

**COMMISSIONER OF BANKING**

**STATE OF WEST VIRGINIA**

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**In the Matter of:**

**REQUEST FOR AUTHORIZATION TO  
ENGAGE IN OTHER BUSINESS ACTIVITY BY  
A REGULATED CONSUMER LENDER**

**filed on behalf of**

**SECURITY PACIFIC FINANCIAL SERVICES  
OF WEST VIRGINIA INC.**

**(Re: Acting as Agent for Soliciting and Servicing Out-of-State Real Estate  
Loans and Sales Finance Contracts on Behalf of an Affiliate)**

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**DECISION ON AUTHORIZATION REQUEST**

On March 21, 1997 Bank of America on behalf of its licensed Regulated Consumer Lender affiliate, Security Pacific Financial Services of West Virginia Inc., by letter, requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the solicitation and servicing of out-of-state real estate loans and sales finance contracts held or made by its Delaware affiliate, Security Pacific Financial Services, Inc. in the same office, room, or place of business in which the Applicant, acting as a regulated consumer lender licensee, conducts the business of making regulated consumer loans.

Upon review of this request, the Commissioner of Banking has determined that such activity is sufficiently related to the business of transacting regulated consumer loans; that the nature and character of the activity will not per se facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder; and that the solicitation and servicing of out-of-state real estate loans and sales finance contracts on

behalf of its Delaware affiliate will not be detrimental to the consumers of this state--  
Provided the activity, procedures and limitations set forth herein are followed.

The decision to grant this type of authority is tempered with concern that the consumer be provided the protections of West Virginia's Consumer Credit and Protection Act ("WVCCPA") in transactions made in West Virginia or involving West Virginia residents. At the same time it needs to be recognized that a reciprocal approach to loans to non-West Virginia residents secured by real estate outside West Virginia should be followed. The West Virginia Secondary Mortgage Loan Act (W. Va. Code § 31-17-1 et seq.) requires that its licensees follow our state law, including the WVCCPA, when making loans to West Virginia residents on property in West Virginia. Such compliance is required even though the licensee's office may be out-of-state. Given this position, it would seem incumbent upon this office and in keeping with comity to recognize the authority of another state to regulate loans to its residents secured by land in its state. This would be particularly true where a choice of law provision in the contract provided for the application of the other state's law in such circumstances.

Security Pacific Financial Services, Inc., a Delaware corporation (hereinafter "SPFSI") is engaged in making real estate loans to Ohio residents on property in Ohio. SPFSI holds a license from the state of Ohio to do such mortgage lending. Security Pacific Financial Services of West Virginia Inc.'s employees at offices in Barboursville, West Virginia (hereinafter "SPFS-WV") act as agents for SPFSI to solicit and service these loans. Provided the loan is: (1) secured by real estate located in another state of which the borrower is a resident; (2) the lender, SPFSI, is licensed or authorized by that state to make such loans which are subject to the laws of that state; and (3) the loan agreement contains a valid choice of law provision electing to be governed by that other state's law—Then, the loan will be viewed as made by SPFSI acting through agents and not by SPFS-WV and will be a permissible activity under W. Va. Code § 46A-4-110, as will its servicing. The records of such loans by SPFSI serviced at West Virginia offices shall be coded and maintained in a manner as to allow examiners to readily distinguish these records from those of SPFSI-WV.

In addition to out-of-state real estate lending activity to nonresidents of West Virginia, SPFSI also engages in the purchase of sales finance contracts from merchants in Ohio and Kentucky as well as West Virginia. Accounts created by in-store sales in Ohio and Kentucky, as well as in-home sales originated in customers' homes located in Ohio and Kentucky are made in conformity with those states' respective laws. Similarly, credit sale agreements in West Virginia made by merchants, either in stores or homes in West Virginia, are extended on terms in conformity with the WVCCPA. State law provides that:

*(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.*

*(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code. [W. Va. Code § 46A-3-104(5) and (6)]*

There is no special licensing requirement for a business which merely engages in the solicitation and purchase of consumer credit sale contracts from West Virginia or at offices in West Virginia, unless the purchaser is affiliated with the credit provider pursuant to a standing arrangement. W. Va. Code § 31A-2-5(b). Were SPFSI to conduct the business of such purchases at its own separate offices in West Virginia no prior approval would be needed from the Commissioner. However, SPFSI seeks to have SPFS-WV act as agent to conduct these activities from the offices of SPFS-WV and to have these credit accounts serviced at their West Virginia regulated consumer lender offices. These activities would thus first require approval by the Commissioner pursuant to W. Va. Code § 46A-4-110.

To the extent that SPFS-WV acts as agent to solicit and service consumer credit sale contracts held by its Delaware affiliate, SPFSI, one could contend that it was acting in the capacity of a collection agency subject to W. Va. Code § 47-16-3. However, SPFS-WV is

exempt from those licensing provisions because under W. Va. Code § 47-16-2(b) it is made clear that the term “collection agency” does “*not mean or include...industrial loan companies [or]... small loan companies (supervised lenders)...*” As is stated in W. Va. Code § 46A-4-112 all “*references in other chapters of this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven [§ 31-7-1 et seq.], chapter thirty-one of this code, shall, after the operative date of this chapter, and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to regulated consumer loans, regulated consumer lenders, regulated consumer lender licensees, and to this article.*”

As with out-of-state mortgage loans held by SPFSI, records pertaining to its out-of-state sales contracts serviced at the offices of SPFS-WV shall be coded and maintained in a manner as to allow examiners to readily distinguish these records from those of SFSI-WV.

Regardless, however, of whether the sales contracts are solicited, held or merely serviced at the offices of SPFS-WV, those transactions which are governed by West Virginia’s rates and charges shall be subject to assessment under W. Va. Code § 46A-4-105(5). This section provides that “*[t]he commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the first day of July, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight [§ 31A-2-8], article two, chapter thirty-one-a of this code.*” To provide otherwise would result in an RCL being able to evade this section while placing the regulatory burden of compliance and complaint resolution upon this office and the State of West Virginia.

Any deviation from the above-stated guidelines will result in the revocation of this written authorization of the Applicant to engage in the business of making loans in the same office, room or place of business in which the solicitation and servicing as agent of out-of-

state real estate loans and sales finance contracts on behalf of its Delaware affiliate, SPFSI, takes place. Subject to the terms and conditions set forth herein: AUTHORIZATION IS HEREBY GRANTED.

*SGB*

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Sharon G. Bias  
Commissioner of Banking

Date: 4/3/97