



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

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THOMAS J. CURRY
COMMISSIONER

March 20, 2001

Joseph T. Baptista, Jr.
Treasurer and CFO
Mechanics Co-operative Bank
308 Bay Street
Taunton, Massachusetts 02780

Dear Mr. Baptista:

This letter is in response to your correspondence dated December 27, 2000 on behalf of Mechanics Co-operative Bank (the "Bank") to the Division of Banks (the "Division") in which you request an opinion relative to whether the Bank may pay referral fees to third parties in connection with a consumer loan.

In your letter you state that the Bank's Board of Directors has approved the payment of a referral fee to a third party, such as a manufactured home park owner, contingent upon the approval and funding of a manufactured or mobile home loan. The referral fee would be a percentage of the loan amount and be paid by the Bank. The cost of the referral fee would not be passed on to the borrower but would be disclosed to the borrower at or before the closing of the transaction. An independent appraisal of the mobile home would be mandatory and underwriting guidelines would conform to secondary market guidelines. You ask if payment of this referral fee would be a violation of any banking statute in the Commonwealth.

There is no statute or regulation in the Commonwealth which prohibits the payment of referral fees to a third party in connection with a consumer loan transaction. However, in the event that the consumer loan is for an amount of \$6,000.00 or less and the interest rate on such loan, including interest and expenses, exceeds 12% per annum, the loan is considered a small loan for the purposes of Massachusetts General Laws chapter 140, section 96, the Small Loans Act, so-called. Under said section 96, any person, directly or indirectly, engaging, for a fee, bonus, commission or other consideration, in the business of negotiating, arranging, aiding or assisting a borrower or lender in procuring a small loan is deemed to be engaged in the business of making small loans and must be licensed as a small loan agency pursuant to chapter 140, section 96.

It is the position of the Division that there is no statute or regulation which prohibits the Bank from paying a referral fee to a third party in connection with a consumer loan. However, the payment of the referral fee may trigger a licensing requirement for the third party if the loan is a small loan under said chapter 140, section 96.

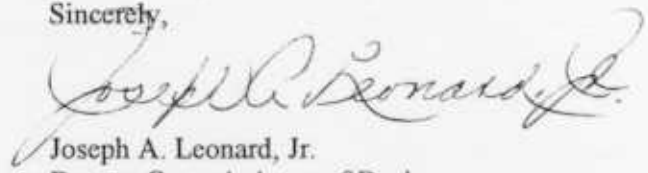


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Additionally, a license may be required for a mortgage broker under the provisions of chapter 255E of the General Laws in certain circumstances. Your letter makes reference to manufactured homes without definition. The Division is aware that in some cases manufactured homes become affixed to real property. In such fact patterns the definitions of said chapter 255E could be triggered. You or Bank counsel should review those definitions and your proposal. If real property is involved the provisions of the federal Real Estate Settlement Procedures Act should also be reviewed.

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,

A handwritten signature in cursive script, appearing to read "Joseph A. Leonard, Jr.", written in dark ink.

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

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