

(717) 787-1471

November 14, 1997

[redacted]

RE: [redacted]

Dear [redacted]:

This letter is in response to your correspondence dated July 7, 1997. Therein, you request a determination by the Department of Banking (the "Department") whether the activities of your client, [redacted] (the "Company") rise to the level of mortgage or consumer loan brokering within the Commonwealth of Pennsylvania.

According to your letter, the Company, by way of a website, will serve as a conduit between consumers and various financial institutions which sign up and pay the Company to be part of the service. The website will offer consumers the opportunity to submit a personal pre-qualification form for consumer credit products, such as home equity loans, mortgages, auto loans, and credit cards. When the consumer has provided basic consumer credit information, the website software will route the application (via secure software systems) to the financial institutions in the system which offer the type of credit requested to consumers meeting that customer's profile (based on geographic area and other basic criteria provided by the financial institution).

The financial institutions are duly authorized to do business in the jurisdiction in which the institutions will offer products; and the Company will be acting as an agent of those companies for the purpose of gathering the consumer information. The Company will not be engaged in any credit evaluation, credit scoring, pulling credit reports, or in any other way engaged in the determination of the customer's eligibility for credit. The website does not advertise rates, and the Company does not promise to obtain an extension of credit or to extend credit. Once the consumer inputs the pre-qualification, the financial institution will proceed with a preliminary application process, including requesting a credit report, and will be responsible for providing all state and federally required notices, including adverse action notices. After the consumer

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has submitted the request for pre-qualification, the consumer will be able to retrieve preliminary pre-qualification offers from the various financial institutions via a secure Internet mail box, which will be created specifically for that consumer. The consumer may then choose which preliminary pre-qualification offer to accept, and will then go forward with the full application process, dealing directly with the financial institution.

There is no charge to the consumer for the use of the website. The institutions will pay, to the extent permitted by law, a fee for the initial lead provided to the institution, and a fee for loans consummated from leads generated through the website. To the extent that the federal Real Estate Settlement Procedures Act requires an alternative payment schedule, the financial institution will pay a flat monthly marketing fee for the services provided by the Company, including maintaining the website and listing the financial institution as a participant in the system.

It is the position of the Department that the Company may be a “mortgage broker” within the meaning of the Mortgage Bankers and Brokers Act (“MBBA”), 63 P.S. § 456.01 *et seq.* A “mortgage broker” is defined as “[a] person who directly or indirectly negotiates or places mortgage loans for others in the primary market for consideration.” 63 P.S. § 456.02. The definition of “person” includes various types of business organizations, but also has a catch-all provision that includes “. . . any other group of individuals, however organized.” 63 P.S. § 456.02. The “primary market” is “[t]he market wherein mortgage loans are originated between a lender and a borrower.” 63 P.S. § 456.02. The Company could be a broker because it is indirectly negotiating loans for others in the primary market for consideration paid for by the lender. No mention is made in the MBBA of the source of the consideration. The provisions of the MBBA are meant to cover any mortgage loan which is “. . . negotiated, offered, or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person.” 63 P.S. § 456.18(1). Unless the Company negotiates fewer than eleven first mortgage residential loans in a calendar year, it may be determined to be a broker under the MBBA. 63 P.S. § 456.03(5). Therefore, there is a strong possibility that the Company is a broker under the MBBA, and that its activities are meant to be regulated by the MBBA.

Likewise, the Company may be a “secondary mortgage loan broker” within the meaning of the Secondary Mortgage Loan Act (“SMLA”), 7 P.S. § 6601 *et seq.* The SMLA contains a similar definition of person. 7 P.S. § 6602. Its definition of “secondary mortgage loan broker” contains the same language as the “mortgage broker” under the MBBA. 7 P.S. § 6602. Finally, the language of the scope provisions are the same as the MBBA in relevant part. 7 P.S. § 6620. Thus, if the Company is determined to be under the purview of the MBBA, it will be under the SMLA as well if it engages in more than two secondary mortgage loan transactions in a calendar year. 7 P.S. § 6603(5)(i).

If Company is brokering some loans that are not secured by a first or second lien on real property, or otherwise do not fall within the purview of the MBBA or SMLA, then it is the position of the Department

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that the Company's activities also fall within the definition of a "loan broker" under the Credit Services Act, 73 P.S. § 2181 *et seq.* A loan broker is defined as a person who "[f]or or in expectation of a consideration fee assists or advises a borrower in obtaining or attempting to obtain a loan of money . . . a line of credit or related guarantee, enhancement or collateral of any kind or nature." 73 P.S. § 2182. The service provided by the Company assists consumers in finding lenders for their loan needs by transmitting the information provided on the pre-qualification form simultaneously to multiple lenders. In return, the Company receives fees from the institution for the initial lead provided to the institution, and for the consummation of a loan with a consumer generated by a lead from the service. Therefore, the Company is required to be registered with the Department as a loan broker. 73 P.S. § 2188. The registration framework for the Credit Services Act is expected to be in place within two months, so the Department will send a preliminary questionnaire to the Company for completion. Upon receipt by the Department of the Company's satisfactory response to the questionnaire, the Department will put the Company on file and will forward a registration application after proposed regulations to implement the Credit Services Act become effective.

In summary, broker licenses may be required under the MBBA and SMLA if brokering more than eleven first mortgage residential loans or more than two second mortgage residential loans in Pennsylvania, respectively, in a calendar year. Otherwise, a loan broker registration under the Credit Services Act will need to be filed with the Department if Company is not otherwise licensed with the Department, according to 73 P.S. §§ 2182 and 2188.

The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Reginald S. Evans
Chief Counsel

RSE:CF:cf