



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

October 9, 2001

Scott Donahue
3181 Linwood Avenue
Suite 22
Cincinnati, Ohio 45208

Dear Mr. Donahue:

This letter is in response to your correspondence dated August 27, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to whether certain business activities which you propose to provide on the internet in connection with residential mortgage loans would require a license in the Commonwealth.

In your letter, you state that your office is in Cincinnati, Ohio and you are considering conducting certain activities through the use of an internet web site. Your business would consist of maintaining a large database of local and national mortgage lenders. You would collect data from potential borrowers on the web site and distribute the information to multiple lenders who lend in the area where the property is located. The information provided to the lenders would be coded to maintain the confidentiality of the potential borrowers. The lenders will in turn provide loan terms which they would be willing to provide to borrowers based on the information. You would then forward the loan terms to the borrowers so that they could contact the lender directly.

You further state that you will not work for any lenders, brokers or other financial institutions and you will not accept fees or commissions from any lenders or brokers. You will not engage in the application or underwriting process for these loans and you will not service loans. You state that you will charge a small fee to the borrowers for the services provided on your internet web site.

Massachusetts General Laws chapter 255E, section 2 states that no person may act as a mortgage lender or mortgage broker in the Commonwealth without first obtaining a license from the Division. A mortgage broker is defined as "... any person who for 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." Said chapter 255E makes no distinction between whether these activities are conducted in person or on the internet.



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Based on the facts as presented in your letter, you would be receiving a fee from a borrower for assisting in the placement of residential mortgage loans in the Commonwealth through your web site. Therefore, it is the position of the Division that the business activities described in your letter would meet the definition of a mortgage broker and you would be required to obtain a mortgage broker's license from the Division. However, the Division would point out that this licensing requirement would only be triggered if you assisted in the placement of five or more residential mortgage loans in a consecutive twelve month period in the Commonwealth.

For further licensing information, you should review Regulation 209 CMR 42.00, Regulatory Bulletin 5.1-102 which outlines the experience and education requirements for mortgage brokers and lenders, and the mortgage broker license application which are available on the Division's web site 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 by the Division.

Sincerely,



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

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