

January 9, 2001

[redacted]

Re: Loan Broker License Requirements Applicable to Internet Company Brokering Business Loans

Dear [redacted]:

This responds to your letter to me in which you asked the Pennsylvania Department of Banking (ADepartment@) for responses to approximately eighteen questions.

This response narrows the issues you raised generally to whether your Internet client (AInternet Company@) is required to obtain a loan broker license from the Pennsylvania Department of Banking (ADepartment@), pursuant to the statutes administered by the Department, in order for Internet Company to be legally authorized to broker, refer, or otherwise facilitate business loans and equipment leasing for business customers over the Internet.

Facts

The main facts derived from your letter for purposes of responding to the above stated general issue are as follows.

Internet Company provides loan broker or loan referral services to small and medium size business customers through its website. You indicate that Internet Company connects the potential buyer and the potential seller of various types of services including loan services and equipment leasing.

Internet Company expressly prohibits requests for consumer-type lending or financing and only is involved in brokering or referring business types of loans and equipment leasing. Internet Company's target market is business/commercial borrowers and lessees of business equipment.

You provided details regarding how Internet Company's business works. Internet Company's website allows a potential business purchaser to complete a questionnaire or request for proposal which is distributed by Internet Company to potential sellers of a particular type of service, such as loan services or equipment leasing. The business customer of Internet Company is not charged a fee for submitting the questionnaire or request for proposal. Internet Company will not assist the customer in the preparation of the questionnaire but will Afilter@ questionnaires only to vendors which provide a particular product or service required or requested in the business customer's questionnaire. A vendor may be required to pay a nominal fee to Internet Company as compensation for vendor's responsive proposal being forwarded by Internet Company to the business customer seeking such services.

Issues and Discussion

1. Whether Internet Company is required to obtain a loan broker license from the Department in order to be legally authorized to engage in the brokering or referring of business loans in Pennsylvania.

It is the Department's position that Internet Company is not required to obtain a loan broker license from the Department under the Mortgage Bankers and Brokers Act¹ (AMBBA@), Secondary Mortgage Loan Act² (ASMLA@), Consumer Discount Company Act³ (ACDCA@), or Credit Services Act⁴ (ACSA@), in order to be legally authorized to engage in the brokering or referring of business loans in Pennsylvania, subject to the following discussion.

The MBBA and SMLA generally pertain, in relevant part, to residential first and secondary mortgage loan brokering and not to brokering commercial property loans. Regarding the CDCA, the answer is more complicated. If the loan is to a corporation, then the CDCA does not apply because of the exemption in the Loan Interest and Protection Law⁵ that does not restrict the interest rate that may be charged on loans made to corporations.⁶ If the loan is less than \$10,000 and is made to a non-corporate entity, such as a sole proprietorship, at an interest rate in excess of 6% simple interest per annum, then a CDCA license would be required for Internet Company to broker such a loan in Pennsylvania unless Internet Company does not take a broker-related fee from the prospective borrower.⁷ However, if Internet Company is merely referring such a loan to a lender in the manner of a telemarketer who is being compensated based on the number of calls made and not upon the number of applications taken or loans generated, and is not involved in discussing details or otherwise taking a loan application for the lender, then the CDCA license would not be required of Internet Company.⁸

¹ 63 P.S. ' 456.01 et seq.

² 7 P.S. ' 6601 et seq.

³ 7 P.S. ' 6201 et seq.

⁴ 73 P.S. ' 2181 et seq.

⁵ 41 P.S. ' 101 et seq.

⁶ 41 P.S. ' 301(f)(iii).

⁷ See 41 P.S. ' 301(f)(v), 202, and 7 P.S. ' 6203.

⁸ See 7 P.S. ' 6203.B which provides, in relevant part, that the referring borrowers to a licensee shall not be deemed to be engaged in the business contemplated by this act [the CDCA] if no charge, no matter how denominated, for such reference is imposed on the prospective borrower by the person making the reference.®

January 9, 2001

Page 3

2. Whether Internet Company is required to obtain a license from the Department in order to be legally authorized to engage in the brokering or referring of equipment leases in Pennsylvania.

It is the Department's position that Internet Company is not required to be licensed by the Department in order to broker or refer equipment leasing for businesses, subject to the following discussion. This Department position presumes that your reference to equipment leasing involves a true lease (as opposed to a lease that really is financing a purchase) of something other than a motor vehicle⁹ as that term is defined in the Motor Vehicle Sales Finance Act⁹ (MVSFA). The MVSFA requires that an installment seller (such as a car dealer) must obtain a license in order to finance the purchase, not the true leasing, of a motor vehicle through the use of an installment sales agreement.

The Department positions in this letter pertain only to the statutes specifically referenced herein and that are within the jurisdiction of the Department to administer or enforce.

If you have additional questions specifically about your client's proposed business activities, it may be appropriate for your client to engage legal counsel authorized to practice law in the Commonwealth of Pennsylvania to provide legal advice regarding those issues.

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.

Sincerely,

Reginald S. Evans
Chief Counsel

cc: Cynthia G. Wirt
Victor H. Seesholtz

⁹ 69 P.S. 601 et seq. A motor vehicle is defined in relevant part as any self-propelled device in which, upon which, or by which any person or property is or may be transported or drawn upon a public highway, excepting tractors, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway, and excepting such devices which move upon or are guided by a track or travel through the air and shall include trailers and semi-trailers. 69 P.S. 603.1.

January 9, 2001
Page 4