



pennsylvania
DEPARTMENT OF BANKING

MARKET SQUARE PLAZA | 17 N SECOND STREET, SUITE 1300 | HARRISBURG, PA 17101-2290
Ph 717.783.1471 Fx 717.783.8427 W www.banking.state.pa.us

OFFICE OF CHIEF COUNSEL

June 15, 2007

Re: Home Improvement Contractor Registration under the Credit Services Act

Dear _____ :

This is in response to your correspondence to the Commonwealth of Pennsylvania Department of Banking (the "Department") in which you request the Department's position regarding what constitutes holding oneself out as a loan broker as contemplated by paragraph (1)(iv) of the definition of "loan broker" contained in Section 2 of the Credit Services Act ("CSA"), 73 P.S. § 2182.

Specifically, you inquire as to whether loan broker registration under the CSA would be required for a home improvement contractor (the "Contractor") located in Pennsylvania if the Contractor were to refer customers to an entity exempt from the CSA¹ for financing without receiving a fee from any party for such referral. You state that the Contractor's compensation would be limited only to payment from the consumer for home improvement services actually rendered. It is the Department's understanding that the Contractor would not receive any compensation for referring consumers to, or providing consumers with assistance in obtaining financing from, exempt entities under the CSA.

As a fundamental matter, Section 8(a) of the CSA provides that "[l]oan brokers shall be registered with the Department of Banking pursuant to regulations promulgated by the department." 73 P.S. § 2188(a). Similarly, the regulations promulgated by the Department pursuant to Section 8(a) of the CSA state that "[o]n or after December 20, 1997, a person may not act as a loan broker in this Commonwealth without registering with the Department." 10 Pa. Code § 42.3(a). Section 2 of the CSA defines a "loan broker" as:

(1) A person who:

(i) For or in expectation of a consideration fee arranges or attempts to arrange or offers to fund a loan of money, a credit card or line of credit for personal, family or household purposes.

¹ You indicate that in this case the exempt entity would be a state-chartered bank.

(ii) For or in expectation of a consideration fee assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit or related guarantee, enhancement or collateral of any kind or nature.

(iii) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers.

(iv) *Holds himself out as a loan broker.*

73 P.S. § 2182 (emphasis added). Pursuant to paragraph (2) of the definition of “loan broker,” the following entities are exempt from registering as a loan broker under the CSA:

(i) Any person organized, chartered, exempt from licensure under statute or holding a license or authorization certificate to make loans or provide credit pursuant to the laws of the Commonwealth or the United States who is subject to regulation and supervision by an official or agency of the Commonwealth or the United States.

(ii) Any bank, bank and trust company, trust company, savings bank, Federal savings and loan association or savings bank located in this Commonwealth, or savings association or any subsidiary or affiliate of such institution, whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Pennsylvania Savings Association Insurance Corporation.

(iii) Any person licensed as a mortgage broker under the act of December 22, 1989 (P.L. 687, No. 90), known as the Mortgage Bankers and Brokers Act.

(iv) Any person who is not required to obtain a license as a mortgage banker by reason of the exceptions contained in section 3(b) of the Mortgage Bankers and Brokers Act.

(v) Any person licensed as a real estate broker where the person is acting within the course and scope of that license.

(vi) Any person admitted to practice law in this Commonwealth where the person renders services within the course of such practice.

(vii) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of such regulation.

73 P.S. § 2182. The term “person” is not defined by the CSA, but the Statutory Construction Act defines a “person” as including “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991.

Since you indicate that the Contractor is not receiving compensation of any kind related to the referring of borrowers to entities that are exempt from registration as loan brokers pursuant to paragraph (2) of the definition of “loan broker,” the question of whether the Contractor is required to register as a loan broker under the CSA in order to make such referrals for Pennsylvania consumers depends upon whether the Contractor is “holding himself out as a loan broker” when making such referrals, as contemplated by paragraph (1)(iv) of the definition of “loan broker” contained in Section 2 of the CSA. Determining what constitutes “holding himself out as a loan broker” is critical in this case because pursuant to the CSA regulations, “[a] person who acts *or holds himself out as a loan broker* and is not registered with the Department under this chapter is in violation of the Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201.1-209.6).” 10 Pa. Code § 42.7 (emphasis added).

In order to address what “holding himself out as a loan broker” means under the definition of “loan broker” under the CSA, the Department looks to the legislative intent of the Pennsylvania General Assembly (the “General Assembly”) in enacting the CSA.² In order to ascertain such intent, the Statutory Construction Act provides in pertinent part that in enacting statutes, the General Assembly “intends the entire statute to be effective and certain.” 1 Pa.C.S. § 1922. The CSA provisions regarding loan brokers were enacted to provide a catch-all registration requirement for persons engaged in consumer loan brokering activity that would not otherwise require a license under the Mortgage Bankers and Brokers and Consumer Equity Protection Act, 63 P.S. § 456.101 *et seq.*, Secondary Mortgage Loan Act, 7 P.S. § 6601 *et seq.*, or Consumer Discount Company Act, 7 P.S. § 6201 *et seq.* As indicated by the plain language of the definition of “loan broker,” the General Assembly intended the broadest possible scope of coverage, including persons holding themselves out to the public as being able to provide the services for which loan broker registration is required under the CSA, even though such persons are not specifically receiving compensation for such services as contemplated by the other parts of the definition of “loan broker.” Paragraph (1)(iv) of the definition of “loan broker” does not contain any limiting language, such as “engaging in the business” of “holding himself out as a loan broker,” which could mitigate the broad scope of coverage set forth by the plain language of the definition of “loan broker.”³ Thus, it is the belief of the Department that the General Assembly intended that registration as a loan broker would be required if a person merely holds himself out as being able to provide the services for which loan broker registration is required under the CSA, regardless of whether compensation is involved. As such, it is the Department’s position that this coverage would necessarily be triggered if such person engages in any advertising or marketing efforts aimed at promoting the ability to provide such services.

² The Statutory Construction Act provides that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a).

³ The concept of “engaging in the business” as a trigger for a licensing requirement appears in most of the statutes under the Department’s jurisdiction. *See, e.g.*, 7 P.S. § 6102; 7 P.S. § 6203; 7 P.S. § 6603(a)(1) and (2); 63 P.S. § 281-3; 63 P.S. § 2311(a); 69 P.S. § 604.

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Based upon the foregoing, it is the position of the Department that “holding himself out as a loan broker” as contemplated by paragraph (1)(iv) of the definition of “loan broker” contained in Section 2 of the CSA necessarily includes any advertising or marketing efforts aimed at promoting the ability of a person to provide the services for which loan broker registration is required under the CSA, regardless of whether the person receives any compensation for such services. Therefore, provided that the Contractor does not engage in any advertising or marketing efforts aimed at promoting its ability to provide the services for which loan broker registration is required under the CSA, the Contractor will not be required to register as a loan broker under the CSA in order to engage in the referral activities as stated in this letter.

Please be advised that this letter provides the Department’s position regarding the applicability of the CSA to the factual scenario you have provided and does not address any other laws that may be applicable to the Contractor’s activities, such as the Home Improvement Finance Act (“HIFA”), 73 P.S. § 500-101 *et seq.*⁴ The statements contained in this letter regarding the applicability of the CSA to the facts presented are not binding upon any other Pennsylvania agency, including the Pennsylvania Office of Attorney General.

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. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department’s position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

Carter D. Frantz
Acting Chief Counsel

⁴ For example, this letter does not affect the ability of a home improvement contractor to advertise that it may offer its own financing of home improvements via the HIFA. Rather, this letter addresses the situation whereby a home improvement contractor holds himself out as being able to obtain financing for consumers other than by self-financing through the HIFA.