STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

February 22, 1993

Michael Taylor
Mabry & Gibson
3 Riverway, Suite 400
Houston, Texas 77056-1943

Re: **Mortgage Loan Officer Commissions**

Dear Mr. Taylor:

The Labor Commissioner, Victoria Bradshaw, has asked me to respond to your letter of November 24, 1992, directed to Senior Deputy Labor Commissioner Dale Louton in our Sacramento District Office.

According to your letter, your client pays its loan officers a commission on a every loan that closes. You further state that as a part of the commission plan, the loan officer shares in the "gain" or "loss" on the sale of the loan. The gain or loss is calculated at the time the loan closes based upon the "loan sale commitment in effect." I assume, therefore, that the loan officer may calculate the commission he or she is to receive on the loan before the loan is completed.

As we understand, the loan officer has at his or her disposal the price of the loan upon which to base the commission payable and knows, at the time of the closing, whether the loan must be discounted in order to find a buyer, or, in the alternative, whether the buyer will accept the loan at a lower rate than noted on the face of the loan. In the event a loan is written at 8% interest and a buyer is found who will purchase the loan at 7½% interest, the loan officer would share in the profit on the sale of the loan. On the other hand, if a buyer cannot be found except at 8¼%, the loan officer shares in the loss.

Your question is whether this type of pay plan would be acceptable in California.

The California courts have adopted the view of the Labor Commissioner that an employee may not be held liable for the losses of the employer over which the employee has no control. *Quillian v. Lion Oil* (1979) 96 Cal.App.3d 156, 157 Cal.Rptr. 740. However, unlike the facts in *Quillian*, under the pay plan set out above, "loss on the loan" is an integral part of the transaction which supports the commission wage. In other words, the cost of the sale of the loan would be a necessary ingredient in determining the profit or loss on that particular transaction.

Also, as the facts in your letter indicate, under the plan you propose, the cost (or profit) is available to the salesperson at the time of the sale. Thus, unlike the situation in *Quillian*, the profit or loss is not due to unforeseen circumstances.

Based upon the information you have provided it appears that the plan would be acceptable to the Labor Commissioner.

This opinion is based upon the facts you have submitted and simply states the legal position of the Labor Commissioner, not the anticipated opinion of any court.

Please excuse the delay in responding to your letter. I hope this adequately addresses the questions you raised.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw
Dale Louton