

New York's New Mortgage Servicing Rules Take Effect in the New Year. Are You Prepared?

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On December 18, 2019, the New York Department of Financial Services' (NYDFS) Final Mortgage Servicing Rules (Final Rules) were published and became effective. **The Final Rules are applicable to persons that are engaged in the servicing of mortgage loans in New York State whether or not that person is registered as a mortgage servicer** (i.e., as a matter of state law, the law applies to organizations exempt from licensing and registration).

The Final Rules were officially adopted on December 18, 2019, after nearly a decade of Emergency Rules enacted under Part 419 and contain material differences including, but not limited to, additional definitions, disclosure requirements, conduct requirements, and oversight of third-party providers.

Servicers will need to review their processes to ensure compliance with the Final Rules. Changes will likely be needed to existing policies and procedures at the very least.

While we'll have more detail to follow in later alerts, here is a summary of the Final Rules:

- **Section 419.1** contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer," "Mortgagee," and "Settlement Service."
- **Section 419.2** describes the requirements for the handling of monies placed by a servicer into an escrow account.
- **Section 419.3** describes requirements for crediting payments from borrowers and handling late payments.
- **Section 419.4** describes the requirements of an annual account statement which must be provided to borrowers in plain language showing: the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period, and the amounts deposited into and disbursed from escrow. The section also describes the servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.
- **Section 419.5** sets forth the requirements relating to fees permitted to be collected by servicers and how often such fees may be charged to a borrower.
- **Section 419.6** describes the requirements for handling borrower complaints and inquiries.
- **Section 419.7** sets forth the servicer's obligations with respect to the handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This section includes requirements relating to procedures

and protocols for handling loss mitigation, including providing borrowers with information regarding the servicer's loss mitigation process, decision-making, and available counseling programs and resources.

- **Section 419.8** describes the Volume of Servicing Report that the Superintendent may require servicers to submit to the Superintendent, including information regarding the servicer's mortgage loan servicing activities.
- **Section 419.9** describes the books and records that servicers are required to maintain as well as other reports the Superintendent may require servicers to file in order to determine whether the servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports, and audited financial statements.
- **Section 419.10** sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and establishes a duty of fair dealing for servicers in connection with their transactions with borrowers.
- **Section 419.11** sets forth a servicer's obligations with respect to the oversight of third-party providers, including requiring a servicer to perform appropriate due diligence and conduct periodic reviews of third-party providers' qualifications, as well as make disclosures regarding the use of third-party providers.
- **Section 419.12** sets forth requirements for mortgage servicing transfers, including a requirement that servicers permit borrowers to continue making existing trial modification payments and disclosure requirements in connection with the first monthly statement provided after a transfer.
- **Section 419.13** establishes a procedure for the handling and reporting of affiliated business arrangements requiring, among other things, notice to the borrower of such an arrangement and market-rate terms.
- **Section 419.14** sets forth a compliance transition period.

While technically effective as of December 18, 2019, the Final Rules include a 90-day transition period (set forth in Section 419.14) allowing servicers to continue complying with the prior Emergency Rules (N.Y. Comp. R. & Regs. tit. 3, §§ 419.1 et seq.) while implementing changes necessary to comply with the updated requirements. Therefore, servicers must be ready to comply with the Final Rules by March 17, 2020.

We are in the process of comparing the Final Rules to the existing Emergency Rules under Part 419 to highlight the changes servicers need to be aware of. Additionally, we are reviewing the Final Rules against the RESPA and TILA servicing requirements to identify additional requirements that servicers will need to meet in New York. Be on the lookout for additional alerts in the weeks to come.

If you have questions, reach out to one of the authors of this alert or another member of the firm's Consumer Financial Services team.

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