



State of Michigan  
John Engler, Governor

Department of Consumer & Industry Services  
Kathleen M. Wilbur, Director

Financial Institutions Bureau  
Gary K. Mielock, Acting Commissioner

P.O. Box 30224  
Lansing, MI 48909

333 S. Capitol, Suite A  
Lansing, MI 48933

Tel. (517) 373-7107  
Fax (517) 373-9475

October 1, 1999

#####  
#####  
#####  
#####

Dear #####:

This letter is in reply to your correspondence dated August 5, 1999, regarding the applicability of the licensing and registration provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act (“MBLSLA”)<sup>1</sup> to #####. Additionally, this letter is in reply to your letter dated May 28, 1999, regarding the Secondary Mortgage Loan Act (“SMLA”)<sup>2</sup>.

Mortgage Brokers, Lenders, and Servicers Licensing Act

Your letter dated August 5, 1999, requested that the Bureau provide written confirmation that ##### is exempt from the licensing requirements of the MBLSLA. Your letter also requested that the Bureau determine whether ##### is a state chartered bank for purposes of section 2(4)<sup>3</sup> of the MBLSLA, which prohibits the use of the term “bank” except for state or nationally chartered banks, savings banks or affiliates. Should the Bureau determine that ##### is not a state chartered bank for purposes of the above statute, your letter requested that we advise whether use of the name “##### Bank” or “##### Bank d/b/a ##### Thrift and Loan Company” would be prohibited on any document or instrument used by ##### in its Michigan business activity.

Your letter indicates that ##### is a California industrial loan company licensed by the California Department of Financial Institutions (“DFI”). In addition, you point out that ##### is principally engaged in the origination of commercial and consumer real estate loans in California as well as in other states. ##### now desires to extend its real estate loan activity into Michigan. Your letter also indicates that ##### is a depository institution insured by the Federal Deposit Insurance Corporation (“FDIC”) and is subject to regulation and examination by both the DFI and the FDIC. Based upon its status as an insured depository financial institution, you claim that ##### is exempt from the licensing requirement of the MBLSLA.

<sup>1</sup> MCL 445.1651, *et seq*; MSA 23.1125(51), *et seq*.  
<sup>2</sup> MCL 493.51, *et seq*; MSA 23.568(1), *et seq*.  
<sup>3</sup> MCL 445.1652(4); MSA 23.1125(52)(4).

#####

October 1, 1999

Page 2

The MBLSLA regulates loans secured by a first lien mortgage in Michigan residential real property.

Section 2<sup>4</sup> of the MBLSLA states, in pertinent part;

“(1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless 1 or more of the following apply:

\* \* \*

“(b) The person is exempt from the act under section 25.”

Section 25(a)<sup>5</sup> of the MBLSLA states that:

“This act does not apply to the following:

“(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.”

Section 1a(d)<sup>6</sup> of the MBLSLA defines “depository financial institution” as:

“[A] state or nationally chartered bank, or a state or federally chartered savings and loan association or savings bank, or a state or federally chartered credit union, or an entity of the federally chartered farm credit system.”

Section 1a(d) of the MBLSLA specifically defines those depository financial institutions that are exempted from regulation by the MBLSLA as being state or nationally chartered banks, state or federally chartered savings and loan associations or savings banks, state or federally chartered credit unions, and entities of the federally chartered farm credit system. However, section 1a(d) makes no mention of industrial loan companies or any other entity whether insured by the FDIC or some other deposit insurance scheme. Under Michigan law, the distinction between banks and industrial loan companies has been abolished. Consequently, Michigan law does not charter or permit the operation of new industrial loan companies.<sup>7</sup>

Unlike Michigan, California law specifically allows for the chartering of “industrial loan companies.” However, California “industrial loan companies” are distinguished from other California financial institutions (banks, commercial banks, trust businesses, trust companies, credit unions, national banks, and savings associations). California banks are distinctly established and regulated under Division 1 of the California Financial Code.<sup>8</sup> California credit unions<sup>9</sup> and savings associations<sup>10</sup> are also distinctly established and regulated under

---

<sup>4</sup> MCL 445.1652; MSA 23.1125(52).

<sup>5</sup> MCL 445.1675(a); MSA 23.1125(75)(a).

<sup>6</sup> MCL 445.1651a(d); MSA 23.1125(51a)(d).

<sup>7</sup> MCL 487.308; MSA 23.710(5).

<sup>8</sup> Cal Fin Code, § 100, *et seq.*

<sup>9</sup> Cal Fin Code, § 14000, *et seq.*

<sup>10</sup> Cal Fin Code, § 5000, *et seq.*

#####

October 1, 1999

Page 3

California law. California industrial loan companies are formed and operated under Division 7<sup>11</sup> of the California Financial Code. In effect, although industrial loan companies may be able to accept deposits and may be federally insured, California law does not treat industrial loan companies as banks. In fact, industrial loan companies in California are so unique, they are both organized and regulated separately and distinctly from banks and other types of depository financial institutions.

Although ##### may be deemed to be a “state bank” under Section 3(a)(2)<sup>12</sup> of the Federal Deposit Insurance Act (“FDIA”) by virtue of its FDIC membership and depository insurance, the MBLSLA specifically enumerates those institutions included within the definition of “depository financial institution.” Industrial loan companies are not included within the definition.

Because California law does not treat industrial loan companies in the same fashion as they treat those institutions listed under Section 1a(d) of the MBLSLA, ##### does not qualify for exemption from the MBLSLA. As a result, the use of the terms “bank”, “banker”, “banking”, “banc”, “bankcorp”, “bancorp”, or any other words or phrases in #####’ name or assumed name that imply ##### is a bank, is engaged in banking, or is affiliated with a bank or savings bank, would not be permitted. However, ##### may use the term “mortgage banker” as authorized under Section 2(4) of the MBLSLA.<sup>13</sup>

### Secondary Mortgage Loan Act

The exemption rules of the MBLSLA differ significantly from the exemption rules of the SMLA. Section 29 of the SMLA states, in pertinent part, that:

“This act does not apply to a *depository financial institution* that is subject to other laws of this state, another state, or of the United States *regulating the power of the depository financial institution to engage in secondary mortgage loan transactions* or upon the conditions and limitations imposed by law upon the exercise of this power.”<sup>14</sup>

Section 1(2)(c)<sup>15</sup> of the SMLA defines the phrase “depository financial institution” to include state and nationally chartered banks, state and federally chartered savings and loan associations, state and federally chartered savings banks, state and federally chartered credit unions, and “any other institution whose deposits are insured by an agency of the federal government.”

Therefore, if ##### can meet the definition of a “depository financial institution” under the SMLA, it may be able to take advantage of the Section 29 exemption.

<sup>11</sup> Cal Fin Code, § 18000, *et seq.*

<sup>12</sup> 12 USC 1813(a)(2).

<sup>13</sup> MCL 445.1652(4); MSA 23.1125(52)(4).

<sup>14</sup> MCL 493.79; MSA 26.568(29). Emphasis added.

<sup>15</sup> MCL 493.51(2)(c); MSA 26.568(1)(2)(c).

#####  
October 1, 1999  
Page 4

According to your letter, ##### is a California-chartered, FDIC-insured, industrial loan company. Because ##### has obtained FDIC deposit insurance, ##### is considered a “depository financial institution” for purposes of the SMLA. However, simply meeting the SMLA’s definition of a depository financial institution by obtaining deposit insurance does not automatically trigger the Section 29 exemption. Insured depository institutions must also be authorized under their regulating authority to engage in secondary mortgage loan transactions.

In some circumstances an insured depository financial institution will be subject to the SMLA, including its licensure provisions, if the state or federal law regulating its lending activity does not authorize a specific type of secondary mortgage loan transaction. For instance, the California Financial Code authorizes industrial loan companies to make a loan “secured primarily by real property,” but defines the phrase “secured primarily by real property” to mean the “fair market value of the real property less prior encumbrances, at the time the loan is made or other obligation is acquired, is more than 50 percent of the principal amount owing on the loan or obligation.”<sup>16</sup> Therefore, it appears that an industrial loan company is prohibited from making some types of secondary mortgage loans (*e.g.*, fair market value is 49% or less of loan) under California law, even though no such lending prohibition would exist in the SMLA. In such a case, the institution would not be able to take advantage of the Section 29 exemption regarding transactions permissible under Michigan law but not regulated under California law without first obtaining a license or registering under the SMLA.

Therefore, to the extent #####’ Michigan secondary loan transactions would be prohibited under California law, it must be licensed or registered under the SMLA.

Please note that this letter is predicated on the facts outlined in your letter. If there is any change in the facts or applicable law, the Bureau may unilaterally withdraw this letter and demand that your client subject itself to any applicable licensure provision.

If you any questions in this regard, please contact me at (517) 373-3470.

Sincerely,

/ ss /

Barbara J. Strefling, Director  
Licensing and Enforcement Division

---

<sup>16</sup> Cal. Fin. Code, § 18006.