



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING
333 MARKET ST, 16TH FLOOR
HARRISBURG, PENNSYLVANIA 17101-2290
(717) 772-3889

Fax (717) 787-8773
www.banking.state.pa.us

January 11, 2006

Dear Sir or Madam:

It has come to the attention of the Pennsylvania Department of Banking (the "Department") that [redacted] ("[redacted]") has made a number of secondary mortgage loans to Pennsylvania residents. It is the Department's understanding that [redacted] is a division of a national bank and is therefore not required to be licensed under the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 *et seq.*, in order to make secondary mortgage loans to Pennsylvania residents. However, at least some of the secondary mortgage loans were brokered by [redacted] ("[redacted]"), of [redacted], Pennsylvania, even though [redacted] was not licensed under the SMLA to broker secondary mortgage loans.

The loans in question were "piggyback" secondary mortgage loans, i.e., secondary mortgage loans made in conjunction with purchase-money first mortgage loans. [redacted] was specifically compensated for brokering the first mortgage loans but did not receive a specific fee for brokering the secondary mortgage loans. Apparently [redacted] was told that, because [redacted] did not receive a specific fee for the secondary mortgage loans, [redacted] was not considered to be in the secondary mortgage loan business and could therefore broker the piggyback secondary mortgage loans without being licensed by the Department.

The Department has consistently taken the position that an entity that brokers piggyback secondary mortgage loans in conjunction with first mortgage loans is considered to be engaged in the secondary mortgage loan business¹ and engaged in the business of a secondary mortgage loan broker² even if that entity does not receive a fee specifically for the piggyback secondary mortgage loans. The Department notes that, in transactions where piggyback secondary mortgage loans are employed, the underlying first mortgage loans could likely not be made without the piggyback secondary mortgage loans. Thus,

¹ See 7 P.S. § 6603(a)(5)(i).

² See 7 P.S. § 6603(a)(2). A "secondary mortgage loan broker" is defined at 7 P.S. § 6602.

[redacted]
January 11, 2006
Page 2

in receiving a fee for such a transaction, the entity is in effect receiving a fee for both the first and secondary mortgage loans. As such, regardless of whether the entity has decided to account for such a fee by attributing it only to the first mortgage loans, the Department takes the position that the fee applies to both mortgage loan transactions. Therefore, a secondary mortgage loan broker license is required in order for an entity to broker piggyback secondary mortgage loans.

[redacted] has since become licensed as a secondary mortgage loan broker and that situation is resolved. The Department is sending you this letter regarding this issue so that [redacted] can provide correct information about secondary mortgage loan licensing requirements in conjunction with piggyback secondary mortgage loans to other brokers in the future.

If you have any questions, please feel free to contact me at (717) 783-8242.

Sincerely,

James Keiser
Administrator, Non-Depository Institutions
Bureau of Supervision and Enforcement.