

February 23, 1999

Re: Mortgage Corporation

Dear Ms. :

I write in response to your letter of February 18, 1999 that inquired whether loans made by _____ are exempt from coverage under Secondary Mortgage Act (“the Act”) pursuant to WV Code 31-17-2(b).

You represent that _____ has been approved by, and is under the supervision of, the U.S. Department of Housing and Urban Development (“HUD”) and the Department of Veteran’s Affairs (“VA”) and is further approved as a “Fannie Mae” lender.

The relevant portion of the Act, WV Code 31-17-2(b), provides that “[t]he provisions of this article do not apply to ... **loans** made by any other lender licensed by and under the supervision of any agency of the federal government...” (emphasis added). It is the policy of the West Virginia Division of Banking that this language exempts only those specific loans that are subject to supervision by a federal agency. It does not exempt a lender from licensing under the Act if only a portion – even a substantial majority -- of its loans are subject to federal supervision.

It is our understanding that Fannie Mae is not an agency of the federal government but rather is a government sponsored enterprise. The VA and HUD, however, are federal agencies. If **all** second-lien mortgage loans made by _____ in West Virginia are subject to supervision by the VA and HUD, then _____ would be exempt from obtaining a license under the Act pursuant to WV Code 31-17-2(b).

If _____ offers other second-lien mortgage loan products to West Virginians that are not subject to supervision by an agency of the federal government you should be aware that the exemption would not apply to those loans and a second mortgage lending license under the Act may be required.

31-17-2

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I hope this letter answers your question. If you need further information, please feel free to contact me.

Sincerely,

Robert J. Lamont
General Counsel