The Commonwealth of Massachusetts

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June 12, 2003

Jeffrey A. DeMaso
Associate Counsel & Compliance Officer
Mortgage Lenders Network USA, Inc.
Middlesex Corporate Center
213 Court Street
Middletown, Connecticut 06457-3387

Dear Mr. DeMaso:

This letter is in response to your correspondence dated April 9, 2003 to the Division of Banks ("the Division") in which you pose a series of questions concerning the applicability of the prepayment penalty statute in the Commonwealth.

Massachusetts General Law chapter 183, section 56 sets forth limitations on prepayment penalties which may be charged to a borrower by a mortgage lender when a first mortgage loan is paid in full prior to its maturity date. The restrictions contained in the statute are applicable only to 1-3 family, owner occupied residential property in the Commonwealth and the provisions for a prepayment penalty must be included in the loan documents. It is the position of the Division that section 56 does not authorize prepayment penalties in the absence of a contractual provision. In general, the statute provides for a prepayment penalty in the first year of the loan if the loan is paid in full by refinancing with the original lender or another financial institution. If the mortgage loan is paid in full within thirty-six months of the date of the note by refinancing with another financial institution, an additional penalty may be imposed.

In your letter you describe three fact patterns and ask the Division to determine when a prepayment penalty may be assessed "for the purpose of refinancing with another institution".

The first fact pattern described in your letter is when the original lender sells the mortgage loan to an investor but retains the servicing rights to such loan. In the event that the borrower seeks to refinance the loan with the original lender two years later, you ask if a prepayment penalty may be assessed. It is the Division's view that since the subsequent sale of the loan to the investor was not initiated by the borrower but was rather an action taken by the lender, and the borrower is refinancing the loan with the original lender within 2 years of the date the loan was made, this transaction is not "for the purpose of refinancing with another financial institution" under said section 56. Therefore, it is the position of the Division that no prepayment penalty may be assessed.

The second set of facts described in your letter states that the lender originates the mortgage loan and contracts with a servicer to service the loan. The borrower contacts the servicer directly in year 2 of the loan for the purpose of refinancing. You ask if a prepayment penalty may be charged upon completion of the refinance transaction. It is the position of the Division that a prepayment penalty may be charged to the borrower on behalf of the original lender because the borrower has initiated the refinance with the servicer and the refinance in this case would be "for the purpose of refinancing with another financial institution". However the right to charge a prepayment penalty must be included in the loan documents.

Your third scenario is when the lender originates the loan and sells the loan servicing-released to a subsequent investor. Two years later, the borrower contacts the original lender to refinance the loan. It is the position of the Division that the analysis is the same as your first set of facts and this is not "refinancing with another financial institution" by the borrower and no prepayment penalty may be charged.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented my result in a different position statement by the Division.

Sincerely,

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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