



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

June 21, 2001

Agnes Mendoza
Compliance Department
New Century Mortgage Corporation
18400 Von Karman, Suite 1000
Irvine, California 92612

Dear Ms. Mendoza:

This letter is in response to your correspondence dated May 1, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to prepayment penalty language in the promissory note used by New Century Mortgage Corporation ("New Century") in the Commonwealth.

In your letter, you provide a copy of the standard mortgage note required by New Century in a mortgage transaction. Paragraph 4 of the promissory note sets forth the prepayment penalties applicable to the loan in the event of prepayment by the borrower. One provision states that if a partial prepayment is made within the first thirty-six months, in any twelve-month period that such prepayment exceeds twenty percent of the original loan amount, the borrower shall pay a prepayment charge equal to two percent on the amount prepaid. The paragraph further describes the prepayment penalty when the loan is prepaid in full.

The Division has reviewed the language of Massachusetts General Laws chapter 183, section 56 relative to mortgage loans in the Commonwealth. Said section 56 limits prepayment penalties on mortgage loans secured by first liens on a dwelling house of three or less families and occupied in whole or in part by the mortgagor. The limits established by the statute are if the loan is prepaid within the first year, the lender may collect the balance of the first year's interest or three months' interest, whichever is less; if the loan is prepaid within thirty-six months from the date of the note for the purpose of refinancing with another institution, an additional payment not in excess of three months' interest may be required.



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There is no language found in section 56 which would authorize a prepayment penalty for a partial prepayment of a mortgage note. Therefore, it is the position of the Division that the language presently included in the promissory note used by New Century which assesses a two percent penalty for a partial payment of a mortgage is not in compliance with said chapter 183, section 56. Furthermore, the prepayment provision, as written does not comply with said section 56 and should be revised accordingly.

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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