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NON-BANK MARKETING RESTRICTIONS: NEBRASKA STATE LAW

Some customers of Nebraska banks have recently received mailings relating to “matters of importance relating to their mortgage.” These letters typically include the name of the bank, loan amount and loan closing date, information that is readily available through public records; they also generally include some form of solicitation for a product or service offered by the company sending the communication.

These communications can be misleading and generally are confusing to customers of the bank who may believe they are being contacted by their lender or that their lender has shared or released information regarding their loan to a third party.

These types of misleading communications or solicitations were more prevalent in the early 2000s and resulted in the NBA seeking legislation to place restrictions on these types of activities. The provisions of **Neb.Rev.Stat.** §§ 8-2501 to 8-2505 are designed to address these types of solicitations by non-banks (*See*, NBA Compliance Handbook, Volume II, Bank Promotion, Non-Bank Marketing Restrictions: Nebraska State Law).

Section 8-2501 lists the requirements for using the name of a non-affiliated bank in a solicitation for business. The statute requires that a clear and conspicuous statutorily prescribed notice of: be given that the sender of the communication or solicitation is not affiliated with the bank, the name of which is referenced in the communication or solicitation.

The statute requires a “clear and conspicuous” notice of “non-affiliation” to be of the same font size used to identify the financial institution and that the name of financial institution must be in close proximity to that notice including on an envelope or through an envelope window containing the statement. The statute also requires the non-affiliation disclosure to specifically state that the solicitation is not authorized by the financial institution.

The Nebraska Department of Banking and Finance (Department) has investigated a number of these solicitations and responded in cases in which the company making the solicitation has failed to comply with the requirements of §8-2501. In these cases, the Department has directed the solicitor to either immediately comply with the requirements of §8-2501 to 8-2505 or to stop advertising using the name of an unaffiliated financial institution in Nebraska. The Department is authorized to take administrative actions or to refer the matter to other law enforcement agencies in Nebraska for a failure to respond to the Department’s directive.

The foregoing Compliance Update is for informational purposes only, and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.