

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:

1 Section 1. The banking law is amended by adding a new section 595-d to
2 read as follows:
3 S 595-D. REGULATION OF MORTGAGE SERVICERS; FORCE-PLACED INSURANCE. 1.
4 AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL MEAN:
5 (A) "FORCE-PLACED INSURANCE" MEANS A POLICY OF HAZARD, FLOOD OR HOME-
6 OWNER'S INSURANCE THAT IS OBTAINED BY A MORTGAGE SERVICER WITH RESPECT
7 TO REAL PROPERTY, SECURING A MORTGAGE LOAN SERVICED BY SUCH MORTGAGE
8 SERVICER.
9 (B) "MORTGAGE SERVICER" MEANS A PERSON OR ENTITY REGISTERED PURSUANT
10 TO SUBDIVISION TWO OF SECTION FIVE HUNDRED NINETY OF THIS ARTICLE TO
11 ENGAGE IN THE BUSINESS OF SERVICING MORTGAGE LOANS FOR PROPERTY LOCATED
12 IN THIS STATE.
13 (C) "MORTGAGE LOAN" MEANS A LOAN TO A NATURAL PERSON MADE PRIMARILY
14 FOR PERSONAL, FAMILY OR HOUSEHOLD USE, SECURED BY EITHER A MORTGAGE OR
15 DEED OF TRUST ON RESIDENTIAL REAL PROPERTY, ANY CERTIFICATE OF STOCK OR
16 OTHER EVIDENCE OF OWNERSHIP IN, AND PROPRIETARY LEASE FROM, A CORPO-
17 RATION OR PARTNERSHIP FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF
18 RESIDENTIAL REAL PROPERTY OR, IF DETERMINED BY THE SUPERINTENDENT BY
19 REGULATION, SHALL INCLUDE SUCH A LOAN SECURED BY A SECURITY INTEREST ON
20 A MANUFACTURED HOME.
21 2. (A) A MORTGAGE SERVICER SHALL NOT OBTAIN FORCE-PLACED INSURANCE
22 UNLESS THERE IS A REASONABLE BASIS TO BELIEVE THE BORROWER HAS FAILED TO
23 COMPLY WITH THE MORTGAGE LOAN REQUIREMENT TO MAINTAIN HAZARD, FLOOD OR
24 HOMEOWNER'S INSURANCE.

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

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

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

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

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

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

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

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

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

26 (C) A CLEAR AND CONSPICUOUS STATEMENT OF THE PROCEDURES BY WHICH THE
27 BORROWER MAY DEMONSTRATE THAT THE BORROWER HAS EXISTING INSURANCE COVER-
28 AGE FOR THE PROPERTY.

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

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

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

44 7. A MORTGAGE SERVICER SHALL NOT OBTAIN FORCE-PLACED INSURANCE FROM AN
45 AFFILIATED ENTITY OR ENTITY IN WHICH THE MORTGAGE SERVICER HAS AN OWNER-
46 SHIP INTEREST.

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

50 S 2. This act shall take effect immediately.