

**DEPARTMENT OF CORPORATIONS**[www.corp.ca.gov](http://www.corp.ca.gov)

**DEMETRIOS A. BOUTRIS**  
California Corporations Commissioner  
Sacramento, California

IN REPLY REFER TO:  
FILE NO: OP 6866 CRMLA

**COMMISSIONER'S OPINION 02/1 CRMLA**

THIS INTERPRETIVE OPINION IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO FINANCIAL CODE SECTION 50312 OF THE CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT. IT IS APPLICABLE ONLY TO THE TRANSACTION IDENTIFIED IN THIS OPINION REQUEST, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER TRANSACTION

February 14, 2002

Mr. Christopher J. Young  
Simcox and Barclay, LLP  
170 Jennifer Road, Suite 200  
Annapolis, Maryland 21401

Re: First Mariner Bank

Dear Mr. Young:

We have reviewed your request for an interpretive opinion dated November 28, 2001.

Your correspondence raises the question as to whether First Mariner Bank ("1<sup>st</sup> Mariner") is exempt from licensure as a residential mortgage lender under the California Residential Mortgage Lending Act (the "Act") by virtue of being an "exempt person" as defined in paragraph (1), of subdivision (g) of Section 50003 of the California Financial Code.

You represent that 1<sup>st</sup> Mariner is a Maryland state-chartered bank, insured by the Federal Deposit Insurance Corporation. You further maintain that 1<sup>st</sup> Mariner does not and will not have a physical presence in the State of California. The plan is for 1<sup>st</sup> Mariner to advertise and accept mortgage loans, secured by California residential property, to California residents through a website. The loans will then be made under the authority of the Maryland State charter issued to 1<sup>st</sup> Mariner. Closings will be conducted at the offices of attorneys and title companies in the State of California. You further represent that 1<sup>st</sup> Mariner will obtain a certificate of authority to transact business in California.

- ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
- ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

We presume for the purposes of this opinion that you admit that 1<sup>st</sup> Mariner will be conducting activities “in this state” under the definition prescribed in Financial Code Section 50003(h), although advertising and accepting mortgage loans through a website.

1<sup>st</sup> Mariner seeks an exemption from the Act as a state-chartered bank under Section 50003(g)(1).

Section 50002, subdivision (a) provides:

No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the [C]ommissioner [of Corporations] . . . , unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

Section 50003(g) defines “exempt person[s]” under the Act. This section, in pertinent part, provides that an “exempt person” includes:

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this State. [Emphasis added.]

In our opinion, 1<sup>st</sup> Mariner, as a bank chartered under the laws of the State of Maryland, will meet the definition of an “exempt person” under Financial Code Section 50003(g)(1), provided that in the conduct of its business activities “in this state” it is “authorized” to transact business. In the context of this exemption, it is our view that “authorized” means that 1<sup>st</sup> Mariner is required to meet all applicable legal requirements imposed by the State of California on a non-domestic entity seeking to engage in business in this state, except the licensure Act, in order to claim the exemption. In this regard, you may wish to review California Corporations Code Section 171 as well as other pertinent sections.

Dated: February 14, 2002  
Sacramento, California

DEMETRIOS A. BOUTRIS  
California Corporations Commissioner

By \_\_\_\_\_  
TIMOTHY L. Le BAS  
Assistant Commissioner and General Counsel  
Office of Law and Legislation  
(916) 322-3553

SIMCOX AND BARCLAY, LLP  
ATTORNEYS AT LAW

170 JENNIFER ROAD-SUITE 200  
ANNAPOLIS, MARYLAND 21401

DAVID C. BARCLAY  
JOHN S. SIMCOX  
CHRISTOPHER J. YOUNG

KAREN M. CRABTREE  
JENNIFER L. CRESWELL  
OF COUNSEL

(410) 266-0610 (ANNAPOLIS)  
(410) 841-2665 (BALTIMORE)  
(301) 261-8070 (WASHINGTON)  
(410) 266-0616 (FAX)  
JSSDCB@SIMCOXANDBARCLAY.COM

November 28, 2001

**VIA FACSIMILE (916) 322-5875**  
**AND FIRST CLASS MAIL**

California Department of Corporations  
Office of Policy  
1515 K Street  
Suite 200  
Sacramento, California 95814

Attn: Demetrios A. Boutris  
California Corporations Commissioner

Re: First Mariner Bank  
Request for Interpretive Determination  
Our File No.: 520.28

Dear Commissioner:

This letter is to request an interpretive determination under the California Residential Mortgage Lending Act (Ca. Fin. Code, § 50003 *et seq.*) (the "Act") in connection with the proposed mortgage lending activities of our client First Mariner Bank ("1<sup>st</sup> Mariner" or the "Bank"). 1<sup>st</sup> Mariner contemplates making loans to California residents secured by California residential real property. We believe, for the reasons set forth below, that in making such loans 1<sup>st</sup> Mariner will be exempt from the licensing requirements under Act. We ask that you send us a letter confirming 1<sup>st</sup> Mariner's exempt status under the Act.

1<sup>st</sup> Mariner asserts as its basis for the above-referenced exemption that it is a Maryland state-chartered bank, insured by the FDIC. Under the Act, "exempt person" means:

Any bank, trust company, insurance company, or industrial loan company doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

Ca. Fin. Code § 50003(g). To qualify for the exemption set forth above (and prior to making any mortgage loans to residents of California) 1<sup>st</sup> Mariner will obtain a certificate of authority to transact business in California.

SIMCOX AND BARCLAY, LLP

California Department of Corporations  
Attn: Demetrios A. Boutris

Page 2  
November 28, 2001

---

Under its proposed program, 1<sup>st</sup> Mariner will not have any physical presence California. 1<sup>st</sup> Mariner will advertise its mortgage loan products to, and accept mortgage loan applications from, California residents via its Website. 1<sup>st</sup> Mariner will make the proposed mortgage loans under the authority of its Maryland charter. Closings will be conducted at the offices of California attorneys and/or title companies located in your state.

Please call me if you have any questions or need any additional information concerning the proposed California mortgage lending activities of 1<sup>st</sup> Mariner. We look forward to your letter of determination and thank you for your assistance with this matter.

Sincerely,

Christopher J. Young



cc: 1<sup>st</sup> Mariner Bank  
Attn: Lori A. Pearson  
Vice President, Quality Control and Compliance

Attn: Eugene A. Friedman  
Corporate Counsel