

December 8, 2005

Dear _____ :

This letter is in response to your inquiry regarding whether your client (the “Company”) should be licensed under the Pennsylvania Mortgage Bankers and Brokers and Consumer Equity Protection Act (the “MBBCEPA”), 63 P.S. § 456.101 *et seq.*, and the Secondary Mortgage Loan Act (the “SMLA”), 7 P.S. § 6601 *et seq.*.

Factual Background

You have indicated the following factual scenario, which is essentially quoted directly from your letter.

The Company maintains a website that will allow consumers the opportunity to compare services, products, availability, prices and potential savings between certain providers of different products and services, including insurance products, credit cards, automobile loans, or residential mortgage loans. Without being charged any fee to access the website, or any subscription or membership fee to participate, consumers who elect to use the Company’s website will be able to enter certain limited information to find companies serving their communities who may provide the goods or services in which the consumer has an interest.

In entering information into the system to find a provider, a consumer can include: the consumer’s contact information, such as name, address, and phone number; basic personal information such as employment, income, or driving record; or product interest, such as the type of credit or insurance product sought. The Company will not ask the consumer to enter a social security number, as no credit report will be pulled on the consumer, but the Company will ask the consumer to note what the consumer believes to be his or her credit standing. The Company does not verify or investigate the information entered into the system as to the consumer’s credit standing. This minimal information, constituting the “consumer profile,” will be sufficient for the consumer to undertake a search of providers of goods and services in which the consumer has an interest.

Once the consumer has entered his or her consumer profile, an automated system will compare the consumer's profile with the directory of service providers. Should the consumer profile match with providers of products in which the consumer has expressed an interest, up to four providers will be displayed to the consumer. The consumer then can elect to submit his or her contact information to the provider, and consent to being contacted directly by the provider. At this point a list of the matched providers is displayed with their phone numbers so that the consumer can initiate contact if the consumer so desires. The consumer also is advised that the provider may be contacting the consumer.

The process is entirely automated and controlled by the consumer as the system only utilizes the profile entered by the consumer to match providers. As far as the Company is involved, the process is passive and entirely in the hands of the consumer to move forward to identify a provider. If a consumer desires to pursue some form of loan or insurance product, the Company does not complete, accept, or process applications, negotiate loan terms or conditions between consumers and their selected lenders, nor collect any loan origination fees from consumers. The Company does not enter the marketplace to find a lender or loan best suited to the consumer, obtain or arrange an extension credit for the consumer, or promote approval of a loan for the consumer. In addition, the Company does not access credit reports or order appraisals, nor does it independently evaluate, verify or analyze any of the information provided by the consumer for purposes of determining the creditworthiness of the consumer or the appropriateness of any match to a service provider.

The consumer pays no fee to access or use the website, nor does the consumer pay any fee to have his or her information transmitted to a service provider. Each provider that lists its products on the Company's website will pay a modest fee ranging from \$10.00 to \$40.00, depending on the products offered, for each consumer profile transmitted. Unlike the typical mortgage broker compensation, this modest fee will not be based on (i) whether the consumer ever applies for a loan or an insurance product from the provider, (ii) the amount of the loan or the insurance policy, or (iii) the number of loans or policies approved over any given period.

Legal Analysis

The MBBCEPA provides that a person is deemed to be engaged in the "first mortgage loan business" in Pennsylvania 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. § 456.02. 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." *Id.* A "secondary mortgage broker" is defined as a "person who in the ordinary course of business, for

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a fee, directly or indirectly negotiates or arranges for others a secondary mortgage loan.” 7 P.S. § 6602.

The SMLA provides that a person is deemed to be engaged in the “secondary mortgage loan business” in Pennsylvania 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; or

(ii) such person in the ordinary course of business becomes the subsequent holder of more than two promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan; provided, however, that a person will not be deemed to be engaged in the secondary mortgage loan business if such person becomes the subsequent holder of two or more promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan solely as an investment and such person is not otherwise in the business of making or servicing such loans.

7 P.S. § 6603(a)(5).

The Department does not agree with your analysis that your client is not engaged in the first mortgage loan business based upon the activities that the Company will be conducting on behalf of the service providers as described above. Specifically, the Company is advertising and soliciting mortgage loans for consideration on behalf of the service providers via a website established and operated by the Company. The “consideration” that the Company will receive for such services is based upon the number of consumer profiles transmitted to the service provider through the website which is operated by the Company for the service provider’s benefit.

Based upon the foregoing, the Company is required to obtain a license as a mortgage broker pursuant to the MBBCEPA in order to engage in this aspect of the Company’s business. The MBBCEPA does not restrict its applicability based upon whether the consumer (first mortgage loan applicant) or some other individual or entity paid “consideration” to a mortgage broker in exchange for the brokering of a first mortgage loan.

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Similarly, it is the position of the Department that the Company is engaged in the secondary mortgage loan business based upon the activities that the Company will be conducting on behalf of the service providers, as described above. Specifically, the Company will be advertising and soliciting secondary mortgage loans for a fee on behalf of the service providers via a website established and operated by the Company. The “fees” that the Company will receive for such services are based upon the number of consumer profiles transmitted to the service provider through the website which is operated by the Company for the service provider’s benefit.

Based upon the foregoing, the Company is required to obtain a license as a secondary mortgage loan broker pursuant to the SMLA in order to engage in this aspect of the Company’s business. The SMLA does not restrict its applicability based upon whether the consumer (secondary mortgage loan applicant) or some other individual or entity paid the “fees” to a secondary mortgage loan broker in exchange for the brokering of a secondary mortgage loan.

Please be advised that this letter provides the Department’s position on the applicability of the laws under the Department’s jurisdiction to the conduct of the Program, and does not address any other Federal or Pennsylvania law that is outside the Department’s jurisdiction that may be applicable to the Program or the Company’s conduct of the Program in Pennsylvania. Specifically, it appears that some of the Company’s activities involve insurance activity that is not regulated by the Department. It is suggested that you contact the Pennsylvania Insurance Department for a definitive ruling regarding those activities.

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,

Robert C. Lopez
Assistant Counsel