



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

July 19, 2001

Arthur B. Axelson, Esq.
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869

Dear Mr. Axelson:

This letter is in response to your correspondence of April 26, 2001 to the Division of Banks (the "Division") on behalf of Allstate Bank (the "Bank"), a federally chartered savings bank relative to the regulation of certain mortgage broker activities performed by insurance agents of its affiliate, Allstate Insurance Company ("Allstate Insurance").

According to your letter, Allstate Insurance contracts with insurance agents that are not compensated as W-2 employees of Allstate Insurance but are independent contractors. The Bank has proposed an arrangement whereby the insurance agents/independent contractors ("Agents") would originate residential mortgage loans and perform mortgage brokerage services on behalf of the Bank. The Bank would require each independent contractor to enter into a written agreement whereby 1) the independent contractor must originate mortgage loans exclusively for the Bank, 2) liability for the independent contractor's actions related to originating mortgage loans would be assumed, and 3) the independent contractor would not accept any fees for its services or those of any third party (e.g. appraiser) from a consumer. Any fees related to the origination of mortgage loans would be paid directly to the Bank after the consumer is put in touch with a Bank employee sales consultant. All mortgage loans would close in the Bank's name.

A "mortgage broker" is defined in General Laws chapter 255E, section 1 as "any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others." Your letter states that the Agents will originate mortgage loans and provide mortgage brokerage services. The Division would consider these to be activities within the definition of "mortgage broker". While your letter states that the Agents will not be accepting any compensation or third-party fees from Massachusetts consumers, the Division infers from the independent contractor arrangement, for purposes of this analysis and absent contrary information in your letter, that the Agents will be receiving some form of compensation or gain or expectation of same in return for their services. The Division has historically applied a broad interpretation to "compensation or gain" in this context.

General Laws chapter 255E, section 2 provides, in part, that the provisions of this chapter shall not apply to certain named entities which include a federal savings bank and an insurance company.



Arthur B. Axelson, Esq.

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Accordingly, as recognized in your letter, the Bank and Allstate Insurance would be exempt from the licensing and other provisions of the statute. The Division recognizes that bona fide employees of such exempt entities would not be required to obtain individual mortgage lender and/or broker licenses. Chapter 255E contains a specific licensing exemption for employees of licensed lender or brokers and for persons (e.g. independent contractors) associated with and working under the direction of a licensed mortgage broker or lender. The Division has implemented a process which recognizes the exemption for persons associated with and under the direction of a licensed mortgage broker or licensed mortgage lender, as the statute provides. It has, however, been the consistent position of the Division that this exemption is not available to persons who have some form of arrangement with exempt entities such as the Bank and Allstate Insurance.¹ Therefore, the Agents as described in your letter, would be required to obtain individual licenses from the Division as mortgage brokers.

The Division has legitimate consumer protection concerns with regards to individuals acting as mortgage brokers without appropriate educational and/or business experience to engage in that profession. The Division's implementing regulation to Chapter 255E requires that an applicant demonstrate that it has the necessary educational and business experience to engage in the business of a mortgage broker. The Division's Regulatory Bulletin 5.1-102 sets forth the required experience and education requirements for mortgage lenders and brokers. The Bulletin is accessible on the Division's website at www.state.ma.us/dob/.

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

enclosure

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¹ See Opinion of the Division of Banks #97-085 enclosed.



WILLIAM F. WELD
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May 5, 1997

Mr. Mark Mohamed
Peoples Federal Savings Bank
435 Market Street, P. O. Box 35036
Brighton, MA 02135-0001

Dear Mr. Mohamed:

This letter is in response to your request to the Division of Banks (the "Division") submitted by fax and dated April 25, 1997 relative to a proposed mortgage broker independent contractor agreement (the "Agreement") which Peoples Federal Savings Bank ("Peoples") intends to use to govern its relationship with independent mortgage brokers. You also discussed this matter with Dennis Otis, Chief Director of the Division's Consumer Compliance Unit.


G. L. chapter 255E governs the licensing of certain mortgage lenders and brokers doing business in the Commonwealth. Section 2 of chapter 255E lists the types of financial institutions and other entities which are exempt from the licensing requirements. A federal savings bank is included within this list of exempt entities.

The issue presented by your request is whether an individual providing mortgage brokering services to Peoples pursuant to the proposed Agreement would be eligible for an exemption under section 2 of chapter 255E as a person "associated with a licensed mortgage broker or mortgage lender...under the direction of said licensed broker or lender".

It is the position of the Division that this exemption is not available to persons who have an association with exempt entities. The Division has implemented a process which recognizes this exemption for persons associated with and under the direction of a licensed mortgage broker or licensed mortgage lender, as the statute provides. Therefore, a person acting in the capacity of a mortgage broker, as defined in section 1 of chapter 255E, who is providing services to Peoples for compensation or gain would be required to obtain a license from the Division as a mortgage broker. The Division declines to opine on the substance of the proposed Agreement as this is a contractual matter between Peoples and proposed brokers and outside the Division's jurisdiction.

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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