

Company Violates Mortgage Law by Holding Servicing Rights without License

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It is usually no surprise to companies operating in the financial services space that they may need a state license to make or service consumer loans. That is particularly true when the loans are highly regulated residential mortgage loans. However, it may be a surprise to learn that merely holding an interest in a loan can be enough to trigger the need for a license. That fact was illustrated in a recent enforcement action out of Washington, involving loan servicing rights.

At the beginning of this year, the Washington Department of Financial Institutions entered into a Consent Order with Sailfish Servicing, LLC.[1] The facts leading to this consent order started several years ago when Sailfish applied for a consumer loan license in Washington. Among other activities that trigger the license, the Washington consumer loan license is needed to service residential mortgage loans.

The trouble arose when Sailfish disclosed, as part of the application process, that it already owned the servicing rights on several thousand Washington residential mortgage loans. In some states, a servicing license applies only to persons who directly engage in servicing conduct, such as collecting payments or sending late payment notices. In other states, however, a servicing license can also pick up persons who own servicing rights or act as master servicers by arranging and managing subservicers on the loan. Washington is an example of the latter, where the license applies broadly to subservicer and master servicers. In particular, Washington's license applies to a host of servicing-related activities, including persons who work with the lender or servicer to make decisions about various servicing activities. The Department has issued regulations making clear that master servicers are subject to the law.

When Sailfish applied for a servicer license and disclosed in the application that it already owned servicing rights, the Department was on notice that Sailfish may have engaged in unlicensed activity. The Department fined Sailfish \$43,000 and required assurances that Sailfish would not obtain any additional servicing rights until it obtains the Washington license. Sailfish did not admit any wrongdoing.

This action serves as a reminder that companies should check with their counsel to determine whether aspects of their business may trigger a state license. That is particularly true if the company may be in the process of applying for a state license. During the application process, state regulators will often question an applicant about

their business model, checking if the company may need additional licenses or may have engaged in unlicensed activities.

[1] *In the Matter of Determining Whether There Has Been A Violation of the Consumer Loan Act of Washington By: Sailfish Servicing, LLC, Nmls No. 2219167, Respondent*, 2024 WL 263278.

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