

ASSEMBLY, No. 4997

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

“Mortgage Servicers Licensing Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2019)

1 AN ACT concerning licensing of mortgage servicers and
2 supplementing Title 17 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the “Mortgage
8 Servicers Licensing Act.”

9
10 2. As used in this act:

11 “Branch office” means a location other than the main office at
12 which a licensee or any person on behalf of a licensee acts as a
13 mortgage servicer.

14 “Commissioner” means the Commissioner of Banking and
15 Insurance.

16 “Control” means the power, directly or indirectly, to direct the
17 management or policies of a company, whether through ownership
18 of securities, by contract or otherwise.

19 “Control person” means an individual that directly or indirectly
20 exercises control over any person that:

21 (1) is a director, general partner or executive officer;

22 (2) in the case of a corporation, directly or indirectly has the
23 right to vote 10 percent or more of a class of any voting security or
24 has the power to sell or direct the sale of 10 percent or more of any
25 class of voting securities;

26 (3) in the case of a limited liability company, is a managing
27 member; or

28 (4) in the case of a partnership, has the right to receive upon
29 dissolution, or has contributed, 10 percent or more of the capital,
30 shall be presumed to be a control person.

31 “Department” means the Department of Banking and Insurance.

32 “Individual” means a natural person.

33 “Mortgage servicer” means:

34 (1) any person, wherever located, who, for the person or on
35 behalf of the holder of a residential mortgage loan, receives
36 payments of principal and interest in connection with a residential
37 mortgage loan, records the payments on the person’s books and
38 records and performs the other administrative functions as may be
39 necessary to properly carry out the mortgage holder’s obligations
40 under the mortgage agreement including, when applicable, the
41 receipt of funds from the mortgagor to be held in escrow for
42 payment of real estate taxes and insurance premiums and the
43 distribution of the funds to the taxing authority and insurance
44 company; and

45 (2) includes a person who makes payments to borrowers
46 pursuant to the terms of a home equity conversion mortgage or
47 reverse mortgage.

1 “Mortgagee” means the grantee of a residential mortgage,
2 provided if the residential mortgage has been assigned of record,
3 “mortgagee” means the last person to whom the residential
4 mortgage has been assigned of record.

5 “Mortgagor” means any person obligated to repay a residential
6 mortgage loan.

7 “Office” means a main office or branch office.

8 “Residential mortgage loan” means a loan made to a natural
9 person or persons to whom credit is offered or extended primarily
10 for personal, family or household purposes which is secured by a
11 mortgage constituting a lien upon real property located in this State
12 on which there is erected or to be erected a structure containing one,
13 two, three, four, five, or six dwelling units, a portion of which
14 structure may be used for nonresidential purposes, in the making of
15 which the mortgagee relies primarily upon the value of the
16 mortgaged property.

17 “Residential mortgage lender” means the same as “residential
18 mortgage lender” as defined in section 3 of P.L.2009, c.53
19 (C.17:11C-53).

20

21 3. a. On and after January 1, 2019, no person shall act as a
22 mortgage servicer, directly or indirectly, without first obtaining a
23 license under section 4 of this act from the commissioner for its
24 main office, which shall be designated by the mortgage servicer,
25 and each branch office where business is conducted, unless the
26 person is exempt from licensure pursuant to subsection b. of this
27 section.

28 b. The following persons shall be exempt from mortgage
29 servicer licensing requirements:

30 (1) any bank, out-of-state bank, credit union chartered in New
31 Jersey, federal credit union, or out-of-state credit union, provided
32 the bank or credit union is federally insured;

33 (2) any wholly-owned subsidiary of the bank or credit union;

34 (3) any operating subsidiary in situations in which each owner
35 of the operating subsidiary is wholly owned by the same bank or
36 credit union;

37 (4) any person licensed as a residential mortgage lender
38 pursuant to the “New Jersey Residential Mortgage Lending Act,”
39 P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) while acting as
40 a mortgage servicer, provided that:

41 (a) the person meets the supplemental mortgage servicer surety
42 bond, fidelity bond, and errors and omissions coverage
43 requirements under section 8 of this act; and

44 (b) during any period that the license of the residential mortgage
45 lender in this State has been suspended, the exemption shall not be
46 effective; and

47 (5) the New Jersey Housing and Mortgage Finance Agency.

1 c. The provisions of sections 9 through 12 of this act shall
2 apply to any person, including a person exempt from licensure
3 pursuant to subsection b. of this section, who acts as a mortgage
4 servicer in this State on or after January 1, 2019.

5
6 4. a. The commissioner shall issue a mortgage servicer license
7 to an applicant if the commissioner finds that:

8 (1) the applicant has identified a qualified individual for its
9 main office, and a branch manager for each branch office where the
10 business is conducted, provided the qualified individual and branch
11 manager have supervisory authority over the mortgage servicer
12 activities at the respective office location and at least three years'
13 experience in the mortgage servicing business within the five years
14 immediately preceding the date of the application for licensure;

15 (2) the applicant, the control persons of the applicant, the
16 qualified individual and any branch manager with supervisory
17 authority at the office for which the license is sought, have not been
18 convicted of or pled guilty or nolo contendere to, in a domestic,
19 foreign, or military court, a felony during the seven-year period
20 preceding the date of the application for licensing, or a felony
21 involving an act of fraud or dishonesty, a breach of trust or money
22 laundering at any time preceding the date of application, except that
23 any pardon or expungement of a conviction shall not be a
24 conviction for purposes of this paragraph;

25 (3) the applicant demonstrates that the financial responsibility,
26 character and general fitness of the applicant, the control persons of
27 the applicant, the qualified individual and any branch manager
28 having supervisory authority over the office for which the license is
29 sought, warrant a determination that the applicant will operate
30 honestly, fairly and efficiently within the purposes of this act;

31 (4) the applicant has met the surety bond, fidelity bond, and
32 errors and omissions coverage requirement under section 8 of this
33 act;

34 (5) the applicant has not made a material misstatement in the
35 application; and

36 (6) the applicant has met any other similar requirements as
37 determined by the commissioner.

38 If the commissioner fails to make the findings, the commissioner
39 shall not issue a license, and shall notify the applicant of the denial
40 and the reasons for the denial. For purposes of this subsection, the
41 level of offense of the crime and the status of any conviction,
42 pardon, or expungement shall be determined by reference to the law
43 of the jurisdiction where the case was prosecuted. In the event the
44 jurisdiction does not use the term "felony," "pardon," or
45 "expungement," the terms shall include legally equivalent events.
46 For purposes of paragraph (1) of this subsection, "experience in the
47 mortgage servicing business" means paid experience in the:

48 (a) servicing of mortgage loans;

1 (b) accounting, receipt and processing of payments on behalf of
2 mortgagees or creditors; or

3 (c) supervision of these activities, or any other relevant
4 experience as determined by the commissioner.

5 b. An application for a license as a mortgage servicer or
6 renewal of the license shall be filed with the department, in a form
7 prescribed by the commissioner, and shall be accompanied by the
8 fees required by section 7 of this act. The applicant shall, at a
9 minimum, furnish to the department information concerning the
10 identity of the applicant, any control person of the applicant, the
11 qualified individual and any branch manager, including personal
12 history and experience in a form prescribed by the commissioner,
13 and information related to any administrative, civil or criminal
14 findings by any governmental jurisdiction. The applicant shall
15 notify the department of any change to the information submitted in
16 connection with its most recent application for licensure not later
17 than 15 days after the applicant has reason to know of the change.
18 For the purpose of this subsection, evidence of experience of the
19 qualified individual and any branch manager shall include:

20 (1) a statement specifying the duties and responsibilities of the
21 person's employment, the term of employment, including month
22 and year, and the name, address and telephone number of a
23 supervisor, employer or, if self-employed, a business reference; and

24 (2) if required by the commissioner, copies of W-2 forms, 1099
25 tax forms or, if self-employed, 1120 corporate tax returns, signed
26 letters from the employer on the employer's letterhead verifying the
27 person's duties and responsibilities and term of employment
28 including month and year, and, if the person is unable to provide the
29 letters, other proof satisfactory to the commissioner that the person
30 meets the experience requirement. The commissioner may conduct
31 a criminal history records check of the applicant, any control person
32 of the applicant, the qualified individual and any branch manager
33 with supervisory authority at the office for which the license is
34 sought and require the applicant to submit the fingerprints of those
35 persons as part of the application. The commissioner is authorized
36 to exchange fingerprint data with and receive criminal history
37 record information from the State Bureau of Identification in the
38 Division of State Police and the Federal Bureau of Investigation
39 consistent with applicable State and federal laws, rules and
40 regulations, for the purposes of facilitating determinations
41 concerning licensure eligibility for the applicant, any control person
42 of the applicant, the qualified individual and any branch manager.
43 The applicant shall bear the cost for the criminal history record
44 background check, including all costs of administering and
45 processing the check. The Division of State Police shall promptly
46 notify the commissioner in the event any person who was the
47 subject of a criminal history record background check pursuant to
48 this section, is arrested for a crime or offense in this State after the

1 date the background check was performed, whether the person is a
2 prospective new licensee, or subsequently, a current license holder.

3 c. (1) The minimum standards for license renewal for a
4 mortgage servicer shall include the following:

5 (a) the applicant continues to meet the minimum standards
6 under subsection a. of this section; and

7 (b) the mortgage servicer has paid all required fees for renewal
8 of the license.

9 (2) The license of a mortgage servicer that fails to satisfy the
10 minimum standards for license renewal shall expire. The
11 commissioner may adopt procedures for the reinstatement of
12 expired licenses. The commissioner may suspend a mortgage
13 servicer license if the licensee is in violation of any provision of
14 this act. After a license has been suspended pursuant to this section,
15 the commissioner shall give the licensee notice of the suspension,
16 pending proceedings for revocation or refusal to renew pursuant to
17 sections 14 and 15 of this act and an opportunity for a hearing on
18 the action and require the licensee to take or refrain from taking any
19 action that, in the opinion of the commissioner, is necessary to
20 effectuate the purposes of this act.

21 d. (1) Withdrawal of an application for a license filed under
22 this section shall become effective upon receipt by the
23 commissioner of a notice of intent to withdraw the application. The
24 commissioner may deny a license up to one year after the effective
25 date of withdrawal.

26 (2) If the license of a mortgage servicer expires due to the
27 licensee's failure to renew, the commissioner may institute a
28 revocation or suspension proceeding or issue an order suspending or
29 revoking the license pursuant to subsection a. of section 14 of this
30 act not later than one year after the date of the expiration.

31 e. The commissioner may deem an application for a license
32 under this section abandoned if the applicant fails to respond to any
33 request for information required under this act, or the regulations
34 adopted pursuant to this act. The commissioner shall notify the
35 applicant that if the information is not submitted within 60 days
36 from the date of the request, the application shall be deemed
37 abandoned. An application filing fee paid prior to the date an
38 application is deemed abandoned pursuant to this subsection shall
39 not be refunded. Abandonment of an application pursuant to this
40 subsection shall not preclude the applicant from submitting a new
41 application for a license.

42

43 5. At least annually, a mortgage servicer shall file with the
44 commissioner the following information with respect to mortgages
45 that it services in this State:

46 a. a current schedule of the ranges of costs and fees it charges
47 mortgagors for its servicing-related activities;

- 1 b. a report in a form and format acceptable to the commissioner
2 detailing the mortgage servicer's activities in the State, including:
3 (1) the number of residential mortgage loans the mortgage
4 servicer is servicing; and
5 (2) the type and characteristics of the residential mortgage loans
6 the mortgage servicer is servicing;
7 c. the number of serviced residential mortgage loans in default,
8 along with a breakdown of 30, 60, and 90-days of delinquency;
9 d. a description of the mortgage servicer's loss mitigation
10 activities, including details on workout arrangements undertaken;
11 and
12 e. the number of foreclosures commenced.
13
- 14 6. a. A mortgage servicer license shall not be transferable or
15 assignable. A licensee shall not use any name other than its legal
16 name or a fictitious name approved by the commissioner, provided
17 the licensee shall not use its legal name if the commissioner
18 disapproves use of the name. Any licensee who intends to
19 permanently cease acting as a mortgage servicer at any time during
20 a license period for any cause, including, but not limited to,
21 bankruptcy or voluntary dissolution, shall file with the department a
22 request to surrender the license for each office at which the licensee
23 intends to cease to do business, not later than 15 days after the date
24 of the cessation. A surrender shall not be effective until accepted by
25 the commissioner.
- 26 b. A mortgage servicer licensee may change the name of the
27 licensee or address of any office specified on the most recent filing
28 with the department if:
29 (1) at least 30 calendar days prior to the change, the licensee
30 files the change with the department and, in the case of a main
31 office or branch office, provides, directly to the commissioner, a
32 bond rider or endorsement, or addendum, as applicable, to any bond
33 or evidence of errors and omissions coverage on file with the
34 commissioner that reflects the new name or address of the main
35 office or branch office; and
36 (2) the commissioner does not disapprove the change, in
37 writing, or request further information within the 30 day period.
- 38 c. The mortgage servicer licensee shall notify the department,
39 in writing, not later than five business days after the licensee has
40 reason to know of the occurrence of any of the following events:
41 (1) filing for bankruptcy, or the consummation of a corporate
42 restructuring, of the licensee;
43 (2) filing of a criminal indictment against the licensee or
44 receiving notification of the filing of any criminal felony indictment
45 or felony conviction of any of the licensee's officers, directors,
46 members, partners or shareholders owning ten percent or more of
47 the outstanding stock;

1 (3) receiving notification of the institution of license denial,
2 cease and desist, suspension or revocation procedures, or other
3 formal or informal regulatory action by any governmental agency
4 against the licensee and the reasons for the action;

5 (4) receiving notification of the initiation of any action by the
6 Attorney General or the attorney general of any other state and the
7 reasons for the action;

8 (5) suspension or termination of the licensee's status as an
9 approved seller or servicer by the Federal National Mortgage
10 Association, Federal Home Loan Mortgage Corporation or
11 Government National Mortgage Association;

12 (6) receiving notification that certain servicing rights of the
13 licensee will be rescinded or cancelled, and the reasons provided
14 therefor;

15 (7) receiving notification of filing for bankruptcy of any of the
16 licensee's officers, directors, members, partners or shareholders
17 owning ten percent or more of the outstanding stock of the licensee;
18 or

19 (8) receiving notification of the initiation of a class action
20 lawsuit on behalf of consumers against the licensee that is related to
21 the operation of the licensed business.

22
23 7. a. An initial mortgage servicer license shall expire at the
24 close of business on December 31 of the year in which it is
25 approved, except that any license that is approved on or after
26 November 1 shall expire at the close of business on December 31 of
27 the year following the year in which it is approved. An application
28 for renewal of a license shall be filed between November 1 and
29 December 31 of the year in which the license expires and a renewal
30 license shall expire at the close of business on December 31 of the
31 third year after the year in which it was approved. Each applicant
32 for an initial license or renewal of a license as a mortgage servicer
33 shall pay to the department any required fees or charges and a
34 license fee of \$1,000. Each applicant for a renewal license shall pay
35 to the department any required fees or charges and a license fee of
36 \$3,000.

37 b. All fees paid pursuant to this section, including fees paid in
38 connection with an application that is denied or withdrawn prior to
39 the issuance of the license, shall be nonrefundable. A fee paid
40 pursuant to this section shall not be prorated if the license is
41 surrendered, revoked or suspended prior to the expiration of the
42 period for which it was approved.

43
44 8. a. A mortgage servicer applicant or licensee and any person
45 exempt from mortgage servicer licensure pursuant to paragraph (4)
46 of subsection b. of section 3 of this act shall file with the
47 commissioner:

1 (1) a surety bond, written by a surety authorized to write the
2 bonds in this State, covering its main office and any branch office
3 from which it acts as mortgage servicer, in a penal sum of \$100,000
4 per office location in accordance with subsection b. of this section;

5 (2) a fidelity bond, written by a surety authorized to write the
6 bonds in this State, in accordance with the requirements of
7 subsection c. of this section; and

8 (3) evidence of errors and omissions coverage, written by an
9 entity authorized to write the coverage in this State, in accordance
10 with the requirements of subsection c. of this section. A mortgage
11 servicer licensee and a person otherwise exempt from mortgage
12 servicer licensure pursuant to paragraph (4) of subsection b. of
13 section 3 of this act shall not act as a mortgage servicer in this State
14 without maintaining the surety bond, fidelity bond and errors and
15 omissions coverage required by this section.

16 b. The surety bond required by subsection a. of this section
17 shall be:

18 (1) in a form approved by the Attorney General; and

19 (2) conditioned upon the mortgage servicer licensee or person
20 exempt from mortgage servicer licensure pursuant to paragraph (4)
21 of subsection b. of section 3 of this act performing any and all
22 written agreements or commitments with or for the benefit of
23 mortgagors and mortgagees, accounting for all funds received from
24 a mortgagor or mortgagee in the person's capacity as a mortgage
25 servicer, and conducting the mortgage business consistent with the
26 provisions of this act. Any mortgagor damaged by the failure of a
27 mortgage servicer licensee or person exempt from mortgage
28 servicer licensure pursuant to paragraph (4) of subsection b. of
29 section 3 of this act to perform any written agreements or
30 commitments, or by the wrongful conversion of funds paid by a
31 mortgagor to the licensee or person, may proceed on the bond
32 against the principal or surety thereon, or both, to recover damages.
33 The commissioner may proceed on the bond against the principal or
34 surety on the bond, or both, to collect any appropriate civil penalty.
35 The proceeds of the bond, even if commingled with other assets of
36 the principal, shall be deemed by operation of law to be held in trust
37 for the benefit of claimants against the principal in the event of
38 bankruptcy of the principal and shall be immune from attachment
39 by creditors and judgment creditors. The surety bond shall run
40 concurrently with the period of the license for the main office of the
41 mortgage servicer or residential mortgage lender and the aggregate
42 liability under the bond shall not exceed the penal sum of the bond.
43 The principal shall notify the commissioner of the commencement
44 of an action on the bond. When an action is commenced on a
45 principal's bond, the commissioner may require the filing of a new
46 bond and immediately on recovery on any action on the bond, the
47 principal shall file a new bond.

1 c. The fidelity bond and errors and omissions coverage
2 required by subsection a. of this section shall name the Department
3 of Banking and Insurance as an additional loss payee on drafts the
4 surety issues to pay for covered losses directly or indirectly
5 incurred by mortgagors of residential mortgage loans serviced by
6 the mortgage servicer. The fidelity bond shall cover losses arising
7 from dishonest and fraudulent acts, embezzlement, misplacement,
8 forgery and similar events committed by employees of the mortgage
9 servicer. The errors and omissions coverage shall cover losses
10 arising from negligence, errors and omissions by the mortgage
11 servicer with respect to the payment of real estate taxes and special
12 assessments, hazard and flood insurance or the maintenance of
13 mortgage and guaranty insurance. The fidelity bond and errors and
14 omissions coverage shall each be in the following principal amounts
15 based on the mortgage servicer's volume of servicing activity most
16 recently reported to the department:

17 (1) If the amount of the residential mortgage loans serviced is
18 \$100,000,000 or less, the principal amount shall be \$300,000; or

19 (2) If the amount of the loans exceeds \$100,000,000, the
20 principal amount shall be \$300,000 plus:

21 (a) three-twentieths of one percent of the amount of residential
22 mortgage loans serviced greater than \$100,000,000 but less than or
23 equal to \$500,000,000;

24 (b) plus one-eighth of one percent of the amount of residential
25 mortgage loans serviced greater than \$500,000,000 but less than or
26 equal to \$100,000,000,000; and

27 (c) plus one-tenth of one percent of the amount of residential
28 mortgage loans serviced greater than \$100,000,000,000.

29 The fidelity bond and errors and omissions coverage may
30 provide for a deductible amount not to exceed the greater of
31 \$100,000 or five percent of the principal amount.

32 d. A surety shall have the right to cancel the surety bond,
33 fidelity bond and errors and omissions coverage required by this
34 section at any time by a written notice to the principal stating the
35 date cancellation shall take effect. The notice shall be sent by
36 certified mail to the principal at least 30 days prior to the date of
37 cancellation. A surety bond, fidelity bond or errors and omissions
38 coverage shall not be cancelled unless the surety notifies the
39 commissioner, in writing, not less than 30 days prior to the effective
40 date of cancellation. After receipt of the notification from the
41 surety, the commissioner shall give written notice to the principal of
42 the date the cancellation shall take effect. The commissioner shall
43 suspend the license of a mortgage servicer on that date. A
44 suspension or inactivation shall not occur if, prior to the date that
45 the bond or errors and omissions coverage cancellation shall take
46 effect:

1 (1) the principal submits a letter of reinstatement of the bond or
2 errors and omissions coverage, or a new bond or errors and
3 omissions policy; or

4 (2) the mortgage servicer licensee has ceased business in this
5 State and has surrendered all licenses in accordance with section 5
6 of this act. After a mortgage servicer license has been suspended
7 pursuant to this section, the commissioner shall give the licensee
8 notice of the suspension, pending proceedings for revocation or
9 refusal to renew pursuant to section 14 of this act and an
10 opportunity for a hearing on the action and require the licensee to
11 take or refrain from taking the action as in the opinion of the
12 commissioner will effectuate the purposes of this section. A person
13 licensed as a residential mortgage lender in this State acting as a
14 mortgage servicer from a location licensed as a main office or
15 branch office shall cease to be exempt from mortgage servicer
16 licensing requirements in this State upon cancellation of any surety
17 bond, fidelity bond or errors and omissions coverage required by
18 this section.

19 e. If the commissioner finds that the financial condition of a
20 mortgage servicer or residential mortgage lender licensee so
21 requires, as evidenced by the reduction of tangible net worth,
22 financial losses or potential losses as a result of a violation of this
23 act, the commissioner may require one or more additional bonds
24 meeting the standards set forth in this section. The licensee shall
25 file any the additional bonds not later than ten days after receipt of
26 the commissioner's written notice of the requirement. A mortgage
27 servicer or residential mortgage lender licensee shall file, as the
28 commissioner may require, any bond rider or endorsement or
29 addendum, as applicable, to any bond or evidence of errors and
30 omissions coverage on file with the commissioner to reflect any
31 changes necessary to maintain the surety bond, fidelity bond and
32 errors and omissions coverage required by this section.

33
34 9. a. A mortgage servicer licensee and person exempt from
35 licensure pursuant to paragraph (4) of subsection b. of section 3 of
36 this act shall maintain adequate records of each residential mortgage
37 loan transaction at the office named in the mortgage servicer or
38 residential mortgage lender license, or, if requested by the
39 commissioner, shall make the records available at the office or send
40 the records to the commissioner by registered or certified mail,
41 return receipt requested, or by any express delivery carrier that
42 provides a dated delivery receipt, not later than five business days
43 after requested by the commissioner to do so. Upon request, the
44 commissioner may grant a licensee additional time to make the
45 records available or send them to the commissioner. The records
46 shall provide the following information:

47 (1) a loan history for residential mortgage loans upon which
48 payments are received or made by the mortgage servicer, itemizing

1 the amount and date of each payment and the unpaid balance at all
2 times;

3 (2) the original or an exact copy of the note, residential
4 mortgage or other evidence of indebtedness;

5 (3) the name and address of the residential mortgage lender,
6 and mortgage broker, if any, involved in the residential mortgage
7 loan transaction;

8 (4) copies of any disclosures or notifications provided to the
9 mortgagor required by State or federal law;

10 (5) a copy of any bankruptcy plan approved in a proceeding
11 filed by the mortgagor or a co-owner of the property subject to the
12 residential mortgage loan;

13 (6) a communications log that documents all verbal
14 communications with the mortgagor or the mortgagor's
15 representative; and

16 (7) a copy of all notices sent to the mortgagor related to any
17 foreclosure proceeding filed against the encumbered property.

18 b. Every mortgage servicer licensee and person exempt from
19 licensure pursuant to paragraph (4) of subsection b. of section 3 of
20 this act shall retain the records of each residential mortgage loan
21 serviced for not less than two years following the final payment on
22 the residential mortgage loan, or the assignment of the residential
23 mortgage loan, whichever occurs first, or a longer period as may be
24 required by any other provision of law. Every mortgage servicer
25 licensee and person exempt from licensure pursuant to paragraph
26 (4) of subsection b. of section 3 of this act shall keep and use in its
27 business books, accounts and records that will enable the
28 commissioner to determine whether the mortgage servicer is
29 complying with the provisions of this act.

30

31 10. Upon assignment of servicing rights on a residential
32 mortgage loan, the mortgage servicer shall disclose to the
33 mortgagor:

34 a. any notice required by the "Real Estate Settlement
35 Procedures Act of 1974" (12 U.S.C. s.2601 et seq.), and the
36 regulations promulgated thereunder, and within the time periods
37 prescribed therein; and

38 b. a schedule of the ranges and categories of its costs and fees
39 for its servicing-related activities, which shall comply with State
40 and federal law and, if the disclosure is made by a mortgage
41 servicer licensee, shall not exceed those reported to the
42 commissioner in accordance with section 5 of this act.

43

44 11. a. A mortgage servicer shall comply with all applicable
45 federal laws and regulations relating to mortgage loan servicing,
46 including, but not limited to:

47 (1) the "Real Estate Settlement Procedures Act of 1974" (12
48 U.S.C. s.2601 et seq.); and

1 (2) the “Truth-in-Lending Act” (15 U.S.C. s.1601 et seq.).

2 b. In addition to any other remedies provided by law, a
3 violation of any the federal law or regulation shall be deemed a
4 violation of this section and a basis upon which the commissioner
5 may take enforcement action pursuant to section 14 of this act.

6
7 12. a. A mortgage servicer shall maintain and keep current a
8 schedule of fees that it charges mortgagors for its servicing-related
9 activities. The schedule shall identify each fee, provide a plain
10 English explanation of the fee and state the amount of the fee or
11 range of amounts or, if there is no standard fee, how the fee is
12 calculated or determined. A mortgage servicer shall make its
13 schedule available to the mortgagor or the mortgagor’s authorized
14 representative upon request.

15 b. A mortgage servicer shall not impose any late fee or
16 delinquency charge when the only delinquency is attributable to late
17 fees or delinquency charges assessed on an earlier payment, and the
18 payment is otherwise a full payment for the applicable period and is
19 paid on its due date or within any applicable grace period. Late
20 charges shall not be:

- 21 (1) based on an amount greater than the past due amount;
22 (2) collected from the escrow account or from escrow surplus
23 without the approval of the mortgagor; or
24 (3) deducted from any regular payment.

25
26 13. A mortgage servicer shall not:

27 a. directly or indirectly employ any scheme, device or artifice
28 to defraud or mislead mortgagors or mortgagees or to defraud any
29 person;

30 b. engage in any unfair or deceptive practice toward any person
31 or misrepresent or omit any material information in connection with
32 the servicing of a residential mortgage loan, including, but not
33 limited to, misrepresenting the amount, nature or terms of any fee
34 or payment due or claimed to be due on a residential mortgage loan,
35 the terms and conditions of the servicing agreement or the
36 mortgagor’s obligations under the residential mortgage loan;

37 c. obtain property by fraud or misrepresentation;

38 d. knowingly misapply or recklessly apply residential mortgage
39 loan payments to the outstanding balance of a residential mortgage
40 loan;

41 e. knowingly misapply or recklessly apply payments to escrow
42 accounts;

43 f. place hazard, homeowner’s or flood insurance on the
44 mortgaged property when the mortgage servicer knows or has
45 reason to know that the mortgagor has an effective policy for the
46 insurance;

47 g. knowingly or recklessly provide inaccurate information to a
48 credit bureau, thereby harming a mortgagor’s creditworthiness;

- 1 h. fail to report both the favorable and unfavorable payment
- 2 history of the mortgagor to a nationally recognized consumer credit
- 3 bureau at least annually if the mortgage servicer regularly reports
- 4 information to a credit bureau;
- 5 i. collect private mortgage insurance beyond the date for which
- 6 private mortgage insurance is required;
- 7 j. fail to issue a release of mortgage in accordance with the
- 8 provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.);
- 9 k. fail to provide written notice to a mortgagor upon taking
- 10 action to place hazard, homeowner's or flood insurance on the
- 11 mortgaged property, including a clear and conspicuous statement of
- 12 the procedures by which the mortgagor may demonstrate that the
- 13 mortgagor has the required insurance coverage and by which the
- 14 mortgage servicer shall terminate the insurance coverage placed by
- 15 it and refund or cancel any insurance premiums and related fees
- 16 paid by or charged to the mortgagor;
- 17 l. place hazard, homeowner's, or flood insurance on a
- 18 mortgaged property, or require a mortgagor to obtain or maintain
- 19 that insurance, in excess of the replacement cost of the
- 20 improvements on the mortgaged property as established by the
- 21 property insurer;
- 22 m. fail to provide to the mortgagor a refund of unearned
- 23 premiums paid by a mortgagor or charged to the mortgagor for
- 24 hazard, homeowner's, or flood insurance placed by a mortgagee or
- 25 the mortgage servicer if the mortgagor provides reasonable proof
- 26 that the mortgagor has obtained coverage so that the forced
- 27 placement insurance is no longer necessary and the property is
- 28 insured. If the mortgagor provides reasonable proof that no lapse in
- 29 coverage occurred so that the forced placement is not necessary, the
- 30 mortgage servicer shall promptly refund the entire premium;
- 31 n. require any amount of funds to be remitted by means more
- 32 costly to the mortgagor than a bank or certified check or attorney's
- 33 check from an attorney's account to be paid by the mortgagor;
- 34 o. refuse to communicate with an authorized representative of
- 35 the mortgagor who provides a written authorization signed by the
- 36 mortgagor, provided the mortgage servicer may adopt procedures
- 37 reasonably related to verifying that the representative is in fact
- 38 authorized to act on behalf of the mortgagor;
- 39 p. conduct any business covered by this act, without holding a
- 40 valid license as required under this act, or assist or aid and abet any
- 41 person in the conduct of business without a valid license as required
- 42 under this act; or
- 43 q. negligently make any false statement or knowingly and
- 44 willfully make any omission of a material fact in connection with
- 45 any information or reports filed with a governmental agency or the
- 46 department or in connection with any investigation conducted by
- 47 the commissioner or another governmental agency.

1 14. a. The commissioner shall have the authority to conduct
2 investigations and examinations as follows:

3 (1) For purposes of initial licensing, license renewal, license
4 suspension, license conditioning, license revocation or termination,
5 or general or specific inquiry or investigation to determine
6 compliance with this act, the commissioner may access, receive and
7 use any books, accounts, records, files, documents, information or
8 evidence including, but not limited to:

9 (a) criminal, civil and administrative history information;

10 (b) personal history and experience information, including
11 independent credit reports obtained from a consumer reporting
12 agency described in Section 603(p) of the “Fair Credit Reporting
13 Act” (15 U.S.C. 1681a(p)); and

14 (c) any other documents, information or evidence the
15 commissioner deems relevant to the inquiry or investigation
16 regardless of the location, possession, control or custody of the
17 documents, information or evidence; and

18 (2) For the purposes of investigating violations or complaints
19 arising under this act, or for the purposes of examination, the
20 commissioner may review, investigate, or examine any mortgage
21 servicer licensee or person subject to the act as often as necessary in
22 order to carry out the purposes of the act. The commissioner may
23 direct, subpoena, or order the attendance of and examine under oath
24 all persons whose testimony may be required about the residential
25 mortgage loans or the business or subject matter of any
26 examination or investigation, and may direct, subpoena or order the
27 person to produce books, accounts, records, files and any other
28 documents the commissioner deems relevant to the inquiry.

29 b. A mortgage servicer licensee or any person subject to this
30 act shall make or compile reports or prepare other information as
31 directed by the commissioner in order to carry out the purposes of
32 this section including accounting compilations, information lists
33 and data concerning residential mortgage loan transactions in a
34 format prescribed by the commissioner or any other information the
35 commissioner deems necessary to carry out the purposes of this act.

36 c. In making an examination or investigation authorized by this
37 section, the commissioner may control access to any documents and
38 records of the mortgage servicer licensee or person under
39 examination or investigation. The commissioner may take
40 possession of the documents and records or place a person in
41 exclusive charge of the documents and records in the place where
42 they are usually kept. During the period of control, no person shall
43 remove or attempt to remove any of the documents and records
44 except pursuant to a court order or with the consent of the
45 commissioner. Unless the commissioner has reasonable grounds to
46 believe the documents or records of the mortgage servicer licensee
47 or person have been, or are at risk of being, altered or destroyed for
48 purposes of concealing a violation of this act, the mortgage servicer

1 licensee or owner of the documents and records shall have access to
2 the documents or records as necessary to conduct its ordinary
3 business affairs.

4 d. In order to carry out the purposes of this section, the
5 commissioner may:

6 (1) retain attorneys, accountants or other professionals and
7 specialists as examiners, auditors or investigators to conduct or
8 assist in the conduct of examinations or investigations;

9 (2) enter into agreements or relationships with other government
10 officials or regulatory associations in order to improve efficiencies
11 and reduce regulatory burdens by sharing resources, standardized or
12 uniform methods or procedures, and documents, records,
13 information or evidence obtained under this section;

14 (3) use, hire, contract or employ public or privately available
15 analytical departments, methods or software to examine or
16 investigate the mortgage servicer licensee or person subject to this
17 act;

18 (4) accept and rely on examination or investigation reports made
19 by other government officials, within or without this State; and

20 (5) accept audit reports made by an independent certified public
21 accountant for the mortgage servicer licensee or person subject to
22 this act, in the course of that part of the examination covering the
23 same general subject matter as the audit and may incorporate the
24 audit report in the report of examination, report of investigation or
25 other writing of the commissioner.

26 e. The authority of this section shall remain in effect, whether
27 the mortgage servicer licensee or person subject to this act, acts or
28 claims to act under any licensing or registration law of this State, or
29 claims to act without the authority.

30 f. A mortgage servicer licensee or person subject to
31 investigation or examination under this section shall not knowingly
32 withhold, abstract, remove, mutilate, destroy or secrete any books,
33 records, computer records or other information.

34

35 15. a. The commissioner may suspend, revoke or refuse to
36 renew any mortgage servicer license or take any other action for
37 any reason which would be sufficient grounds for the commissioner
38 to deny an application for the license under section 4 of this act, or
39 if the commissioner finds that the licensee, any control person of
40 the licensee, the qualified individual or any branch manager with
41 supervisory authority, trustee, employee or agent of the licensee has
42 done any of the following:

43 (1) made any material misstatement in the application;

44 (2) committed any fraud or misrepresentation or
45 misappropriated funds;

46 (3) violated any of the provisions of this act or of any
47 regulations adopted pursuant thereto, or any other law or regulation
48 applicable to the conduct of its business; or

1 (4) failed to perform any agreement with a mortgagee or a
2 mortgagor.

3 b. Whenever it appears to the commissioner that any person
4 has violated, is violating, or is about to violate any of the provisions
5 of this act or of any regulations adopted pursuant thereto, or any
6 licensee has failed to perform any agreement with a mortgagee or
7 mortgagor, committed any fraud, made any misrepresentation or
8 misappropriated funds, the commissioner may:

9 (1) issue an order directing a person or licensee to cease and
10 desist from engaging in any act or practice that is in violation of this
11 act; and

12 (2) bring an action in any court of competent jurisdiction to
13 enjoin the acts or practices and to enforce compliance with any
14 provision of this act.

15
16 16. The provisions of sections 3 through 12 of this act shall not
17 apply to:

18 (1) a person exempt from licensure as a residential mortgage
19 lender pursuant to the “New Jersey Residential Mortgage Lending
20 Act,” P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89), while
21 servicing residential mortgage loans made pursuant to the
22 exemption;

23 (2) a person servicing five or fewer residential mortgage loans
24 within any period of twelve consecutive months;

25 (3) any agency of the federal government, any state or municipal
26 government or any quasi-governmental agency servicing residential
27 mortgage loans under the specific authority of the laws of any state
28 or the United States; and

29 (4) a person exempt from licensure as a mortgage servicer
30 pursuant to paragraphs (1), (2), and (3) of subsection b. of section 3
31 of this act.

32
33 17. The Commissioner of Banking and Insurance may adopt
34 rules and regulations, pursuant to the “Administrative Procedure
35 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), including any fines or
36 penalties, necessary to effectuate the provisions of this act.

37
38 18. This act shall take effect on the 90th day next following
39 enactment.

40
41
42 STATEMENT

43
44 This bill, entitled the “Mortgage Servicers Licensing Act,”
45 requires any person acting as a mortgage servicer to obtain a
46 license from the Commissioner of Banking and Insurance for each
47 main office and each branch office where business is conducted,
48 unless the person is exempt under certain exemptions provided for

1 by the bill. The bill defines a “mortgage servicer” as any person,
2 wherever located, who performs certain functions for the holder of a
3 residential mortgage loan secured by real property located in this
4 State.

5 The bill provides that the commissioner shall issue a mortgage
6 servicer license to an applicant if the commissioner makes certain
7 findings, including that the applicant has met certain financial and
8 character and fitness requirements.

9 The bill requires a mortgage servicer to annually file with the
10 commissioner certain information regarding the mortgages that it
11 services in the State. The bill also requires mortgage servicers to
12 file with the commissioner a surety bond, fidelity bond, and
13 evidence of coverage, that meet certain standards as set forth in the
14 bill.

15 A mortgage servicer and a person exempt from licensure are
16 required to maintain adequate records of each residential mortgage
17 loan transaction and are required to produce the records upon
18 request of the commissioner. Upon assigning the servicing rights on
19 a residential mortgage loan, the servicer must make certain
20 disclosures to the mortgagor as set forth in the bill. A mortgage
21 servicer must maintain a schedule of fees charged to mortgagors.
22 The bill also prohibits certain unfair and deceptive trade practices.

23 The bill provides the commissioner the authority to conduct
24 investigation and examination of mortgage servicers. The
25 commissioner can suspend, revoke, or refuse to renew a mortgage
26 servicer license for certain reasons as set forth in the bill.

27 The bill provides the commissioner the authority to adopt rules
28 and regulations, pursuant to the “Administrative Procedure Act,”
29 P.L.1968, c.410 (C.52:14B-1 et seq.), including any fines or
30 penalties, necessary to effectuate the provisions of the bill.