

SUPERVISORY PROCEDURE MB 109.
APPLICATION FOR REGISTRATION AS A MORTGAGE LOAN SERVICER

§ 109.1 Definitions.

For purposes of this Supervisory Procedure:

- (a) "Mortgage Loan Servicer" or "MLS" has the meaning set forth in section 418.3 of Part 418 of the Superintendent's Regulations.
- (b) "Third Party Servicer" has the meaning set forth in section 418.3 of Part 418 of the Superintendent's Regulations.
- (c) "National Mortgage Licensing System and Registry" or "NMLSR" means the web-based system developed and from time to time modified by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators or their designees that allows Mortgage Loan Servicers to apply for, amend, update or renew a registration in New York as well as in other participating states. The system also uses the trade name "NMLS".
- (d) "Executive Officer" is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.
- (e) "Controlling Member" of a partnership means any general partner or any limited partner with 10 percent or more equity interest in the partnership.
- (f) "Affiliate" is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.
- (g) "Subsidiary" is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.
- (h) "Net Worth" shall have the meaning set forth in section 418.12(a) of Part 418 of the Superintendent's Regulations.
- (i) "Principal Stockholder" is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to

direct or cause the direction of the management and policies of a mortgage loan servicer.

- (j) "Principal Beneficiary" is any person or entity entitled to 10 percent or more of the benefit of a trust.
- (k) "Surety Bond" means the bond required by Section 418.12(b) of Part 418 of the Superintendent's Regulations.
- (l) "Fidelity and E&O Bond" means the bond or evidence of coverage required by Section 418.12(c) of Part 418 of the Superintendent's Regulations.

§ 109.2 General information.

Any person or entity seeking to register as an MLS shall submit an application for registration. The application shall be submitted in such form and in such manner as may be prescribed by the Superintendent. Applicants will be required to submit certain parts of an application electronically through the NMLSR. Information to be submitted by mail should be sent to the Department at the address set forth in section 1.1 of Supervisory Policy G 1:

The application form prescribed by the Superintendent and instructions on how to use the NMLSR will be available on the Department's website as set forth in Section 1.1 of Supervisory Policy G 1 or in links provided in the Department's website.

§ 109.3 Registration Application.

- (a) *Application requirements.* Each applicant for registration as an MLS shall submit the following documents as part of its application:
 - (1) A completed application form, in the form prescribed by the Superintendent, a copy of which is available on the Department's website, which application shall be attested to by the applicant.
 - (2) Fingerprint cards with fingerprint certification, which shall be submitted to the address specified in Section 109.2 above.
 - (3) The prescribed fees, which shall be submitted electronically together with the application. A schedule of fees and a list of acceptable forms of payment shall be available at the Department's

website as set forth in Section 1.1 of Supervisory Policy G 1 The fees shall consist of:

- i. An investigation fee in the amount, if any, specified in section 18-a of the Banking Law;
- ii. Fingerprint processing fees collected by the State Division of Criminal Justice Services and/or the NMLSR; and
- iii. A processing fee charged by the NMLSR.

If the application is denied or withdrawn, none of these fees will be refunded.

- (b) *Execution.* The application shall contain the acknowledgement and attestation of the applicant. If the applicant is a partnership, corporation, trust or other entity, the acknowledgement and attestation shall be made by a Controlling Member, authorized Executive Officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to execute the application on behalf of the corporation. Each person executing the application shall:
- (1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and
 - (2) affirm, under penalty of perjury, that such person has reviewed the application and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading.

If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgements must be affixed to the application.

- (c) *Additional information and in-person conferences.* The Superintendent reserves the right to require additional information in connection with the application. In the absence of a showing of undue hardship, the Superintendent may also require that the applicant and any officers, directors and/or representatives of the applicant appear at the Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

§ 109.4 Information and documents required to be submitted.

Each applicant for registration as a Mortgage Loan Servicer shall submit information and documents as set forth below:

(a) *Name and address of applicant.* Set forth the name, address, principal place of business and telephone and fax numbers of the applicant. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) *Organizational structure and ownership of applicant.* State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each Executive Officer, director and Principal Stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each Controlling Member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and Principal Beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning not less than 10 percent of any class of the outstanding capital stock. If a partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, Subsidiary, or other Affiliate of the applicant operating in this State.

(c) *Name and address of principal contact person.* Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the Department should be addressed and the person(s) responsible for regulatory and financial matters.

(d) *Licenses received.* List all states in which the applicant, under this or any other name, or any Subsidiary or other Affiliate of the applicant, is licensed to engage in any of the following businesses: banking, insurance, sales finance, small loan, mortgage lending, mortgage loan servicing, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any other professional licenses held by any of the foregoing.

(e) *Prior applications.* The applicant, under this or any other name, any subsidiary or other Affiliate of the applicant, and, as applicable, any officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and any trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s) in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(f) *Unsafe or unsound banking practices.* The applicant, under this or any other name, any Subsidiary or other Affiliate of the applicant, and, as applicable, any Executive Officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and any trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any finding of having engaged in unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(g) *Financial information; financial responsibility requirements.*

(1) Unless exempted as provided in subsection (a) of Section 418.14 of Part 418 of the Superintendent's Regulations, the applicant, at the time of application, shall submit audited annual financial statements showing net worth as of the close of its most recent fiscal year of at least \$250,000 plus (A) $\frac{1}{4}$ of 1% of the outstanding principal balance of loans to be serviced or (B) if such applicant will be solely a Third-Party Servicer, $\frac{1}{4}$ of 1% of the outstanding principal amount of New York mortgage loans for which it will be a Third Party Servicer, or (C) If such applicant will be a Third Party Servicer with respect to certain mortgage loans and will own other mortgage loans or the servicing rights thereto, $\frac{1}{4}$ of 1% of the outstanding principal balance of the non-Third party servicer loans and $\frac{1}{4}$ of 1% of the outstanding principal amount of the New York mortgage loans for which it is a Third-party servicer. In addition, the applicant shall submit the most recent quarterly financial statements subsequent to such annual statements. If the applicant is a corporation, partnership or trust, financial statements, audited if available, shall be submitted for the previous two years if the applicant was in existence for that period. If applicable, submit the most recent consolidated audited annual financial statements of the applicant's ultimate parent corporation.

(2) Unless the Superintendent determines otherwise, prior to obtaining a license the applicant shall file a Surety Bond in the principal sum of not less

than \$250,000 in a form satisfactory to the Superintendent. Surety Bond forms may be obtained from the Mortgage Banking unit of the Department.

(3) Prior to obtaining a license the applicant shall also file Fidelity and E&O Bonds in an amount based on its anticipated volume of business, but in no event less than the principal sum of \$300,000, in a form satisfactory to the Superintendent. Fidelity and E&O Bond forms may be obtained from the Mortgage Banking unit of the Department.

(h) *Personal information.* As applicable, each individual applicant, each director, the three most senior Executive Officers and, if different, any officer(s) in charge of the New York operations of the applicant and the Principal Stockholder of a corporate applicant, each Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant shall complete a personal history questionnaire obtained from the Department. Each such person shall file an authority to release information form. As applicable, each individual applicant, each director, the three most senior Executive Officers, and, if different, any officer(s) in charge of the New York operations of the applicant and the Principal Stockholder of a corporate applicant, each Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant shall submit a signed and acknowledged current personal financial statement.

(i) *Minimum experience qualifications.* Set forth the name of the person who meets the minimum experience qualifications described in Part 418.11(a) of this Title. That person shall be either an owner, general partner, trustee or Executive Officer of the applicant, as applicable, and shall be actively engaged in the daily operations of the applicant.

(j) *Corporate, partnership or trade style documents* to be submitted, as applicable:

- (1) A copy of the certificate of incorporation;
- (2) A copy of the qualification to do business in this State;
- (3) A copy of the certificate of limited or general partnership;
- (4) A copy of an executed partnership agreement;
- (5) A certificate of the county clerk or Secretary of State, as may be appropriate, that a trade name or "doing business as" certificate has been filed pursuant to section 130 of the General Business Law; and
- (6) A copy of an executed trust agreement.

(k) *Other documents* to be submitted:

- (1) Affidavit of ownership filed by the applicant;
- (2) Litigation affidavit describing any legal proceedings against the applicant or against any Executive Officer, director or Principal Stockholder of a

corporate applicant, Controlling Member of a partnership applicant, or trustee or Principal Beneficiary of a trust applicant;

(3) Fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;

(4) A background report for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant (names of acceptable companies that supply such reports may be obtained from the Mortgage Banking unit of the Department);

(5) Taxpayer identification information form for the applicant; and

(6) Unless exempted, a surety bond and Fidelity and E&O bonds, each in the principal sum specified in subsection (g) of this section.

(l) *Checklist.* A checklist of the information and documents required to be submitted with the application for registration as a Mortgage Loan Servicer may be found on the Department's website set forth in Section 1.1 of Supervisory Policy G 1 along with the instructions for completing and submitting the application.