



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

December 13, 2001

Karen L. Emmett, Vice President
Lending Compliance
Salem Five Cents Savings Bank
210 Essex Street
Salem, Massachusetts 01970

Dear Ms. Emmett:

This letter is in response to your correspondence dated August 15, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to whether premium rates on adjustable rate mortgage loans in the Commonwealth are no longer prohibited if the loan is saleable on the secondary market. Your request was included in your response to a Compliance Examination and it was not forwarded to the Legal Unit until September 25, 2001. This is the reason for the delay in this response to your request.

In your letter, you state that the value of the index to which adjustable rate mortgage loans are tied is at its lowest level in many years. The downward trend in interest rates has brought the issue of premium rates into the discussion of the pricing of these loans. You ask if premium rates are no longer prohibited as a result of the passage of Chapter 222 of the Acts of 1998 which added subsection C to Massachusetts General Laws chapter 167E, section 2.

The Division's Opinion No. 86-1, effective April 7, 1986, prohibited the use of premium rates on adjustable rate mortgage loans. "Premium rate" is defined in Opinion No. 86-1 as an interest rate greater than the sum of the index plus the margin.

However, said chapter 167E, section 2, subsection C grants state-chartered banks the authority to make or acquire any residential mortgage loan, other than a reverse mortgage loan, which is saleable in the secondary market. It is your position that if an adjustable rate mortgage loan with a premium rate is saleable in the secondary market that it is no longer prohibited by Opinion No. 86-1.



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Adjustable rate mortgage loans in the Commonwealth are governed by Massachusetts General Laws chapter 167, section 2, subsection B, paragraph 10 and Regulatory Bulletin 1.3-101. Said paragraph 10 authorizes state-chartered banks to make or acquire mortgage loans of the "... several classes or types specified in this chapter ..." which provide for a variation in the rate of interest subject to conditions and restrictions imposed by the Commissioner. Adjustable rate mortgage loans of the several classes and types contained in chapter 167E are subject to the limitations and conditions imposed under paragraph 10 and Regulatory Bulletin 1.3-101 as well as Opinion No. 86-1. Subsection C is part of chapter 167E. Subsection C of section 2 of chapter 167E does not negate the provisions of paragraph 10 of subsection B of section 2 of chapter 167E and Regulatory Bulletin 1.3-101 and Opinion No. 86-1.

Although Subsection C of section 2 of chapter 167E does not negate the provisions of chapter 167E, section 2B(10), Opinion 86-1 is hereby modified to allow premium rates on adjustable rate mortgage loans due to the present economic conditions and the downward trend in interest rates and value of the economic indices used to establish interest rates. The Division finds that the market conditions which existed at the time of the issuance of Opinion No. 86-1 do not currently exist. The premium rate restrictions of Opinion 86-1, however, shall be reimposed if the Division's examiners' reviews show that interest rate conditions have changed or that abuses have occurred.

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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