



## COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

1000 Washington Street, 10<sup>TH</sup> Floor, Boston, MA 02118-6400  
(617) 956-1500 · Fax (617) 956-1599 · TDD (617) 956-1577  
www.Mass.Gov/DOB

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

**JAY ASH**  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

**JOHN C. CHAPMAN**  
UNDERSECRETARY

**TERENCE A. MCGINNIS**  
COMMISSIONER

August 6, 2018

Timothy A. Raty  
Docutech Corporation  
1755 International Way  
Idaho Falls, ID 83402

Dear Mr. Raty:

This letter is in response to your correspondence dated May 18, 2018 to the Division of Banks (Division), in which you request an opinion relative to the requirements of Massachusetts law with respect to the question of who is authorized to provide a borrower with the Loan Estimate and Closing Disclosure, as required by federal and Massachusetts law. More specifically, you have asked whether it is permissible for a mortgage broker to distribute or prepare the Loan Estimate to a borrower, and whether it is permissible for a settlement agent to distribute or prepare the Closing Disclosure, where neither would be considered the “creditor” under Massachusetts General Laws chapter 140D.

As noted in your letter, Massachusetts General Laws chapter 140D, section 12, requires that the “creditor” provide certain Truth-in-Lending (TIL) disclosures. The Division has previously opined that only the “creditor” may provide such disclosures based upon the definition of “creditor” set forth in G. L. c. 140D, § 1, as “the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of the indebtedness or, if there is no such evidence of indebtedness, by agreement.” Accordingly, in the Division’s Opinion 98-243, issued in 1998, the Division specified that the mortgage broker should not be “preparing or distributing truth-in-lending disclosures to consumers . . . [i]t is the responsibility of the mortgage lender in whose name the loan is closed to provide truth-in-lending disclosures to borrowers and it is the mortgage lender which is responsible for the accuracy of the APR on such disclosures and other compliance issues.”

Since the issuance of the referenced 1998 opinion, the truth-in-lending landscape has changed dramatically. As you note in your correspondence, the passage of the Dodd-Frank Act required the federal Consumer Financial Protection Bureau (CFPB) to publish rules and forms that combine the disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (Regulation X). In fulfilling its mandate in 2013, the CFPB published the *Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Final Rule (TRID)* combining these disclosures. Most pertinently, under TRID, the Loan Estimate replaces the previously-required Good Faith Estimate and early TIL disclosure, while the Closing Disclosure replaces the HUD-1 and final TIL disclosure. TRID expressly provides that the Loan Estimate may be prepared and provided to the borrower by the mortgage broker. *See* 12 C.F.R. 1026.19(e)(1)(ii). Likewise, TRID specifically

Mr. Timothy A. Raty

August 6, 2018

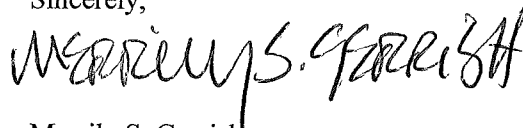
Page 2

authorizes a settlement agent to provide the Closing Disclosure. See 12 C.F.R. 1026.19(f)(1)(v). Both provisions, as well as the CFPB's official commentary, make clear that while a mortgage broker or settlement agent may prepare and provide the identified disclosures, the creditor ultimately remains responsible for ensuring that the requirements of the rule have been satisfied.

In light of the significant changes at the federal level, the Division sought to amend and streamline its regulation to largely provide that compliance with the provisions of the federal rule constitutes compliance with the corresponding provisions of 209 CMR 32.00. In doing so, the Division acted pursuant to the authority granted in G. L. c. 140D, § 3(a) to promulgate regulations with such differentiations as necessary to facilitate compliance with the law. As such, the Division's regulation, 209 CMR 32.19, *Certain Mortgage and Variable-rate Transactions*, expressly provides that compliance with 12 C.F.R. 1026.19 constitutes compliance with 209 CMR 32.19. Accordingly, it is the position of the Division that, consistent with 12 C.F.R. 1026.19(e)(1)(ii), a mortgage broker is authorized to prepare or distribute the Loan Estimate under Massachusetts law. Likewise, consistent with 12 C.F.R. 1026.19(f)(1)(v), a settlement agent is authorized to prepare or distribute the Closing Disclosure under Massachusetts law. Consistent with TRID and the CFPB's official commentary, the Division emphasizes that a creditor who chooses to permit the applicable disclosures to be prepared or provided by a mortgage broker or settlement agent remains responsible for ensuring compliance with all applicable law.

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

Sincerely,



Merrily S. Gerrish  
Deputy Commissioner of Banks  
and General Counsel

O18004