

**BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA**

IN THE MATTER OF:

FIRST SENTINEL BANK
315 Railroad Avenue
Richlands, VA 24641

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of First Sentinel Bank (the "Bank"), which may be subject to an order by the Attorney General or by a court of law. In accordance with W. Va. Code § 46A-7-107, the Bank, without in any way admitting that any of its prior practices were in violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code §§ 46A-1-101 *et seq.*, or other applicable state and federal laws, consents to observe the following terms, conditions, and agreements in the future conduct of its business from and after the date of this Assurance of Discontinuance ("Assurance").

Background and Applicable Law

1. The Bank is a community bank that has six branch offices in Virginia and is headquartered at 315 Railroad Avenue, Richlands, Virginia 24641.
2. The Bank's chief executive officer is John C. Thompson.
3. The Bank is engaged in the practice of making consumer loans to individuals who reside in West Virginia and, as such, the Bank engages in the extension of "credit" as that term is defined by W.Va. Code § 46A-1-102(17).

4. The Bank engages in the collection of accounts from consumers who reside in West Virginia and, as such, the Bank is a “debt collector” as that term is defined by W.Va. Code § 46A-2-122(d).

5. Some of the consumer loans made by the Bank to persons who reside in West Virginia are secured by purchase money security interests in motor vehicles. When such persons default on their loans, the Bank may hire outside vendors to enter West Virginia to repossess the vehicles that secure the loans.

6. Companies that enter West Virginia to repossess motor vehicles must first obtain a business license from the State Tax Department as required by W.Va. Code § 11-12-3(a). If such outside vendors are foreign corporations, they must also obtain a certificate of authority from the West Virginia Secretary of State as required by W.Va. Code § 31D-15-1501(a).

7. By entering into extensions of credit and engaging in the collection of accounts from consumers who reside in West Virginia, the Bank is subject to the provisions set forth in WVCCPA, which is regulated by the Attorney General pursuant to W.Va. Code sec 46A-7-102.

8. By engaging in the collection of debt related to a consumer financial product or service, the Bank is also a “covered person” as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), 12 U.S.C. §5481 (6)(A), 15(A)(x).

9. The Dodd-Frank Act prohibits covered persons from engaging in “any unfair, deceptive, or abusive act or practice,” 12 U.S.C. § 5536(a)(1)(B).

10. Attorneys general and state regulators are empowered to enforce the provisions of the Dodd-Frank Act and the regulations issued by the Consumer Financial Protection Bureau (“CFPB”), 12 U.S.C. §5552(a)(1).

11. The violation of West Virginia statutes pertaining to business registration requirements and other state or federal laws intended to protect the public and foster fair and honest competition constitutes an unfair or deceptive act or practice as defined by the WVCCPA, W.Va. Code § 46A-6-104.

12. Repeated and willful violations of the WVCCPA may subject a violator to civil penalties of up to \$5,000.00 **for each violation**, in accordance with W.Va. Code § 46A-7-111(2) (emphasis added).

13. For purposes of this Assurance, the term “West Virginia Consumers” or “West Virginia Accounts” shall mean and refer to all persons who resided at or provided a West Virginia address at the time they obtained a loan from the Bank or whose vehicles were repossessed by the Bank.

The Attorney General’s Allegations

14. The Attorney General received a complaint alleging that the Bank engaged in certain debt collection activities which, if true, may violate various provisions of the WVCCPA. Further investigation disclosed that these practices include, but are not limited to, the ones identified below.

15. The Attorney General received a complaint from a consumer who reported that the Bank sent an agent to his home in Princeton, West Virginia, without invitation or advanced notice, to collect a delinquent account. He was not home but his wife and children were there when the Bank’s agent arrived. His wife was afraid to answer the door because she could not identify the Bank’s agent when he knocked on the door.

16. Further investigation disclosed that the Bank regularly engaged in the practice known as “field visits” or “in-person” debt collection in West Virginia when accounts were delinquent and a repossession was imminent.

17. The Attorney General asserts that personal visits by debt collectors to consumers at their homes or places of employment are inherently intrusive, amount to contacts with consumers at times and places known to be inconvenient, are unwanted, and, in the case of visits at work, are impermissible and create an unreasonable risk of disclosure of the debt to third parties, in violation of W.Va. Code § 46A-6-104.

18. The CFPB issued a Compliance Bulletin urging covered entities to refrain from in-person collections as they may be likely to cause substantial injury to consumers, such as the unlawful disclosure or publication of the debt to third parties and, when such contacts occur at consumers’ places of employment, they may also result in negative employment consequences. *See* CFPB Compliance Bulletin 2015-07.

19. In response to the Attorney General’s inquiry, the Bank acknowledged that it had dispatched outside vendors to carry out 324 repossessions of motor vehicles inside West Virginia during the five year period preceding the Attorney General’s investigation of the Bank. None of the Bank’s outside vendors had business registration certificates as required by the State Tax Department, W.Va. Code § 11-12-3(a), or certificates of authority from the West Virginia Secretary of State, as required of foreign corporations by W.Va. Code § 31D-15-1501(a), in violation of W.Va. Code § 46A-6-104.

Agreement

20. Without admitting that it has committed any of the violations as alleged herein, the Bank promises to take the following actions set forth herein below in order to resolve the concerns of the Attorney General regarding West Virginia Consumers or West Virginia Accounts.

a. The Bank hereby promises and voluntarily assures the Attorney General that it and its employees, agents, successors, and assigns will comply with the provisions of the WVCCPA, W. Va. Code §§ 46A-1-101 *et seq.*, the Dodd-Frank Act, 12 U.S.C. § 5301 *et seq.*, and other applicable state and federal laws in their business practices.

b. The Bank agrees to permanently refrain from making field visits or in-person contacts with persons who reside in West Virginia at their homes, places of employment, or at other locations for the purpose of collecting alleged debts, in accordance with CFPB Compliance Bulletin 2015-07 and W.Va. Code § 46A-6-104.

c. The Bank shall take reasonable steps to ensure that all outside vendors that it retains to carry out repossessions of motor vehicles from consumers who reside in West Virginia have a business registration certificate from the State Tax Department as required by W.Va. Code § 11-12-3(a) and, if they are foreign corporations, that they have a certificate of authority from the West Virginia Secretary of State, as required by W.Va. Code § 31D-15-1501(a), in accordance with W.Va. Code § 46A-6-104.

21. The Bank shall take the following actions with respect to the 324 accounts of West Virginia Consumers that ended in default and repossession during the five year period preceding the Attorney General's investigation of the Bank:

a. The Bank shall close all such accounts with a zero balance and shall notify any consumer reporting agencies to which it reports to delete all references to the accounts from consumers' credit records.

b. The Bank shall, within 30 days after the date of this Assurance, provide the Attorney General with a spreadsheet in Microsoft Excel, Access, or other mutually agreeable electronic format containing the following information pertaining to each affected West Virginia Consumer: the name, address, telephone numbers, and social security number; the date and amount of each loan; the total payment made; and the final balance owed before the account was closed with a zero balance.

22. The Bank acknowledges that the accounts of West Virginia Consumers that are the subject of this Assurance are disputed and that any amounts allegedly owed by West Virginia Consumers are offset by the potential private claims of the consumers and the claims of the Attorney General for violation of the WVCCPA as outlined hereinabove. Accordingly, the Bank acknowledges that it is not required to file a 1099-C Cancellation of Debt form with the Internal Revenue Service on these accounts and agrees that it will not do so.

23. The Bank shall, at the time it signs this Assurance, make a payment of \$2,500.00 to Patrick Keys as consumer restitution. Provided, however, the Bank may require Mr. Keys to sign an appropriate release of his private claims.

24. The Bank shall, at the time it signs this Assurance, make a payment of \$27,400.00 to the State of West Virginia. The payment shall be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes, to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

25. The Bank further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of their business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this Assurance are and shall be public information.

26. This Assurance fully resolves any concerns the Attorney General has, or may have had, about the collection of debts in West Virginia by the Bank.

27. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of this Assurance, the matters settled by the filing of this agreement may be reopened by the Attorney General of West Virginia for the purpose of enforcing the terms of this Assurance.

IN WITNESS WHEREOF, the Bank has caused this Assurance to be executed and represents that the person whose signature appears below is authorized to bind the Bank to the terms and conditions set forth herein. The Attorney General of West Virginia or his designate has approved this Assurance.

FIRST SENTINEL BANK

DATED: 12/15/17

BY: Matthew D. Tiller
(Signature)

NAME: Matthew D. Tiller

TITLE: S.V.P. - Chief Credit Officer
(print name and title)

STATE OF _____,

COUNTY OF _____, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this _____
day of _____, 2017, by _____, on behalf of First Sentinel Bank.

My commission expires _____.

NOTARY PUBLIC

**PATRICK MORRISEY
ATTORNEY GENERAL**

BY COUNSEL

Norman Googel

NORMAN GOOGEL

SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division
Office of the Attorney General of West Virginia

DATED: December 18, 2017

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 18th
day of December, 2017.

My commission expires July 20, 2020.

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NOTARY PUBLIC

