



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

March 6, 2002

Mr. Hough Marshall
7880 Bent Branch Drive, Ste. 150
Dallas, Texas 75063

Dear Mr. Marshall:

This letter is in response to your correspondence of February 22, 2002 to the Division of Banks (the "Division") relative to the mortgage broker licensing requirements, if any, applicable to certain activities proposed to be performed on behalf of a licensed mortgage lender in the Commonwealth.

According to your letter, a licensed mortgage lender intends to outsource to a separate entity (the "Company") some of the customer contact and information gathering functions involved in its loan business.

The arrangement would involve the lender identifying individuals it would like contacted and instructing the Company to contact them on its behalf. The individuals would include those who have asked to be contacted regarding obtaining a mortgage or home equity loan, those the lender believes would be interested in obtaining a mortgage or home equity loan and those existing customers that the lender believes might be interested in additional products offered by the lender. The lender may also have the Company contact customers who have started but not completed a mortgage or home equity application with the lender. In each situation, the Company would present only products, rates, and other information that are authorized by the lender and that are otherwise available to customers who access the lender's web site or from speaking directly with the lender's employees. The Company would not solicit, place, or negotiate loan applications for itself, in its own name. The Company would not participate in the processing, underwriting, or approval of loan applications submitted to the lender. The Company would not charge or collect any fees from the customer and would not accept any visits from the public to its offices. All communications by the Company will be made in the name of the lender, unless otherwise required by applicable law.

In addition, the Company will collect information needed to complete an application for a mortgage or home equity loan from the lender from individuals the Company contacts at the request of the lender or from individuals who respond to lender marketing campaigns. The Company would use the same application form that the customer would use if entering the information themselves on the lender's web site or if they were speaking directly with a lender employee.



The lender will compensate the Company for the performance of these services on an hourly basis based on the actual time spent on behalf of the lender, at the market rate for such services. The Company will not receive any fees from customers of the lender and will not be paid by the lender based on the value or number of closed loans or other indicator of loan value or volume.

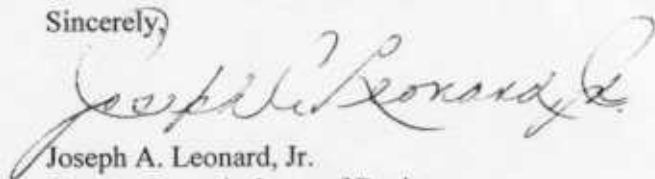
The question presented by your inquiry is whether the activities as described fall within the definition of "mortgage broker" set forth in section 1 of Massachusetts General Laws chapter 255E so as to require licensing under that statute. A mortgage broker is defined as any person who for compensation 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.

The Division has previously opined on similar scenarios to those described in your letter. Opinion 00-146¹ (see copy enclosed for your review) concluded that a mortgage broker license was not required for a company to place initial phone calls to prospective customers listed in a client database provided by a licensed lender. The Division has recognized, on a case-by-case review method, that certain activities deemed administrative or clerical in nature, performed on behalf of a licensed lender or broker, do not necessarily trigger a licensing requirement. You should also review Opinion 98-266² (see copy enclosed) discussing particular activities including answering calls from customers, taking application information, providing specific rate and product information.

Based on the information provided in your letter, it is the Division's position that the activities described do not fall within the definition of mortgage broker. Accordingly, the Company would not be required to obtain a broker license to engage in these activities on behalf of a properly licensed or exempt lender. The Division cautions, however, that any variation in these activities may result in a different outcome. For example, the degree to which the Company may engage in counseling or explanations with respect to various programs may trigger a licensing requirement. See Opinion 98-266. The exemptions within section 2 of said chapter 255E are not applicable to this situation.

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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¹ Letter to Phillip K. Johnson dated November 9, 2000.

² Letter to Jason Gryder dated February 25, 1999.



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One South Station

Boston, Massachusetts 02110

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER

November 9, 2000

Phillip K. Johnson
Lathrop & Gage
Suite 2600
2345 Grand Boulevard
Kansas City, Missouri 64108-2684

Dear Mr. Johnson,

This letter is in response to your correspondence dated October 9, 2000 to the Division of Banks (the "Division") in which you request an opinion as to whether your client's proposed activities would require a mortgage broker's license pursuant to Massachusetts General Laws chapter 255E, section 2.

Your letter states that a licensed mortgage lender or broker (the "Company") will retain your client as an independent contractor for the limited purpose of placing phone calls to individuals listed in a prospective client database provided by the Company. Your client will ask the prospective client whether they wish to speak to a representative from the Company about refinancing or obtaining a second residential mortgage. If an affirmative response is received, your client will inform the individual that a mortgage lender or broker will contact them soon, whereas if a negative response is received your client will remove the individual from the prospective client database. Your client will not initiate any calls beyond this initial call.

Your client will not negotiate any terms of a prospective mortgage, quote interest rates or loan amounts. Additionally, your client will not obtain personal or financial information from individuals, perform any calculations designed to determine loan amount, or offer information as to the type of loan for which an individual may qualify. Your client will be paid hourly and not on a commission or other basis dependent on whether a mortgage loan is actually consummated.

Massachusetts General Laws chapter 255E, section 1 defines mortgage broker 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 specifically states that your client will simply ask the potential borrower if he/she is interested in speaking with a representative of a licensed entity. The list of potential borrowers is provided by the Company. There are no other services provided to the Company. Based on the information contained in your letter, it is the position of the Division that your client's proposed activities would not fall within the definition of a mortgage broker. Please be advised, however, a different result could occur if your client were to request information from



the consumer or otherwise engage in extended communications beyond that which is indicated in your letter.

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,

A handwritten signature in cursive script, appearing to read "Joseph A. Leonard, Jr.", written in dark ink.

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

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The Commonwealth of Massachusetts

*Office of the Commissioner of Banks
Leverett Pattonstall Building, Room 2004
100 Cambridge Street
Boston, Massachusetts 02202*

ARGEO PAUL CELLUCCI
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

February 25, 1999

Mr. Jason Gryder
AnyTime Access, Inc.
1750 Creekside Oaks Drive
Sacramento, California 95833

Dear Mr. Gryder:

This letter is in response to your correspondence to the Division of Banks (the "Division"), dated December 15, 1998. As stated in your letter, AnyTime Access, Inc. is an outsource provider of application and loan recommendation services to financial institutions. You seek a determination as to any licensing requirements in the Commonwealth for the services you propose to provide. The general information provided raised certain questions. The Division contacted you and left two messages to call the Division about your December 15th letter. Since to date you have not responded, the Division will provide a general response to your letter.

According to your letter, AnyTime Access, Inc. provides a call center for financial institutions which contract with it. The contract would require you to answer a unique 800-line call initiated by the institution's customer. The customer is calling to seek information on a first mortgage. The call would be answered in the name of the customer's financial institution. The call may result in AnyTime Access, Inc. taking an application from the customer (emphasis added). Any such application would be delivered to the institution electronically and the institution would do the processing, approval, documentation and closing. AnyTime Access, Inc. would bill the financial institution per minute or a per application basis regardless of the application results.

You state that, based upon the above information, no licensing is required in the Commonwealth of Massachusetts.

The Division cannot concur with your position. Massachusetts General Laws



Jason Gryder
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chapter 255E defines a mortgage broker 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." AnyTime Access, Inc. will be receiving compensation or gain on a per minute or per application basis for its actions in placing or assisting in placing mortgage loans on residential property.

The Division's review of the limited information provided considered the services of AnyTime Access, Inc. under three separate and distinct scenarios. The most basic service that could be provided by AnyTime Access, Inc. under the information provided would be to provide specific rate information on loans to be made by the lender whose unique 800 line was called by a consumer. AnyTime Access, Inc.'s providing such specific and limited information would not trigger any licensing requirements under said chapter 255E.

Similarly, providing information about a specifically requested product or mortgage program would not trigger the law. However, a different result could occur the more counseling or explaining various options of a mortgagor that AnyTime Access, Inc. provided directly over the telephone.

Finally, providing certain mortgage information on a separate and distinct, dedicated telephone line for each separate lender would not require a license. However, if AnyTime Access, Inc. could inform a customer calling the dedicated line of one lender that another lender had the product or mortgage program they were seeking, then a license would be required under chapter 255E.

Absent more detailed information on the specific activities of AnyTime Access, Inc., the Division can not make a determination on the status of AnyTime Access, Inc. under chapter 255E of the General Laws.

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

JAL/mhc
Enclosures
98-266