

New law defines "lender" as a state or federally chartered bank, savings bank, credit union, or savings and loan association, which is operating in La. with one or more physical branches or a main office, and any affiliate thereof, or any third party operating with the consent of the lender.

New law provides that a person shall not be considered a lender solely on the basis of the person's former employment with the lender.

New law defines "publicly available information" as any information that a bank or credit union or any affiliate has a reasonable basis to believe is lawfully made available to the general public from any of the following:

- (1) Federal, state, or local government records.
- (2) Widely distributed media.
- (3) Disclosures to the general public that are required to be made by federal, state, or local law.

New law defines "solicit" or "solicitation" as the initiation of a communication to a consumer for the purpose of encouraging the consumer to purchase property, goods, or services or apply for an extension of credit. "Solicit" shall not include communications initiated by the consumer or directed to the general public.

New law defines "solicitor" as any individual, firm, corporation, limited liability company, partnership, organization, association, or other legal entity seeking to sell or market products or services. The term "solicitor" shall not include a "lender".

New law prohibits a solicitor from using a lender's name, trade name, service mark, or trademark in a solicitation for the offering of services or products to a consumer without the written authorization of the lender, unless the oral, electronic, or written solicitation discloses all of the following:

- (1) The name, address, and telephone number of the solicitor making the solicitation.
- (2) A statement explaining that the solicitor making the solicitation is not affiliated with the referenced lender.
- (3) A statement that the solicitation is not authorized or sponsored by the referenced lender.
- (4) A statement that the referenced loan information was not provided by the lender.

New law requires the disclosures to be located on the front page of all written or electronic solicitations. The disclosures shall be clear and conspicuous, in bold-faced type that is the same font size as is predominantly used in the solicitation.

New law requires a clear and audible recitation of the disclosures at the beginning of all oral solicitations.

New law prohibits a solicitation for the purchase of services or products from containing a loan number, loan amount, or other specific loan information that is not publicly available information.

New law prohibits a solicitor from using a loan number, loan amount, or other specific loan information that is publicly available information in a solicitation for the purchase of services or products unless the oral, written, or electronic solicitation discloses all of the following:

- (1) The name, address, and telephone number of the solicitor making the solicitation.
- (2) A statement that the solicitor making the solicitation is not affiliated with the lender.

- (3) A statement that the solicitation is not authorized or sponsored by the lender.
- (4) A statement that the loan information referenced was not provided by the lender and that the information was retrieved from public records.

New law requires the disclosures to be located on the front page of all written or electronic solicitations. The disclosures shall be clear and conspicuous, in bold-faced type that is the same font size as is predominantly used in the solicitation.

New law requires a clear and audible recitation of the disclosures at the beginning of all oral solicitations.

New law shall not apply to a lender who uses a loan number, loan amount, or other specific loan information derived from the business relationship between the lender and a current or former customer in communications with the current or former customer of the lender.

New law prohibits any reference to a lender and any reference to a loan number, loan amount, or other specific loan information appearing on the outside of an envelope, visible through the envelope window, or on a postcard in connection with any written communication that includes or contains a solicitation for services or products, unless express consent is given by the lender to the solicitor.

New law provides that it shall not be a violation of new law for a solicitor or lender to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

New law authorizes a lender to seek an injunction against a solicitor who violates new law to enjoin the unlawful use of the name, trade name, trademark, service mark, or loan information.

New law provides that the lender seeking the injunction shall not be required to prove actual damages as a result of the violation. Irreparable harm to the lender or owner shall be presumed.

New law provides that the lender seeking the injunction may also seek to recover actual damages as a result of the violation.

New law further provides that the lender, if it prevails in any action brought pursuant to new law, shall be entitled to recover costs associated with the action and reasonable attorney fees from the solicitor.

Effective August 15, 2011.

(Adds R.S. 6:412.1)