

**COMMISSIONER OF BANKING**  
**STATE OF WEST VIRGINIA**

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**In the Matter of:**

**REQUEST FOR AUTHORIZATION TO  
ENGAGE IN OTHER BUSINESS ACTIVITY BY  
A REGULATED CONSUMER LENDER  
filed on behalf of  
AVCO FINANCIAL SERVICES OF WHEELING, INC.  
(Re: Acting Under Out-of-State License for Real Estate Loans)**

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**DECISION ON AUTHORIZATION REQUEST**

On November 26, 1997 Avco Financial Services on behalf of its licensed Regulated Consumer Lender affiliate, Avco Financial Services of Wheeling, Inc., requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the solicitation, provision, and servicing of out-of-state real estate loans to non-West Virginia residents under its mortgage lender licenses issued by Ohio and Kentucky in the same office, room, or place of business in which the Applicant, acting as a regulated consumer lender licensee, conducts the business of making regulated consumer loans.

Upon review of this request, the Commissioner of Banking has determined that as to **out-of-state real estate** secured lending to non-West Virginia residents such activity is sufficiently related to the business of a financial institution; that the nature and character of the activity will not per se facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder; and that the solicitation, provision and servicing of out-of-state real estate loans to non-residents under another state's license

will not be detrimental to the consumers of this state-- Provided the activity, procedures and limitations set forth herein are followed.

The decision to grant this type of authority is tempered with concern that the consumer be provided the protections of West Virginia's Consumer Credit and Protection Act ("WVCCPA") in transactions secured by real estate in West Virginia or involving West Virginia residents. At the same time, it needs to be recognized that a reciprocal approach to loans to non-West Virginia residents secured by real estate outside West Virginia should be followed. The West Virginia Secondary Mortgage Loan Act (W. Va. Code § 31-17-1 et seq.) requires that its licensees follow our state law, including the WVCCPA, when making loans to West Virginia residents on property in West Virginia. Such compliance is required even though the licensee's office may be out-of-state. Given this position, it would seem incumbent upon this office and in keeping with comity to recognize the authority of another state to regulate loans to its own residents secured by land in its state. This would be particularly true where a choice of law provision in the contract provided for the application of the other state's law in such circumstances.

Avco Financial Services of Wheeling, Inc. (hereinafter "Avco FSW") is engaged in making real estate loans to Ohio residents on property in Ohio and to Kentucky residents on property in Kentucky. Avco FSW holds proper licenses from both the state of Ohio and the state of Kentucky to conduct such mortgage lending. Avco FSW's employees at its offices in West Virginia solicit, process applications, fund and service these loans. Provided the loan is: (1) secured by real estate located in another state of which the borrower is a resident; (2) the lender, Avco FSW, is licensed or authorized by that state to make such loans which are subject to the laws of that state; and (3) the loan agreement contains a valid choice of law provision electing to be governed by that other state's law—Then, the loan will be viewed as a permissible activity under W. Va. Code § 46A-4-110, as will its servicing. The records of such loans by Avco FSW serviced at West Virginia offices shall be coded and maintained in a manner as to allow examiners to readily distinguish these records from those made in the regular course of business which are governed by West Virginia law.

Present policy treats out-of-state secured real estate loans made to non-residents under a another state's license and laws as not subject to assessment under W. Va. Code § 46A-4-105. Please note that this treatment is not mandated by law, though, and may therefore be subject to future change. Those transactions involving West Virginia residents or which are secured by property in West Virginia, however, shall be governed by West Virginia's law and are thus subject to assessment under W. Va. Code § 46A-4-105(5).

Based upon these determinations and findings the Commissioner of Banking IS OF THE OPINION that a regulated consumer lender licensee may conduct the business of making regulated consumer loans in the same office, room or place of business in which it makes real estate secured loans to non-residents under the license and laws of another state. THEREFORE, subject to the terms and conditions set forth herein: AUTHORIZATION TO ACT UNDER ITS OHIO AND KENTUCKY LICENSES IN OUT-OF-STATE REAL ESTATE SECURED LOAN TRANSACTIONS WITH NON-RESIDENT BORROWERS IS HEREBY GRANTED. Any deviation from the above-stated guidelines will result in the revocation of this written authorization.

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Sharon G. Bias  
Commissioner of Banking

Date: \_\_\_\_\_