

**CHAPTER 454M**  
**MORTGAGE SERVICERS**

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" **§454M-1 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

"Affiliated entity" means a person or other entity that is controlled, controlled by, or under common control with a developer.

"Applicant" means a person applying for a license under this chapter.

"Bankruptcy code" refers to the United States Bankruptcy Code, title 11 United States Code, section 101 et seq., as amended.

"Borrower" means the obligor, maker, cosigner, or guarantor under a mortgage loan agreement. For purposes of this chapter, a borrower is included in the term consumer.

"Business day" means Monday through Friday, excluding state holidays.

"C.F.R." means the Code of Federal Regulations.

"Commissioner" means the commissioner of financial institutions of this State.

"Consumer Financial Protection Bureau" means the agency of the United States government referenced in title 12 United States Code chapter 53, subchapter V.

"Control" means the power to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise.

"Developer" means a person whose time share plan is accepted by the director for registration under chapter 514E.

"Director" means the director of commerce and consumer affairs.

"Division of financial institutions" or "division" means the division of financial institutions of the department of commerce and consumer affairs.

"Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

"Home Affordable Modification Program" means the program established by the United States Department of the Treasury, pursuant to sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009. The Home Affordable Modification Program is a component of the Making Home Affordable Program, also known as the MHA Program.

"License" means a license issued under this chapter.

"Licensee" means a person licensed or required to be licensed under this chapter.

"Loss mitigation option" means an alternative to foreclosure, including loan modification, reinstatement, forbearance, deed-in-lieu, and short sale.

"Mortgage servicer" means the person responsible for collecting, receiving, and processing any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts under the Real Estate Settlement Procedures Act, and for making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this chapter, servicing includes making payments to the borrower.

"NMLS" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed loan originators and other financial services providers, or any system provided by the Consumer Financial Protection Bureau.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.

"Principal office" means the office location where the company's core executive and administrative functions are primarily carried out.

"Real Estate Settlement Procedures Act" means title 12 United States Code chapter 27, as amended, and regulations adopted thereunder also known as Regulation X, title 12 C.F.R. part 1024.

"Received" means, in the context of the date of payment, the date that the payment instrument or other means of payment reaches the mortgage servicer, in accordance with title 12 C.F.R. section 1026.36(c).

"Residential loan modification" or "loan modification" means a temporary or permanent change to the terms of a borrower's existing residential mortgage loan agreement, mutually agreed to between a borrower and a lender.

"Residential mortgage loan" or "mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition.

"Residential real estate" means any real property located in this State, upon which a dwelling is constructed or intended to be constructed.

"Servicing" means the business activity of a mortgage servicer.

"Time share interest" means that interest purchased in a time share plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a time share plan.

"Time share plan" has the same meaning as defined in title 11 United States Code section 101(53D). [L 2009, c 106, pt of §1; am L 2012, c 245, §2; am L 2013, c 92, §2; am L 2015, c 62, §2; am L 2016, c 122, §19]

" **§454M-2 License required.** (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) No person shall engage in the business of mortgage servicing in this State unless the person providing services has a physical presence in the State pursuant to section 454M-5(b)(6). [L 2009, c 106, pt of §1; am L 2011, c 48, §8; am L 2012, c 245, §3; am L 2015, c 62, §3; am L 2016, c 122, §20]

" **[§454M-2.5] Unlicensed foreclosure actions voided.** Any action taken in connection with a mortgage foreclosure under chapter 667 by a nonexempt person who engages in the business of mortgage servicing without a license as provided in this chapter shall be void for purposes of chapter 667. [L 2011, c 48, §2]

" **§454M-3 Exemptions.** This chapter shall not apply to the following:

- (1) Any persons chartered or authorized under the laws of any state or federal law to engage in the activity of an insured depository institution as defined in title 12 United States Code section 1813(c)(2), including banks or savings associations, and operating subsidiaries of an insured depository institution;
- (2) Trust companies, credit unions, insurance companies, and financial service loan companies licensed by the State;
- (3) The Federal Deposit Insurance Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;

- (4) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; the Federal Deposit Insurance Corporation; the United States Department of Housing and Urban Development, and the Government National Mortgage Association and the Federal Housing Administration, and cases in which a mortgage insured under the National Housing Act, 12 United States Code section 1701 et seq., is assigned to the United States Department of Housing and Urban Development; the National Credit Union Administration; the Farmers Home Administration or its successor agency under Public Law 103-354; and the Department of Veterans Affairs, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation for conservatorship or receivership of the servicer or an entity by which the servicer is owned or controlled;
- (5) Any person making or acquiring contemporaneously no more than five residential mortgage loans with that person's own funds for that person's own investment; and
- (6) A developer of a time share plan, or an affiliated entity of a developer of a time share plan, servicing a loan that is:
  - (A) Made by the developer or the developer's affiliated entity; and
  - (B) Secured by a lien on a time share interest. [L 2009, c 106, pt of §1; am L 2016, c 122, §21]

" **§454M-4 License; fees; renewals; notices; voluntary surrender of license; bonds.** (a) The commissioner may approve a license or license renewal application upon receipt of a complete application; provided that an applicant for licensure shall file an application on a form prescribed by NMLS or by the commissioner and shall pay an application fee of \$675. Each license shall expire on December 31 of each calendar year unless the license is renewed. A licensee may apply for license renewal by filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee of \$600, at least four weeks prior to December 31. The minimum standards for license renewal shall include the following:

- (1) The licensee continues to meet the minimum standards for licensure established pursuant to this section;

- (2) The licensee has paid all required fees for renewal of the license; and
- (3) The licensee is registered with the business registration division of the department of commerce and consumer affairs.

All fees paid pursuant to this section, including fees paid in connection with an application, shall be nonrefundable. No fee paid pursuant to this section shall be prorated if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was approved.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with NMLS or other entities designated by NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) To the extent reasonably necessary to participate in NMLS, the commissioner may modify any or all of the requirements of subsections (e) and (i).

(d) The commissioner may use NMLS as an agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source, as directed by the commissioner.

(e) The applicant shall submit any other information that the commissioner may require, including the applicant's:

- (1) Form and place of organization;
- (2) Tax identification number; and
- (3) Proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members have ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, have ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or have ever been convicted of any felony.

(f) A mortgage servicer license shall not be transferable or assignable. No licensee shall use any name other than the licensee's legal name or a fictitious name approved by the commissioner; provided that no licensee shall use the licensee's legal name if the commissioner disapproves of the use of the licensee's legal name.

(g) A mortgage servicer licensee may change the licensee's name or the address of any of the licensee's offices specified on the most recent filing with NMLS if:

- (1) The licensee files the change with NMLS and provides directly to the commissioner a bond rider or endorsement, or addendum, as applicable, to any bond on

file with the commissioner that reflects the new name or address;

- (2) The commissioner approves the change in writing; and
- (3) The mortgage servicer pays to the commissioner a fee of \$100 and any fees charged by NMLS.

(h) The mortgage servicer licensee shall file with NMLS or, if the information cannot be filed with NMLS, directly notify the commissioner in writing no later than five business days after the licensee has reason to know of the occurrence of any of the following events:

- (1) Filing for bankruptcy or the consummation of a corporate restructuring of the licensee;
- (2) Filing of a criminal indictment against the licensee or receiving notification of the filing of any criminal felony indictment or felony conviction of any of the licensee's officers, directors, employees, managers, agents, members, partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee;
- (3) Receiving notification of the initiation of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency against the licensee and the reasons for the action;
- (4) Receiving notification of the initiation of any action against the licensee by the state attorney general or the attorney general of any other state and the reasons for the action;
- (5) Suspension or termination of the licensee's status as an approved servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association;
- (6) Receiving notification that certain servicing rights of the licensee will be rescinded or canceled, and the reasons provided therefor;
- (7) Receiving notification of filing for bankruptcy of any of the licensee's officers, directors, members, managers, agents, partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee; or
- (8) Receiving notification of the initiation of a class action lawsuit on behalf of consumers against the licensee that is related to the operation of the licensed business.

(i) A mortgage servicer licensed under this chapter may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its mortgage servicer license. Notice pursuant to this

subsection shall be given at least thirty days before the surrender of the license and shall include:

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) The original license issued pursuant to this chapter to the mortgage servicer; and
- (5) If applicable, a copy of all notices to affected borrowers required by the Real Estate Settlement Procedures Act of the assignment, sale, or transfer of the servicing of all relevant loans that the licensee is currently servicing under the license being surrendered.

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this subsection; provided that if a mortgage servicer is required to assign, sell, or transfer the servicing of any loans, the voluntary surrender of the mortgage servicer's license shall be effective upon the effective date of the assignment, sale, or transfer of the servicing of all loans.

(j) Before a mortgage servicer's license becomes effective, the applicant or licensee shall file with the commissioner a surety bond written by a surety authorized to write surety bonds in this State, covering the applicant or licensee in a penal sum of \$100,000. No mortgage servicer licensee shall act as a mortgage servicer in this State without maintaining the surety bond required by this section.

The surety bond shall be:

- (1) In a form approved by the attorney general of this State; and
- (2) Conditioned upon the mortgage servicer licensee faithfully performing any and all written agreements or commitments with or for the benefit of borrowers and mortgagees, truly and faithfully accounting for all funds received from a borrower or mortgagee in the person's capacity as a mortgage servicer, and conducting the mortgage business consistent with the provisions of this chapter to perform any written agreements or commitments.

(k) The commissioner, or any person claiming to have sustained damage by reason of the failure of the mortgage servicer to comply with the mortgage servicer's bond, or by the



wrongful conversion of funds paid by a borrower to the mortgage servicer, may bring an action on the bond to recover the damage therefrom. The commissioner may deposit with a court of competent jurisdiction all or any part of the sum of the bond. The proceeds of the bond, even if mixed with other assets of the principal, shall be deemed by operation of law to be held in trust for the benefit of claimants against the principal in the event of bankruptcy of the principal and shall be immune from attachment by creditors and judgment creditors. The surety bond shall run concurrently with the period of the license for the principal office of the mortgage servicer and the aggregate liability under the bond shall not exceed the penal sum of the bond. The principal shall notify the commissioner of the commencement of an action on the bond. When an action is commenced on a principal's bond, the commissioner may require the filing of a new bond and immediately on recovery on any action on the bond, the principal shall file a new bond.

(1) A surety may cancel the surety bond required by this section at any time by a written notice to the principal stating the date cancellation shall take effect. The notice shall be sent by certified mail to the principal at least thirty days prior to the date of cancellation. A surety bond shall not be canceled unless the surety notifies the commissioner, in writing, not less than thirty days prior to the effective date of cancellation. After receipt of the notification from the surety, the commissioner shall give written notice to the principal of the date the cancellation shall take effect. The commissioner shall automatically suspend the license of a mortgage servicer on that date. No automatic suspension or inactivation shall occur if, prior to the date that the bond cancellation shall take effect:

- (1) The principal submits a letter of reinstatement of the bond or a new bond; or
- (2) The mortgage servicer licensee has ceased business in this State and has surrendered all licenses in accordance with this chapter.

Automatic suspension of a mortgage servicer license by the commissioner, and subsequent orders and proceedings, if any, shall be conducted pursuant to section 454M-7.

(m) If the commissioner finds that the financial condition of a mortgage servicer so requires, as evidenced by the reduction of tangible net worth, financial losses, or potential losses as a result of a violation of law or rule, the commissioner may require one or more additional bonds that meet the requirements of this section. The licensee shall file any additional bonds no later than ten days after receipt of the commissioner's written notice of the requirement for one or more additional bonds. A mortgage servicer or mortgage lender

licensee shall file, as the commissioner may require, any bond rider or endorsement or addendum, as applicable, to any bond on file with the commissioner to reflect any changes necessary to maintain the surety bond required by this section.

(n) For purposes of this section, "principal" means, in the context of a surety bond requirement, the primary party who will perform the contractual obligation. [L 2009, c 106, pt of §1; am L 2011, c 48, §9; am L 2012, c 245, §4; am L 2013, c 92, §3; am L 2014, c 30, §1; am L 2015, c 62, §4; am L 2016, c 122, §22]

" **§454M-4.5 Registration with NMLS.** The commissioner may require all mortgage servicers to register with NMLS. [L 2012, c 245, §1; am L 2013, c 92, §4]

" **§454M-5 Additional duties of a mortgage servicer; good faith and fair dealing; disclosures; payments, accounting, and records; assignment of servicing rights.** (a) A mortgage servicer licensed or acting under this chapter, has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan.

(b) In addition to any other duties imposed by law, a mortgage servicer shall:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Follow reasonable and lawful instructions from the borrower consistent with the underlying note and mortgage;
- (3) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (4) Disclose to the commissioner in the servicer's license application and each yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities;
- (5) File a report with each yearly renewal statement in a form and format acceptable to the commissioner detailing the servicer's activities in this State, including:
  - (A) The number of mortgage loans the servicer is servicing;
  - (B) The type and characteristics of loans serviced in this State;
  - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;

- (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
  - (E) Information on foreclosures commenced in this State;
  - (F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its affiliations; and
  - (G) Any other information that the commissioner may require; and
- (6) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer's business constitutes at least a twenty per cent share of the portion of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall prohibit a mortgagee as defined by section 667-1 or a mortgage servicer from contracting with a licensee that maintains an office in this State in conformity with this section for the purposes of addressing consumer inquiries or complaints and accepting service of process.

(c) A mortgage servicer shall comply with the following requirements concerning handling and processing of mortgage payments:

- (1) Except as provided in paragraph (4), all payments received by a mortgage servicer on a mortgage loan at the address where the borrower has been instructed in writing to make payments shall be accepted and credited, or treated as credited, on the business day received, to the extent that the borrower has provided sufficient information to credit the account. For all mortgage loans originated after July 1, 2015, except where inconsistent with federal law or regulation, payments shall be credited to the principal and interest due on the home loan before crediting the payments to taxes, insurance, or fees;
- (2) Methods of payment and payment instruments shall be reasonable;

- (3) If a mortgage servicer specifies in writing requirements for the borrower to follow in making payments, but accepts a payment that does not conform to the requirements, the mortgage servicer shall credit the payment as soon as commercially practicable, but in no event later than three business days after receipt;
- (4) Late payments of principal and interest shall be credited before any late charge is collected; and
- (5) If the mortgage servicer receives any payment on a mortgage loan and suspenses the payment, does not credit the payment, or does not treat the payment in accordance with this section, the mortgage servicer, within ten days of receipt, shall send the borrower notice by mail at the borrower's last known address indicating the reason the payment was suspended or was not credited or treated as credited to the account, and specifying any actions by the borrower necessary to make the loan current.

(d) A mortgage servicer shall comply with the following requirements concerning escrows for the payment of taxes and insurance:

- (1) Any mortgage servicer who receives funds from a borrower to be held in escrow for payment of taxes and insurance premiums shall pay the taxes and insurance premiums of the borrower to the appropriate taxing authority and insurance company in the amount required and at the time the taxes and insurance premiums are due, in accordance with the requirements of the Real Estate Settlement Procedures Act, including title 12 C.F.R. section 1024.17, and shall be liable to the borrower as provided therein;
- (2) If the amount held in the escrow account as of the date the taxes and insurance premiums are due is insufficient to pay the taxes and insurance premiums, the mortgage servicer shall pay the taxes and insurance premiums from the mortgage servicer's own funds; provided that the borrower has paid to the mortgage servicer the amounts required to be paid into the escrow account, as determined by the mortgage servicer, for all amounts scheduled to be paid to the mortgage servicer prior to the date the taxes and insurance premiums are due; and
- (3) Where an escrow account has been established and a mortgage servicer advances funds in paying a disbursement that is not the result of a borrower's payment default under the underlying mortgage document, the mortgage servicer shall conduct an

escrow account analysis to determine the reasons for and extent of the deficiency and shall provide a written explanation to the borrower before seeking repayment of the funds from the borrower. The mortgage servicer shall then give the borrower the option of paying the shortage over a period of not less than one year. The mortgage servicer shall not charge or collect interest on any shortage during the payment period.

Any mortgage servicer who violates any provision of this subsection shall be liable to the borrower: for any penalties, interest, or other charges levied by the taxing authority or insurance company as a result of any violation; any actual damages suffered by the borrower as a result of the violation, including any amount that would have been paid by an insurer for a casualty or liability claim had the insurance policy not been canceled for nonpayment by the mortgage servicer; and, in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney's fees as determined by the court.

(e) A mortgage servicer shall comply with the following requirements concerning statements of account:

- (1) At least once annually, within thirty days of the end of the computation year, a mortgage servicer shall deliver to the borrower a plain language statement of the borrower's account showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding twelve-month period, the interest paid during that period, and the amounts deposited into escrow and disbursed from escrow during the period. The annual escrow statement may be provided separately from the annual statement showing the unpaid principal and interest paid. The format and content of the annual escrow statement shall comply with the Real Estate Settlement Procedures Act, including title 12 C.F.R. section 1024.17;
- (2) A mortgage servicer shall promptly provide a borrower with an accurate accounting in plain English of the debt owed when requested by the borrower or borrower's authorized representative. Within thirty days of receipt of a request from the borrower or the borrower's authorized representative, a mortgage servicer shall deliver to the borrower a payment history for the last thirty-six months of the borrower's account, unless a different period is requested, showing the date and amount of all payments made or credited to the account and the total unpaid

balance. The mortgage servicer shall have sixty days to deliver a payment history where the request is for a period longer than the last thirty-six months;

- (3) A fee shall not be charged to the borrower for the annual escrow statement or for one payment history furnished to a borrower in a twelve-month period; and
- (4) A shortage, surplus, or deficiency in the escrow account shall be handled in accordance with the Real Estate Settlement Procedures Act, including title 12 C.F.R. section 1024.17. Alternatively, with the consent of the borrower, an excess balance may be applied to the principal balance.

(f) Except where inconsistent with the automatic stay provisions of the Bankruptcy Code with respect to a borrower in a pending bankruptcy proceeding, a mortgage servicer shall send a payment reminder notice to a borrower at the borrower's last known address no later than seventeen days after the payment becomes due and remains unpaid; provided that a mortgage servicer is not required to send a separate payment reminder notice for each consecutive month in which the mortgage loan continues to remain unpaid.

(g) A mortgage servicer shall provide a clear, understandable, and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date, within a reasonable time, but in any event no more than five business days after receipt of a request from the borrower or borrower's authorized representative. No borrower shall be charged a fee for being informed or receiving a payoff statement or for being provided with a release upon full prepayment; provided that a mortgage servicer may charge a reasonable fee for providing a payoff statement after five or more requests in any calendar year.

(h) A mortgage servicer shall comply with the following requirements concerning handling consumer complaints and inquiries:

- (1) A mortgage servicer shall follow the requirements of the Real Estate Settlement Procedures Act, including requests for error and information resolution procedures under title 12 C.F.R. sections 1024.35 and 1024.36;
- (2) In addition to the requirements of the Real Estate Settlement Procedures Act, a mortgage servicer shall establish and maintain a system to respond to and resolve borrower inquiries and complaints in a prompt and appropriate manner;
- (3) Within ten business days of receiving a request in writing from a borrower or the borrower's authorized

representative, a mortgage servicer shall provide the borrower with the name, address, phone number or electronic mail address, if available, and other relevant contact information for the owner or assignee of the mortgage loan; and

- (4) In addition to the information required to be disclosed under this section, a mortgage servicer may, at its option, provide any other information regarding the servicing of the loan that the mortgage servicer believes would be helpful to a borrower; provided that any additional information does not contradict or obscure the required disclosures.
  - (i) A mortgage servicer shall comply with the following requirements concerning fees:
    - (1) A mortgage servicer shall maintain and keep current a schedule of standard or common fees that the mortgage servicer charges borrowers for the servicer's servicing-related activities, such as nonsufficient fund fees. The schedule shall identify each fee, provide a plain English explanation of the fee, and state the amount of the fee or range of amounts. If there is no standard fee, the schedule shall explain how the fee is calculated or determined. A mortgage servicer shall make its schedule available on the mortgage servicer's website and to the borrower or the borrower's authorized representative upon request;
    - (2) A mortgage servicer may only collect a fee if the fee is for services actually rendered and one of the following conditions is met:
      - (A) The fee is clearly and conspicuously disclosed by the loan instruments and not prohibited by law;
      - (B) The fee is expressly permitted by law and not prohibited by the loan instruments; or
      - (C) The fee is not prohibited by law or the loan instruments and is a reasonable fee for a specific service requested by the borrower that is assessed only after clear and conspicuous disclosure of the fee is provided to the borrower and the borrower expressly consents to pay the fee in exchange for the services;
    - (3) In addition to the limitations in paragraph (2), attorneys' fees charged in connection with a foreclosure action shall not exceed reasonable and customary fees for the work. If a foreclosure action or proceeding is terminated prior to the public sale because of a loss mitigation option, a reinstatement, or payment in full, the borrower shall only be liable

for reasonable and customary fees for work actually performed; and

- (4) A mortgage servicer shall not impose any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period. Late charges shall not be:
  - (A) Based on an amount greater than the past due amount;
  - (B) Collected from the escrow account or from escrow surplus without the approval of the borrower; or
  - (C) Deducted from any regular payment.

(j) Each mortgage servicer licensee shall maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license for seven years.

(k) Upon assignment of servicing rights on a residential mortgage loan, the mortgage servicer shall disclose to the borrower:

- (1) Any notice required by the Real Estate Settlement Procedures Act, including title 12 C.F.R. section 1024.33, within the time periods prescribed therein; and
- (2) A schedule of the ranges and categories of the mortgage servicer's costs and fees for the servicer's servicing-related activities, which shall comply with state and federal law and, if the disclosure is made by a mortgage servicer licensee, shall not exceed those reported to the commissioner in accordance with this chapter.

(1) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:

- (1) Any notice required by the Real Estate Settlement Procedures Act;
- (2) A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with this chapter and which shall not exceed those reported to the commissioner; and
- (3) A notice in a form and content acceptable to the commissioner that the servicer is licensed by the commissioner and that complaints about the servicer may be submitted to the commissioner.

(m) Where this chapter requires a person to comply with procedures, actions, standards, disclosures, notices, format, content, or other requirements of the Real Estate Settlement



Procedures Act, the required compliance applies to any person subject to this chapter, whether or not the Real Estate Settlement Procedures Act applies to that person or transaction. [L 2009, c 106, pt of §1; am L 2011, c 48, §10; am L 2012, c 182, §4; am L 2015, c 62, §5; am L 2016, c 122, §23]

" **[§454M-5.5] Residential mortgage loan delinquencies and loss mitigation efforts.** (a) Mortgage servicers shall make reasonable and good faith efforts consistent with this chapter to engage in appropriate loss mitigation options, including loan modifications, to assist borrowers to avoid foreclosure. Mortgage servicers shall provide timely and appropriate responses to borrower inquiries and complaints regarding available loss mitigation options and ensure that borrowers are not required to submit multiple copies of required documents during consideration for any loss mitigation option. In the event of a delinquency or other act of default on the part of the borrower, or whenever a borrower who is at imminent risk of default contacts the mortgage servicer with respect to a loan modification or other loss mitigation option, the mortgage servicer shall:

- (1) Inform the borrower of the facts concerning the loan, the nature and extent of the delinquency or default, the mortgage servicer's loss mitigation option protocols, and the loss mitigation options and services offered by the mortgage servicer in accordance with this chapter; and
  - (2) Pursue loss mitigation options with the borrower, including a loan modification whenever possible, in accordance with this chapter, and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's lawful duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout of the delinquency or to prevent the borrower's default.
- (b) Mortgage servicers shall consider a loan modification as an alternative to foreclosure when:
- (1) The borrower demonstrates that the borrower has experienced a financial hardship and is either unable to maintain the payment at the current amount required under the mortgage loan or is unable to make up the delinquent payments; and
  - (2) The net present value of the income stream expected of the modified loan is greater than the net present value of the income stream that is expected to be recovered through the disposition of the property through a foreclosure sale.

(c) Mortgage servicers that are participating in the Home Affordable Modification Program shall offer loan modifications in compliance with the Home Affordable Modification Program guidance and directives, including using reasonable efforts to remove prohibitions or impediments to the mortgage servicer's authority, and obtain third party consents and waivers that are required by contract or law to effectuate a loan modification under the Home Affordable Modification Program.

(d) Unless a longer time is permitted under the guidance or directives implementing the Home Affordable Modification Program, within ten business days of receiving a request from a borrower or the borrower's authorized representative for one or more loss mitigation options, the mortgage servicer shall transmit a written acknowledgment of the request to the borrower and, if applicable, to the authorized representative. The acknowledgment shall identify with specificity any information needed from the borrower for the mortgage servicer to review the borrower's loss mitigation option request. The acknowledgment shall also include an explanation of the loss mitigation option process, including the following, as appropriate:

- (1) The information that the borrower may be asked to provide and third party approvals that may be required for the mortgage servicer to evaluate and complete the request for a loan modification or other loss mitigation option;
- (2) The average length of time for a decision to be made regarding a loan modification or other loss mitigation option; and
- (3) A notification of the actions the mortgage servicer, lender, or owner of the mortgage may take during the loss mitigation option process, such as whether the borrower may continue to receive collection letters or foreclosure notices, whether the foreclosure process will continue, or whether and to what extent collection and foreclosure will be stayed.

(e) Within thirty days of receiving all required documentation from the borrower and third parties, unless a shorter time is required under applicable state or federal rules or regulations pertaining to mortgage servicing or under guidance or directives implementing the Home Affordable Modification Program, a mortgage servicer shall complete its evaluation of the borrower's eligibility for a loan modification or any other loss mitigation option requested by the borrower and advise the borrower, and if applicable, the borrower's authorized representative, in writing of the mortgage servicer's determination.

If the mortgage servicer approves the borrower for a loan modification, including a trial loan modification, or other loss mitigation option, the written notice shall provide the borrower with clear and understandable written information explaining the material terms, costs, and risks of the loss mitigation option offered.

If the mortgage servicer determines that the borrower cannot be approved for a loan modification or other requested loss mitigation option, the written notice shall state with specificity:

- (1) The reasons for the determination;
- (2) Procedures, deadlines, and contact information for a person at the mortgage servicer for reconsideration, dispute, or appeal of the determination; and
- (3) Any other loss mitigation option for which the borrower may be considered.

In addition, the written notice shall include the following statement, in boldface type and in print no smaller than the largest print used elsewhere in the main body of the written notice: "If you believe your loss mitigation option request has been wrongly denied, you may file a complaint with the state division of financial institutions at [insert current division telephone number] or [insert current division website address for consumer complaints]".

(f) A mortgage servicer shall take reasonable steps to ensure that the mortgage servicer's staff is aware of programs designed to assist borrowers to avoid foreclosure or resolve delinquency. The mortgage servicer shall make available to borrowers who are at least sixty days delinquent or who the mortgage servicer has reason to believe are experiencing a financial hardship and are in imminent risk of default, a list of government approved not-for-profit housing counselors in the borrower's geographic area, as listed on the website of the United States Department of Housing and Urban Development.

(g) A mortgage servicer shall maintain and make available to borrowers and borrowers' authorized representatives current contact information to communicate and negotiate with the mortgage servicer's designated loss mitigation option staff who are authorized to discuss and negotiate loss mitigation options. The contact information shall include all toll-free telephone numbers for direct communication with a loss mitigation option staff person, fax numbers for receipt of documents, and electronic mail addresses.

(h) The mortgage servicer shall establish and maintain a process through which borrowers may bring disagreements to a supervisory level where a separate review of the borrower's eligibility or qualification for a loss mitigation option can be

performed. A mortgage servicer shall not require a borrower to waive legal claims and defenses as a condition of a loan modification, forbearance, or repayment plan.

(i) Delay caused by the mortgage servicer shall not be counted in calculating the passage of time where a Home Affordable Modification Program, proprietary, or other loan modification program specifies:

- (1) A time limit for a borrower action or response, including appealing or disputing a denial of a request for a loss mitigation option under subsection (e), or providing documents;
- (2) A time after which a document is considered stale or too old to use; or
- (3) A time during which a mortgage servicer is barred from taking certain action adverse to the borrower, including taking steps toward foreclosure or referring the borrower's account to foreclosure.

Examples of delay caused by the mortgage servicer include the mortgage servicer's failure to timely send a communication or request to the borrower, duplicative or piecemeal document requests delaying completion of a file, and failure to identify additional documents needed to complete a borrower's loan modification application. The mortgage servicer shall reasonably extend the applicable period and promptly inform the borrower in writing of the specific extension period.

(j) Nothing in this section shall be construed to prevent a mortgage servicer from offering or accepting alternative loss mitigation options, including other modification programs offered by the mortgage servicer, a short sale, a deed-in-lieu of foreclosure, or forbearance, if the borrower requests such an alternative, is not eligible for or does not qualify for a loan modification under the Home Affordable Modification Program, or rejects the mortgage servicer's loss mitigation option proposal.

(k) A mortgage servicer shall avoid taking steps to foreclose or to refer a borrower to foreclosure if the borrower has requested and is being considered for a loss mitigation option or if the borrower is in a trial or permanent loan modification and is not more than thirty days in default under the loan modification agreement.

(l) A mortgage servicer shall ensure that the mortgage servicer and the mortgage servicer's attorneys and agents comply with the requirements of chapter 667.

(m) A mortgage servicer shall establish and maintain a system for servicing delinquent loans. [L 2015, c 62, §1]

" **§454M-6 Prohibited activities.** (a) It shall be a violation of this chapter for any mortgage servicer in the

course of any mortgage loan transaction, or in connection with any mortgage servicing business, to:

- (1) Misrepresent or conceal material facts, make false promises, or pursue a course of misrepresentation through its agents or otherwise;
- (2) Engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;
- (3) Obtain property by fraud or misrepresentation;
- (4) Misapply residential mortgage loan payments;
- (5) Misapply payments to escrow accounts;
- (6) Require any amount of funds to be remitted by means more costly to the borrower than a bank or certified check or attorney's check from an attorney's account to be paid by the borrower;
- (7) Fail to timely pay taxes or insurance premiums of the borrower, if and as required by this chapter;
- (8) Fail to follow procedures concerning escrows for the payment of taxes and insurance as required by this chapter;
- (9) Place hazard, homeowner's, or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the borrower has an effective policy for such insurance;
- (10) Fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property, including a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower has the required insurance coverage and by which the mortgage servicer shall terminate the insurance coverage placed by the mortgage servicer and refund or cancel any insurance premiums and related fees paid by or charged to the borrower;
- (11) Place hazard, homeowner's, or flood insurance on a mortgaged property, or require a borrower to obtain or maintain such insurance, in excess of the replacement cost of the improvements;
- (12) Fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgagee or the mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement insurance is no longer necessary and the property is

- insured. If the borrower provides reasonable proof that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage servicer shall promptly refund the entire premium;
- (13) Collect private mortgage insurance beyond the date for which private mortgage insurance is required;
  - (14) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge, any fee not in compliance with, or prohibited by, this chapter;
  - (15) Fail to provide a timely and accurate statement of account, as required by this chapter;
  - (16) Fail to handle a consumer complaint or inquiry in accordance with this chapter;
  - (17) Provide inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness;
  - (18) Fail to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually if the mortgage servicer regularly reports information to a credit bureau;
  - (19) Fail to provide or submit a timely, complete, and accurate notice, acknowledgment, statement, information, explanation, reminder, communication, or other information to any person as required by this chapter;
  - (20) Fail to comply with loss mitigation option requirements of this chapter;
  - (21) Fail to offer loan modifications in compliance with the Home Affordable Modification Program guidelines or directives, if the mortgage servicer is participating in the Home Affordable Modification Program;
  - (22) Fail to comply with the requirements of chapter 667 and ensure that the mortgage servicer's attorneys and agents comply with chapter 667;
  - (23) Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower; provided that the mortgage servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower;
  - (24) Fail to provide a timely payoff statement as required by this chapter;
  - (25) Fail to issue a release of mortgage in accordance with section 506-8;
  - (26) Conduct any business for which this chapter requires a license without holding a valid license as required under this chapter or assist or aid and abet any person in the

conduct of business without a valid license as required under this chapter;

- (27) Engage in the business of mortgage servicing without complying with bonding requirements of this chapter;
- (28) Transfer or assign its mortgage servicer license;
- (29) Change its name or office address without complying with the requirements of this chapter;
- (30) Fail to maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license; or
- (31) Make any false statement or omission of a material fact, in connection with any information or reports filed with a governmental agency or NMLS or in connection with any investigation conducted by the commissioner or another governmental agency.

(b) It shall be a violation of this chapter for any mortgage servicer in the course of any mortgage loan transaction to fail to comply with any:

- (1) Applicable federal law or regulation related to mortgage servicing, including but not limited to:
  - (A) The Real Estate Settlement Procedures Act, including the mortgage loan servicing transfer, escrow account administration, and borrower request for information and error resolution requirements;
  - (B) The Truth in Lending Act, title 15 United States Code sections 1601 through 1667f, as amended, and Regulation Z adopted thereunder, title 12 C.F.R. part 1026, as amended; or
  - (C) Rules and regulations issued or administered by the Consumer Financial Protection Bureau, and interpretations of the rules by the Consumer Financial Protection Bureau through interpretive rules, bulletins, statements of policy, and statements of guidance;
- (2) Agreement with a governmental entity, agency, agent, or regulator, or state attorney general that applies to the mortgage servicer, including:
  - (A) A servicer participation agreement or other agreement to participate in the Home Affordable Modification Program or other Making Home Affordable program;
  - (B) Home Affordable Modification Program rules, including guidance provided by Making Home Affordable program handbooks, and supplemental directives; or

- (C) The National Mortgage Settlement reached in 2012 by the federal government and forty-nine states, with the five largest mortgage servicers in the United States, to address mortgage servicing, foreclosure, and bankruptcy abuses;
- (3) Order of a court or government regulator that applies to the mortgage servicer;
  - (4) Provision of this chapter or any rule adopted pursuant to this chapter; or
  - (5) Federal or state law, rule, or regulation.
- (c) It shall be a violation of this chapter for any mortgage servicer to provide any mortgage loan modifications or other services that would require licensing pursuant to chapter 454F, unless the mortgage servicer is licensed under chapter 454F.
- (d) Notwithstanding any other provision of this chapter, a mortgage servicer shall not be in violation of this chapter if performance of a requirement under this chapter would constitute a violation of federal law, rules, or regulations. [L 2009, c 106, pt of §1; am L 2012, c 245, §5; am L 2015, c 62, §6; am L 2016, c 122, §24]

#### Case Notes

No basis for a claim under this section (pre-2012 amendment), where, among other things, defendant's various responses to the numerous letters from plaintiff to defendant showed no basis for a claim that defendant engaged in any practice that "is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing purchase, or sale of any mortgage loan" under paragraph (2). 948 F. Supp. 2d 1086 (2013).

" **[§454M-7] License sanctions; suspension, revocation, denial, condition, and refusal to renew, reinstate, or restore.** In addition to any other actions authorized by law, the commissioner may suspend, revoke, deny, condition in any manner, or refuse to renew, reinstate, or restore, any license issued under this chapter, or fine any person holding a license issued under this chapter, for any violation of this chapter. All such orders shall be made pursuant to chapter 91. [L 2009, c 106, pt of §1]

" **§454M-8 Powers of commissioner.** In addition to any other acts or conditions provided by law, the commissioner may:



- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and investigate and act upon written consumer complaints;
- (2) Grant, deny, forfeit, renew, reinstate, or restore the license of any mortgage servicer;
- (3) Revoke, suspend, or otherwise limit the license of any mortgage servicer for any violation of the provisions in this chapter, or any rule or order of, or agreement with the commissioner;
- (4) Report any violation of this chapter or violation of federal or state law to the Consumer Financial Protection Bureau or other federal agency having jurisdiction over the licensee;
- (5) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the commissioner; and
- (6) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91. [L 2009, c 106, pt of §1; am L 2013, c 92, §5]

" **[§454M-8.3] Confidentiality.** (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to NMLS, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to NMLS. The information and material may be shared with all state and federal regulatory officials with mortgage servicer industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to:

- (1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or a state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by NMLS applicable to the information or material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(d) Notwithstanding chapter 92F, the examination process and related information and documents, including the reports of examination, are confidential and are not subject to discovery or disclosure in civil or criminal lawsuits.

(e) Notwithstanding any law to the contrary, the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of this section.

(f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage servicers that are included in NMLS for access by the public. [L 2016, c 122, §2]

" **§454M-8.5 Investigation and examination authority.** (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations in accordance with this section. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee or person subject to this chapter shall provide to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers,

principals, mortgage servicers employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.

(d) Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information that the commissioner deems necessary to carry out the purposes of this section.

(e) In conducting any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee or person under examination or investigation have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) To carry out the purposes of this chapter, the commissioner may:

- (1) Retain accountants or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this chapter;

- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; and
- (5) Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(h) No licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination or investigation fee, payable to the commissioner, based upon the cost per hour per examiner for all licensees and persons subject to this chapter examined or investigated by the commissioner or the commissioner's staff. The hourly fee shall be \$60 or an amount as the commissioner shall establish by rule pursuant to chapter 91. In addition to the examination or investigation fee, the commissioner may charge any person who is examined or investigated by the commissioner or the commissioner's staff pursuant to this section additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination or investigation, payable to the commissioner.

(j) Any person having reason to believe that this chapter or the rules adopted pursuant thereto have been violated, or that a license issued under this chapter should be suspended or revoked, may file a written complaint with the commissioner setting forth the details of the alleged violation or grounds for suspension or revocation. [L 2013, c 92, §1; am L 2016, c 122, §25]

" **[§454M-9] Private right of action.** Nothing in this chapter shall be construed to preclude any individual or entity that suffers loss as a result of a violation of this chapter from maintaining a civil action to recover damages and, as provided by statute, attorney's fees. [L 2009, c 106, pt of §1]

" **§454M-10 Penalty.** Any person who violates any provision of this chapter may be subject to an administrative fine of not

more than \$7,000 for each violation; provided that if the aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate fine amount shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-86. [L 2009, c 106, pt of §1; am L 2011, c 48, §11; am L 2012, c 182, §5; am L 2016, c 122, §26]

" **[\$454M-11] Compliance resolution fund.** Any law to the contrary notwithstanding, fees and fines collected by the commissioner shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). [L 2009, c 106, pt of §1]