

September 18, 2003

Dear

This letter responds to a letter from your attorney, [redacted] Carl E. Anderson, Chief Counsel of the Pennsylvania Department of Banking (“Department”), in which [redacted] requests the Department’s position on whether a proposed transaction between [redacted] [redacted] and [redacted] (“[redacted]”) would require [redacted] to be licensed under the Consumer Discount Company Act, 7 P.S. § 6201 *et seq.*

Background

[redacted] explained in his letter that [redacted] plans to purchase certain loans from [redacted] and the funding for the purchase is being provided by Sterling National Bank which will also service the loans. Furthermore, the loans that [redacted] plans to purchase from [redacted] are in amounts in excess of \$5,000 and are secured by liens on parcels of real property used as dwellings which are subject to prior mortgages. [redacted] states his view that the loans to be bought by [redacted] from [redacted] are subject to the Pennsylvania Secondary Mortgage Loan Act (“SMLA”), 7 P.S. § 6601 *et seq.* [redacted] is not licensed under either the SMLA or, according to phone conversations between you and the undersigned, the Pennsylvania Consumer Discount Company Act (“CDCA”), 7 P.S. § 6201 *et seq.*

Analysis

Based on the facts provided by you and your counsel, [redacted] made certain loans to consumers that are secured by junior mortgage liens on real property. The Department’s records reveal that [redacted] is licensed only under the CDCA and not the SMLA. Section 13 of the CDCA provides the general authority for [redacted] to make junior lien mortgage loans as follows:

In addition to the general powers conferred upon a corporation by the Business Corporation Law of this

Commonwealth, a corporation licensed under this act shall have power and authority:

* * * * *

B. To lend money on the security of real or personal property or without security.

7 P.S. § 6213.B. Thus, CDCA licensees are authorized by the CDCA to make mortgage loans secured by junior liens up to an amount of \$25,000. 7 P.S. § 6203.A. Since [redacted] possessed no other authority to make loans of any kind, [redacted] made all of the loans that are of interest to [redacted] pursuant to the CDCA.

In addition, the SMLA specifically exempts from its own provisions loans made pursuant to the CDCA. For example, the definition of a secondary mortgage loan in the SMLA specifically exempts from its scope a loan that would otherwise fall under the scope of the SMLA that is, “made under any other law of the Commonwealth of Pennsylvania.” 7 P.S. § 6602. Similarly, the section defining the scope of the SMLA states that, “[t]he provisions of this act shall apply to any secondary mortgage loan (except loans secured by real property made pursuant to a license issued under any other law of this Commonwealth) . . .” 7 P.S. § 6620(a) (emphasis added). Furthermore, section 23 of the SMLA specifically preserves the powers of financial institutions when it states that:

[n]othing in this act shall be construed as restricting the powers otherwise conferred by law upon financial institutions, such as State and national banks, State and Federal savings and loan associations, savings banks and insurance companies, to engage in the secondary mortgage business as defined in section 2, and no such financial institution, in exercising any power otherwise so conferred upon it, shall be subject to any provision of this act.

7 P.S. § 6623. The Department takes the position that a CDCA licensee is a “financial institution” within the meaning of Section 23 of the SMLA. Thus, in light of the foregoing, the SMLA simply does not apply to loans made by CDCA licensees pursuant to its authority under the CDCA.

It is also clear that the SMLA does not authorize a CDCA licensee to use the SMLA as authority to make junior lien mortgage loans. The second sentence of section of 23 of the SMLA authorizes certain depository institutions to use the SMLA to make secondary mortgage loans without obtaining a license under the SMLA when it states:

[a] state-chartered or national bank, bank and trust company, savings bank or savings and loan association located in this State shall have all the powers of a licensee under this act but shall not be subject to the license

requirement or any other provision of this act relating to the requirements imposed on licensees.

7 P.S. § 6623. Unlike the first sentence in section 23 of the SMLA which applies broadly to, “financial institutions, such as . . .” banks and other depository institutions, the second sentence of section 23 of the SMLA, which empowers the specified depository institutions to use the SMLA without obtaining a license, is limited only to those depository institutions identified in that sentence and does not enable CDCA licensees to use the SMLA. Therefore, a CDCA licensee, such as [redacted], may not use the SMLA to make junior lien mortgage loans and may only use the CDCA to make such loans.

Given the foregoing, since [redacted] is only licensed under the CDCA, the loans that [redacted] plans to buy from [redacted] are subject to the CDCA, not the SMLA, and approval from the Department pursuant to 7 P.S. § 6214.I and 10 Pa. Code § 41.6(a) must be sought by [redacted] prior to the sale. Please note that, under the relevant regulation, “[t]he privilege of collecting the charges authorized by the [CDCA] may not be transferred to an unlicensed purchaser.” 10 Pa. Code § 41.6(a). Since [redacted] is not licensed under the CDCA and is not otherwise authorized by law to collect interest in excess of the general usury limit imposed by the Pennsylvania Loan Interest and Protection Law, 41 P.S. § 101 *et seq.*, the Department would only authorize [redacted] to collect from consumers the general Pennsylvania usury rate of 6% simple interest *per annum* if the Department exercised its discretion and approved any sale of loans from [redacted] to [redacted]. For a discussion of this issue, please see pages 9-11 and 22 of the enclosed interpretive letter.

However, if [redacted] were licensed under the CDCA, then the Department need only be provided with the noticed required by section 14.I of the CDCA, 7 P.S. § 6214.I. To learn more about becoming licensed under the CDCA, including minimum capital and in-state office requirements, please contact Mr. Donald DeBastiani, Chief of the Department’s licensing division, at (717) 787-3717.

Pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-101 *et seq.*, the undersigned may only give legal advice to the Department and may not divulge that legal advice or other confidential matters, such as attorney-client communications, to anyone without permission from the Department. No such permission has been given in this case. Therefore, this letter represents the policy positions of the Department and is not intended to disclose privileged and confidential advice provided by the Office of Chief Counsel. Accordingly, this letter may not be relied upon or construed as constituting legal advice. This letter constitutes a duly authorized statement of the Department’s official position regarding the issues discussed herein and has been authorized by the appropriate Department personnel. The Department’s analysis is based upon the facts as stated in

this letter. Any change in the facts could result in an amendment or reversal of the Department's position.

Sincerely,

David H. Bleicken
Deputy Chief Counsel

Enclosure

cc: Carl E. Anderson, Esq.