

January 17, 2002

Re: Licensing Requirement for Wholesale Account Representatives

Dear _____ :

This is in response to your letter to the Pennsylvania Department of Banking (the "Department") in which you request that the Department address the licensing requirements under the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. § 456.101 *et seq.*, and Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601 *et seq.*, for wholesale account executives ("Account Executives") conducting activities from a residential location on behalf of a licensed mortgage lending company (the "Company"). You do not identify the Company's name.

Factual Background

You have indicated the following factual scenario in your letter. As originally proposed to the Department, Account Executives would conduct limited activities out of "home/residence" office locations, including contacting mortgage brokers and distributing company rate sheets and loan product information, and accepting loan packages from approved loan brokers via facsimile or mail in the Account Executives' homes. The Account Executives would review loan packages for conformity with Company loan programs prior to forwarding the loan packages to a licensed Company location for processing, underwriting, and decisions regarding creditworthiness.

The Department previously advised you by telephone that the Account Executives are required to be licensed as a branch of the Company for the activities listed above and that the Account Executives would be required to maintain separate telephone and facsimile numbers as well as a separate area for records storage in order to conduct such business from a residence.

You indicate that the Company now proposes to have approved mortgage brokers submit the loan packages directly to one of the Company's licensed locations, thereby bypassing the Account Executives and limiting the Account Executives' activities to contacting mortgage

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brokers and distributing company rate sheets and loan product information. The Account Executives would not handle the loan packages at any time and would not telephone or otherwise contact the public or potential borrowers from the Account Executives' "home/residence" office locations. It is the understanding of the Department that the Account Executives are W-2 employees of the Company.

Legal Analysis

The MBBCEPA states that:

[a] person is deemed to be engaged in the first mortgage loan business in this Commonwealth if that person advertises, causes to be advertised, *solicits*, negotiates or arranges in the ordinary course of business, offers to make or makes more than two first mortgage loans in a calendar year in this Commonwealth, *whether directly or by any person acting for his benefit*.

63 P.S. § 456.302 (emphasis added). Anyone engaging in the first mortgage loan business in Pennsylvania must be licensed as a mortgage broker, limited mortgage broker, loan correspondent, or mortgage banker. *See* 63 P.S. § 456.303(a).

Similarly, the SMLA states that:

a person is deemed to be engaged in the secondary mortgage loan business in the Commonwealth if:

- (i) such person advertises, causes to be advertised, *solicits*, negotiates or arranges in the ordinary course of business, offers to make or makes more than two secondary mortgage loans in a calendar year in this Commonwealth, *whether directly or by any person acting for his benefit*, but this provision shall not prohibit advertising or solicitation by a licensee under a general corporate name, logo or trade mark;

7 P.S. § 6603(a)(5) (emphasis added). Anyone engaging in the secondary mortgage loan business in Pennsylvania must be licensed as a secondary mortgage lender, secondary mortgage loan broker, or broker's agent. *See* 7 P.S. § 6603(a).

Based upon the foregoing, it is the Department's position that the Account Executives, as employees of the Company, would be required to become licensed as a branch of the Company because the Account Executives, on behalf of the Company, are soliciting mortgage loans from licensed mortgage brokers for the purpose of placing the mortgage loans with the Company. If the Account Executives were not employees of the Company, the Account Executives would be required to obtain licensure as mortgage brokers and/or secondary mortgage loan brokers pursuant to the MBBCEPA and/or SMLA, respectively, because the Account Executives, on

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behalf of the Company, are soliciting mortgage loans from licensed mortgage brokers for the purpose of placing the mortgage loans with the Company.

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

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Manager, Compliance Division

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