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I N   S E N A T E

June 12, 2012

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Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.