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Regulations Adopted on an Emergency Basis

Part 419. Servicing Mortgage Loans: Business Conduct Rules (Statutory Authority: Banking Law Article 12-D)

June 26, 2013

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§ 419.1 Definitions

For purposes of this part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 418.3 of Part 418.

- a. *“Authorized representative”* means a person designated by the borrower in a written authorization signed by the borrower, including an attorney, employee or agent of a not-for-profit housing counseling or legal services organization, provided that nothing herein shall restrict the ability of a servicer to share information and communicate verbally with a person acting on behalf of a borrower following a tape recorded or other verifiable verbal consent by the borrower.
- b. *“Home Affordable Mortgage Program”* or *“HAMP”* means the program established by the U.S. 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.
- c. *“Loan modification”* means waiver, modification or variation of any material term of the mortgage loan, irrespective of whether the duration is short-term, long-term or life-of-loan, that changes the interest rate, forbears or forgives the payment of principal or interest or extends the final maturity date of the loan.
- d. *“Loss mitigation option”* means an alternative to foreclosure, including loan modification, reinstatement, forbearance, deed-in-lieu and short sale.
- e. *“Servicer”* means a person engaging in the servicing of mortgage loans in this state whether or not registered or required to be registered pursuant to paragraph (b-1) of subdivision two of Banking Law section 590.
- f. *“Qualified Written Request”* means, as set forth in RESPA, 24 C.F.R. section 3500.21(e)(2), a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.
- g. *“RESPA”* means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq. and regulations adopted thereunder, also sometimes known as Regulation X, and found at 24 C.F.R. Part 3500.

§ 419.2 Servicer duty of fair dealing

A Servicer 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. This includes, but is not limited to, the duty to:

- a. Safeguard and account for any money handled for the borrower;

- b. Follow reasonable and lawful instructions from the borrower consistent with the underlying note and mortgage;
- c. Act with reasonable skill, care and diligence;
- d. Promptly provide the borrower with an accurate statement of account in accordance with Part 419.7(b);
- e. Make borrowers in default aware of loss mitigation options and services offered by the Servicer in accordance with Part 419.11;
- f. Provide trained personnel and telephone facilities sufficient to respond promptly to borrower inquiries regarding their mortgage loans; and
- g. Pursue loss mitigation with the borrower whenever possible in accordance with Part 419.11.

§ 419.3 Compliance with federal and state laws

In addition to applicable provisions of Banking Law Article 12-D and the requirements of Part 418 and this Part, a Servicer shall comply with all applicable federal and New York state laws and regulations relating to mortgage loan servicing, including but not limited to RESPA, the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., section 6-k of the Banking Law and Article 9, Title 3-A, of the Real Property Tax Law.

§ 419.4 Consumer complaints and inquiries

- a. A Servicer shall follow the requirements relating to “Qualified Written Requests” pursuant to RESPA, 24 C.F.R. section 3500.21.
- b. In addition to the requirements of RESPA, a Servicer shall have procedures and systems in place to respond to and resolve borrower inquiries and complaints in a prompt and appropriate manner. A Servicer shall designate a customer service department staffed by trained personnel to whom borrowers may direct complaints and inquiries and provide a toll-free telephone number or collect calling services through which any borrower may direct telephone inquiries on the borrower’s mortgage loan during regular business hours.
- c. A Servicer shall clearly and conspicuously disclose with its welcome packet to borrowers, with each periodic billing statement, including as applicable either the monthly mortgage statement or annual coupon book, and with each annual statement pursuant to Part 419.7(a):
 - 1. an address to which borrowers can direct complaints and inquiries;
 - 2. a toll-free telephone number or collect calling services that gives the borrower access to a live person trained to answer inquiries and resolve or help resolve complaints, provided that the Superintendent in his or her discretion may waive or modify this requirement for good cause; and
 - 3. statements, (A) if applicable, that the Servicer is registered with the Superintendent, (B) that the borrower may file complaints about the Servicer with the New York State Department of Financial Services and (C) that the borrower may obtain further information from the New York State Department of Financial Services by calling the Department’s Consumer Assistance Unit at 1-800-342-3736 or by visiting the Department’s website at www.dfs.ny.gov.
- d. Within 10 days of receiving a request in writing from a borrower or the borrower’s authorized representative, a Servicer shall provide the borrower with the name, address, phone number or email address, if available, and other relevant contact information for the owner or assignee of the mortgage loan.
- e. In addition to the information required to be disclosed under this section, a Servicer may, at its option, provide any other information regarding the servicing of the loan that it believes would be helpful to a borrower, provided that such additional information does not contradict or obscure the required disclosures.

§ 419.5 Payments of tax or insurance premiums

- a. Any Servicer that receives funds from a borrower to be held in escrow for payment of taxes or insurance premiums shall make payments of the taxes or insurance premiums due under the mortgage in accordance with the requirements of RESPA, 24 C.F.R section 3500.17, Real Property Tax Law Article 9, Title 3-A and Banking Law section 6-k, and shall be liable to the borrower as provided therein.
- b. A Servicer shall disclose any payments from the escrow account clearly and conspicuously in the next periodic statement provided to the borrower.
- c. Where an escrow account has been established and a Servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, the 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.

§ 419.6 Crediting of payments

- a. *In general.* Except as provided in subsection (d), all amounts received by a 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 January 1, 2011, except where inconsistent with federal law or regulation such payments shall be credited to the interest and principal due on the home loan before crediting the payments to taxes, insurance, or fees.
- b. *Reasonable payment requirements.* Requirements for making payments must be reasonable. It should not be difficult for most consumers to make conforming payments. A cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the Servicer for receipt of such check would be considered reasonable.
- c. *Non-conforming payments.* If a Servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to such requirements, the Servicer shall credit the payment as soon as commercially practicable, but in no event later than 5 days after receipt.
- d. *Late payments.* Late payments must be credited before any late charge is collected.
- e. *Scheduled method of accounting.* If a Servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date or 30 days from the date of receipt, whichever is earlier.
- f. *Notice of noncredit.* If the Servicer receives any payment on a mortgage loan and does not credit it or treat it as credited by the due date or within 30 days from the date of receipt, whichever is earlier, the Servicer shall, within 10 business days of receipt, send the borrower notice by mail at the borrower's last known address indicating the reason the payment was not credited or treated as credited to the account, and any actions by the borrower necessary to make the loan current.
- g. *Payment overages and shortages.* A Servicer shall establish written policies and procedures for determining the handling of payment overages and shortages.

§ 419.7 Statement of account

- a. *Annual statements.* At least once annually, within 30 days of the end of the computation year, a 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 12-month period, the interest paid during such 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 requirements of RESPA, 24 C.F.R. section 3500.17(i)(1).
- b. *Payment Histories.* A 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 30 days of receipt of a request from the borrower or the borrower's authorized representative, a Servicer shall deliver to the borrower a payment history for the last 36 months (unless a different period is requested) of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. The Servicer shall have 60 days to deliver a payment history where the request is for a period longer than the last 36 months.
- c. *Fees.* 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 12-month period.
- d. *Escrow shortages, surpluses, and deficiencies.* A shortage, surplus or deficiency in the escrow account shall be handled in accordance with the provisions of RESPA, 24 C.F.R. section 3500.17(f)(2). Alternatively, with the consent of the borrower, an excess balance may be applied to the principal balance.

§ 419.8 Late payment notices

Except where inconsistent with the automatic stay provisions of the Bankruptcy Code with respect to a borrower in a pending bankruptcy proceeding, a Servicer shall send a payment reminder notice to a borrower at the borrower's last known address no later than 17 days after the payment becomes due and remains unpaid, provided that a Servicer is not required to send a separate payment reminder notice for each consecutive month in which the mortgage loan continues to remain unpaid.

§ 419.9 Payoff balances

A 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 5 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 Servicer may charge a reasonable fee for

providing a payoff statement after five or more requests in any calendar year. The requirements of this section are in addition to the requirements of section 274-a of the Real Property Law regarding the written instrument to be provided by the holder of a mortgage upon real property in connection with a bona fide written demand as defined by section 274-a(2)(b)(iii) therein.

§ 419.10 Fees

- a. *Schedule of fees.* A Servicer shall maintain and keep current a schedule of standard or common fees, such as nonsufficient fund fees. A Servicer shall make its schedule available on its website and to the borrower or borrower's authorized representative upon request. 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 or if there is no standard fee how the fee is calculated or determined.
- b. *Authorized fees.* A Servicer may only collect a fee if the fee is for services actually rendered and one of the following conditions is met: (1) the fee is expressly authorized and clearly and conspicuously disclosed by the loan instruments and not prohibited by law; (2) the fee is expressly permitted by law and not prohibited by the loan instruments; or (3) 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.
- c. *Attorneys Fees.* In addition to the limitations in paragraph (b), attorneys fees charged in connection with a foreclosure action shall not exceed reasonable and customary fees for such work. In the event a foreclosure action is terminated prior to the final judgment and sale for 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.
- d. *Late fees and Delinquency Charges.* A 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 be in accordance with Real Property Law section 254-b. Late charges shall not be (1) based on an amount greater than the past due amount; (2) collected from the escrow account or from escrow surplus without the approval of the borrower; or (3) deducted from any regular payment. Except as provided in Real Property Law section 254-b(2), late charges shall not be imposed more than once with respect to a single delinquent installment and shall not exceed 2% of the amount of the delinquent installment.

§ 419.11 Residential mortgage loan delinquencies and loss mitigation efforts

- a. *In general.* Servicers shall make reasonable and good faith efforts consistent with usual and customary industry standards and paragraph (b) of this section to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure. Servicers must have adequate staffing, written procedures, resources and facilities to provide timely and appropriate responses to borrower inquiries and complaints regarding available loss mitigation options and to ensure that borrowers are not required to submit multiple copies of required documents during consideration for a loss mitigation option. Whenever a borrower is at least 60 days delinquent (or earlier at the Servicer's option) or whenever a borrower who is in default or at imminent risk of default contacts the Servicer with respect to a loan modification or other loss mitigation assistance, the Servicer shall (1) inform the borrower of the facts concerning the loan, the nature and extent of the delinquency or default, the Servicer's loss mitigation protocols, and the loss mitigation options and services offered by the Servicer, and (2) if requested by the borrower, negotiate with the borrower in good faith, subject to the Servicer's 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, including a loan modification. Notwithstanding any language to the contrary, nothing in this Part shall be construed to require a Servicer to perform services in a manner inconsistent with the terms of the note, mortgage or contract for the servicing of a mortgage loan.
- b. *Loan Modifications.* Servicers should consider a loan modification as an alternative to foreclosure when (1) the borrower demonstrates that he or she is in imminent risk of defaulting on the mortgage loan as a result of a financial hardship or has experienced a financial hardship and is 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. Loan modifications should be structured to result in payments that are affordable and sustainable for the borrower. Servicers that are participating in HAMP shall offer loan modifications in compliance with the HAMP guidelines or directives, including using reasonable efforts to remove prohibitions or impediments to their authority and to obtain third party consents and waivers that are required, by contract or law, in order to effectuate a loan modification under HAMP.

- c. *Written acknowledgement.* Unless a longer time is permitted under the guidelines or directives implementing HAMP, within 10 business days of receiving a request from a borrower or authorized representative for a loss mitigation option, the Servicer shall transmit a written acknowledgement of the request to the borrower and, if applicable, to the authorized representative. The acknowledgement shall identify with specificity any information needed from the borrower in order for the Servicer to review the borrower's loss mitigation request. The acknowledgement shall also include the key elements of the loss mitigation process, including, as appropriate, the following:
1. The information that the borrower may be asked to provide and third party approvals that may be required for the 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 Servicer, lender or owner of the mortgage may take during the loss mitigation 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.
- d. *Decisions regarding loss mitigation options.* Within 30 days of receiving all required *documentation* from the borrower and third parties, unless a shorter time is required under regulations or guidelines implementing HAMP, a Servicer shall complete its evaluation of the borrower's eligibility for a loan modification or other loss mitigation option requested by the borrower and advise the borrower, and if applicable, the borrower's authorized representative, in writing of its determination. Where the Servicer approves the borrower for a loan modification, including a trial modification, or other loss mitigation option, the written notice must provide the borrower with clear and understandable written information explaining the material terms, costs and risks of the option offered. Where the Servicer determines that the borrower cannot be approved for a loan modification or other requested loss mitigation option, the written notice must state with specificity the reasons for the determination, contact information for a person at the mortgage servicer to reconsider such a denial and any other foreclosure prevention alternatives for which the borrower may be considered. In addition, such denial shall also include the following statement, in boldface type and in print no smaller than the largest print used elsewhere in the main body of the denial: If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the New York State Department of Financial Services at 1-800-342-3736 or www.dfs.ny.gov.
- e. *Borrower programs and counseling.* A Servicer shall take reasonable steps to ensure that its staff is aware of programs designed to assist borrowers avoid foreclosure or resolve delinquency. The Servicer shall make available to homeowners who are at least 60 days delinquent or who they have 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 homeowner's geographic area as listed on the Department of Financial Services website (www.dfs.ny.gov) or the Division of Housing and Community Renewal's website (www.nysdhcr.gov).
- f. *Loss mitigation contacts.* A Servicer shall maintain and make available to borrowers and borrowers' authorized representatives current contact information to communicate and negotiate with the Servicer's designated loss mitigation staff who are authorized to discuss and negotiate loss mitigation options. The contact information shall include toll free telephone number(s) for direct communication with a loss mitigation staff person, fax number(s) for receipt of documents and e-mail addresses.
- g. *Escalation process.* The Servicer shall have a process through which borrowers may escalate disagreements to a supervisory level where a separate review of the borrower's eligibility or qualification for a loss mitigation option can be performed. The Servicer shall also designate special escalation contacts for not-for-profit housing counselors, government representatives, legal services organizations and attorneys to utilize when necessary to review or intervene in the handling of a pending loss mitigation matter.
- h. *Waiver of legal claims and defenses.* A Servicer shall not require a homeowner to waive legal claims and defenses as a condition of a loan modification, forbearance or repayment plan.
- i. *Presumption of good faith.* It shall be presumed that a Servicer has engaged in good faith loss mitigation efforts if the Servicer offers loan modifications and other loss mitigation options in accordance with the HAMP guidelines or directives developed by the United States Department of Treasury.
- j. *Alternative loss mitigation options.* Nothing in this section shall be construed to prevent a Servicer from offering or accepting alternative loss mitigation options, including other modification programs offered by the 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 HAMP, or rejects the Servicer's loss mitigation proposal.
- k. *Foreclosure.* A Servicer must develop and implement policies and procedures to provide notification to its foreclosure attorneys and trustees regarding a borrower's status for consideration of a loss mitigation option and whether the

borrower is being evaluated for, or is currently in, a trial or permanent modification. A Servicer should avoid initiating a foreclosure action if the borrower has requested and is being considered for a loss mitigation option or if the borrower is in a trial or permanent modification and is not more than 30 days in default under the modification agreement. A Servicer must also develop and implement policies and procedures to ensure that its foreclosure attorneys comply with the requirements of New York Civil Practice Law and Rules Section 3408 with regard to mandatory settlement conferences in residential foreclosure actions, including that their attorneys are fully authorized to resolve the foreclosure action and to negotiate with the borrower in good faith to reach a mutually agreeable resolution of the action, including a loan modification, if possible, and that its attorneys bring to the settlement conference relevant documents and information, including the payment history, an itemization of the amounts needed to cure and pay off the loan, the mortgage and note and, if the plaintiff is not the owner of the mortgage and note, the name, address and telephone number of the legal owner of the mortgage and note.

- I. *Servicer Protocols.* A Servicer shall maintain a system for servicing delinquent loans that includes at a minimum the following:
 1. An accounting system that promptly alerts the appropriate department that a mortgage is delinquent;
 2. Procedures for identifying and working with borrowers who are at risk of foreclosure or delinquency in order to help such borrowers, including procedures for making borrowers aware of programs and counseling as set forth in subsection (e) above;
 3. Procedures and controls for sending delinquency notices, assessing late charges, handling partial payments, maintaining collection histories, and reporting delinquencies to credit bureaus;
 4. Guidelines for analyzing each delinquency; and
 5. Procedures for management review and evaluation of decisions regarding appropriate loss mitigation options or commencement of foreclosure actions.

§ 419.12 Quarterly reporting

The Superintendent may require each Servicer that is either registered or required to be registered with the Superintendent or that is an exempt organization regulated by the Superintendent to compile and submit to the Superintendent, within 30 days of the end of each calendar quarter, a report in the format required by the Superintendent, that contains the following information for the preceding months for mortgage loans in New York:

- a. The number and type of the mortgage loans the Servicer is servicing;
- b. The number and type of the mortgage loans that the Servicer is servicing that are in payment default and a breakdown of these mortgage loans by length of payment delinquency, including 30-day, 60-day, and 90-day and longer delinquencies;
- c. Information on loss mitigation activities undertaken including, but not limited to, the following:
 1. The proactive steps taken to identify borrowers at a heightened risk of default, such as those with impending interest rate resets or with mortgages due to recast, including, but not limited to, contacts with borrowers to assess their ability to repay their mortgage loan obligations;
 2. The number and type of workout arrangements in process;
 3. The number and type of workout arrangements, including the percentage of each type of workout arrangement, entered into;
 4. The number and type of the mortgage loans for which each type of workout arrangement was entered into; and
 5. The number of and reasons for redefaults.
- d. For workouts that involve mortgage modifications, the total number of modifications resulting in each of the following:
 1. Additions of delinquent payments and fees to loan balances;
 2. Interest rate reductions and freezes;
 3. Term extensions;
 4. Reductions of principal;
 5. Deferrals of principal;
 6. Combinations of modifications described in subsections (1), (2), (3), (4) or (5);
 7. Increased monthly principal and interest payments;
 8. No change in monthly principal and interest payments;
 9. Monthly principal and interest payments decreasing less than 10 percent;
 10. Monthly principal and interest payments decreasing between 10 percent and 20 percent;
 11. Monthly principal and interest payments decreasing by 20 percent or more.

- e. Information regarding loans that have been modified and then entered into default, including information regarding defaults where the loan modification resulted in the following:
 - 1. Higher monthly payments by the homeowner;
 - 2. Same monthly payments by the homeowner;
 - 3. Lower monthly payments by the homeowner of up to 10 percent;
 - 4. Lower monthly payments by the homeowner of between 10 to 20 percent, or
 - 5. Lower monthly payments by the homeowner of more than 20 percent.
- f. The number of preforeclosure notices served pursuant to Real Property Actions and Proceedings Law section 1304, foreclosure actions commenced, judgments obtained and foreclosure sales concluded in this state in connection with mortgage loans the MLS is servicing;
- g. The number of settlement conferences scheduled in foreclosure actions pursuant to Civil Practice Law and Rules section 3408 and the outcome of such conferences, i.e. matter adjourned, resolution reached and nature of the resolution, resolution not reached and reason;
- h. The number and type of REO properties held;
- i. The number and dollar amount of adjustable rate mortgage loans, interest only mortgage loans and payment option ARM mortgage loans held;
- j. The specific reasons for the delinquency, if known, such as death, illness, change in marital status, decrease in income, unemployment, loss of rental income, increase in escrow account, interest rate reset, other debt obligations, payment dispute etc. A Servicer should identify the primary reason for delinquency; and
- k. Any other information that the Superintendent may consider necessary, including geographic information regarding applicable mortgage loans.

§ 419.13 Books and records and annual reports

- a. *In general.* This section applies to each Servicer that is either registered or required to be registered with the Superintendent or that is an exempt organization regulated by the Superintendent. Each Servicer shall (1) keep such books and records in a manner that will allow the Superintendent to determine whether the Servicer is complying with applicable laws and regulations and (2) preserve its books and records for at least three years after making the final entry with respect to any New York mortgage loan being serviced by the Servicer, unless a longer period is provided by statute. At a minimum, books and records must provide information regarding:
 - 1. Loan payments received, disbursements made and the dates of transactions for each account;
 - 2. The principal balance of each loan account;
 - 3. The amount and due date of each loan installment for each loan serviced;
 - 4. The servicing history for all mortgage loans serviced by the Servicer, including the servicing history of loans acquired from another entity, provided that the Servicer is only required to maintain records of any prior Servicer of a loan to the extent that such information is reasonably available; and
 - 5. The servicing of delinquent loans, including loans in foreclosure.
- b. *Telephone and written communications.* The Servicer must maintain a telephone log and file of all written correspondence, including fax transmissions and e-mail correspondence, relating to the servicing of each mortgage loan, including, but not limited to communications and correspondence between it and
 - 1. Any previous loan servicer;
 - 2. The lender or any owner of such loan;
 - 3. The holder of the mortgage or person acting on the holder's behalf;
 - 4. The borrower or the borrower's authorized representative; and
 - 5. A governmental entity.
- c. *Quality control and internal audit function.* The Servicer must have internal controls (commensurate with the size and complexity of the servicing operations) which periodically assess the Servicer's loan servicing to ensure that servicing standards and procedures are being met. At least annually, the Servicer shall conduct an internal assessment of all its servicing activity. The Servicer shall also conduct periodic audits of payment processing functions to ensure payments are properly credited, including payments remitted to the servicer via certified mail.
- d. *Delinquency and foreclosure reports.* In addition to the quarterly reports required pursuant to section 419.12, the Servicer shall collect, maintain and analyze appropriate data on delinquency and foreclosure rates to enable it to (1) evaluate the effectiveness of its collection efforts and overall performance of its servicing portfolio and (2) identify discriminatory trends. The Servicer shall further determine how its delinquency and foreclosure rates compare with rates in reports published by

the industry, investors and others and analyze significant variances between its foreclosure and delinquency rates and those found in reports and publications and take appropriate corrective action.

- e. *Quarterly Financial Report and Net Worth Certification.* Within 45 days of the end of each fiscal quarter, the Servicer must submit to the Department, in a format, prescribed by the Superintendent, a quarterly financial report and certification of net worth.
- f. *Annual audited financial statements.* Unless the Superintendent in his or her sole discretion determines that other financial information may be substituted, the Servicer shall submit an annual audited financial statement as of its fiscal year end which must be filed with the Department within 90 days of the close of the fiscal year. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant in accordance with generally accepted auditing standards.
- g. *Annual and other reports.* The Superintendent may require Servicers to file other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures, annually or as otherwise requested by the Superintendent. Such reports shall be in a form prescribed by the Superintendent and, except as permitted by the Superintendent, shall be subscribed and affirmed as true under the penalty of perjury.

§ 419.14 Servicing prohibitions

A Servicer is prohibited from:

- a. Engaging in unfair or deceptive business practices or misrepresenting or omitting any material information in connection with the servicing of the loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a loan, the terms and conditions of the servicing agreement or the borrower's obligations under the loan;
- b. Placing hazard, homeowner's or flood insurance on the mortgaged property when the Servicer knows or has reason to know that the borrower has an effective policy for such insurance;
- c. Failing 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 he or she has the required insurance coverage and by which Servicer shall terminate the insurance coverage placed by it and refund or cancel any insurance premiums and related fees paid by or charged to the borrower;
- d. Placing hazard, homeowner's or flood insurance on a mortgaged property, or requiring a borrower to obtain or maintain such insurance, in excess of the replacement cost of the improvements on the mortgaged property;
- e. Failing 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 mortgage lender or the 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;
- f. Requiring funds to be remitted by means more costly to the consumer than a bank or certified check or attorney's check from an attorney's account;
- g. Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower;
- h. Failing to provide the borrower with the notice required by Real Property Actions and Proceedings Law section 1304 at least ninety days before commencing legal action against the borrower or in the case of a residential cooperative, failing to provide the debtor with the notice required by Uniform Commercial Code section 9-611 at least ninety days before disposing of the debtor's cooperative interest; and
- i. Failing to make the filings with the Superintendent as required by Real Property Actions and Proceedings Law section 1306.