

**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  
TRANSAMERICA FINANCIAL SERVICES, INC.  
(Re: Engaging in Real Estate Secured Lending  
Under an Out-of-State License)**

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**DECISION ON AUTHORIZATION REQUEST**

On April 17, 1997 Transamerica Financial Services, Inc., a licensed Regulated Consumer Lender and West Virginia corporation, by letter of its counsel, 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, making and servicing of out-of-state real estate loans to non-residents under another state's license 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 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, making 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 and reciprocity to recognize the authority of another state to regulate loans to its 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.

Transamerica Financial Services, Inc., (hereinafter “TFSI”) is engaged in soliciting and making real estate loans to Ohio residents on property in Ohio from its Wheeling, West Virginia regulated consumer lender (“RCL”) office. TFSI holds a license from the state of Ohio to do such mortgage lending. Provided the loan is: (1) secured by real estate located in another state of which the borrower is a resident; (2) the lender, TFSI, 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 made through its Ohio license and not under its West Virginia RCL license, and will be a permissible activity under W. Va. Code § 46A-4-110, as will its servicing. The records of such loans by TFSI serviced at its West Virginia offices shall be coded and maintained in a manner as to allow examiners to readily distinguish these records from those made under its RCL license.

In general, West Virginia law does not license or closely regulate first mortgage loans; nor are RCLs subject to West Virginia’s secondary mortgage loan act (W. Va. Code § 31-17-1 et seq.). Were a corporate affiliate of TFSI to conduct the business of making out-of-state real estate secured loans to non-residents at its own separate offices in West Virginia

no prior approval would be needed from the Commissioner under W. Va. Code § 46A-4-110. However, TFSI seeks to conduct these activities from, and to have these loans serviced at, their West Virginia regulated consumer lender offices. These activities would thus first require approval by the Commissioner pursuant to W. Va. Code § 46A-4-110.

Regardless, however, of whether under Ohio law TFSI would be permitted pursuant to that state's license to make mortgage loans on Ohio property to West Virginia residents, all such loans will be viewed by this office as made under its RCL license and subject to West Virginia law. Further, any such transactions to residents of this state, which are thereby governed by West Virginia's rates and charges, shall be subject to assessment under W. Va. Code § 46A-4-105(5). This section provides that "*[t]he commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the first day of July, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight [§ 31A-2-8], article two, chapter thirty-one-a of this code.*" To provide otherwise would result in an RCL being able to evade this section while placing the regulatory burden of compliance and complaint resolution upon this office and the State of West Virginia.

Any deviation from the above-stated guidelines will result in the revocation of this written authorization of the Applicant to engage in the business of making loans in the same office, room or place of business in which the solicitation, making and servicing of out-of-state real estate loans to non-residents under another state's license, takes place. Subject to the terms and conditions set forth herein: AUTHORIZATION IS HEREBY GRANTED.

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Sharon G. Bias  
Commissioner of Banking

Date: 4/24/97