

INTERPRETIVE LETTER NO. 98-06 (July 20, 1998)

The phrase, "other than property the ownership of which is subject to a legal dispute" in Section 1 of the Pawnbroker Regulation Act [205 ILCS 510/1] means that if a pawnbroker has actual knowledge that there is a dispute about the ownership of an item, that pawnbroker may not accept such an item for pawn. Furthermore, those who deal in the purchase of property on the condition of selling the property back again at a stipulated price are included in the definition of "pawnbroker".

As you are aware, Governor Edgar recently signed into law Public Act 90-602, which amends the Pawnbroker Regulation Act ("Act"). 205 ILCS 510/0.01 *et seq.** has asked the Office of Banks and Real Estate ("Agency") to interpret the newly amended definition of "pawnbroker" in Section 1 of the Act. 205 ILCS 510/1. What follows is our response to that interpretive request.

Section 1 states:

Every individual or business entity which lends money on the deposit or pledge of physically delivered personal property, *other than property the ownership of which is subject to a legal dispute, securities, printed evidence of indebtedness or printed evidence of ownership of the personal property*, or who deals in the purchase of such property on the condition of selling the property back again at a stipulated price, shall be held and is hereby declared and defined to be a pawnbroker. The business of a pawnbroker does not include the lending of money on deposit or pledge of title to property. [emphasis added]

Your first question regards how the Agency interprets the phrase, "other than property the ownership of which is subject to a legal dispute." We believe that this phrase does not in any way affect existing common law regarding the property rights of any individual or business entity involved in a pawn transaction. It also does not alter the ability of law enforcement to investigate and prosecute illegal activity relating to the unlawful delivery or receipt of property.⁽¹⁾ Further, it does not require pawnbrokers to conduct formal investigations into the legal status of items brought in to be pawned. It means that if a pawnbroker has actual knowledge that there is a dispute about the ownership of an item, that pawnbroker may not accept such an item for pawn.

You also inquired whether those who deal in the purchase of property on the condition of selling the property back again at a stipulated price are excluded from the definition of "pawnbroker". The statute plainly states that "[e]very individual or business entity which lends money on the deposit or pledge of physically delivered personal property,...., or who deals in the purchase of such property on the condition of selling the property back again at a stipulated price" is considered to be a pawnbroker. The italicized phrase set off by commas⁽²⁾ merely describes personal property which, though such property may be physically delivered, falls outside the definition of a pawnbroker transaction.

We trust that this letter responds to your inquiries. Should you have any additional questions, please do not hesitate to contact us.

⁽¹⁾Nothing in the Act or in this Interpretive Letter is meant to suggest that individuals who

knowingly receive property from someone who is not the rightful owner would be free from law enforcement or regulatory scrutiny.

⁽²⁾"other than property the ownership of which is subject to a legal dispute, securities, printed evidence of indebtedness or printed evidence of ownership of the personal property"