



## COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

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COMMISSIONER

October 24, 2017

Jeffrey B. Loeb, Esq.  
Rich May, P.C.  
176 Federal Street  
Boston, MA 02110

Dear Mr. Loeb:

This letter is in response to your correspondence dated June 27, 2017 to the Division of Banks (“Division”) in which you request an advisory opinion as to whether your client is required to obtain a debt collector license pursuant to G. L. c. 93, §§ 24 – 28.

As you described in your correspondence, your client is in the business of real estate development and does not engage in debt collection. Your question has arisen due to a set of unique circumstances. More specifically, following your client’s purchase of certain real property from a bank at a foreclosure sale, the foreclosure sale was thereafter deemed void pursuant to a recent decision of the Massachusetts Supreme Judicial Court.<sup>1</sup> Your client does not purchase debt; in this situation, it acquired the mortgage to the real estate at issue by operation of law solely as a result of the defective foreclosure, and the accompanying promissory note (necessary to conduct a new foreclosure) was accordingly transferred to your client only due to these unique circumstances. As noted in your correspondence, this is the first time that your client has acquired debt. In addition, your correspondence notes that your client will be utilizing the services of Massachusetts-licensed attorneys to send all statutorily and contractually required foreclosure notices and conduct the foreclosure in this matter.

Pursuant to G. L. c. 93, § 24A, “no person shall directly or indirectly engage in the commonwealth in the business of a debt collector . . . without first obtaining from the commissioner a license to carry on the business.” A “debt collector” is defined as “any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another.” G. L. c. 93, § 24.

As stated in your letter, this is the first time that your client has acquired debt. As previously mentioned, your client is not in the business of debt collection and as such does not intend to acquire any additional debts. Accordingly, the principal purpose of your client’s business is not the collection of debt. Likewise, your client is now the holder of the promissory note and mortgage at issue, and is therefore not collecting a debt owed or due or asserted to be owed or due another, and therefore would not come within the statutory definition of a debt collector. In addition, the debt buyer licensure requirement set forth in the definition of debt collector in 209 CMR 18.02 is intended to refer back to the licensure requirements of the statute and is not intended to require licensure of those debt buyers in your client’s position, who are collecting a single debt and do not meet the statutory definition. Accordingly, based upon the facts as described in your correspondence, it is the position of the Division that your client is not required to be licensed as a debt collector pursuant to G. L. c. 93, § 24. Please be advised,

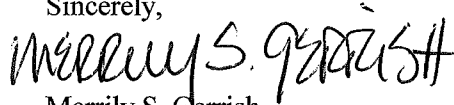
<sup>1</sup> Pinti v. Emigrant Mortgage Co., 472 Mass. 226 (2015).

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however, that your client's acquisition of any additional debt for collection would impact the Division's analysis and conclusion set forth in this opinion. Lastly, please note that because the Division has determined that your client is not a debt collector, the fact that Massachusetts attorneys will be sending all statutorily and contractually required pre-foreclosure notices and conducting the foreclosure does not alter this conclusion.

The conclusions reached in this letter are based solely on the specific 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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