

**STATE OF ARKANSAS
SECURITIES DEPARTMENT**

IN THE MATTER OF

PERSONS MAKING ONLY NON-
RESIDENTIAL MORTGAGE LOANS OR
COMMERCIAL LOANS

ORDER EXEMPTING PERSONS WHO
MAKE ONLY NON-RESIDENTIAL
MORTGAGE LOANS PURSUANT TO
ARK. CODE ANN. § 23-39-
502(6)(B)(xviii)

ORDER NO. 15039-CS

FINDINGS OF FACT

1. On March 20, 2003, the Arkansas Legislature enacted the Arkansas Fair Mortgage Act, Ark. Code Ann. § 23-39-501 *et seq.* (the “Act”), requiring that all persons acting as mortgage brokers, mortgage bankers, or mortgage servicers, be registered with the Arkansas Securities Commissioner (the “Commissioner”), unless exempt from registration. The Act, by its terms, became effective on January 1, 2004.

2. Since the effective date of the Act, the Commissioner has received several comments and requests from persons engaging exclusively in commercial transactions, often on an infrequent basis, regarding the effect of the Act on the availability of such loans, and whether it is desirable, appropriate, or in the public interest to require the registration of such persons under the Act.

3. The Act contains no exemption for those persons who make only commercial loans, unless they otherwise qualify as exempt under one of the provisions of Ark. Code Ann. § 23-39-502(6)(B).

CONCLUSIONS OF LAW

4. Ark. Code Ann. § 23-39-502(6)(B)(xvii) specifically authorizes the Commissioner, by rule or order, to designate persons other than those specifically listed as exempt from the registration requirements of the Act.

5. Exempt persons are exempt only from the registration provisions of the Act and not from the prohibited activities provisions of the Act as set forth in Ark. Code Ann. § 23-39-513.

OPINION

It is not necessary, appropriate, or in the public interest to require those persons who make only commercial loans to register under the provisions of the Act, particularly when they make such loans in Arkansas only on an infrequent basis. Commercial borrowers are typically more sophisticated and in less need of the protections afforded under the Act than are residential borrowers. In fact, commercial borrowers often have attorneys or advisors to assist them in the transactions, and for that reason, are not in need of the same protections as are residential borrowers, whose home mortgage loan may well be the single largest expenditure of their lives. Requiring such lenders to register under the Act may well result in a decreased pool of available money for commercial borrowers and otherwise adversely impact competition in the commercial mortgage markets.

ORDER

IT IS THEREFORE ORDERED that those persons who make 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 are exempt from the registration provisions of the Act. This exemption shall not be available to a mortgage lender who makes any mortgage loan, regardless of amount, secured by real property used or to be used for one-to-four-family residential purposes.

IT IS FURTHER ORDERED that this Order shall not exempt any person from the prohibited practices provisions of Ark. Code Ann. § 23-39-513.

IT IS FURTHER ORDERED that this Order shall remain in force and effect until June 30, 2007, unless sooner modified or vacated. After such date, unless modified, it shall become void and of no effect.

WITNESS MY HAND AND SEAL this 31st day of March, 2004.

A handwritten signature in black ink, appearing to read "M. Johnson", written in a cursive style.

MICHAEL B. JOHNSON
SECURITIES COMMISSIONER