

SUPERVISORY PROCEDURE MB 110 APPLICATION FOR A CHANGE IN
CONTROL OF A
MORTGAGE LOAN SERVICER

§ 110.1 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.
- (b) "Change in control" shall have the meaning set forth in Section 418.8 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 entity, 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" means any person or entity entitled to 10 percent or more of the benefit of the trust.
- (k) "Surety Bond" means the bond required by Section 418.12(b) of the Superintendent's Regulations.
- (l) "E&O Bond" means the bond or bonds required by Section 418.12(c) of the Superintendent's Regulations.

§ 110.2 General information.

(a) *General requirements.* Any person or entity seeking approval to acquire of control of a Mortgage Loan Servicer shall submit an application 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 set forth in Section 1.1 of Supervisory Policy G 1 or in links provided in the Department's website.

§ 110.3 Change of Control Application

(a) *Application requirements.* Each applicant for approval of a change of control of 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 110.2 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 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) *Time periods.* The Superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the Superintendent. The period for approval or disapproval shall commence on the date that the Department has received both the applicable filing fee and an application determined by the Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) *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.

(d) *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.

(e) *Notification.* If, as a result of the acquisition, there will be changes in the locations where the examination of the Mortgage Loan Servicer is to be conducted or other address changes involving the location of the items listed below, the Mortgage Banking unit of the Department should be notified at the time of application or as soon as the decision to make the change has been made:

- (1) Examination;
- (2) Mortgage servicing files;
- (3) Accounting records;
- (4) Executive offices;
- (5) Internal auditing department;
- (6) Servicing department;
- (7) Mailing address;
- (8) Person in overall charge;
- (9) Person in charge of New York operations;
- (10) Contact for regulatory matters;
- (11) Contact for financial matters.

§110.4 Information and documents required to be submitted.

A person seeking to acquire control of a Mortgage Loan Servicer shall submit information and documents as set forth below:

(a) *Name and address of mortgage loan servicer and applicant.* Set forth the name, address, principal place of business, telephone and fax numbers of the applicant and of the Mortgage Loan Servicer in which an interest is being acquired. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) *Type of qualifying experience.* Each Mortgage Loan Servicer must have a person with the qualifying experience, as described in Part 418 of this Title, as either an owner, general partner, trustee or Executive Officer of the

corporation. Such person shall be actively engaged in the daily operations of the mortgage loan servicer. State the name of the person who, subsequent to the proposed change of control, will have such experience.

(c) *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.

(d) *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.

(e) *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 professional licenses held by any of the foregoing.

(f) *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 trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s), registration(s) or authorization(s) to do

business in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(g) *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 conducted 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.

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

The applicant shall file:

(1) Unless exempted as provided in subsection (a) of Section 418.13 of the Superintendent's Regulations, an audited consolidated annual financial statement of the applicant prepared by an independent certified public accountant as of the close of its most recent fiscal year end with an opinion prepared by an independent certified public accountant showing net worth at 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;

(2) If the applicant is a corporation, partnership or trust, annual financial statements, audited if available, for the previous two years and unaudited financial statements of the applicant for each fiscal quarter since the end of the most recent fiscal year end;

(3) Evidence, satisfactory to the Superintendent, that the proposed change of control will not adversely affect the continued coverage of the registrant either under its existing Surety Bond or under a substitute Surety Bond acceptable to the Superintendent;

(4) Evidence, satisfactory to the Superintendent, that the proposed change of control will not adversely affect the continued coverage of the registrant either under its existing Fidelity and E&O Bonds or under substitute Fidelity and E&O Bonds acceptable to the Superintendent; and

(5) A pro forma financial statement for the successor company, if applicable, showing net worth of at least \$250,000 plus (A) $\frac{1}{4}$ of 1% of the outstanding principal balance of New York mortgage loans or (B) if such successor company 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 successor company 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.

(i) *Personal information.* As applicable, each individual applicant, each director, the three most senior Executive Officers and, if different, any officer(s) who will be in charge of the New York operations of the MLS and each 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) who will be in charge of the New York operations of the MLS and the Principal Stockholders 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.

(j) *Description of acquisition.* Describe the proposed transaction which will result in a change of control, indicating the purpose, source of funds, financing terms, if applicable, and any contemplated changes in the organizational structure, management and staffing of the existing Mortgage Loan Servicer.

(k) *Corporate, partnership, trust or trade style documents of the applicant* 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;
 - (6) A copy of an executed trust agreement; and
 - (7) A copy of any contract of sale or purchase agreement.
- (l) *Other documents* to be submitted:
- (1) Affidavit of ownership filed by the applicant;
 - (2) Litigation affidavit describing any legal proceedings against the applicant and 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); and
 - (5) Taxpayer identification information form for the applicant.
- (m) *Checklist.* A checklist of the information and documents required to be submitted with the application to acquire control of 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.