

Lenders Compliance Group

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New Mortgage Servicing Practices

On August 10, 2010, the New York State Banking Department issued new regulations that address the business practices of mortgage loan servicers and establish additional consumer protections for homeowners.

[Part 419 of the Superintendent's Regulations](#), which went into effect on October 1, 2010, were a follow-up to the adoption of Part 418 in July 2009, which established standards and procedures for the registration of mortgage loan servicers in New York. The regulations implement certain provisions of the [Mortgage Lending Reform Law](#) enacted in 2008 to address the foreclosure crisis and establish greater consumer protections for subprime and high-cost home loans.

Recently, Benjamin M. Lawsky, the Superintendent of Financial Services of New York's Department of Financial Services and Banking Department, announced that the Department had entered into two agreements with certain servicers to implement new servicing practices. The Department considers these new servicing requirements to be landmark changes, and they form the basis of the new Mortgage Servicing Practices.

In the first instance, Superintendent Lawsky announced on [September 1, 2011](#) that Goldman Sachs Bank, Ocwen Financial Corp, and Litton Loan Servicing LP agreed to adhere to the new Mortgage Servicing Practices. The agreement, entitled "[Agreement on Mortgage Servicing Practices](#)," was required by the Department as a condition to allowing Ocwen's acquisition of Litton, the Goldman Sachs mortgage servicing subsidiary. With the Litton acquisition, Ocwen's mortgage servicing entity, Ocwen Loan Servicing, LLC becomes the 12th largest servicer in the nation. The servicer has 60 days from the date of the acquisition to implement the provisions and requirements of the Mortgage Servicing Practices.

In the second instance, Superintendent Lawsky announced on [November 10, 2011](#) that Morgan Stanley and its mortgage servicer Saxon, American Home Mortgage Servicing, and Vericrest Financial had agreed to the new Mortgage Servicing Practices.

The changes are substantial and clearly the Department is committed to enforcing them. Maybe you would suggest other changes. In any event, these servicing requirements will benefit both the consumer and the mortgage industry.

It is likely that these new [Mortgage Servicing Practices](#) will become a model in other states.

The following is a brief review of these new practices.

OVERVIEW

The Department has consumer protection concerns relating to practices "highlighted in the media" that have been prevalent in the mortgage servicing industry generally, including but not limited to, (1) the practice of "Robo-signing," (2) referring to affidavits in foreclosure proceedings that falsely attest that the signer has personal knowledge of the facts presented therein and/or were not notarized in accordance with state law; (3) weak internal controls and oversight that may have compromised the accuracy of foreclosure documents; (4) unfair and improper practices in connection with loss mitigation, including improper denials of loan modifications; and, (5) imposition of improper fees by servicers, among others.

OUTLINE OF PRACTICES

- Document Execution and Accuracy of Documentation
- Ownership of Note, Foreclosures
- Quality Assurance and Audits
- Oversight of Third Party Vendors
- Staffing
- Training
- Notices, Single Point of Contact and Modifications for Transferred Servicing Files
- Borrower Communication
- Independent Evaluation of Loan Modification Denials
- Restrictions on Dual Tracking

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PROHIBITED PRACTICES

- "Robo-signing," where servicer staff signed affidavits stating they reviewed loan documents when they had not actually done so.
- Weak internal controls and oversight that compromise the accuracy of foreclosure documents.
- Referring borrowers to foreclosure at the same time as those borrowers are attempting to obtain modifications of their mortgages or other loss mitigation.
- Improper denials of loan modifications.
- Failing to provide borrowers with access to a single customer service representative, resulting in delays or failure of the loss mitigation process.
- Imposition of improper fees by servicers.

SPECIFIC CHANGES

- 1) End Robo-signing and impose staffing and training requirements that will prevent Robo-signing.
- 2) Require servicers to withdraw any pending foreclosure actions in which filed affidavits were Robo-signed or otherwise not accurate.
- 3) End "dual tracking", for instance referring a borrower to foreclosure while the borrower is pursuing loan modification or loss mitigation, and prohibit foreclosures from advancing while denial of a borrower's loan modification is under an independent review, which is also required by the agreements.
- 4) Provide a dedicated single point of contact representative for all borrowers seeking loss mitigation or in foreclosure so borrowers are able to speak to the same person who knows their file every time they call.
- 5) Require servicers to ensure that any force-placed insurance be reasonably priced in relation to claims incurred, and prohibit force-placing insurance with an affiliated insurer.
- 6) Impose more rigorous pleading requirements in foreclosure actions to ensure that only parties and entities possessing the legal right to foreclose can sue borrowers.
- 7) For borrowers found to have been wrongfully foreclosed, require servicers to ensure that their equity in the property is returned, or, if the property was sold, compensate the borrower.
- 8) Impose new standards on servicers for application of borrowers' mortgage payments to prevent layering of late fees and other servicer fees and use of suspense accounts in ways that compounded borrower delinquencies and defaults.
- 9) Require servicers to strengthen oversight of foreclosure counsel and other third party vendors, and impose new obligations on servicers to conduct regular reviews of foreclosure documents prepared by counsel and to terminate foreclosure attorneys whose document practices are problematic or who are sanctioned by a court.



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