allow licensees to avoid placing borrowers who are struggling with their existing mortgage loans into inappropriate mortgage loan modifications.

§ 47.3. Provision of mortgage loan modification counseling to borrowers.

A licensee who wishes to provide mortgage loan modifications for mortgage loans other than those held or serviced by the licensee should do one of the following:

- (1) Be approved as a counselor by a government agency or employed by a counselor approved by a government agency and follow the rules, regulations, policies and guidelines of the approving government agency.
- (2) Verify and document that the borrower has received counseling regarding mortgage loan modifications from a counselor approved by a government agency.

Cross References

This section cited in 10 Pa. Code § 47.5 (relating to improper activities regarding mortgage loan modifications).

§ 47.4. Options other than licensee mortgage loan modification.

Prior to contracting with a borrower to perform a mortgage loan modification, a licensee should inform the borrower of other appropriate options to resolve a delinquent mortgage loan, which may include:

- (1) Repayment of the mortgage loan according to the contracted terms.
- (2) A self-negotiated mortgage loan modification.
- (3) Sale of the property which is collateral for the mortgage loan.
- (4) Filing for personal bankruptcy.

§ 47.5. Improper activities regarding mortgage loan modifications.

A licensee providing mortgage loan modifications should not:

- (1) Provide mortgage loan modifications for mortgage loans other than those held or serviced by the licensee in a manner inconsistent with § 47.3 (relating to provision of mortgage loan modification counseling to borrowers).

(2) Advise, encourage or permit a borrower to stop or delay making regularly scheduled payments on an existing mortgage loan unless a mortgage loan modification is completely negotiated and executed with the holder or servicer of the borrower's mortgage loan and the mortgage loan modification provides for such a cessation or delay in making regularly scheduled payments on the existing mortgage loan.

(3) Accept, hold or transmit any money unless the licensee is operating in compliance with Federal and State law, including the Debt Management Services Act (63 P. S. §§ 2401—2449) and the Money Transmission Business Licensing Law (7 P. S. §§ 6101—6118).

(4) Charge advance fees to a borrower for a mortgage loan modification.

(5) Attempt to negotiate or contract with a borrower for a mortgage loan modification which the licensee knows or has reason to believe the borrower will not be able to afford.

(6) Enter into any contract or agreement to purchase a borrower's property.

(7) Accept a power of attorney to represent a borrower or represent that the licensee has a power of attorney for a borrower.

(8) Fail in a timely manner to:

(i) Communicate with or on behalf of a borrower.

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower.

(9) Engage in false or misleading advertising. Examples of false or misleading advertising include:

(i) Advertising which makes it appear that the licensee is a government agency.

(ii) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.

(iii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.

(10) Make a statement or engage in an action which is false, misleading, deceptive or inappropriate. Examples of false, misleading, deceptive or inappropriate statements or actions include:

(i) Leading a borrower to believe that payments do not need to be made on the borrower's existing mortgage loan.

(ii) Encouraging or directing a borrower not to communicate with the holder or servicer of the borrower's mortgage loan.

(iii) Leading a borrower to believe that a mortgage loan modification can be negotiated on behalf of the borrower when the licensee has reason to believe that a mortgage loan modification cannot be negotiated on behalf of the borrower.

(iv) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee

has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

§ 47.6. Credit Services Act applicability to mortgage loan modifications.

A mortgage broker or mortgage originator providing mortgage loan modifications may be considered to be a "credit services organization" as that term is defined in section 2 of the Credit Services Act (73 P. S. § 2182). As such, a mortgage broker or mortgage originator providing mortgage loan modifications should carefully review the Credit Services Act (73 P. S. §§ 2181—2192) and, when appropriate, contact the Pennsylvania Office of Attorney General regarding the Credit Services Act's applicability to mortgage loan modifications.

[Next page is 48-1.]