



**PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS**

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MEMORANDUM

TO: Entities Involved in the Servicing of Loans Secured by Residential Real Property in Kentucky

FROM: Kentucky Department of Financial Institutions

DATE: December 22, 2016

RE: Licensing Requirements for Servicers

The Kentucky Department of Financial Institutions ("Department") issues this guidance to address the Department's regulatory approach relating to licensing requirements for "master servicers" and "sub servicers" pursuant to KRS Chapter 286.8.

The Department's position is subject to change in the event there are subsequent changes in facts, statutes, or regulations. The Department reserves the rights and obligations under KRS Chapter 286.8 to conduct investigations, examinations and enforcement actions against mortgage entities the Department reasonably believes have violated applicable laws and regulations.

After research and review of the statutory language, the Department will require both "master servicers" and "sub servicers", who are not otherwise exempt pursuant to KRS 286.8-020, to obtain licensure as a mortgage loan company with the Department if the loans being serviced are secured by residential real property located in Kentucky.

As used in this guidance:

- A master servicer is any entity or individual that owns the right to perform servicing of a mortgage loan. A master servicer typically reserves the legal right to either perform the servicing itself or to do so through a sub servicer.
- A sub servicer does not own the right to perform servicing, but performs servicing on behalf of a master servicer, generally premised upon duties enumerated in a contract between the sub servicer and master servicer.

The relevant statutory language is as follows:

KRS 286.8-010(20) states:

“Mortgage loan company” means any person who directly or indirectly:

- (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or*
- (b) Services mortgage loans, or holds oneself out as being able to do so.*

KRS 286.8-010(32) states:

“Service” or “servicing” means:

- (a) Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;*
- (b) Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;*
- (c) Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except this shall not include licensed attorneys representing clients in such matters; or*
- (d) In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower.*

KRS 286.8-030(1)(a) states:

It is unlawful for any person to transact business in Kentucky, either directly or indirectly, as a mortgage loan company or mortgage loan broker if the mortgage loan company or mortgage loan broker is not licensed in accordance with the requirements of this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the commissioner.

Having considered the applicable law, the Department is of the opinion that a master servicer, is a mortgage loan company, pursuant to KRS 286.8-010(20)(b), because it both holds itself out as being able to service loans and it indirectly services loans through a sub servicer. A sub servicer also is a mortgage loan company pursuant to KRS 286.8-010(20)(b) because it actually performs the servicing of the loan.

March 1, 2017 Deadline for Licensure

Master servicers and sub servicers with loans secured by residential real property located in the Commonwealth of Kentucky must be licensed with the Department by **March 1, 2017**, unless the master servicer or sub servicer can document to the Department, in writing, that they are specifically exempt from licensure, in accordance with KRS 286.8-020. The Department reserves the right to pursue appropriate administrative action against master servicers and sub servicers that engage, either **directly or indirectly** in servicing activities **after March 1, 2017**, without a Kentucky mortgage company license issued by the Department.

Please contact Tammy Scruggs, Division Director – Nondepository Institutions, by telephone at (502) 782-9086 or via email at tammy.scruggs@ky.gov with questions.