

1980 WL 120820 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1980

***1 RE: Security Pacific Mortgage Corporation**

Peter R. Nuessle, Esquire
S. C. State Housing Authority
Suite 540
2221 Devine Street
Columbia, South Carolina 29205

Dear Mr. Nuessle:

You have recently asked this Office for its opinion as to whether the Security Pacific Mortgage Corporation may sell its ability to service loans which have been purchased by the Housing Authority. It is the opinion of this Office that by the terms of the South Carolina State Housing Authority Series B Servicing Agreement which expressly incorporates by reference the Procedural Guide there is no authority for Security Pacific Mortgage Corporation to sell or in any way require the payment of a fee for the transfer of the accounts that it formerly was servicing for the Authority.

Section 2 of the Servicing Agreement requires the Servicer to service the mortgage loans to be purchased by the Authority ' . . . in accordance with the terms, conditions and requirements of this Agreement and of the Procedural Guide.' Section 12A(1) of the Servicing Agreement states, in pertinent part, 'Notwithstanding any provision herein to the contrary, this Agreement may be terminated by the Authority upon the mailing of written notice of termination to the Servicer upon any one more of the following events:

(1) In the sole opinion of the Authority, any failure, in the judgment of the Authority, by the Servicer to perform any of its duties or responsibilities hereunder, or under any other Agreement with, or undertaking to, the Authority . . .'

Moreover, Section 12B delineates very carefully the Servicer's duties and responsibilities from and after the effective date of termination of this Agreement and nowhere in 12B is there to be found any indication that the Servicer has any right or ability in relation to the loans it has been processing other than to turn them over as expeditiously as possible to the new Servicer and to account to the Authority.

Section 17 of the Servicing Agreement states 'This Agreement shall not be assigned, whether by operation of law or otherwise, by the Servicer or its successor or assigns without the written consent of the Authority, which consent shall not be unreasonably withheld,' In the Procedural Guide, Section 6.1.A., the Servicer is required to be located in the State of South Carolina and in Procedural Guide Section 6.1.C., the Servicer is required to maintain within the State facilities enabling persons to receive information from it. There is no contention by Security Pacific that they have not violated the requirement that they remain in the State of South Carolina and there is no question by Security Pacific that they have been properly notified in writing of the termination of the Agreement. When the above-referenced sections of the Servicing Agreement and Procedural Guide are read together, there would seem to be no doubt that there is no ability or right in Security Pacific Mortgage Corporation to sell or in any way charge a fee for the transfer of the loans that they have been processing.

***2** Additionally, Section 15 of the Servicing Agreement (INDEMNIFICATION) would seem to indicate that if Security Pacific were to bring any legal proceedings against the Authority over this matter, Security Pacific might well be liable for the Authority's costs and attorneys fees from having to defend that action.

If you have any further questions about this please feel free to contact this office.

Sincerely yours,

William P. Simpson
Assistant Attorney General

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