

COMMISSIONER OF BANKING
STATE OF WEST VIRGINIA

In the Matter of:

**REQUEST FOR AUTHORIZATION TO
ENGAGE IN OTHER BUSINESS ACTIVITY BY
A REGULATED CONSUMER LENDER
filed on behalf of
BENEFICIAL WEST VIRGINIA, INC.
(Re: Acting as Agent for Soliciting and Servicing
Out-of-State Loans on Behalf of an Affiliate)**

DECISION ON AUTHORIZATION REQUEST

On April 15, 1997 Beneficial Management Corporation of America on behalf of its licensed Regulated Consumer Lender affiliate, Beneficial West Virginia, Inc., by letter of 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 and servicing of out-of-state real estate loans and personal loans held or made by its Ohio affiliate, Beneficial Ohio, Inc. d/b/a Beneficial Mortgage Co. of Ohio (“BMCOH”) 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.

I.

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 and servicing

of out-of-state real estate loans 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 made 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 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.

Beneficial Ohio, Inc. d/b/a Beneficial Mortgage Co. of Ohio (hereinafter "BMCOH") is engaged in making real estate loans to Ohio residents on property in Ohio. BMCOH holds a license from the state of Ohio to do such mortgage lending. Beneficial West Virginia, Inc.'s employees at its offices in Huntington, Parkersburg and Wheeling, West Virginia (hereinafter "BWVI") act as agents for BMCOH to solicit 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, BMCOH, 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 by BMCOH acting through agents and not by BWVI and will be a permissible activity under W. Va. Code § 46A-4-110, as will its servicing. The records of such loans by BMCOH serviced at West Virginia offices shall be coded and maintained in a manner as to allow examiners to readily distinguish these records from those of BWVI.

Regardless, however, of whether the mortgage loans are solicited, held or merely serviced at the offices of BWVI, those transactions involving West Virginia residents or which are otherwise governed by West Virginia's law 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 a regulated consumer lender 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 and servicing as agent of out-of-state real estate loans on behalf of its Ohio affiliate, BMCOH, takes place. Subject to the terms and conditions set forth herein: AUTHORIZATION TO ACT AS AGENT FOR AN AFFILIATE IN OUT-OF-STATE REAL ESTATE SECURED LOAN TRANSACTIONS WITH NON-RESIDENT BORROWERS IS HEREBY GRANTED.

II.

Upon review of the request to make non-real estate secured loans governed by Ohio law on behalf of an out-of-state affiliate at BWVI offices in West Virginia, the Commissioner of Banking has determined that the nature and character of the activity will facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code and the rules issued thereunder. The West Virginia Consumer Credit & Protection Act (“WVCCPA”) does not limit its coverage to state residents. Where the consumer loan is not secured by real estate in another state, and is made by a West Virginia regulated

consumer lender licensee (“RCL”), then the loan is governed by West Virginia law, regardless of the consumer’s state of residence. The basis of the consumer’s residency alone cannot in such situations deprive that consumer from the protections afforded under the WVCCPA, and thus the terms and conditions of the loan must comport with that allowed under Chapter 46A and Article 4 thereof. To the extent that Ohio or some other state seeks to require the loan be on its terms, the lender may not do so. It may well be that the loan transaction can be structured such that it’s rates and terms conform to both states’ laws, but in any event, no RCL loan unsecured by real property in another state can evade the provisions of the WVCCPA. Such loans made at or through BWVI’s offices in West Virginia will be viewed as regulated consumer loans governed by Article 4 of Chapter 46A.

Based upon these determinations and findings the Commissioner of Banking IS OF THE OPINION that a regulated consumer lender licensee may not conduct the business of making regulated consumer loans in the same office, room or place of business in which it, or its affiliate, makes non-real estate secured loans under the laws of another state. THEREFORE THE REQUEST FOR AUTHORIZATION TO ACT AS AGENT FOR AN AFFILIATE IN MAKING NON-REAL ESTATE SECURED LOAN TRANSACTIONS GOVERNED BY OUT-OF-STATE LAW IS HEREBY DENIED.

SGB

Sharon G. Bias
Commissioner of Banking

Date: 5/1/97