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STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

January 13, 2010

Dana Frederick Clarke, Esq.
Hudson Cook, LLP
6 Hutton Center Drive, Suite 840
Santa Ana, CA 92707

Dear Mr. Clark:

This letter is in response to your correspondence dated December 4, 2009 to the Division of Banks (the "Division") in which you request an opinion relative to whether Massachusetts General Laws chapter 183, section 63A would preclude mortgage loan modifications in the Commonwealth under the federal Home Affordable Modification Program ("HAMP"). This matter has also been raised and discussed by you in several telephone calls with the Division.

In your letter you state that HAMP commits \$75 billion, including \$50 billion of funds from the Troubled Asset Relief Program, to encourage loan modifications that will provide sustainably affordable mortgage payments for borrowers. It is one component of Making Home Affordable, President Obama Administration's comprehensive plan to stabilize the United States housing market and offer assistance to homeowners by reducing mortgage payments and preventing avoidable foreclosures. The HAMP program provides that the interest rate on certain modified mortgage loans will be fixed for the first five years of modification at an interest rate lower than the current interest rate. After the five year fixed-rate period, the rate may increase one percentage point per year until it reaches the Freddie Mac Primary Mortgage Market rate for 30-year fixed rate conforming mortgage loans. As you point out, after the initial five year period, the interest rate may at some point adjust to an interest rate which exceeds the initial rate prior to modification. You ask if the language of chapter 183, section 63A would preclude a modification under the HAMP program.

Section 63A authorizes a mortgagee to revise the rate of interest on an owner-occupied, 1-4 family mortgage loan provided that "the interest rate on any such note and mortgage, after any such revision, shall not be in excess of the existing note and mortgage so revised." Although said section 63A could be interpreted as prohibiting an otherwise eligible homeowner from participating in any loan modification, such as the HAMP program, in which the interest rate after modification could, at some future date, exceed the interest rate in effect prior to modification, you argue that section 63A should be



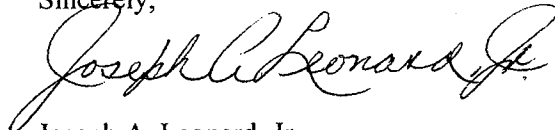
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interpreted as requiring a comparison of the interest rate in effect prior to modification and the interest rate as modified, as opposed to at any time during the subsequent term of the modified loan. This interpretation of section 63A would be consistent with the purpose of the statute and the HAMP program by allowing homeowners to avoid foreclosure by allowing mortgagees to revise the terms of existing mortgage loans at a lower rate for an extended period of time.

The Division has analyzed your letter within the language of chapter 183, section 63A. The Division has concluded that loan modifications pursuant to section 63A are not required to be fixed rate loans but may adjust based on the changes in an index such as the Freddie Mac Primary Mortgage Market Rate. A fixed rate of interest for the first five years after modification would not be a circumvention of the statute particularly where it is only a possibility that the interest rate at some point during the term of the loan will exceed the interest rate prior to modification. The Legislative intent in amending section 63A was to increase loan modifications to assist homeowners to avoid foreclosure. Therefore, the Division concludes that section 63A does not prohibit a mortgagee's participation in the HAMP program in order to engage in loan modifications in the Massachusetts.

The conclusions reached in this letter are based solely on the facts presented which include that HAMP is a federal program which seeks the same goal of encouraging modification of mortgage loans at a lower interest for an extended period of time consistent with the amendments to section 63A as set out in SECTIONS 5 and 6 of Chapter 206 of the Acts of the 2007, An Act Protecting And Preserving Home Ownership. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in black ink, reading "Joseph A. Leonard, Jr." with a stylized flourish at the end.

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

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