

46A-2-128

46A-3-109

May 24, 1996

Ms.

Re: Assessment of Fees in Connection with Mortgages

Dear Ms. :

The Commissioner of Banking requested that I respond to your letter of April 22, 1996 regarding the legality of charging certain fees in connection with their mortgage lending. In particular, three issues are raised: (1) Restrictions on fees for payoff statements, or expediting payoff statements; (2) Disclosure of fees for the provision of any payoff statement; and (3) Restrictions on fees for filing the satisfaction or release of the mortgage lien.

West Virginia Code §§ 46A-3-109 and 46A-2-128 would generally prohibit any fee for the provision of a mortgage payoff statement to a consumer. W. Va. Code § 46A-3-109(a)(4) provides:

“In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:... Charges for other benefits...conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, *and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner.*” (Emphasis added).

W. Va. Code § 46A-2-128(d) provides:

“No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:...The collection of or the attempt to collect any interest or

other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is *expressly authorized by the agreement creating the obligation and by statute.*" (Emphasis added).

The Commissioner of Banking has adopted no rule which permits a lender to charge a borrower a fee for providing a payoff statement in a mortgage loan transaction. Nor is such a fee authorized by statute. (Note that under West Virginia law a lender attempting to collect on their own loan, is a debt collector for purposes of chapter 46A; See *Thomas v. Firestone Tire & Rubber Co.*, 266 S.E.2d 905 (W. Va. 1980)). Thus any attempt to impose or collect such a fee would be a violation of West Virginia law.

However, to the extent that a consumer requested an *expedited provision* of a payoff statement by having it sent to him or her by overnight mail, was informed of the additional cost for such a mailing and agreed to pay it, then such a *reimbursement for that third party expense would be permissible*. The obligation to supply the consumer with a payoff statement is one involving commercial reasonableness, not that the statement be sent by overnight mail. If the consumer wishes to expedite the process by insisting on overnight mail and agreeing to pay for that additional service, then a lender obtaining reimbursement for the actual third party expenses involved would not be improper. Essentially, the consumer in that situation is agreeing to buy an additional service which is not truly incidental to the loan transaction. But a lender may not delay release of the information by requiring the reimbursement payment be made prior to the payoff statement's transmission.

Pursuant to W. Va. Code § 38-12-1 **no fee** may be imposed on a borrower for the lender filing the *Satisfaction or Release of Lien in a mortgage* loan transaction. The statute provides this service to be provided "free of charge...within thirty days after the debt has been satisfied." Id.

If you have any questions regarding this matter, please contact me.

Sincerely,

Timothy C. Winslow
General Counsel