

MIKE HUCKABEE  
GOVERNOR

MICHAEL B. JOHNSON  
COMMISSIONER



HERITAGE WEST BUILDING, SUITE 300  
201 EAST MARKHAM STREET  
LITTLE ROCK, ARKANSAS 72201-1692  
TELEPHONE: (501) 324-9260  
FACSIMILE: (501) 324-9268

## ARKANSAS SECURITIES DEPARTMENT

April 17, 2006

Mr. David R. Bordovsky, President  
Capital Centre  
416 Oak Manor Circle  
Springdale, Arkansas 72764

Re: CapitalCentre, LLC; Applicability of Arkansas  
Fair Mortgage Lending Act to Specific Real Estate  
Transactions. (06-31766-CS)

Dear Mr. Bordovsky:

This is in response to your letter to Mr. Moore dated April 4, 2006, a copy of which is attached hereto. In your letter, you stated generally that on occasion your firm, CapitalCentre LLC, is presented with opportunities to finance residential investment properties.

You have described two specific real estate transaction scenarios. The first scenario involves the financing of a purchase of certain residential rental properties located in Rogers, Arkansas, those being 30 rental units consisting of 6 four-plexes and 2 tri-plexes located at 900 and 901 North 13<sup>th</sup> Street and 1300 West Beech Street, and an additional 20 rental units consisting of five four-plexes located on West Olive Street.

The second scenario described involves the possible refinancing of approximately 15 single family dwellings under one consolidated note for approximately \$750,000. All of the single family dwellings are investment properties and are rented.

The issue is whether the above described transactions would require your company to register as a mortgage loan company pursuant to the Arkansas Fair Mortgage Lending Act (FMLA).

Mr. David R. Bordovsky  
April 17, 2006  
Page 2

On March 31, 2004, an order was entered by the Arkansas Securities Commissioner exempting persons who make only non-residential mortgage loans from the registration requirements of the FMLA. (**See Order Number 15039-CS**). A copy of the order is enclosed. The order was applicable to those persons making mortgage loans consisting only of loans secured by an interest in real property used or to be used for other than one-to-four family residential purposes. In 2005, the Arkansas legislature amended the FMLA to exempt a "person who brokers, makes, or services mortgage loans if the only mortgage loans that the person brokers, makes, or services in Arkansas are nonresidential loans". **Ark. Code Ann. Section 23-39-502 (6) (B) (xvii)**.

I have conferred with Mr. Moore regarding your letter, and he and I are in agreement that a strict construction of the FMLA as amended in 2005 does suggest that your firm would be required to register as a mortgage loan banker should it engage in the lending transactions described above. However, it is also our belief it was not the intent of the FMLA or the Commissioner's 2004 order that such transactions be covered by the Act.

Your letter does raise another issue that is unrelated to the issue described and discussed above. In the last paragraph of the first page of your letter, you referenced a previous discussion with a member of the Securities Department staff concerning registration requirements associated with construction loans. You stated that you were informed that "brokering construction loans for clients that build residential dwellings would not subject the broker to the terms and provisions of the ACT provided that the note it self did not include a feature that would allow it to automatically convert long term permanent financing."

I have discussed with Mr. Moore the issue raised in your letter concerning construction loans. Neither Mr. Moore nor I recall having any such telephone conversation addressing a licensing exemption for construction loans. Based upon the limited facts contained in your letter, we must decline to render an opinion on that issue. Until such time as an opinion is rendered on that issue, those persons brokering, financing, or servicing residential

Mr. David R. Bordovsky  
April 17, 2006  
Page 3

construction loans in Arkansas should assume that registration is mandatory, unless the entity engaging in such activity is otherwise exempt.

To summarize, the Securities Department staff declines to render an opinion on the issue of construction loans in Arkansas based upon the limited information furnished. In connection with the financing of the residential rental units described in your letter, please be advised that the staff of the Arkansas Securities Department would recommend that the Securities Commissioner take no action to enforce the registration provision of the FMLA if the facts relating to these transactions are as described in your letter. Please note that this position of the Securities Department staff is based solely upon the representations in your letter and applies only to the transactions identified therein. Different facts or circumstances might, and often would, require a different response. This position of the Securities Department staff relates to anticipated enforcement action, and does not purport to be a legal opinion.

Please contact me or Mr. Moore should you have any questions.

Sincerely,



Mike Spades, Jr.  
Staff Attorney

Enclosures