

December 27, 2001

Re: Exemption From Licensing and Office Requirements

Dear \_\_\_\_\_ :

This is in response to your letter to the Pennsylvania Department of Banking (the "Department") in which you request that the Department confirm for you that [redacted] (the "Bank"), a Maryland state-chartered bank, is not required to obtain a license under the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. § 456.101 *et seq.*, or Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601 *et seq.*, or to establish an office in Pennsylvania, in order to originate mortgage loans secured by residential real property to Pennsylvania residents. In addition, you request that the Department confirm that the Bank is not required to qualify to do business in the Commonwealth pursuant to the Associations Code, 15 Pa.C.S.A. § 101 *et seq.*

#### Factual Background

You indicate in your letter that the Bank will advertise its mortgage loan products to, and accept mortgage loan applications from, Pennsylvania residents via its website. The Bank will have no physical presence in Pennsylvania and will make the proposed mortgage loans under the authority of its Maryland charter. Closings will be conducted at the offices of Pennsylvania attorneys and/or title companies located in Pennsylvania. The Bank will not accept deposits from Pennsylvania residents.

#### Legal Analysis

As a state-chartered depository institution, the Bank is exempt from the provisions of the MBBCEPA and SMLA in regard to the origination of residential first and second mortgage loans, respectively. *See* 63 P.S. § 456.303(b)(1); 7 P.S. § 6603(a)(3), 6623. The MBBCEPA and SMLA do not prohibit the Bank from having the residential first and second mortgage loans it makes to Pennsylvania residents closed at the offices of attorneys licensed and located in Pennsylvania or title insurance companies or agencies

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licensed and located in Pennsylvania. *See* 63 P.S. § 456.309(b); 7 P.S. § 6620(c). Thus, the Bank should consider whether the laws of the State of Maryland permit the Bank to have such loans closed in Pennsylvania at the referenced offices.

The Bank is not required to establish an office in Pennsylvania in order to originate the loans by the methods described herein. *See* 7 P.S. § 101 *et seq.* This statement is made with the understanding that no soliciting, processing, or accepting of deposits will be engaged in on the Bank's behalf by any person at the referenced closing offices. *See* 7 P.S. § 105.

The Department does not regulate the Associations Code and is therefore unable to opine on the issue of whether the Bank must qualify to do business in Pennsylvania under the Associations Code. The Pennsylvania Department of State is the agency charged with regulating the Associations Code and, as such, you should contact that agency for a determination of the issue of whether the Bank must qualify to do business in Pennsylvania.

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  
Staff Counsel

cc: Cynthia G. Wirt  
Director, Bureau of Licensing, Compliance and Consumer Services

Victor H. Seesholtz  
Manager, Compliance Division