

The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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July 8, 2004

Nancy R. Wilsker, Esq.
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Dear Ms. Wilsker:

This letter is in response to your correspondence of March 24, 2004 to the Division of Banks (the "Division") on behalf of Guidance Residential, LLC ("Guidance") currently a licensed mortgage lender and broker in the Commonwealth.

According to your letter, Guidance is in the business of financing and refinancing home purchases. Its purchase-money and refinancing programs are unusual in that they are designed to comply with the religious precepts of Islamic law, known as "Sharia", which prohibit the paying and receiving of interest on loans. Your letter states that these prohibitions pose a significant obstacle to the acquisition of a home by Muslims who are not in a position to make an all-cash purchase.

Under the Sharia compliant arrangements, a third party, an LLC that is wholly owned by Guidance Holding Corporation, a wholly-owned subsidiary of Guidance, becomes a co-owner of the property with the consumer. The obligation to pay is then styled as an installment purchase transaction pursuant to which the consumer agrees to make monthly payments to the co-owner that consist of an "Acquisition" component (equivalent to the repayment of principal) and a "profit" component (equivalent to the payment of interest). These monthly payments result in a scheduled transfer of the co-owner's ownership interest to the consumer calculated in the same manner as a traditional amortization schedule. Since Sharia permits the sharing and transfer of ownership interests between co-owners, your letter states that this structure complies with Islamic law.

One question presented in your letter is whether Guidance can proceed to do business in Massachusetts on the basis of its current licensing or whether the LLCs must also be licensed as mortgage lenders. Guidance creates a separate LLC (or a separately named series of a series-style LLC under Delaware law) for each transaction for a variety of reasons, including technical issues (to avoid the merger of Guidance's lender and ownership interests) and liability purposes (to shield customers' ownership interests from liabilities stemming from other customers' homes). The LLC is the payee of the consumer's obligation to pay. According to your letter, the consumer deals only with Guidance, a licensed mortgage lender and mortgage broker in the Commonwealth. Guidance is the entity to which the



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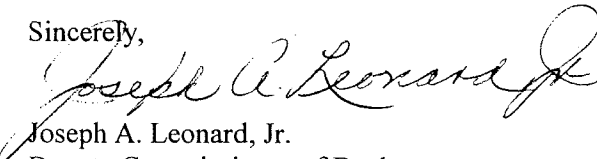
consumer submits an application for participation in the program. Guidance issues all disclosure documentation required by law; the "Co-ownership Commitment Agreement", comparable to a Commitment Letter in a traditional financing, is entered into by the consumer and Guidance. All customer service personnel are employees of Guidance and all terms and conditions of the transaction are negotiated with Guidance. The LLC affiliate of Guidance or co-owner does not determine any term of the transaction and has no employees. The LLC is created by Guidance for the specific purpose of co-owning the property, is under the direct control of Guidance and functions exclusively at the direction of Guidance. The co-owner has no separate assets, employees, or business objectives. The co-owner does not originate the transaction for Guidance or perform any other services to assist Guidance in originating the transaction. The LLC does not receive a fee from Guidance as a result of the transaction.

As you know, G.L. c. 255E requires the licensing of mortgage lenders and mortgage brokers. A mortgage lender is defined as any person engaged in the business of making mortgage loans or issuing commitments for mortgage loans. 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. Based on the information provided in your letter, Guidance is making mortgage loans as a lender and is currently properly licensed as such in the Commonwealth. The LLCs to be utilized are indirect wholly-owned subsidiaries of Guidance and, while servicing as payee of the loans, they continue to be owned and controlled by Guidance. It is the Division's position that the LLC would not have to obtain an independent license as a mortgage lender under the proposal as described. Additionally, under the described scenario the LLC would not be engaged in activities the Division would deem as falling within the definition of mortgage broker and would not require such a license.

You also state that Guidance typically sells its transactions "servicing retained" and then outsources its servicing obligations to a subservicer. You inquire as to whether the activities of Guidance would require it to obtain a collection agency license and/or register as a third-party loan servicer pursuant to St. 2003, c. 130 effective February 24, 2004. It is the Division's position that Guidance is not engaged in the collection of debt owed to another as set forth in the definition of "debt collector" in G.L. c. 93, §24. Persons engaged in the business of a third party loan servicer are now required to register with the Division. G.L. c. 93, §24 defines third party loan servicer as a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another. Based on the information submitted in your letter, Guidance would not be considered to be a third party loan servicer required to register with the Division.

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