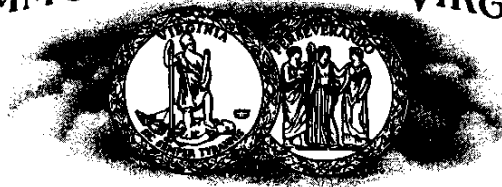


COMMONWEALTH OF VIRGINIA

OFFICE OF THE GENERAL COUNSEL
P.O. Box 1197
Richmond, Virginia 23218-1197



Telephone Number (804) 371-9671
Facsimile Number (804) 371-9240
Facsimile Number (804) 371-9549

STATE CORPORATION COMMISSION

June 20, 2002

138

James E. Gilleran, Director
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Re: Alternative Mortgage Transaction Parity Act, Docket No.
2002-17

Dear Director Gilleran:

I am writing to you in the above matter on behalf of the State Corporation Commission ("Commission") of the Commonwealth of Virginia. The Commission is a multi-jurisdictional agency which, insofar as is pertinent to this matter, charters and regulates Virginia state banks, savings institutions and credit unions, and licenses and regulates non-depository home mortgage lenders and mortgage brokers making or arranging home mortgage loans on property in Virginia. These functions are performed primarily through the Commission's Bureau of Financial Institutions.

In your notice of proposed rulemaking (NPR) you propose, among other things, to render 12 CFR § 560.34 inapplicable to alternative mortgage transactions entered into by so-called "state-chartered housing creditors." The cited regulation effectively allows such creditors to evade state law limitations on prepayment penalties that may be imposed in connection with such transactions, which we believe is contrary to law. We believe that neither OTS nor its predecessor agency has or ever had any authority to displace state laws relating to prepayment penalties chargeable in connection with alternative mortgage transactions.

Our conclusion is founded upon what we perceive to be a failure of the FHLBB and OTS to reconcile the provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), Pub.L.96-221, with the limited authority

James E. Gilleran, Director
June 19, 2002
Page 2

conferred under the Alternative Mortgage Transaction Parity Act ("AMTPA"), 12 U.S.C. § 3801 et seq. This failure is amply demonstrated by the simultaneous suggestion in section VII D of the NPR that §501 of DIDMCA might preempt application of state prepayment penalty and late charge laws, when your own regulations promulgated under DIDMCA provide, at 12 CFR § 590.3(c), that they do not preempt state law limitations on "prepayment charges, attorneys fees, late charges or other provisions designed to protect borrowers". This regulation echoes language in the Senate Report accompanying Title V of DIDMCA (see S.Rep.No.368, 96 Cong.2d Sess.19, reprinted in 1980 U.S.C.C.A.N. 236, 255) which preempted the applicability of state usury laws to "federally related mortgage loans", but confirmed that state laws on the enumerated subjects would continue to apply to such loans.

Both DIDMCA and AMTPA were Congressional reactions to the volatile and high market interest rates that characterized the 1970s and early 1980s, and resulting inability of home buyers to obtain home mortgage loans at low fixed interest rates (see Eskridge, "One Hundred Years of Ineptitude: The Need for Mortgage Rules, etc.", 70 Va.L.Rev.1083, pp.1102-1110). The essential subject matter of both enactments is home mortgage loans; consequently, they are in pari materia and must be harmonized, Vimar Seguros v. M/V Sky Reefer, 515 U.S. 528(1995), 82 C.J.S. Statutes under § 366.

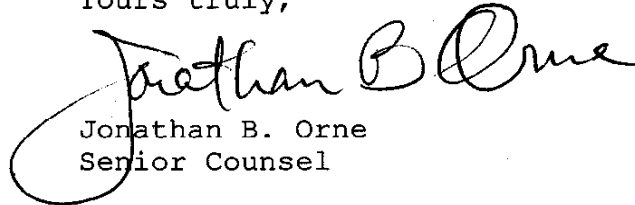
Alternative mortgage transactions are, viewed analytically, a subset or subcategory of federally related mortgage loans. They are merely home mortgage loans with repayment variations that differ from the conventional. The relationship between these types of credit is best portrayed by viewing federally related mortgage loans as a large circle which contains within it a smaller circle representing alternative mortgage transactions. It follows that state laws relating to prepayment charges, late charges, etc., which apply to the whole galaxy of federally related loans, must apply to alternative mortgage transactions. Otherwise, such state laws would apply to some federally related mortgage loans but not to others contrary to Congressional intent as expressed in the cited 1980 Senate Report.

James E. Gilleran, Director
June 19, 2002
Page 3

Therefore, the OTS had no authority to preempt the applicability of these state laws to alternative mortgage transactions made by state chartered housing creditors. But the remedial action you propose does not go far enough. Since "federally related mortgage loans", as defined in 12 USC § 1735f-5(b)(2)(A), includes mortgage loans made by "any lender which is itself regulated by any agency of the Federal Government", you must also undesignate 12 CFR § 560.34 as applicable to alternative mortgage transactions made by federal thrifts. You will thereby achieve the precise equality in relation to prepayment penalties as between federal thrifts and state chartered housing creditors which some argue is required by AMTPA.

We thank you for considering these comments when taking final action in your rulemaking proceeding.

Yours truly,



Jonathan B. Orne
Senior Counsel

JBO:neb