



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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ISGC – 2004 – 007 – DOB

Former LETTER 2004 – 008 LC (JMV)

June 23, 2004

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Your inquiry on behalf of your Georgia-chartered bank client (“Bank”) and its Virginia-based mortgage lending subsidiary (“Mortgage Subsidiary”), dated May 17, 2004, has been referred to me for response in my capacity as Legal Counsel for the Washington State Department of Financial Institutions (“DFI”).

We note preliminarily that Bank does **not** intend to open a branch or have employees located in, or otherwise maintain a presence in the State of Washington. Based on your representation, then, DFI makes the following determination:

1. No “Alien Bank” Limited Authorization Required. Bank will **not** be required to comply with the Washington Alien Bank Act, at Title 30, Chapter 42, Revised Code of Washington (RCW Chapter 30.42).

2. Bank Not Required To Be Chartered or Authorized by Either the DFI or the Secretary of State Merely for Originating Loans Without a Branch or Employees. The Washington Commercial Bank Act, at RCW 30.04.020, restricts a foreign corporation, whose name contains the words “Bank,” “Banker,” “Banking” or “Trust,” or whose articles of incorporation empower it to engage in banking or to engage in a trust business, from engaging in such business without specific authorization under state law, federal law, or from the DFI.

However, as set forth in RCW 30.04.020(2):

“If an activity would **not** constitute ‘transacting business’ within the meaning of RCW 23B.15.010(1) or chapter

23B.18 RCW, then the activity shall ***not*** constitute banking
. . . .”

Furthermore, the Washington Business Corporations Act, at RCW 23B.15.010, provides, in pertinent part, as follows:

“(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

. . . .

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

. . . .

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same”

Therefore, we confirm that Washington State will not impose any restrictions under RCW Titles 23B, 30 or 32 on Bank simply for originating or accepting loans in its own name that are made to Washington State residents.

Notwithstanding the above, we caution that the entire Washington Business Corporations Act (RCW Title 23B) should be read, in context, to determine whether there are other grounds for obtaining authorization for the Mortgage Subsidiary to do business as a foreign corporation in Washington State. Since the Secretary of State, and not the DFI, governs RCW Title 23B, we caution your clients to look elsewhere for advice as to general authority to do business in Washington State as a foreign corporation.

3. Bank and Mortgage Subsidiary Automatically Exempt from Washington Mortgage Broker Practices Act. The Mortgage Brokers Practices Act, at RCW 19.146.020(1) declares:

“(1) Except as provided under subsections (2) and (3) of this section, the following are ***exempt*** from all provisions of this chapter:

(a) ***Any person doing business under the laws of*** the state of Washington or ***the United States relating to commercial banks***, bank holding companies, ***savings banks***, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, ***subsidiaries***, and service corporations ***thereof***”

[Emphasis added.]

You have informed the DFI in your letter of May 17, 2004, that Bank is FDIC-insured and a member of the Federal Reserve. As such, Bank does business, in some degree, under the laws of the United States with respect to banks and/or savings banks. Therefore, Mortgage Subsidiary, as a subsidiary of Bank, is automatically exempt from the Washington Mortgage Broker Practices Act (RCW Chapter 19.146). Moreover, if Bank originates (in its own name) mortgage loans in Washington State, which are “brokered” or “assigned” by Mortgage Subsidiary (or any other lender) to Bank, then Bank itself will be automatically exempt from the Washington Mortgage Broker Practices Act.

4. Bank Exempt from Washington Consumer Loan Act. The Washington Consumer Loan Act (RCW Chapter 31.04) regulates the activities of mortgage lenders that seek a license under the Act for the purpose of charging interest rates higher than general state usury laws (RCW 31.04.005). Pursuant to RCW 31.04.025, the Washington Consumer Loan Act —

“ . . . shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, “

[Emphasis added.]

You have informed the DFI in your letter of May 17, 2004, that Bank is FDIC-insured and a member of the Federal Reserve. As such, Bank does business, in some degree, under and as permitted by federal laws and regulations with respect to banks and/or savings banks. Therefore, Bank itself is exempt from the requirements of the Washington Consumer Loan Act.

5. Mortgage Subsidiary Not Automatically Exempt from the Washington Consumer Loan Act. However, the exemption set forth in RCW 31.04.025, does not extend to subsidiaries of a commercial bank or state savings bank and, therefore, does not apply to Mortgage Subsidiary. For all lenders not exempt from the Act, RCW 31.04.035 declares:

“No person may engage in the business of making secured or unsecured loans of money, credit, or things in action at interest rates authorized by this chapter without first obtaining and maintaining a license in accordance with this chapter.”

[Emphasis added.]

The interest rates authorized by RCW Chapter 31.04, in excess of Washington State's general usury statute,* are those presently above twelve percent (12%) per annum.

It is not the typical practice of the DFI to determine, simply from general descriptions such as those set forth in your May 17th letter, whether any product, including your clients' "piggyback mortgages" and/or "home equity lines of credit," will comply with Washington State law. Indeed, we lack sufficient information from your letter to make such a determination, even if we were inclined to do so.

However, if Mortgage Subsidiary seeks to originate loans in Washington State at interest rates above 12% per annum (or a greater amount as determined in the footnote below), then Mortgage Subsidiary will be required to obtain a consumer loan license from the DFI. In other words, Mortgage Subsidiary would be in violation of the general usury statute if it made loans above 12% without obtaining a consumer loan license.

6. Concluding Remarks. Based on the information we have supplied above, you should be able to properly advise your clients on how they may proceed to lawfully engage in loan origination in Washington State.

The statutory standards for making the determinations in this letter are uniformly applicable for any out-of-state commercial bank or savings bank, and out-of-state mortgage lending subsidiary, similarly situated, seeking to conduct the activity undertaken by Bank and Mortgage Subsidiary as stated above. However, institutions other than Bank and Mortgage Subsidiary are advised that each applicant's relevant facts and circumstances may be different; and such relevant facts, as applied to the governing law, may result in the DFI reaching a conclusion different than the one made herein.

Should you have any questions, please do not hesitate to call upon me at either (360) 902-0516 or (206) 956-3229.

Sincerely,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By:

Joseph M. Vincent

* Washington's general usury statute, at RCW 19.52.020, declares:

"Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action."

At the present time, the general highest interest rate in Washington State, absent an exemption under federal or state law, is twelve percent (12%) per annum.

[REDACTED]
[REDACTED]
RE: Authority of Georgia Bank/Virginia Mortgage Subsidiary
Date: 06/23/04 — Page 5 of 5 Pages

Legal Counsel