



MARYLAND COMMISSIONER OF FINANCIAL REGULATION INDUSTRY ADVISORY REGULATORY GUIDANCE



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Maryland Mortgage Broker Agreement: Proper Issuance and Compliance

The Office of the Commissioner of Financial Regulation (OCFR) has become aware that some lenders require brokers to utilize a Broker Agreement prepared and/or provided by the lender, and that in some cases those agreements conflict with the obligations and mandates imposed by Maryland law. This Advisory is intended to provide guidance to both lenders and brokers regarding Lenders' provision of agreements to brokers.

According to Md. Code Ann., Commercial Law Article ("CL") §12-805(d) a mortgage broker may not receive a finder's fee unless the fee is paid as provided in a written agreement between the broker and borrower that meets the requirements set forth in the statute ("Broker Agreement"). CL §12-801(d) defines a "finder fee" as "any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money," and commonly known as a broker fee. A Broker Agreement may be prepared by either a lender or a broker provided that upon signature, the Agreement runs between the Broker and borrower.

Using a Broker Agreement that does not meet the statutory requirements, regardless of who prepares it, is not permitted. Brokers using such defective Brokers Agreements violate State law. To the extent that a lender prepares, and requires the use of, an agreement this not compliant with Maryland law, it is facilitating a violation of State law. Lenders and Brokers engaging in such practices, could be subject to enforcement actions and could be required to take remedial steps to rectify the violations of law as well as subjected to the imposition of civil monetary penalties and other injunctive orders.

The following information is intended to provide guidance to brokers and lenders regarding Maryland Broker Agreements:

- The Broker Agreement must be between the broker and the borrower and must be dated and signed by both the broker and the borrower.
- Regardless of who prepares or provides the Broker Agreement, the Broker Agreement:
 - must comply with the requirements of Maryland law,
 - must be separate and distinct from any other document and may not be combined with any other agreement or disclosure;
 - must not contain any blanks to be filled in after execution by the borrower;
 - must be disclosed to the borrower before the mortgage broker undertakes to assist the borrower in obtaining a loan or advance of money;

- must specify the amount of the broker's fee (i.e., the fee disclosed must be specific). It may be disclosed as a specific dollar amount (e.g., "you will pay \$_____"), a specific percentage of the loan amount (e.g., "you will pay ___% of the amount of your loan"), or as a combination of the two (e.g., "you will pay ___% of your loan and a \$____ processing fee"). It is not permissible to merely disclose a range (e.g., "your fee will be between 1% and 4% of the amount of your loan"), as that is not specific; and
- must contain a representation by the mortgage broker that the mortgage broker is acting as a mortgage broker and not as a lender in the transaction.
- **Even if the Lender provides the Broker Agreement, the broker is responsible for the content of the Broker Agreement and its proper execution by both the borrower and the broker.**
- Even if the lender provides the Broker Agreement, the broker may not receive a finder's fee, including any lender-paid compensation, if the Broker Agreement fails to comply with CL Title 12, subtitle 8.
- A copy of the Broker Agreement must be provided to the borrower within ten (10) days of the date of application, regardless of whether it is provided by the broker or by the lender. A broker may not receive a finder's fee pursuant to a Broker Agreement that is provided to the borrower more than ten (10) days after the date of application.
- A broker may not simultaneously have more than one Broker Agreement with a borrower nor may a Broker Agreement contain alternative provisions regarding the amount or calculation of the fee.

NOTE: Brokers should review and comply with the [regulatory alert](#) issued by the OCFR on February 16, 2018 on what compensation is deemed a Finder's Fee.

Lenders are reminded of the requirement in CL §12-805(c) that, if a finder's fee is paid from the proceeds of the loan, the lender must advise the borrower in writing of the borrower's right to a right to refund of the finder's fee upon the exercise of any right of rescission of the loan. OCFR considers it acceptable for this advice to be provided, on the lender's behalf, within the Broker Agreement, provided the advice is clearly and conspicuously stated. However, the Lender is responsible for ensuring that the advice is provided to borrowers.

Questions regarding this Advisory should be sent to Christine Brooks, Director of Mortgage Lending Supervision: (410) 230-6074 or email christine.brooks@maryland.gov.

The Office of the Commissioner of Financial Regulation, a division of the Maryland Department of Labor, is Maryland's banking and financial services regulatory agency. For more information, please visit our website at www.labor.maryland.gov/finance.



Office of the Commissioner of Financial Regulation