

April 2, 1990
ADVISORY RULING #94

Re: Territorial Application; Loans closed in Attorney's Office

Dear

You have asked whether an unlicensed non-bank lender from out of state may close loans to Maine consumers at an attorney's office in Maine. For the reasons set forth below, it is my opinion that loans closed in this state, whether at an office of a lender, an agent, an attorney or a title company, may be made only if the creditor is licensed as a Supervised Lender.

The Maine Consumer Credit Code, 9-A M.R.S.A. §1-201, "Territorial Application," states that a consumer credit transaction is made or entered in this state if "[a] signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State...."

In my opinion, if a lender from out of state sends a check to be distributed at a closing which takes place in a Maine lawyer's office, the attorney becomes an agent of the company, and receipt by the attorney of the transaction documents from the consumer constitutes receipt "by the creditor in this State."

To rule otherwise would be to allow a company to establish itself in one state, and make loans in 49 other states using attorneys' offices in those other states. Theoretically, if it did not make loans in its home state, the lender would not need a license in its home state, nor in any of the states in which it disbursed funds through attorneys. This is clearly an inappropriate result.

This opinion is not to be confused with the issue of whether an attorney's office must be licensed, in addition to the already-licensed home office of a client lender. That matter was first addressed in Advisory Ruling #54 and subsequently incorporated into the licensing statute, 9-A M.R.S.A. §2-302(5). That subsection holds that "[f] or purposes of this subsection, the closing of a supervised loan, secured by an interest in real estate, made by the licensee, at the office of an attorney or land title company, shall not be considered the making of a supervised loan at the place of business other than the licensee's licensed location" (emphases added). The issue addressed in those instances involves an already-licensed entity, closing at a second location. The issue before us now is whether a non-licensed entity, out of state, needs to meet licensing requirements in order to close loans in an attorney's office in Maine.

For the reasons stated above, out-of-state mortgage or loan companies which wish to close loans at an attorney's, agent's or title company's office in this state, must first apply for and obtain a Supervised Lender license.

Sincerely

William N. Lund
Superintendent

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