

STATE OF CONNECTICUT
DEPARTMENT OF BANKING

260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Howard F. Pitkin
Commissioner

July 18, 2011

Mr. Michael Schneider
New Haven Asset Management, LLC
329 Greene Street, Suite 4
New Haven, CT 06511

Dear Mr. Schneider:

This department is in receipt of your email dated May 27, 2011, in which you request an opinion as to whether, as a licensed debt negotiator in Connecticut, your current practice of partnering with and being compensated by real estate firms for your assistance in negotiating short sales of residential property complies with Department of Banking's laws governing debt negotiators and the Commissioner's Schedule of Maximum Fees.

The Schedule of Maximum Fees states, in pertinent part, that:

A debt negotiator of secured debt, including Short Sales and Foreclosure Rescue Services, may impose a fee upon the mortgagor or debtor for performing debt negotiation services not to exceed five hundred dollars (\$500). Such fee shall only be collectable upon the successful completion of all services stated in the debt negotiation service contract. Nothing herein shall prohibit any person from receiving compensation from the mortgagee or its assignees.

This department may issue advisory opinions pursuant to Section 36a-1-8 of the Regulations of Connecticut State Agencies, which states in pertinent part, that:

The commissioner or any authorized employee of the department may issue advisory opinions or other legal interpretations regarding any laws or regulations that the commissioner is charged with administering. Such opinions or interpretations may take the form of a no-action letter or confirmation of the applicability of an exclusion or exemption.

The relevant facts, as represented in your correspondence and subsequent telephone conversations, are as follows: Your company, New Haven Asset Management LLC ("NHAM"), is a Connecticut licensed debt negotiator. Individually, you are licensed as a real estate salesperson in Connecticut. NHAM partners with real estate firms to assist mortgagors in short sale transactions of residential

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property in Connecticut, whereby the mortgagor is “underwater”—in other words, where the current market value of the property is below the outstanding mortgage on the property.

In connection with these short sale transactions, there are essentially three pertinent agreements:

1. An agreement between the mortgagor and the realtor in which the mortgagor agrees to pay a fixed percentage of the sales price to the real estate firm upon successful sale of the property;
2. An agreement between NHAM and the mortgagor in which the mortgagor agrees to pay no more than \$500 in fees for debt negotiation services; and
3. An agreement between NHAM and the real estate firm in which the real estate firm agrees to pay a certain fee to NHAM, usually in excess of \$500, upon successful short sale for, among other things, debt negotiation services provided on behalf of the mortgagor.

The agreement between the mortgagor and the realtor is usually executed first, followed by the next two agreements with NHAM. NHAM will not commence debt negotiation services until the respective agreements are signed by its clients.

The sale of the residential property proceeds as it would in any other short sale real estate transaction. The buyer and mortgagor negotiate a sales price with the assistance of the real estate agent. Once a sale price is agreed upon, it is then presented by NHAM to the mortgage holder or party that represents such mortgage holder (“mortgagee”) to determine the amount of the underlying mortgage debt that will be waived. The sales price, less any closing costs, including real estate agent commissions, is the amount that the mortgagee will ultimately receive. In certain instances, the mortgagee may ask for higher net proceeds from the transaction. This may be accomplished by increasing the sales price, adjusting the closing costs, or the mortgagor or buyer contributing additional out-of-pocket monies or a promissory note to consummate the transaction.

The real estate firm pays NHAM its debt negotiation fees after the consummation of the transaction, which debt negotiation fees are not listed on the HUD-1 settlement statement as being paid by the mortgagor.

By letter dated May 10, 2011, this department and the Department of Consumer Protection advised real estate and debt negotiator licensees that the splitting of real estate broker commissions with debt negotiators, as evidenced by the placement of such fees on the HUD-1 settlement statement as part of the real estate broker’s commission, is prohibited pursuant to Connecticut law, and reminded licensees of the \$500 fee cap placed on fees received by debt negotiators from mortgagors.

Although only the Department of Consumer Protection can opine as to whether this is an acceptable compensation arrangement pursuant to laws and regulations within its jurisdiction, it is the opinion of the Department of Banking that this transaction does not violate the fee cap of \$500 on amounts paid by mortgagors for debt negotiation services. Unlike amounts paid at closing to a debt negotiator by a mortgagor, and evidenced as such on the HUD-1 settlement statement, the fees in excess of \$500 are paid by the real estate firm after closing pursuant to a separate and distinct agreement. The mortgagor’s fee obligation to NHAM is limited to the \$500 cap for successful completion of all debt negotiation services stated in the debt negotiation service contract, and no additional debt negotiation fees are being paid by the mortgagor. After closing, the real estate firm, not the mortgagor, is responsible for paying any additional fees for debt negotiation services pursuant to its own agreement with NHAM, and such fees have been negotiated by NHAM with the real estate firm.

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Based on the aforementioned set of facts, it is the opinion of this Department that the fee arrangement described above, as it relates to short sales of Connecticut residential property, does not violate the Department's laws concerning debt negotiators or its Schedule of Maximum Fees.

Very truly yours,

HOWARD F. PITKIN
BANKING COMMISSIONER

By: 
Stacey L. Serrano
Staff Attorney

SLS:td