

STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE BANKING DEPARTMENT

DECLARATORY RULING

Document # 10252

Effective as of the date signed by Commissioner.

The Department issues this declaratory ruling to the Petitioner with respect to only the particular facts and circumstances described in his petition.

INTRODUCTION

The Petitioner, [REDACTED] ("Petitioner") petitions the Department, seeking a declaratory ruling "that he is not required to maintain a mortgage servicer license as he is not engaged in the business of mortgage servicing." For the reasons outlined below, the Department finds that the Petitioner is required to maintain a mortgage servicer license as he is engaged in the business of mortgage servicing. See RSA 397-B:2, I; RSA 397-B:4, I(a).

FACTS

The Department finds the following facts. The Petitioner was once the sole member of [REDACTED] (the "Company"). The Company was a New Hampshire limited liability company which serviced a limited number of residential mortgage loans made by the Petitioner or by entities solely owned by the Petitioner.

[REDACTED] the Petitioner, both individually and through various business entities owned and operated by him, ceased making residential mortgage loans and the Company ceased operating. The Company attempted, but ultimately was unable to sell the right to service eight mortgage loans when it ceased operations. Accordingly, the Company assigned the right to service the eight loans to the Petitioner. The Petitioner subsequently became registered with the Department to service mortgage loans.

The Petitioner seeks a declaratory ruling from the Department "that he is not required to maintain a mortgage servicer license." In support of his petition, the Petitioner argues "that his limited activity as an individual, servicing a small number of remaining mortgage loans originated by a business entity that ceased operations [REDACTED] years ago, does not constitute the business of servicing mortgage loans."

The Petitioner states in his petition that he "no longer wishes to hold or service these residential mortgage loans, but has been unable to find a willing buyer for these loans." He further states that "[s]everal local banks have declined his requests that they service these loans for him." The Petitioner also states that when he applied for and received the registration from

the Department, "he did not comprehend the extent and cost of maintaining such a license." Additionally, the Petitioner states that "compliance with the requirements to maintain a mortgage servicing license is not financially feasible for an individual holding a small number of residential mortgages loans, several of which are not performing."

Attached to the Petitioner's petition, the Department finds an exhibit in the form of a chart, entitled "Outstanding residential loans, first or second, as November 16, 2012." The chart indicates that three out of the eight mortgage loans are in default. One of the defaulted loans has a foreclosure sale scheduled for December 7, 2012. All of the loans are secured by real property located in New Hampshire. The chart also indicates that each of the eight loans is paid on a monthly basis.

LAW AND APPLICATION

Under RSA Chapter 397-B, the Department regulates "mortgage servicing companies that engage in the business of servicing mortgage loans secured by real property located in the state of New Hampshire." RSA 397-B:2, I. "Any mortgage servicing company which services mortgage loans secured by real property located in the state of New Hampshire shall be required to register with the [Department]" RSA 397-B:4, I(a). A "mortgage servicing company" includes an "individual" who "holds the servicing rights or records such payments on its books and records and performs such other administrative functions as may be necessary to properly carry out the mortgage holders [sic] obligations under the mortgage servicing agreement." RSA 397-B:1, III.

RSA Chapter 397-B does not define the phrase "engage in the business." "Generally, however, 'business' is defined as 'transactions, dealings, or intercourse of any nature.'" Frost v. Comm'r, N.H. Banking Dep't, 163 N.H. 365, 375 (2012) (quoting WEBSTER'S 3D NEW INT'L DICTIONARY 302 (unabridged ed. 2002)). To be engaged in a business requires more than a single, isolated, or occasional act. Frost, 163 N.H. at 375-76; Currier v. Tuck, 112 N.H. 10, 12 (1972).

In this case, the Department finds that the Petitioner is engaging in the business of servicing mortgage loans secured by real property located in the State of New Hampshire. Servicing eight mortgage loans is more than a single, isolated, or occasional act. The Petitioner records payments and performs other administrative functions on each of the eight mortgage loans on a monthly basis. Moreover, the Petitioner has arranged to have default notices sent to the mortgagors for three of the loans and scheduled a foreclosure auction for one of the loans. These transactions and dealings constitute multiple acts which the Petitioner performs as part of the business of servicing the eight loans. Accordingly, the Petitioner must maintain a mortgage servicer registration with the Department.

Nonetheless, the Petitioner appears to argue that he should not be required to maintain a registration because when he applied for the registration "he did not comprehend the extent and cost of maintaining such a license." The Department disagrees because the extent and cost of maintaining a mortgage servicer registration is plainly stated in RSA Chapter 397-B. The cost of

the registration on a yearly basis is \$500. RSA 397-B:4, I(a). The requirement that a registrant pay cost of examination is stated in RSA 397-B:9-a, V and explained in RSA 383:11.

Additionally, the Petitioner appears to argue that he should not be required to maintain a registration with the Department because it "is not financially feasible for an individual holding a small number of residential loans, several of which are not performing." While the Department is sympathetic to the Petitioner's plight, the Department is required by law to regulate individuals engaged in the business of servicing mortgage loans. The legislature set the fees charged to the Petitioner by statute. E.g., RSA 397-B:4, I(a). RSA Chapter 397-B does not permit the Department to use a sliding scale of fees based on the Petitioner's profit. If the Petitioner believes the statutory fees are too high, the appropriate recourse is through petitioning the legislature to amend the relevant statutes.

Accordingly, the Department finds that the Petitioner is required to maintain a mortgage servicer license as he is engaged in the business of mortgage servicing. See RSA 397-B:2, I; RSA 397-B:4, I(a).

1/14/13
Date



Ronald A. Wilbur,
Bank Commissioner