



700 S. W. Jackson
Suite 300
Topeka, KS 66603-3796

Office of the State
Bank Commissioner

Phone: (785) 296-2266
Fax: (785) 296-6037
www.osbckansas.org

David L. Herndon, Acting Bank Commissioner

Laura Kelly, Governor

CML Guidance 2019-1 Advertising August 23, 2019

Information Required in Advertising

KMBA. Licensees and registrants soliciting or advertising mortgage business directed at Kansas residents must include the name and license number/unique identifier of the licensee on record with the OSBC per K.S.A. 9-2208 (c) and (e).

CSO. Similarly, credit service organizations must include the name and license number used on record with the OSBC for solicitations and advertisements per K.S.A. 50-1120 (d) and (f).

U3C. A licensee subject to the Uniform Consumer Credit Code may only conduct business under the name given in the license per K.S.A. 16a-2-302(7).

KMTA. Kansas law does not prescribe requirements for money transmitter names.

Limits on Name Under the Banking Code. A provision of the Kansas banking code, K.S.A. 9-2011, states:

It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that the individual, firm or corporation is engaged in the **banking business or trust business** without first having obtained authority from the commissioner. Any such individual or member of any such firm or officer of any such corporation violating this section, upon conviction shall be guilty of a class A, nonperson misdemeanor.

Use of the words “trust company” or “bank” (or any derivative such as banc, banque) may constitute advertising to the general public that such person is engaged in the banking business. Such advertising makes it appear that the person has obtained authority from the OSBC and it is in fact a bank/trust company subject to banking law and supervision. Such an assertion is deceptive and confusing to the public.¹

The OSBC must review names on a case-by-case basis to determine whether the particular use of the words in the name could be construed to mean the entity is lawfully engaged in the

¹ Exception are businesses that are clearly not financial institutions such as “Blood Bank.”

business of banking. Factors to be considered in deciding whether the use of the words “bank,” “trust,” or “trust company” are appropriate: 1. type of service provided, 2. level of sophistication of the parties interacted with, and 3. the amount of contact the business has with the public.

Retention of Advertising Records

KMBA. Licensees shall maintain a record of all solicitations or advertisements for a period of 36 months in accordance with K.S.A. 9-2208(c). Such advertising does not include business cards or promotional items.

CSO. Each licensee must maintain a record of all solicitations or advertisements for a period of 36 months, not including business cards or promotional items per K.S.A. 50-1120(d).

U3C. K.S.A. 16a-2-304 outlines the requirements for record retention under the U3C. Generally, records must be maintained in order for the administrator to determine compliance with the law. Under K.A.R. 75-6-38—a regulation implementing the U3C’s record retention—each licensee or person filing notification shall retain copies of advertisements or solicitations whether printed or internet/electronic.

KMTA. The commissioner has discretion to require any person under the Act to maintain such documents and records as necessary to verify compliance with law. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who fails to keep and maintain sufficient records to permit an audit or to show compliance with the law per K.S.A. 9-513a.

False and Misleading Advertisement

KMBA. An individual engaging solely in loan processing or underwriting cannot represent to the public that such individual can or will perform any activities of a loan originator. This prohibition includes advertising, communicating, or using business cards, stationery, brochures, signs, rate lists or other promotional items per K.S.A.9-2201(i)(2). No KMBA solicitation or advertisement can contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas, per K.S.A. 9-2208(d). No person who is required to be licensed or registered under the KMBA can solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting per K.S.A. 9-2212(m).

CSO. No CSO solicitation or advertisement shall contain false, misleading or deceptive information per K.S.A. 50-1120(e).

U3C. Under K.S.A. 16a-2-310, no person shall solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting. Under K.S.A.16a-3-208, a supervised lender

shall not, directly or indirectly, make a false, misleading or deceptive advertisement regarding loans or the availability of loans.

A supervised lender cannot advertise any size of loan, security required for a loan, rate of charge or other conditions of lending except with the full intent of making loans at those rates—or lower rates—and under those conditions—or conditions more favorable to the consumer—to loan applicants who meet the standards or qualifications prescribed by the supervised lender.

KMTA. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who: engages in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission or; advertises, displays, distributes, broadcasts or televises any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for the transmission of money per K.S.A. 9-513a(j), (k).

Regulation Z

In addition to state law restrictions on advertising solicitations, Regulation Z, 12 C.F.R. 1026, requires that certain disclosures be provided in advertisements. Licensees should refer to Regulation Z for specific advertising requirements applicable to the loan products they offer. Features common to many of the advertisements we have reviewed include statements regarding terms of repayment or specifying the amount of a payment. Such statements trigger additional disclosures that must be made pursuant to Regulation Z. The OSBC expects all licensees to familiarize themselves with Regulation Z's advertising provisions and to seek legal counsel when necessary to ensure compliance. Licensees should not rely on marketing companies offering form solicitations for compliance with either state or federal law.

Internet Communications and Social Media

Any website or internet post, as well as social media, e.g., Facebook, Twitter, Instagram, and any form of electronic promotion is considered advertising subject to this Regulatory Mailing.