



State of Michigan  
John Engler, Governor

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

Financial Institutions Bureau  
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September 15, 1999

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Dear #####:

This letter is in response to your March 31, 1999 facsimile. Your facsimile requested a written statement “ratifying that it is acceptable in Michigan for a lender to charge an assignment recording fee on the HUD to the borrower as part of a second mortgage transaction.” For the reasons that follow, we cannot ratify your conclusion regarding the charging of assignment recording fees.

I should inform you at the outset that the Bureau does not provide legal research services or advice. I can, however, inform you of the following and suggest that you seek the advice of an attorney familiar with mortgage lending in the State of Michigan.

In your facsimile you state that an “assignment recording fee” is a “reasonable and necessary charge that ...is an actual expense ... incurred by the licensee ... in connection with the closing, disbursing ... or [(sic)] a secondary mortgage loan.” We understand that your statement is made on the premise that where an assignment is made immediately after the execution of a loan transaction, the assignment recording fee is a fee that is reasonable and necessary to the loan transaction. We cannot ratify such a statement and do not agree with the premise upon which it is based.

The Michigan Legislature has codified several principles of statutory construction. Section 3a<sup>1</sup> of Chapter 1 of the Revised Statutes of 1846, as amended by 1959 PA 189, states that:

“All words and phrases shall be construed [(sic)] and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.”

The Michigan Supreme Court has explained that “[i]t is a rule of construction that the meaning of the legislature is to be obtained from the subject-matter being dealt with, as well

<sup>1</sup> MCL 8.3a; MSA 2.212(1).

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as the meaning of the words used ...”<sup>2</sup> The words of a statute must not be subjected to such a technical construction as to do away with the plain meaning of the words and phrases used.<sup>3</sup> It is these principles that must guide our analysis of the Secondary Mortgage Loan Act (“SMLA”)<sup>4</sup>

Section 22(1)<sup>5</sup> of the SMLA states, in pertinent part, that:

“Other charges and fees shall not be made, directly or indirectly, in connection with the making of a secondary mortgage loan, except for any of the following, which may include in the principal of the loan:

\* \* \*

“(b) Reasonable and necessary charges that are the actual expenses incurred by the licensee, registrant, or exclusive broker **in connection with the making, closing, disbursing, extending, readjusting, or renewing** of a secondary mortgage loan.”

(emphasis added).

Clearly the words used by the Michigan Legislature lead to the conclusion that fees and charges paid by a borrower under Section 22(b) of the SMLA must be incurred “in connection with the making, closing, disbursing, extending, readjusting, or renewing” of a secondary mortgage loan. In other words, charges and fees must be related to some part of the transaction between the lender and borrower.

The assignment transaction does not involve the borrower. It is a transaction between the assignor (lender) and assignee. “Assignment recording fees” simply do not occur in the making, closing, disbursing, extending, readjusting, or renewing of loans. An assignment cannot occur before a loan is made, closed, and disbursed. Likewise, a lender that extends, readjusts, or renews a loan does so before assigning the loan. If the loan is assigned, the assignor retains nothing to extend, adjust, or renew. “Moreover, the position of the ... [borrower] is unchanged other than the fact that possession and title of the ...” mortgage note has changed.<sup>6</sup>

Your March 31, 1999 facsimile indicates that you discussed this matter with several employees of the Bureau. Please note that although our staff did discuss the “assignment recording fee” with you, only the Commissioner or other Bureau employee designated by the

<sup>2</sup> McRae v Thompson, 168 Mich 511, 525; 134 NW 722 (1912).

<sup>3</sup> Davidow v Wadsworth Mfg Co, 211 Mich 90, 178 NW 776 (1920).

<sup>4</sup> MCL 493.51, *et seq*; MSA 26.568(1), *et seq*.

<sup>5</sup> MCL 493.72(1); MSA 26.568(22)(1).

<sup>6</sup> See, OAG, 1981-1982, No 5895, p170, 172 (May 11, 1981).

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Commissioner can announce the Bureau's position on any particular issue. If this was not communicated to you, please accept my apologies.

In accordance with your instructions, a copy of this letter will be sent to #####.

Please contact me at (517) 373-3470 if you have any further questions in this regard.

Sincerely,

/ ss /

Ann Gaultney, Director  
Examination Division

CC: #####