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ARKANSAS SECURITIES DEPARTMENT

VIA REGULAR U.S. MAIL

January 13, 2015

Herbert H. Thomas
Thomas Law Firm, P.C.
9400 N. Central Expressway, Suite 305
Dallas, TX 75231

RE: CDC Direct Capital, Inc.
No-Action 15-NA-0001

Dear Mr. Thomas:

The Staff of the Arkansas Securities Department ("Staff") is in receipt of your letter dated November 20, 2014, requesting that the Staff issue a legal opinion letter concerning the applicability of the Arkansas Fair Mortgage Lending Act ("FMLA"), as codified at Ark. Code Ann. § 23-39-501 through 518, to the need for CDC Direct Capital, Inc. to be licensed as a mortgage broker under the FMLA. A copy of your request is attached to avoid reciting or summarizing the facts that you have presented.

Based upon the specific facts contained in your request, the Staff will not recommend that the Arkansas Securities Commissioner take enforcement against CDC Direct Capital, Inc. if it engages in the activities detailed in your letter without first obtaining licenses from the Arkansas Securities Department. It appears that CDC Direct Capital, Inc. can rely on the fact that commercial mortgage loans do not fall under the regulatory purview of the FMLA or the Arkansas Securities Department.

Please note that the position of the Staff is based solely upon the representations made in your request letter and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response or opinion from the Staff.

Sincerely,

A handwritten signature in black ink that reads "David H. Smith".

David H. Smith
Chief Counsel

enclosure

Thomas Law Firm, P.C.

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ARKANSAS SECURITIES DEPT.

November 20, 2014

VIA FEDEX

Karyn Tierney
Arkansas Securities Department
201 E. Markham, Suite 300
Little Rock, Arkansas 72201

Re: Request for an Interpretative Opinion or No Action Letter from the Staff of the Arkansas Securities Department that the activities of making and servicing Arkansas commercial mortgage loans by CDC Direct Capital, Inc. does not require a mortgage banker or servicer license from the Arkansas Securities Department.

Dear Ms. Tierney:

I represent CDC Direct Capital, Inc., Kurt Chilcott, President, 2448 Historic Decatur Road, Suite 22, San Diego, CA 92106, a commercial mortgage company ("client") who wishes to make and service loans collateralized by owner-occupied commercial real estate properties in Arkansas. No residential borrowers or properties will be involved. My client desires to be in compliance with Arkansas state licensing laws. My client is consulting with me as to whether it needs a mortgage license from the Arkansas Securities Department in order to make such loans. I have researched, reviewed and analyzed the definition of "mortgage loan" in your state licensing statute as well as available statutory exemptions and concluded that the activities of my client qualify for a statutory exemption such that a mortgage license is not required. My client wishes to request an interpretative opinion or no action letter from the Staff of the Arkansas Securities Department that the activities of making and servicing Arkansas commercial mortgage loans by CDC Direct Capital, Inc. does not require a mortgage banker or servicer license from the Arkansas Securities Department.

Facts:

My client will [1] make owner-occupied commercial real estate loans to small businesses to finance their purchases of commercial real estate properties, ie, commercial office buildings and [2] sell the closed commercial loans to an institutional investor on the secondary market but retain the mortgage servicing rights and service the sold loans. The commercial loans made and serviced by my client will be first lien mortgages. All of the commercial mortgage loans will be secured by commercial real estate properties whose owners or occupants will use them only for

commercial or industrial purposes. None of the properties will be residences or can be used for residential purposes.

Legal Issue:

Do the activities of making and servicing owner-occupied commercial mortgage loans secured by commercial real properties require a mortgage license from the Department?

Conclusion: From my review of the facts and legal analysis set forth below, I have concluded that the activities as described above would not require a mortgage banker or servicer license from the Department.

Legal Analysis: The Activities of Commercial Mortgage Lender and Servicer:

Licensing Statute and Regulations.

23-39-502. Definitions.

As used in this subchapter:

- (1) "Applicant" means a person who has applied to become licensed under this subchapter as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;
- (10) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;
- (12) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;
- (14) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;
- (16) "Mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:
 - (A) A dwelling as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2011; or
 - (B) Residential real estate upon which is constructed or intended to be constructed a dwelling;

23-39-503. License required -- Licensee records.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.

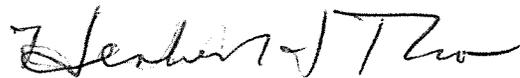
Analysis:

My client is not an Arkansas mortgage lender because it will not make Arkansas residential mortgage loans as defined under the Act. A commercial mortgage loan is not a "mortgage loan" under the Act because [1] it is not residential; ie, used for the purpose of a residence, [2] it is not a mortgage loan primarily for personal, family, or household use because it is primarily for commercial, business and profit uses [3] its collateral is not a dwelling, as defined in s. 103(v) of the federal Truth in Lending Act, "a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives" because it is not

a residential structure or a family housing unit. Since my client does not make mortgage loans as defined in the Act, it is not a mortgage banker engaged in the business of making mortgage loans. Therefore, if the Act only requires licensure of mortgage lenders who qualify as a mortgage banker, my client would not be required to be licensed under the Act.

Request: My client hereby requests an interpretative opinion or no action letter from the Staff of the Arkansas Securities Department that the activities of making and servicing Arkansas commercial mortgage loans by CDC Direct Capital, Inc. does not require a mortgage banker or servicer license from the Arkansas Securities Department.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert H. Thomas". The signature is written in a cursive style with a prominent initial "H" and a long, sweeping tail.

Herbert H. Thomas