



The Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

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GOVERNOR

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THOMAS J. CURRY
COMMISSIONER

February 26, 2001

David F. Hadlock, Esq.
Hadlock Law Offices, P.C.
40 Speen Street, Suite 203
Framingham, Massachusetts 01701

Dear Mr. Hadlock:

This letter is in response to your correspondence dated January 26, 2001 to the Division of Banks (the "Division") relative to two issues raised by the recent amendments to 209 CMR 32.32 and 209 CMR 42.12A (hereinafter, the "Regulations"). In summary, the Regulations cover high cost home loans. The Regulations were filed with the Secretary of State on December 8, 2000 with an effective date of January 22, 2001 set out in CMR 32.32 (8) and 42.12A (4). Based upon several requests, the Division delayed the effective date for the Regulations from January 22 to March 22, 2001.

Your letter asks whether the delay related to enforcement of the Regulations by the Division or whether the Regulations were officially changed or amended to reflect the March 22, 2001 date. Upon request, the Division filed Emergency Regulations with the Secretary of State on January 23, 2001 which officially changed the effective date of the Regulations to March 22, 2001. The Emergency Regulations were subsequently published in Massachusetts Register #915 on February 16, 2001. The Division is proceeding to complete the process associated with the filing of Emergency Regulations.

The second question raised in your letter concerns a specific provision of 209 CMR 32.32 (2)(a)3 on the definition of points and fees. Under the definition, points and fees include, among other things, 209 CMR 32.32(2)(a)3: "all items listed in 209 CMR 32.04(3)(g) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge and the charge is not paid to any affiliate of the creditor." You seek the Division's determination that the latter provision requiring the inclusion of payments to "an affiliate of the creditor" does not apply to an "affiliate" of a broker, assuming that the broker and creditor are not affiliated themselves. Absent an affiliation between the broker and creditor, it is the position of the Division, that the cited provision of 209 CMR 32.32(2)(a)3 does not extend to payments to an affiliate of a broker.



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

Sincerely,

A handwritten signature in cursive script, reading "Joseph A. Leonard, Jr.", written in dark ink.

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

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