

July 12, 2004

Costas A. Avrakotos, Esq.
KIRKPATRICK & LOCKHART, LLP
1800 Massachusetts Avenue, NW, Suite 200
Washington, DC 20036-1221

RE: Definition of Mortgage Loan Servicer
Opinion No. 19295-CS

Dear Mr. Avrakotos:

We are in receipt of your letter dated June 23, 2004 in which you request that the staff of the Arkansas Securities Department issue an opinion regarding the activities described in your letter as they relate to the definition of a mortgage servicer as defined in the Arkansas Fair Mortgage Lending Act, Ark. Code Ann. § 23-39-501, *et seq.* (“FMLA”) Specifically, you have requested whether it is the Department’s opinion that a person must register as a mortgage banker or servicer if such person (1) acquires closed independently funded residential mortgage loans for investment or for resale with or without the servicing rights, and (2) merely acquires and holds the servicing rights without engaging in the collection of payments.

The term “mortgage banker” as defined in Ark. Code Ann. § 23-39-502(11) means a person who engages in the business of making mortgage loans for compensation or other gain. To “make a mortgage loan” as defined in subsection (9) of the same provision means to close a loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan. The term “mortgage servicer” is defined in subsection (14) as one who, under a contract with a mortgage banker, receives funds or credits from or on behalf of a borrower in payment for a mortgage loan or taxes or insurance associated with such a loan.

Implicit in your letter is the representation that the person acquiring the loans has neither funded the loans nor engages in collection of payments associated with the loans. It also appears that since the loans are closed prior to the acquisition, the person is not engaged in the brokering of a loan. Accordingly, it appears that the activities described do not trigger the registration requirements under the FMLA.

Should you have any questions, please contact me.

Yours truly,

John E. Moore, Jr.
Chief Counsel