

THE SECONDARY MORTGAGE LOAN ACT (EXCERPT)
Act 125 of 1981

493.62a Conservator; appointment; reimbursement of expenses; powers; termination; disposition of compensation and expenses; disbursement of funds and interest.

Sec. 12a.

(1) Notwithstanding section 12, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing secondary mortgage loans as required by this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require the conservator to provide a bond or security as the commissioner considers necessary. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred in connection with the conservatorship. The amount reimbursed shall be paid into the revolving fund provided for in subsection (4). The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and the possession of the books and records of the licensee or registrant. The licensee or registrant may transfer or assign the rights to service secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the secondary mortgage loans are serviced as required by this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of secondary mortgage loans subject to any terms, conditions, and limitations as prescribed by the commissioner.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorship under this act shall be deposited in the state treasury and shall be directed to a financial institutions bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the financial institutions bureau for expenses incurred by the bureau in connection with conservatorships of licensees or registrants.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act