



## Financial Services & Products ADVISORY ■

**DECEMBER 12, 2017**

### MSR Holder Sanctioned for Not Holding Requisite State License

by [Stephen Ornstein](#)

On November 2, 2017, the Arkansas Securities Commissioner (ASC) issued a consent order against a financial services company for purchasing and holding “master servicing rights” (commonly referred to as mortgage servicing rights or MSRs) without first having obtained a mortgage servicer license under the Arkansas Fair Mortgage Lending Act (FMLA). Under the terms of the consent order, the ASC ordered the company to pay a \$5,000 fine and to cease conducting “mortgage servicing activities” until it obtains an Arkansas mortgage servicer license. The consent order indicates that the company began purchasing MSRs on residential mortgage loans in Arkansas in October 2015 and held MSRs on 169 Arkansas residential mortgage loans. The consent order implies that it directly or indirectly held the rights to service mortgage loans, but did not actually service the loans itself.

Even though the company performed no actual servicing functions, the FMLA requires a license “to act or attempt to act, directly or *indirectly*, as a . . . mortgage servicer.” “Mortgage servicer” means a person “that receives or has the right to receive from or on behalf of a borrower . . . the funds or credits in payment for a mortgage loan . . .”

#### **Alston & Bird Observations**

While the penalty imposed by the ASC was relatively light, the issuance of the consent order is a startling development. In a [previous advisory](#), we warned that a growing list of state regulators are requiring entities that purchase and hold MSRs to be licensed or registered as residential mortgage servicers – even though these entities actually perform no servicing activities and engage in no consumer-facing functions.

In the eyes of these state regulators, there are two types of MSR holders: (1) persons that purchase and hold only MSRs – and not the underlying loans – but retain third-party licensed mortgage servicers to actually perform the servicing activity; and (2) persons that purchase residential mortgage loans, servicing released from the seller and similarly hire licensed mortgage servicers to perform the servicing activity.

In light of this Arkansas consent order, MSR holders should consider obtaining the requisite licenses or, as we describe in the previous advisory, evaluate short-term solutions such as acquiring MSRs through a Delaware statutory trust with a national bank trustee or through a participation arrangement.

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