



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

BETH LINDSTROM
DIRECTOR
OFFICE OF CONSUMER AFFAIRS AND
BUSINESS REGULATION

April 26, 2005

Kevin F. Kiley, Esq.
Executive Vice President
Massachusetts Bankers Association, Inc.
73 Tremont Street, Suite 306
Boston, Massachusetts 02108-3906

Dear Mr. Kiley:

This letter is in response to your correspondence dated March 16, 2005 to the Division of Banks (the "Division") on behalf of the member banks of the Massachusetts Bankers Association, Inc. (the "Association"). The specific issue raised in your letter concerns the authority for state-chartered banks to make adjustable rate mortgage loans ("ARMs") under the provisions of Chapter 461 of the Acts of 2004 (the "Act"). Several provisions of the General Laws governing state-chartered banks were modernized by the Act including chapter 167E of the General Laws applicable to mortgages and loans. The complete rewriting of said chapter 167E was based primarily on a legislative recommendation of the Division.

Prior to the passage of the Act, state-chartered banks had the authority to make ARMs under two provisions of the then existing chapter 167E. Since the early 1980s authority for ARMs was set out in paragraph 10 of subsection B of section 2 of chapter 167E. That authority contained several specific conditions and restrictions. As noted in your letter, separate authority to make ARMs was later added to chapter 167E without specified conditions and restrictions. In 1998, that separate authority was added as a subsection C to section 2 of said chapter 167E. In relevant part it authorized state-chartered banks to make or acquire any residential real estate mortgage loan as defined therein, including ARMs, saleable in the secondary market. Only a reverse mortgage loan was excluded from that authority. The essential question presented is whether such dual authority for making ARMs exists within said chapter 167E as rewritten by the Act.



Kevin F. Kiley
April 26, 2005
Page 2

One of the major purposes for the rewriting of chapter 167E was to eliminate the over twenty-five various classes of mortgage loans and the specific conditions set out within each class which were authorized to state-chartered banks. Under the provisions of the Act state-chartered banks were, for the most part, given general authority to make mortgages and loans in chapter 167E. That general authority to make or acquire mortgage loans subject to terms agreed upon is set out in section 3 of chapter 167E ("Section 3"). A provision, clause (vi) of subsection (b) of Section 3, was retained, although different, which in applicable part, authorized state-chartered banks to make or acquire mortgage loans saleable in the secondary market. As drafted, the rewritten chapter 167E, in subsection (f) of said Section 3, reserved from these general grants of authority two types of mortgage loans, reverse mortgage loans and ARMs. Those two loans are governed by the specific provisions of sections 7 and 8 respectively of chapter 167E and incorporate the same conditions and restrictions set out in law prior to passage of the Act.

The Act gave the Division in several places within chapter 167E broad authorities to implement the rewritten statute. Within Section 3, the Commissioner is authorized, in subsection (g), to carry out the purposes of the section by directive, guideline or regulation and to further define terms used in order to promote safe and sound banking practices. Moreover, under section 2 of chapter 167E a state-chartered bank is granted not only the enumerated powers in statute but also those that are incidental or complementary powers fairly implied which are reasonably necessary to enable such banks to fully exercise those powers according to common customs and usages.

Based upon this review of the past authorities and those contained in the rewritten chapter 167E the Division makes the following findings and determinations. Subsection (e) of Section 3 authorizes state-chartered banks to make mortgage loans, among other things, subject to terms agreed upon governing the payment of principal and interest. Clause (vi) of subsection (b) of Section 3 authorizes mortgage loans saleable in the secondary market. Since 1998, it has been customary for state-chartered banks to make or acquire ARMs saleable in the secondary market. Accordingly, pursuant to the provisions of subsection (g), I authorize state-chartered banks, under clause (vi) of subsection (b) of Section 3 to make or acquire ARMs that are saleable in the secondary market.

This opinion response shall be deemed a guideline under subsection (g).

The authority for state-chartered banks to make or acquire ARMs under section 8 of chapter 167E remains a separate and distinct enabling power.

This guideline shall be deemed effective as of March 30, 2005.

Very truly yours,



Steven L. Antonakes
Commissioner of Banks