

February 3, 1982

Dear

You have asked the Bureau whether a Supervised Lender's license pursuant to 9-A M.R.S.A. §2-301 is required in the following situation: An out-of-state company which is not a supervised financial organization (§1-301(38)) or a licensed supervised lender takes assignment of second lien mortgage loans originated by a Maine creditor. The out-of-state assignee reassigns the loans to an out-of-state supervised financial organization who then seeks collection and enforcement of the loan. The original assignee (your client) does not seek collection or enforcement of the loan.

The fact that the original loan is subject to the Code is not disputed. The issue of whether the original assignee must be licensed by this Bureau solely by virtue of assignment. Section 2-301 provides:

"Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him to make supervised loans, he shall not engage in the business of:

1. Making supervised loans; or
2. Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans."*

Licensing is not required for one who merely takes assignment; the assignee must also seek direct collection from or enforcement of rights against debtors. Therefore, your client does not need a license from this Bureau in light of the facts you have described.

In addition to the collection or enforcement requirement, the Bureau will also consider the provisions on territorial application of the Code (§1-201) when considering the necessity for licensing of an assignee pursuant to §2-301. However, this issue need not be reached in your case.

This result concerning licensing should not be interpreted to free your client or a subsequent assignee from compliance with certain provisions of the Code, notably § 5-116, which regulates debt collection practices by creditors or their assignees.

Sincerely,

/s/ Barbara R. Alexander

Barbara R. Alexander
Superintendent

BA:as

*AR #88 Amendment

Public Law 1983, c. 212, §4 amended §2-301(2) by adding the words "in this State" to make it clear licensing of assignees is only required if they are physically located in the State. See AR #80.
7/14/86