



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

December 11, 2001

Bart Miller
Equity Guard
161 Saint Matthews Avenue, Suite 17
Louisville, Kentucky 40207

Dear Mr. Miller:

This letter is in response to your correspondence of February 20, 2001 to the Division of Banks (the "Division") requesting an opinion as to the licensing requirements, if any, for Equity Guard (the "Company") to offer certain Programs to homeowners in the Commonwealth.

Your letter states that the Company proposes to engage in two Programs. The first is a bi-weekly mortgage Program. This Program would be offered by the Company and would be totally independent of the lender. The Company would act solely as an agent for the borrower. The Company would receive funds from the borrower and in turn would make electronic fund transfers to the mortgage lender. Your letter states that by making 26 bi-weekly payments to the mortgage lender instead of 12 monthly payments, the borrower's mortgage loan could be paid off several years earlier. In addition, the Company offers a Program which you state is similar to having an escrow account on a mortgage loan. Under this Program, the Company would electronically debit a customers account monthly for the appropriate amount needed to pay the borrower's annual tax and insurance bills. The Company would then act as agent for the borrower in making such payments.

Massachusetts General Laws chapter 255E requires the licensing of certain mortgage lenders and brokers in the Commonwealth. A mortgage lender is defined as "any person engaged in the business of making mortgage loans, or issuing commitments for mortgage loans". The bi-weekly mortgage program as described is an optional service offered to borrowers which provides them with an alternative method of payment for an existing mortgage loan. The Program as described does not involve the making of mortgage loans or issuing commitments for mortgage loans. Additionally, these services would not fall within the definition of a mortgage broker under said chapter 255E. The other Program proposed to be offered which is described in your letter as the Company acting as escrow agent for the borrower in the payment of certain expenses is not subject to any statute or regulation under the jurisdiction of the Division.



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Accordingly, it is the position of the Division based on the facts provided, that there are no licensing requirements in the Commonwealth applicable to either Program. The issuance of this opinion is not to be construed as a review, approval or endorsement of either Program by the Division, particularly since a consumer could perform all elements of either Program directly without the need of a third party.

The Division's position may change if the Company were to do direct solicitations to mortgagors and if such solicitation made reference to the mortgagor's existing lender. In that situation, the Division could find that the Company may be operating in violation of section 37 of chapter 167 of the Massachusetts General Laws. That statute makes it unlawful to transact business in a manner which would lead the public to believe the entity was a bank. Additionally, such solicitation could trigger the Commonwealth's Consumer Protection Act, chapter 93A of the General Laws. That Act prohibits unfair and deceptive business practices.

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,



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

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