

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Foreclosure Consultants

Adopted New Rules: N.J.A.C. 3:18

Adopted Amendments: N.J.A.C. 3:1-7.6; 3:5-1.1, 2.1, and 4.4; and 3:23-2.1

Proposed: May 6, 2013, at 45 N.J.R. 969(a).

Adopted: December 9, 2013, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: December 9, 2013, as R.2014 d.015, **without change**.

Authority: N.J.S.A.17:1-15.e and 46:10B-68.

Effective Date: January 6, 2014.

Expiration Dates: June 5, 2015, N.J.A.C. 3:1;

November 15, 2018, N.J.A.C. 3:5;

January 6, 2021, N.J.A.C. 3:18;

April 24, 2015, N.J.A.C. 3:23.

Summary of Public Comment and Agency Response:

The Department of Banking and Insurance (the "Department") timely received comments from the New Jersey Association of Realtors (NJAR).

COMMENT: NJAR stated that it supports the proposed new rules creating the requirement for foreclosure consultants to be licensed with the Department as a way to

protect homeowners who are looking for legitimate methods of avoiding foreclosures. NJAR specifically supports N.J.A.C. 3:18-2.1(b)9, which states that real estate licensees operating under the terms of their licenses are not considered foreclosure consultants and consequently do not have to register for such a license.

RESPONSE: The Department thanks NJAR for their support.

Federal Standards Analysis

The Federal Consumer Financial Protection Bureau (“the CFPB”), created pursuant to Title X of the Dodd Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5481 et seq., has issued regulations on financially related industries. Among the industries regulated by the CFPB are Mortgage Assistance Relief Service (MARS) Providers, as defined in 12 CFR 1015.1 et seq., which includes mortgage foreclosure consultants. The Federal rules cover a generally broader range of activity than the adopted rules, which are designed to effectuate the purposes of the licensing and regulatory requirements of the Foreclosure Rescue Fraud Prevention Act, P.L. 2011, c. 146 (“the Act”), codified as N.J.S.A. 46:10B-53 et seq.

The Federal rules for MARS providers set forth standards for communications and disclosures to property owners. Those standards include a prohibition on misrepresenting any material aspect of any mortgage assistance relief services, and require clear communications and disclosures to homeowners. The Federal rules also require the providing of a written agreement from the lender notifying the homeowner of the differences between the terms, conditions and limitations of the owner’s current

mortgage and those of the recast or replacement loan if the owner accepts the loan holder's or servicer's offer. While there is some variation in the language of the various disclosures required by the Federal rules and the adopted rules, the intent of both rules is consumer protection. Moreover, the proposed content of the disclosures and contract notices referenced in adopted N.J.A.C. 3:18-5.4 is statutorily mandated and in furtherance of the licensing and regulatory requirements of the Act.

The adopted rules require mortgage foreclosure consultants involved in distressed property services to be licensed, bonded, and subject to audits as mandated by the Act. The Federal rules contain no such licensing, bonding, or audit requirements.

The Federal rules provide recordkeeping standards which differ from the adopted rules. The Federal rules require that MARS providers retain records for a period of 24 months after the record is created. N.J.A.C. 3:18-5.3(c) requires a minimum of three years retention. While the Act is silent on the length of recordkeeping, the statute requires the Department to conduct at least one examination every two years. The Department believes that the three-year retention is necessary in order to conduct meaningful examinations of a licensee's foreclosure consulting activity. In addition, this requirement may be filled through the use of current technologies, as N.J.A.C. 3:18-5.3(d) provides for electronic recordkeeping.

The Federal rules prohibit collection of the advance payment of any fee or other consideration by any MARS provider until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer, incorporating the offer of mortgage relief the MARS provider obtained from the loan holder or servicer. The adopted rules, which mirror the Act, provide that a foreclosure

consultant may not collect payment until after the mortgage foreclosure consultant has fully performed every distressed property service for which the mortgage foreclosure consultant has contracted.

Full text of the adoption follows:

TEXT