



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

August 2, 2001

Philip L. Goduti, Esq.
Treasurer
and General Counsel
New England Merchants Corp.
P.O. Box 750015
Arlington Heights, Massachusetts 024750-0015

Dear Mr. Goduti:

This letter is in response to your correspondence dated February 21, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to whether the fee or premium paid by the original lender to a secondary market purchaser in a residential mortgage transaction must be disclosed on the HUD-1 settlement statement.

In your letter, you state that it is your understanding that in a mortgage transaction closed in the name of a licensed mortgage lender, the HUD-1 settlement statement should not include any information of any premium resulting from the sale of the loan. You then raise the issue of table funded loans in the Commonwealth.

Although the Division is not the regulatory agency which is responsible for promulgating and enforcing the Real Estate Settlement Procedures Act (RESPA) regulations of which the HUD-1 settlement statement is part, the Division does review compliance with the regulation during its compliance examination of licensed mortgage lenders. The HUD-1 settlement statement must disclose fees paid to a mortgage lender and mortgage broker as part of the mortgage loan transaction. The Division is not aware of any existing provision for disclosure of premiums paid in connection with a subsequent sale of the mortgage loan.

The second issue raised in your letter is the issue of table funded loans, so-called. It has been the consistent position of the Division that under Massachusetts General Laws chapter 255E residential mortgage loans must close in the name of a licensed mortgage lender in the Commonwealth or an entity exempt from licensing even if the funds are actually provided by a third party and the loan is immediately assigned to the third party. The Division does not recognize table funded mortgage loans as exempt from the licensing provisions of chapter 255E.



Philip L. Goduti, Esq.
Page Two
August 2, 2001

Relative to the treatment of a payment to mortgage brokers, it has been the Division's consistent position that payment to a broker by a creditor, also known as "yield spread premium", is not included in the definition of points and fees. However, all compensation paid by the borrower must be included in the calculation of points and fees.

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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