



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR Gavin Newsom • ACTING COMMISSIONER Christopher S. Shultz

IN REPLY REFER TO:  
FILE NO: \_\_\_\_\_

July 30, 2021

VIA EMAIL

Re: \_\_\_\_\_ – Opinion Request

Dear Mr. \_\_\_\_\_:

Thank you for your letters to the Department of Financial Protection and Innovation (“Department”) dated March 3, 2021 and June 18, 2021. You request an interpretive opinion regarding the applicability of the agent-of-payee exemption under the Money Transmission Act (“MTA”) to transfers of funds through \_\_\_\_\_ (“\_\_\_”) in connection with real estate closing transactions.

**Background**

\_\_\_\_\_, a subsidiary of \_\_\_\_\_, is licensed as a money transmitter in several states, including California, and registered as a money services business with FinCEN.

For some of its operations, \_\_\_ proposes to facilitate fund transfers in connection with real estate closing transactions. In these situations, \_\_\_ will be authorized to receive real estate closing funds on behalf of its customer (the seller of real estate). The funds will be sent via wire transfer to \_\_\_ from a third party, typically the buyer’s lawyer or title company. Once received by\_\_\_, the funds will remain the property of the seller. \_\_\_ will then perform a currency conversion (for example, from U.S. dollars to euros) and remit the proceeds directly into the seller’s bank account. Thus, the payment will flow first from the buyer of real estate to \_\_\_ via the buyer’s lawyer or title company, and then from \_\_\_ to the seller.

In providing these services, \_\_\_, as the seller’s agent, receives money from the buyer pursuant to a preexisting written contract between \_\_\_ and the seller (“Agreement”). The Agreement states:

Agent of Payee Notice – California Only: In connection with enabling you to receive payments from your payor(s) through the Services, you hereby appoint \_\_\_ as your limited payments agent

for the purpose of receiving, holding, and settling payments to you pursuant to this Agreement. You further agree and understand that a payment received by \_\_\_ on your behalf, satisfies your payor's obligation to pay you, regardless of whether \_\_\_ actually settles such payment to you. In the event that \_\_\_ does not make or otherwise fails to make such payment to you as described in this Agreement, you will have recourse against only \_\_\_ and not against your payor(s).

### **Money Transmission Act**

The MTA prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or an agent of a person licensed or exempt from licensure.<sup>1</sup> "Money transmission" includes receiving money for transmission.<sup>2</sup> "Receiving money for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.<sup>3</sup>

Financial Code section 2010, subdivision (l), exempts from the MTA transactions in which the recipient of the money is an agent of the payee pursuant to a preexisting written contract and delivery of the money to the agent satisfies the payor's obligation to the payee for the goods or services provided. An "agent" is one who represent another, called the principal, in dealings with third persons.<sup>4</sup> A "payee" is the provider of goods or services, who is owed payment of money from the payor for the goods or services.<sup>5</sup> A "payor" is the recipient of goods or services, who owes payment of money to the payee for the goods or services.<sup>6</sup>

### **Analysis**

To the extent these fund transfers take place in California or are with, to, or from persons located in California, \_\_\_'s services constitute "receiving money for transmission" because \_\_\_ receives money from the buyer for transfer to the seller.

However, \_\_\_'s contract contains a provision appointing \_\_\_ as the agent of the seller when the seller is located in California. With that provision, \_\_\_'s services satisfy the requirements of the agent-of-payee exemption in Financial Code section 2010, subdivision (l): \_\_\_ acts as the agent of the seller (Payee) pursuant to a preexisting written contract, and \_\_\_'s receipt of payment satisfies the buyer's (Payor's) obligation to the seller (Payee) for goods or services.

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<sup>1</sup> Fin. Code, § 2030, subd. (a).

<sup>2</sup> Fin. Code, § 2003, subd. (q)(3).

<sup>3</sup> Fin. Code, § 2003, subd. (u).

<sup>4</sup> Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

<sup>5</sup> Fin. Code, § 2010, subd. (l)(2).

<sup>6</sup> Fin. Code, § 2010, subd. (l)(3).

Because the contract provision only applies to sellers in California, \_\_\_\_ does not qualify for the agent-of-payee exemption when the seller is located outside of California.

**Conclusion**

The Department concludes \_\_\_\_'s services, in connection with the real estate closing transactions described in your letters, fall within the definition of "money transmission" but are exempt from the MTA to the extent \_\_\_\_, as the agent pursuant to its preexisting written agreement with certain sellers, receives money from the buyer, via the buyer's lawyer or title company, as payment for goods or services.

This opinion is limited to the facts and circumstances described above. Should any of the facts or circumstances change, the Department's opinion may also change.

Sincerely,

Christopher S. Shultz  
Acting Commissioner  
Department of Financial Protection and Innovation

By

\_\_\_\_\_  
/s/

Senior Counsel