S T A T E O F N E W Y O R K

10490

I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. CLARK -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to prohibiting a mortgage servicer from obtaining force-placed insurance in certain circumstances; in relation to requiring a mortgage servicer to provide written notices prior to obtaining force-placed insurance; in relation to regulating the cost of coverage a mortgage servicer may obtain for force-placed insurance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The banking law is amended by adding a new section 595-d to read as follows:

S 595-D. REGULATION OF MORTGAGE SERVICERS; FORCE-PLACED INSURANCE. 1. AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL MEAN:

(A) "FORCE-PLACED INSURANCE" MEANS A POLICY OF HAZARD, FLOOD OR HOMEOWNER'S INSURANCE THAT IS OBTAINED BY A MORTGAGE SERVICER WITH RESPECT TO REAL PROPERTY, SECURING A MORTGAGE LOAN SERVICED BY SUCH MORTGAGE SERVICER.

(B) "MORTGAGE SERVICER" MEANS A PERSON OR ENTITY REGISTERED PURSUANT TO SUBDIVISION TWO OF SECTION FIVE HUNDRED NINETY OF THIS ARTICLE TO ENGAGE IN THE BUSINESS OF SERVICING MORTGAGE LOANS FOR PROPERTY LOCATED IN THIS STATE.

(C) "MORTGAGE LOAN" MEANS A LOAN TO A NATURAL PERSON MADE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD USE, SECURED BY EITHER A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL REAL PROPERTY, ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF OWNERSHIP IN, AND PROPRIETARY LEASE FROM, A CORPORATION OR PARTNERSHIP FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF RESIDENTIAL REAL PROPERTY OR, IF DETERMINED BY THE SUPERINTENDENT BY REGULATION, SHALL INCLUDE SUCH A LOAN SECURED BY A SECURITY INTEREST ON A MANUFACTURED HOME.

2. (A) A MORTGAGE SERVICER SHALL NOT OBTAIN FORCE-PLACED INSURANCE UNLESS THERE IS A REASONABLE BASIS TO BELIEVE THE BORROWER HAS FAILED TO COMPLY WITH THE MORTGAGE LOAN REQUIREMENT TO MAINTAIN HAZARD, FLOOD OR HOMEOWNER'S INSURANCE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) IF THE BORROWER'S EXISTING HAZARD, FLOOD OR HOMEOWNER'S INSURANCE POLICY IS PAID THROUGH AN ESCROW ACCOUNT, THEN THE MORTGAGE SERVICER SHALL ADVANCE PAYMENTS TO CONTINUE THE BORROWER'S EXISTING POLICY, UNLESS THE BORROWER OR INSURANCE COMPANY CANCELS THE EXISTING POLICY.

3. A MORTGAGE SERVICER SHALL NOT BE DEEMED TO HAVE A REASONABLE BASIS FOR OBTAINING FORCE-PLACED INSURANCE UNLESS THE FOLLOWING IS MET:

(A) THE MORTGAGE SERVICER HAS SENT, BY FIRST-CLASS MAIL, A COPY OF A WRITTEN NOTICE DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION TO THE BORROWER.

(B) IF THE MORTGAGE SERVICER HAS NOT RECEIVED FROM THE BORROWER WRITTEN CONFIRMATION OF HAZARD, FLOOD OR HOMEOWNER'S INSURANCE COVERAGE FOR THE PROPERTY SECURING THE MORTGAGE LOAN, THE MORTGAGE SERVICER HAS SENT, BY FIRST-CLASS MAIL, A SECOND COPY OF THE WRITTEN NOTICE DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION, AT LEAST THIRTY DAYS AFTER THE MAILING OF THE FIRST NOTICE.

(C) THE MORTGAGE SERVICER HAS NOT RECEIVED FROM THE BORROWER WRITTEN CONFIRMATION OF HAZARD, FLOOD OR HOMEOWNER'S INSURANCE COVERAGE FOR THE PROPERTY SECURING THE MORTGAGE LOAN WITHIN FIFTEEN DAYS FROM THE DATE THAT THE SECOND NOTICE WAS SENT BY THE MORTGAGE SERVICER.

4. WRITTEN NOTICE, AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION, SHALL CONTAIN ALL OF THE FOLLOWING:

(A) A REMINDER OF THE BORROWER'S OBLIGATION TO MAINTAIN HAZARD, FLOOD OR HOMEOWNER'S INSURANCE ON THE PROPERTY SECURING THE MORTGAGE LOAN.

(B) A STATEMENT THAT THE MORTGAGE SERVICER DOES NOT HAVE EVIDENCE OF INSURANCE COVERAGE FOR THE PROPERTY.

(C) A CLEAR AND CONSPICUOUS STATEMENT OF THE PROCEDURES BY WHICH THE BORROWER MAY DEMONSTRATE THAT THE BORROWER HAS EXISTING INSURANCE COVERAGE FOR THE PROPERTY.

(D) A STATEMENT THAT THE MORTGAGE SERVICER MAY OBTAIN INSURANCE COVERAGE FOR THE PROPERTY AT THE BORROWER'S EXPENSE IF THE BORROWER DOES NOT PROVIDE A DEMONSTRATION OF THE BORROWER'S EXISTING COVERAGE IN A TIMELY MANNER.

5. A MORTGAGE SERVICER SHALL NOT OBTAIN HAZARD, FLOOD OR HOMEOWNER'S INSURANCE FOR A MORTGAGED PROPERTY, OR REQUIRE A BORROWER TO OBTAIN OR MAINTAIN THAT INSURANCE, IN EXCESS OF THE GREATER OF THE LAST KNOWN AMOUNT OF THE COVERAGE OR THE OUTSTANDING LOAN BALANCE.

6. WITHIN FIFTEEN DAYS OF THE RECEIPT BY A MORTGAGE SERVICER OF EVIDENCE OF A BORROWER'S INSURANCE COVERAGE, THE MORTGAGE SERVICER SHALL TERMINATE ANY FORCE-PLACED INSURANCE AND REFUND TO THE BORROWER ALL FORCE-PLACED INSURANCE PREMIUMS PAID BY THE BORROWER DURING ANY PERIOD DURING WHICH THE BORROWER'S INSURANCE COVERAGE WERE BOTH IN EFFECT, AND ANY RELATED FEES CHARGED TO THE BORROWER'S ACCOUNT WITH RESPECT TO THE FORCE-PLACED INSURANCE DURING THAT PERIOD.

7. A MORTGAGE SERVICER SHALL NOT OBTAIN FORCE-PLACED INSURANCE FROM AN AFFILIATED ENTITY OR ENTITY IN WHICH THE MORTGAGE SERVICER HAS AN OWNERSHIP INTEREST.

8. A MORTGAGE SERVICER SHALL NOT SPLIT FEES, OR GIVE OR ACCEPT ANY REFERRAL FEES OR ANYTHING OF VALUE, IN CONNECTION WITH OBTAINING FORCE-PLACED INSURANCE.

S 2. This act shall take effect immediately.