



Financial Services & Products ADVISORY ■

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Kentucky Issues Guidance Requiring Licensing of Master Servicers and Sub Servicers by March 1, 2017

In December, the Kentucky Department of Financial Institutions issued a [memorandum](#) interpreting the Mortgage Licensing and Regulation Act (Ky. Rev. Stat. Ch. 286.8) as requiring master servicers and sub servicers to be licensed as mortgage loan companies, unless otherwise exempt, if the loans being serviced are secured by residential real property located in Kentucky.

The memorandum defines a “master servicer” as “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.” The memorandum distinguishes a sub servicer as not owning “the right to perform servicing, but perform[ing] servicing on behalf of a master servicer, generally premised upon duties enumerated in a contract between the sub servicer and master servicer.”

The department interpreted the term “mortgage loan company,” defined in relevant part as “any person who *directly or indirectly* ... services mortgage loans, or holds oneself out as being able to do so ...,” as applying to a master servicer because it “holds itself out as being able to service loans and it *indirectly* services loans through a sub servicer.” A sub servicer would also fall within this definition because it “actually performs the servicing of the loan.”

Any master servicer and sub servicer with loans secured by residential real property in Kentucky must be licensed with the department by March 1, 2017, unless the entity can document to the department in writing that it is specifically exempt from licensure under the Mortgage Act. However, under the Mortgage Act, most exempt entities are not required to file with the department to claim an exemption unless the basis for the exemption is HUD approval or status as a nonprofit organization. The department did not provide further guidance on this inconsistency. The department did reserve the right to pursue appropriate administrative action against a master servicer or sub servicer that engages, either directly or indirectly, in servicing activities after March 1, 2017, without a Kentucky mortgage company license.

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The guidance by the department follows a recent trend among state regulators to more broadly scrutinize the activities of holders of master servicing rights, a group that, until recently, had not received much attention. In the last two years, for example, we have seen several states (e.g., Iowa and New Hampshire) amending and reinterpreting existing statutes to require licensing of master servicers. Absent contrary guidance from state regulators, master servicers may be subject to mortgage lender and/or servicing licenses in states with statutes that define “servicer” or “mortgage lender” to include a person that indirectly services a mortgage loan and in any other jurisdiction that expressly requires licensing of master servicers (e.g., Connecticut).

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