

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED
2009 SEP 18 PM 4: 18
PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF BANKING, BUREAU : DOCKET No. 090175 (ENF-ORD)
OF COMPLIANCE, INVESTIGATION :
AND LICENSING, :
v. :
FREEDMAN CAPITAL GROUP LLC. :
:

ORDER

WHEREAS, the Department of Banking, (the "Department") is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Licensing Act (the "MLA"), 7 Pa. C.S. § 6101 et seq., and the regulation regarding the Proper Conduct of Lending and Brokering in the Mortgage Loan Business promulgated under the MLA (the "Proper Conduct Reg"), 10 Pa. Code § 46.1 et seq.; and

WHEREAS, the Bureau of Compliance, Investigation and Licensing (the "Bureau") is primarily responsible for administering and enforcing the MLA and the Proper Conduct Reg for the Department; and

WHEREAS, Freedman Capital Group LLC ("Freedman Capital") is licensed as a mortgage broker pursuant to the MLA; and

WHEREAS, Freedman Capital is located at 3232 Penn Ave., Pittsburgh, PA 15201; and

WHEREAS, the Proper Conduct Reg was enacted on December 20, 2008, by virtue of publication in the *Pennsylvania Bulletin* (Vol. 38, No. 51); and

WHEREAS, on December 22, 2008, the Secretary of Banking issued a letter to all mortgage lenders, mortgage loan correspondents and mortgage broker licensees announcing the

enactment of the Proper Conduct Reg. A true and correct copy of the December 22, 2008, letter is attached as Exhibit A; and

WHEREAS, the December 22, 2008, letter provided a summary of Section 46.2(g) of the Proper Conduct Reg which requires that an ability to repay analysis be conducted for each mortgage loan. See Exhibit A, pg. 2; and

WHEREAS, the December 22, 2008, letter also informed all licensees that Section 46.2(g) of the Proper Conduct Reg would be effective as of March 20, 2009. See Exhibit A, pg. 2; and

WHEREAS, on or around February 3, 2009, the Department's Bureau of Non-Depository Examinations emailed a letter to all mortgage lenders, mortgage loan correspondents and mortgage broker licensees (the "Licensees") requesting the submission of a detailed internal policies and procedures plan (the "Policy") that would address how the Licensees will perform an ability to repay analysis for mortgage loan applicants as required by Section 46.2(g) of the Proper Conduct Reg. A true and correct copy of the letter contained in the February 3, 2009, email that was sent to all Licensees is attached as Exhibit B; and

WHEREAS, the letter emailed on February 3, 2009 stated that the Policy was to be submitted to the Department no later than February 28, 2009. See Exhibit B; and

WHEREAS, on or around March 11, 2009, the Bureau of Non-Depository Examinations sent a second letter via email to all Licensees who failed to submit the Policy to the Department by the February 28, 2009, deadline. A true and correct copy of the letter contained in the March 11, 2009 email that was sent to Licensees who failed to submit the Policy is attached as Exhibit C; and

WHEREAS, the letter emailed on March 11, 2009, provided that Licensees must submit the Policy to the Department by March 18, 2009. See Exhibit C; and

WHEREAS, on or around May 12, 2009, the Bureau of Non-Depository Examinations mailed a letter through the United States Postal Service to all Licensees who failed to submit the Policy by the March 18, 2009 extended deadline. A true and correct copy of the May 12, 2009 letter sent to those Licensees who failed to submit the Policy is attached as Exhibit D; and

WHEREAS, the May 12, 2009, letter gave an additional extension to provide the Policy to the Department no later than May 19, 2009. See Exhibit D;

WHEREAS, the May 12, 2009, letter stated that failure to provide the Policy to the Department could result in administrative action. See Exhibit D; and

WHEREAS, correspondence for Freedman Capital was sent to 3232 Penn Ave., Pittsburgh, PA 15201 (the "Address") and joshua.freedman@freedmancapitalgroup.com (the "Email Address"), which were obtained from the Nationwide Mortgage Licensing Database ("NMLS"); and

WHEREAS, Freedman Capital provided the Address and Email Address to NMLS for use by the Department and any other state Freedman Capital is licensed in; and

WHEREAS, as of the date this Order is issued, Freedman Capital continues to have an active license with the Department;

WHEREAS, as of the date this Order is issued, NMLS continues to list the Address and Email Address as current contact information for Freedman Capital; and

WHEREAS, as of the date this Order is issued, Freedman Capital has not provided the Policy to the Department; and

WHEREAS, Section 6138(a)(1) of the MLA provides the Department with the authority to examine any instrument, document, account, book, record or file of licensees. 7 Pa. C.S. § 6138(a)(1); and

WHEREAS, Section 6138(a)(3) of the MLA provides the Department with the authority to “[r]equest and receive information or records of any kind” from a licensee. 7 Pa. C.S. § 6138(a)(3); and

WHEREAS, the Department had the authority to require the Licensees to provide the Policy; and

WHEREAS, Section 6138(a)(4) of the MLA grants the Department with the authority to issue orders for the enforcement of the MLA and the proper conduct of the mortgage loan business by licensees. 7 Pa. C.S. § 6138(a)(4); and

WHEREAS, Section 6139(a)(2) of the MLA, grants the Department with the authority to suspend, revoke or refuse to renew any license issued pursuant to the MLA if a licensee has failed to comply with or violated any provision of the MLA. 7 Pa. C.S. § 6139(a)(2); and

WHEREAS, Freedman Capital violated the MLA by failing to submit the Policy to the Department despite repeated requests; and

WHEREAS, Section 6140(b) of the MLA provides that “[a] person licensed under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa. C.S. § 6140(b); and

AND NOW THEREFORE, because Freedman Capital has violated the MLA, the Bureau under the authority cited above, hereby imposes the following Order:

1. Upon the effective date of this Order, Freedman Capital's licensee shall be suspended from engaging in the mortgage loan business in Pennsylvania as defined by the MLA until such time as the Policy is received by the Department. The Policy shall be sent to:

FAX: 717-787-8773
Attention Tim Knopp

MAIL: Timothy Knopp, SFIE
Bureau of Non-Depository Examinations
Pennsylvania Department of Banking
17 N. Second Street, Suite 1300
Harrisburg, PA 17101-2290

2. Upon the effective date of this Order, Freedman Capital shall be assessed a fine of ten thousand dollars (\$10,000) which shall be due and payable to the Department within thirty (30) days of the effective date of this Order. The fine payment shall be remitted by a certified check or money order made payable to the Pennsylvania Department of Banking and sent to:

Compliance Division
Bureau of Compliance, Investigation and Licensing
Pennsylvania Department of Banking
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

3. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary for the enforcement of the MLA.

IT IS SO ORDERED.

September 18, 2009
Date

Ryan Walsh
Administrator, Compliance Division
Bureau of Compliance, Investigation and
Licensing
Department of Banking

EXHIBIT A



pennsylvania

DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, 13TH FL | HARRISBURG, PA 17101

PH 717.787.6991 FX 717.787.8773 W www.banking.state.pa.us

SECRETARY OF BANKING

December 22, 2008

To All Mortgage Lender, Mortgage Loan Correspondent and Mortgage Broker Licensees under 7 Pa.C.S. Ch. 61 (Relating to Mortgage Loan Industry Licensing and Consumer Protection) (the “Mortgage Act”) and Licensees under the Consumer Discount Company Act (the “CDCA”), 7 P.S. § 6201 *et seq.* (Jointly, the “Acts”):

This letter is to announce to you that by virtue of publication in the December 20, 2008 edition of the *Pennsylvania Bulletin* (Vol. 38, No. 51), the Commonwealth of Pennsylvania Department of Banking (the “Department”) has adopted its regulation regarding the proper conduct of lending and brokering in the mortgage loan business, which will be codified at 10 Pa.Code § 46.1 *et seq.* **The regulation was effective immediately, with the exception of Subsections 46.2(b) through (i), which will be effective 90 days from the date of publication in the *Pennsylvania Bulletin* (March 20, 2009).**

The regulation provides rules for the proper conduct of lending and brokering in the mortgage loan business for brokers and lenders licensed under the Mortgage Act and all CDCA licensees engaged in the mortgage loan business and is the result of one of the policy recommendations made by the Department in its 2005 Report on Residential Mortgage Foreclosures and Abusive Lending Practices in Pennsylvania, which was requested by the Pennsylvania General Assembly in House Resolution 364 of 2003.

A complete copy of the regulation appears on the Department’s website as well as in the December 20, 2008 issue of the *Pennsylvania Bulletin*. This letter contains a brief summary of the regulation and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is vitally important for you to familiarize yourself with the regulation itself and seek guidance from your legal counsel and trade association regarding the effects of this new regulation on your business operations.

Summary of the Regulation

Subsection 46.2(a) prohibits false or misleading advertising and was **effective on December 20, 2008.**

Subsections 46.2(b) through (f) require licensees to issue a disclosure form prescribed by the Department within three business days after the application is received or prepared by the licensee.

The form will disclose: (1) if the lender providing the loan will escrow the applicable taxes and hazard insurance; (2) if the licensee is a lender with the ability to directly lock-in a loan interest rate; (3) whether the loan contains a variable interest rate or balloon payment feature; (4) whether the loan includes a prepayment penalty; and (5) whether the loan has a negative amortization feature. Licensees are also required to have applicants sign and date the disclosure form, retain the disclosure form for their records and re-issue the disclosure form if the licensee knows or reasonably should know the initial disclosure form is inaccurate. These provisions are **effective on March 20, 2009**. The Department will be making this one-page form available on its website in advance of the March 20, 2009 effective date.

Subsection 46.2(g) requires licensees to perform an ability to repay analysis when offering a mortgage loan to an applicant. Licensees must reasonably determine, based upon the documents and information provided to the licensee, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule. Additionally, licensees: (1) are required to verify and document the income and the fixed expenses of the applicants; (2) are not permitted to primarily rely upon the sale or refinancing of the applicants' loan collateral to repay the loan; and (3) may not ignore facts or circumstances that it knows or reasonably should know would indicate that the applicant does not have the ability to repay the offered loan. Licensees are permitted to consider other factors in addition to income and fixed expenses when performing the ability to repay analysis and licensees are only required to verify and document the income that the applicant intends to rely upon in repaying the loan. Lastly, this subsection sets forth a presumption of ability to repay for certain loans and provides a framework for an analysis of loans with balloon payment features. This subsection is **effective on March 20, 2009**.

Subsection 46.2(h) exempts reverse mortgage products from the ability to repay and disclosure form provisions of the regulation, because such provisions are inconsistent with the features of reverse mortgage loans. This subsection is **effective on March 20, 2009**. Reverse mortgage loans remain subject to the rest of the regulation that was effective on December 20, 2008.

Subsection 46.2(i) addresses the continuing responsibility of licensees regarding the ability to repay analysis when there is a material change in facts or circumstances that a licensee knows or reasonably should know would substantially affect the applicant's ability to repay the offered loan. This subsection is **effective on March 20, 2009**.

Subsection 46.2(j) sets forth a series of prohibited acts in regard to mortgage loan transactions which became **effective on December 20, 2008**.

Subsection 46.2(k) requires licensee lenders to fund closed loans and prohibits licensees from delaying or failing to fund a loan based upon post-closing underwriting or quality control. A licensee lender may refuse to fund a closed loan only if there is fraud committed by the applicant. In any administrative action brought by the Department under this subsection, a licensee may raise applicant fraud as an affirmative defense; however, this subsection does not relieve or limit the liability of a licensee against any claims of borrowers due to a refusal or failure to fund a loan based upon an allegation of fraud. This subsection was **effective on December 20, 2008**.

Subsection 46.2(l) requires licensees, upon request, to provide an applicant or an authorized representative of the applicant with copies or originals of documents associated with the loan transaction, so long as the licensee is permitted to do so under state and federal law and has the documents in its possession. This subsection was **effective on December 20, 2008**.

Subsection 46.2(m) requires a licensee that holds or services a loan to provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, within seven business days of a request by a borrower or authorized representative of the borrower. This subsection was **effective on December 20, 2008**.

Finally, Section 46.3 provides that violations of the regulation are considered violations of the Acts. This section also provides that if a loan is made in good faith in conformity with an interpretation of this regulation by the Department or the courts of this Commonwealth, no penalty for a violation shall apply, notwithstanding that the relied-upon interpretation may subsequently change. Although it is not specifically stated in the regulation, Mortgage Act and CDCA licensees are reminded that by virtue of Section 6121(13) of the Mortgage Act, 7 Pa.C.S. § 6121(13), Mortgage Act and CDCA licensees are responsible for the acts and omissions of their employees, including mortgage originators, in regard to this regulation. This section was **effective on December 20, 2008**.

Conclusion

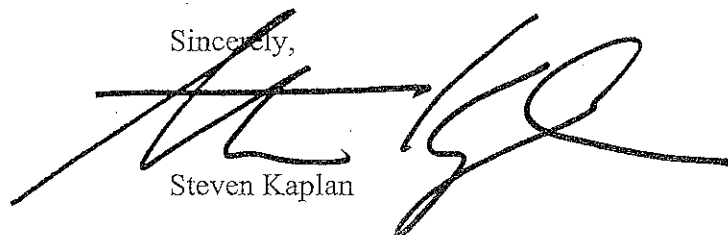
This regulation may create significant changes in the way that licensees under the Mortgage Act and CDCA conduct their mortgage business. The Department is committed to working with you to ensure the smoothest possible transition to operation under this new regulation. To that end, the Department will be offering outreach programs regarding this new regulation. Please watch your mail carefully for communications from the Department and be sure to check the Department's website, www.banking.state.pa.us, for updates.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the regulation and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is critically important for you to read the actual regulation and seek guidance from your legal counsel and trade association regarding the effects of this new regulation on your business operations.

If you have questions regarding this regulation, please contact the Compliance Division of the Department's Bureau of Compliance, Investigations and Licensing at (717) 772-3889 or through the Department's website at www.banking.state.pa.us.

We here at the Department look forward to working with you in order to seamlessly implement this new and important regulation.

Sincerely,

A handwritten signature in black ink, appearing to read 'SK', is written over a horizontal line. The signature is fluid and cursive.

Steven Kaplan

EXHIBIT B



pennsylvania
DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, 13TH FL | HARRISBURG, PA 17101
PH 717.787.2665 FX 717.787.8773 W www.banking.state.pa.us

February 03, 2009

Contact Name
Licensee Name
Street Address
City, State Zip

Dear Contact Name:

The Pennsylvania Department of Banking (the "Department") issued a letter to all mortgage lenders, mortgage loan correspondents and mortgage broker licensees on December 22, 2008 announcing the adoption of a regulation regarding the proper conduct of the mortgage business. The regulation was codified at 10 Pa.Code 46.2 et seq. In the letter, the Department summarized the provisions and effective dates of the regulation. The regulation and letter can be found in full on our website, www.banking.state.pa.us, and at the following links [Mortgage Regulation](#) and [December 22, 2008 Letter](#).

The regulation applies to all mortgage loan businesses that are licensed under the Mortgage Act or that engage in the mortgage business under the Consumer Discount Company Act. In particular, licensees must perform an ability to repay analysis for each loan. Pursuant to subsection 46.2(g) of the regulation, licensees must reasonably determine, based upon the documents and information provided to the licensee, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

Additionally, licensees:

- (1) are required to verify and document the income and the fixed expenses of the applicants;
- (2) are not permitted to primarily rely upon the sale or refinancing of the applicants' loan collateral to repay the loan; and
- (3) may not ignore facts or circumstances that it knows or reasonably should know that would indicate that the applicant does not have the ability to repay the offered loan.

Licensees are permitted to consider other factors in addition to income and fixed expenses when performing the ability to repay analysis and licensees are only required to verify and document the income that the applicant intends to rely upon in repaying the loan. Lastly, the subsection sets forth a presumption of ability to repay for certain loans and provides a framework for an analysis of loans with balloon payment features.

Please note that this provision becomes effective on **March 20, 2009**.

The Department is asking each licensee to submit their internal policies and procedures on how they will perform an ability to repay analysis on their customers to the Department no later than February 28, 2009. This document should be complete so that it fully and accurately details your program to comply with the requirements of this subsection of the regulations.

As a preferred method of contact, the internal policies and procedures related to the ability to repay analysis should be provided electronically to email address mtgexams@state.pa.us. If you are unable to provide your ability to repay analysis electronically you may submit it by fax or mail.

Fax to: 717-787-8773
Attention: Tim Knopp

Mail to: Pennsylvania Department of Banking
Attention: Tim Knopp
17 North Second Street, Suite 1300
Harrisburg, PA 17101-2290

Regardless of the submission method, be sure to include your licensed name, license number, and contact information.

Please review the regulation and letter. If you have any questions regarding the submission of your ability to repay analysis, please submit to mtgexams@state.pa.us. Alternatively, you may call Examiner Tim Knopp at 717-425-5470. Thank you for your cooperation.

Sincerely,

Donald DeBastiani,
Director, Non-Depository
Examinations

EXHIBIT C



pennsylvania

DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, SUITE 1300 | HARRISBURG, PA 17101
ph 717.425.5470 Ex 717.787.8773 w www.banking.state.pa.us

March 11, 2009

Contact Name
Licensee Name
Street Address
City, State Zip

Dear Contact Name:

On February 3, 2009, you received an emailed letter from the Pennsylvania Department of Banking (the "Department") which required a response by February 28, 2009. It has come to the attention of the Department that Licensee Name has not provided a response as required. **The Department is sending this emailed letter as a courtesy and is allowing Licensee Name to provide a response within 7 days from the date of this letter, by March 18, 2009.**

Excerpts from the February 3, 2009 emailed letter:

The Department issued a letter to all mortgage lenders, mortgage loan correspondents and mortgage broker licensees on December 22, 2008 announcing the adoption of a regulation regarding the proper conduct of the mortgage business. The regulation was codified at 10 Pa.Code 46.2 et seq. In the letter, the Department summarized the provisions and effective dates of the regulation. The regulation and letter can be found in full on our website, www.banking.state.pa.us, under New Mortgage Regulation and Laws, then December 2008.

The regulation applies to all mortgage loan businesses that are licensed under the Mortgage Act or that engage in the mortgage loan business under the Consumer Discount Company Act. In particular, licensees must perform an ability to repay analysis for each mortgage loan. Pursuant to subsection 46.2(g) of the regulation, licensees must reasonably determine, based upon the documents and information provided to the licensee, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

Please note that this provision becomes effective on March 20, 2009.

The Department is requesting under the authority granted by § 6138 of the Mortgage Act, that each licensee submit their internal policies and procedures on how they will perform the ability to repay analysis on their applicants. This document should be complete so that it fully and accurately details your program to comply with the requirements of this subsection of the regulation.

As a preferred method of contact, the internal policies and procedures related to the ability to repay analysis should be provided electronically to email address mtgexams@state.pa.us. If you are unable to provide your ability to repay analysis electronically you may submit it by fax.

Fax to: 717-787-8773
Attention: Tim Knopp

Regardless of the submission method, be sure to include your licensed name, license number, and contact information.

Please review the regulation and letter. If you have any questions regarding the submission of your ability to repay analysis, please submit to mtgexams@state.pa.us. Alternatively, you may call Examiner Tim Knopp at 717-425-5470. Thank you for your cooperation.

Sincerely,

Tim Knopp

F
inancia
l
Institut
ions
Exami
ner
B
ureau
of
Non-
Deposi
tory
Exami
nations
P
ennsyl
vania
Depart
ment
of
Bankin
g

EXHIBIT D



pennsylvania
DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, SUITE 1300 | HARRISBURG, PA 17101-2290
PH 717.425.5470 FX 717.787.8773 W www.banking.state.pa.us

DATE

Contact Name
Licensee Name
Street Address
City, State Zip

Dear Contact Name,

The Pennsylvania Department of Banking, Bureau of Examinations (“the Bureau”) first requested on February 3, 2009 your internal policies and procedures related to evaluating an applicant’s ability to repay a loan (“ability to repay policy and procedure”) as required by Section 46.2(g) of the regulation titled “Proper Conduct of Lending and Brokering in the Mortgage Loan Business” (10 Pa. Code § 46.1 *et seq.*) (the “Regulation”). The Regulation was signed into law on December 20, 2008 and Section 46.2(g) became effective on March 20, 2009. The ability to repay policy and procedure was due back to the Bureau no later than **February 28, 2009**.

Subsequently, a letter was sent on March 11, 2009 by the Bureau extending the time period to respond to this request until March 18, 2009.

According to Bureau’s records, you have not responded to the Bureau’s request. This letter serves as a final notice to remedy this matter.

The Bureau is requesting per its authority in Section 6138(a)(4) of the Mortgage Act, 7 Pa. C.S. § 6101 *et seq.*, that each licensee submit their internal policies and procedures on how they will perform the ability to repay analysis for their applicants. This document should be completed so that it fully and accurately details your program to comply with the requirements of this subsection of the regulation.

- **The record must be submitted to the Bureau no later than May 15, 2009.**

Failure to provide the requested record by May 15, 2009 could result in administrative action under Section 6139 and Section 6140 of the Mortgage Act.

As a preferred method of contact, the internal policies and procedures related to the ability to repay analysis should be provided electronically to email address mtgexams@state.pa.us.

If you are unable to provide your ability to repay analysis electronically you may submit it by fax.

Fax to: 717-787-8773
Attention: Tim Knopp

Regardless of the submission method, be sure to include in the title of the submission your licensed name and license number, and include your contact information in the body of the submission.

The Department's website is www.banking.state.pa.us

The Mortgage Act can be found on the Department's website or directly at:
http://www.banking.state.pa.us/banking/lib/banking/mortgage_act.pdf

The Regulation can be found on the Department's website or directly at:
<http://www.pabulletin.com/secure/data/vol38/38-51/2285.html>

Please review the regulation. If you have any questions regarding the submission of your ability to repay analysis, please submit to mtgexams@state.pa.us. Alternatively, you may call Examiner Tim Knopp at 717-425-5470.

Sincerely,

Tim Knopp
Senior Financial Institutions Examiner
Bureau of Non-Depository Examinations
Pennsylvania Department of Banking

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED
2009 SEP 18 PM 4:18
PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF BANKING, BUREAU : DOCKET No. 090175 (ENF-ORD)
OF COMPLIANCE, INVESTIGATION :
AND LICENSING, :
v. :
FREEDMAN CAPITAL GROUP LLC. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order upon the party below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED MAIL and FIRST CLASS MAIL

Joshua Freedman
Freedman Capital Group LLC
3232 Penn Ave.
Pittsburgh, PA 15201

Dated this 18th day of September, 2009.

Lauren A. Sassani
Assistant Counsel
Attorney I.D. # 203016
FOR: Commonwealth of Pennsylvania
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101
(717) 787-1471