



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

BETH LINDSTROM
DIRECTOR
OFFICE OF CONSUMER AFFAIRS AND
BUSINESS REGULATION

August 31, 2005

Dana Cabral
Five Hillcrest Avenue
Methuen, Massachusetts 01844

Dear Mr. Cabral:

This letter is in response to your correspondence dated May 7, 2005 to the Division of Banks (the "Division") in which you request an opinion relative to whether a licensed real estate agent may be compensated as a mortgage broker in the same real estate transaction in which he/she is compensated as a real estate broker. The matter has also been discussed with you on the telephone.

In your letter you state that you are a licensed real estate agent in Massachusetts as well as a loan officer. After discussing the matter with you on the telephone, the Division has determined that you are a loan originator for a licensed mortgage broker. You pose the question of whether a licensed real estate agent who also acts as a mortgage broker in the same transaction may be compensated for providing each service to the buyer/borrower in the transaction. You state that you have contacted the National Association of Realtors, the Massachusetts Association of Realtors, the American Real Estate Academy and the Kathy Roosa School of Real Estate and received various opinions relative to the legal and ethical issues involved in the dual representation scenario set forth in your letter. However, none of these entities have provided you with a specific legal reference on which its opinion was based.

While the Division has no regulatory jurisdiction over real estate brokers, the statute and regulation governing the licensing of mortgage brokers by the Division may provide you with some guidance. Massachusetts General Laws chapter 255E governs the licensing of mortgage lenders and mortgage brokers in the Commonwealth. Section 2 of chapter 255E contains a specific exemption from the licensing requirements for mortgage lenders and mortgage brokers for "a real estate broker or real estate salesman as defined in section eighty-seven. PP of chapter one hundred twelve who, in connection with services performed in a prospective real estate transaction, provides mortgage information or assistance to a buyer if such real estate broker or real estate sales person is not compensated for the same in addition to the compensation received from the seller for such real estate services." It is the position of the Division that this exemption from licensing in section 2 would not apply if a real estate agent is being compensated as a mortgage broker in the same transaction.

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The Division has serious concerns that there may be an inherent conflict of interest when an individual is compensated as a mortgage broker and a real estate broker in the same transaction. These conflicts develop because the duties and responsibilities of a real estate broker in the purchase of property could be different than the duties and responsibilities of a mortgage broker in the same transaction. While there may not be a specific statutory prohibition against this dual representation of a buyer/borrower, it is not an arrangement that the Division would endorse.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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