

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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September 4, 2018

Daniel Wise
Legal Assistant
Secured Investment Corp.
701 E. Front Ave, Second Floor
Coer d'Alena, ID 83814

Dear Mr. Wise:

This letter is in response to your July 17, 2018 correspondence to the Division of Banks (the "Division"), on behalf of Secured Investment Corp. d/b/a Lake City Servicing ("Lake City") relative to whether a third party loan servicer registration is required in order for it to conduct its operations in Massachusetts.

In your letter, you advise that Lake City, a Wyoming corporation with its principal place of business in Idaho, seeks to service certain loans on behalf of others secured by real property located within the Commonwealth. As set forth in your correspondence, all of the loans to be serviced by Lake City will meet the following criteria: (i) the loans are for business or investment purposes; (ii) the loans are granted to business entity borrowers, not individuals; (iii) the loans will be secured by non-owner occupied real property, either commercial or residential; (iv) owners of business entity borrowers who have an ownership interest greater than 30% are required to provide personal guarantees for the loans; and (v) those individuals who are personal guarantors, as described, may or may not be residents of Massachusetts.

In Massachusetts, debt collection and loan servicing are governed under the provisions of General Laws chapter 93, sections 24 through 28, inclusive, and 209 CMR 18.00, *et seq.* Under section 24A(b) of chapter 93, no person may directly or indirectly engage in the business of a third party loan servicer without registering with the Division. The Division's regulation, 209 CMR 18.02, provides the following definition of "servicing" applicable to your inquiry:

Servicing means receiving a scheduled periodic payment from a consumer pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

Further, 209 CMR 18.02 also defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." Lastly, both G. L. c. 93, § 24 and 209 CMR 18.02 define "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or

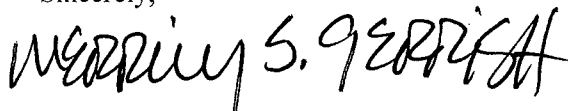
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household purposes, whether or not the obligation has been reduced to judgment.” Accordingly, based upon these definitions, as incorporated into the definition of “servicing,” it has been the consistent position of the Division that a third party loan servicing registration is not required for the servicing of loans that are not primarily for personal, family, or household purposes.

As set forth in your letter, Lake City’s servicing activities are limited to collecting obligations incurred for business purposes and not for personal, family, or household purposes. Your correspondence has confirmed that any personal guarantees being enforced by Lake City are executed in connection with a commercial transaction. It is the Division’s position that personal guarantees provided in such circumstances do not alter the commercial nature of the transactions. See Opinion 04-080. Accordingly, based upon the information provided in your letter, Lake City is not required to register with the Division as a third party loan servicer.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in black ink that reads "Merrily S. Gerrish". The signature is written in a cursive, slightly slanted style.

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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