

46A-4-110

46A-4-101

March 12, 1999

Re: West Virginia, Inc. Examination

Dear Mr. :

I write regarding the July 1998 examination of West Virginia, Inc. branch offices. The 1998 examination cited for violating WV Code 46A-4-110. That statute prohibits the making of regulated consumer loans at any location in which any other business is solicited or engaged in, unless the Commissioner of Banking first authorizes such business in writing. We have considered your response to the cited violation set forth in your letter of December 9, 1998 and conclude that there was no violation of WV Code 46A-4-110 for the reasons stated in this letter.

The violation of WV Code 46A-4-110 was first alleged because 's balance sheet revealed an account titled "Loans Sold to Investors". This account involved real estate loans that had been pooled, securitized and sold with servicing retained by the local office. Your December 9 response stated "[t]he fact that a loan is part of a securitization pool is invisible to the customers and any person viewing our branch office operation."

After reflecting on the language of WV Code 46A-4-110, the Division of Banking finds that the intent of this statute is to protect the consumer by limiting what can be sold to him or her at a specific location. It is designed to control communications to consumers that are extraneous to the process of obtaining a regulated consumer loan. In this case, customers were unaware of the securitization and selling of real estate loans. They had no role in that process and did not have to consent to securitization. The fact that a loan may have been sold and securitized had no effect on the terms or conditions of their loan payments.

Therefore, we conclude that the pooling, securitization and sale of real estate loans, with servicing retained by the local office, does not constitute a violation of WV Code 46A-4-110.

We caution, however, that this determination is limited to the very specific facts and circumstances surrounding the securitization activities of 's branch offices. We encourage to discuss in advance any plan to conduct additional

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commercial activities at regulated consumer loan offices. This is especially critical in cases where a customer may be aware of the existence of such activities.

Finally, we note that collection responsibilities were not sold with the loans. For that reason, the provisions of WV Code 46A-4-101(2) do not apply and the purchaser(s) of the loans would not be required to have a regulated consumer lender license. This would not be the case if servicing was not retained by the local office.

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

Sincerely,

Robert J. Lamont
General Counsel