



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

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COMMISSIONER OF BANKS

June 18, 2014

Hayden J. Richards, Esq.
Dykema Gosset PLLC
Franklin Square, Third Floor West
1300 I Street N.W.
Washington, DC 20005

Dear Mr. Richards:

This letter is written in response to your correspondence dated April 7, 2014 to the Division of Banks (Division) in which you request an opinion relative to the proper method for a debt collector and third party loan servicer to report a consumer's information to a consumer reporting agency.

In your letter, you state that you represent Seterus, Inc. (Seterus) which currently holds a debt collector license in the Commonwealth. You indicate that Seterus acts as a third party loan servicer as well as a debt collector, but, as a licensed debt collector, is not required to register as a third party loan servicer in Massachusetts pursuant to the Division's regulation 209 CMR 18.01(2)(b). However, when acting in the capacity of a third party loan servicer, Seterus is required to comply with the provisions of 209 CMR 18.21 and 18.21A relative to reporting consumer information to credit reporting agencies.

You state in your correspondence that the sole client of Seterus does not wish to have the client's name identified on individual credit reports and would therefore prefer to have Seterus identified on the credit reports as the mortgage servicer. Due to its status in Massachusetts as a licensed debt collector, Seterus believes that reporting the consumer's information in its corporate name would be a violation of 209 CMR 18.17(11) which prohibits a debt collector from reporting to a credit reporting agency in its own name. However, as a mortgage servicer, Seterus is also required to comply with the provisions of 209 CMR 18.21(1)(g) which makes it an unfair servicing practice for a third party loan servicer to fail to report both the favorable and unfavorable payment history of a consumer to a nationally recognized consumer reporting agency at least annually, if the servicer regularly reports information to a credit bureau. Based on its desire to avoid a violation of the prohibition set forth under 209 CMR 18.17(11), Seterus has stopped reporting consumer payment history to credit reporting agencies when performing in the capacity of the third party loan servicer.

As described in your letter, because Seterus is authorized to perform in the separate capacities of a debt collector and as a third party loan servicer in Massachusetts, it must reconcile the differing reporting requirements to the credit reporting agencies established under 209 CMR 18.00 *et seq.* You requested that the Division consider an accommodation to permit Seterus, a licensed debt collector, to

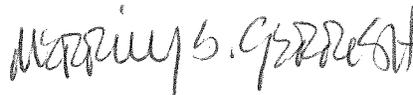
include only its own name when it reports information regarding the status of residential mortgage loans to the appropriate consumer reporting agencies.

The Division's regulation 209 CMR 18.01(2)(b) states, in part, that, "Any person licensed as a debt collector shall not be required to register as a third party loan servicer." As you described, Seterus is an entity acting in two separate and distinct capacities under the Massachusetts debt collector license pursuant to the exemption from the third party loan servicer registration requirement provided under 209 CMR 18.01(2)(b). Under such circumstances, the capacity in which the entity is operating relative to a specific account, rather than the license type, is determinative of which provisions of 209 CMR 18.00 *et seq.* apply. In the event that Seterus is acting as a third party loan servicer, it must comply with all of the pertinent state and federal laws and regulations governing third party loan servicers, including 209 CMR 18.21(1)(g). Notwithstanding Seterus's exemption from the registration requirement for third party loan servicers as a result of obtaining the debt collector license, by operation of 209 CMR 18.01(2)(b), the provisions of 209 CMR 18.21(1)(g) permit Seterus to report to the credit reporting agencies when acting as a third party loan servicer without need for any additional accommodation from the Division.

Therefore, when performing in the capacity of a third party loan servicer, Seterus may report the consumer's payment history to a credit reporting agency in its own name. However, if Seterus is acting in a debt collector capacity for a particular entity or account, payment information relating to the debt must be reported to a credit reporting agency in the name of the holder of the debt. It remains Seterus's responsibility to identify in what capacity it is acting in each individual case and to determine the proper manner in which to report payment information to the credit reporting agencies as described above.

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,



Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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