

SENATE, NO. 2299

AN ACT RELATIVE TO EMPLOYER ASSISTED HOUSING AND RESPONSIBLE LENDING

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish a program to develop employer assisted housing and to ensure responsible lending practices in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by inserting after section 172I the following section:-

3 Section 172J. Notwithstanding section 172 of chapter 6 or any other general or special
4 law to the contrary, the commissioner of banks shall obtain all available criminal offender
5 record information from the criminal history systems board prior to accepting any
6 application for a mortgage loan originator license application. Neither the commissioner
7 of banks nor the division of banks shall disseminate any such information obtained for
8 any purpose other than to determine if the applicant is eligible for licensure.

9 SECTION 2. Chapter 121B of the General Laws, as appearing in the 2006 Official
10 Edition, is hereby amended by inserting after section 59 the following section:-

11 Section 60. (a) The department shall establish a program to help businesses develop
12 employer assisted housing funds. Such business' employer assisted housing funds shall

13 provide grants or loans for housing located in the state for all employees, including
14 seasonal employees, of the business, or any subsidiary thereof, whose annual household
15 income does not exceed 120 per cent of the area-wide median income as determined by
16 the United States Department of Housing and Urban Development. Not less than 50 per
17 cent of such a business' employer assisted housing fund shall be for all employees whose
18 annual household income does not exceed 80 per cent of the area-wide median income as
19 determined by the United States Department of Housing and Urban Development.

20 (b) Businesses offering an employer assisted housing program may establish
21 requirements for employee participation, including incentives that encourage
22 neighborhood revitalization or encourage employees to locate housing near their place of
23 work and that are not inconsistent with the procedures adopted by the department. Grants
24 and loans from the business' employer assisted housing fund shall be spent in the
25 commonwealth and may be used: (i) for the cost to purchase housing that is to be a
26 principal residence, including cooperative housing, and that falls within price guidelines
27 established by the department, including costs for down payments, mortgage interest rate
28 buy-downs, closing costs and other costs determined to be eligible by the department; (ii)
29 for payments for security deposits and advance payments for rental housing; and (iii) to
30 contribute to the production of housing units that fall within price guidelines and that
31 meet other requirements as may be established by the department.

32 (c) The department, subject to appropriation, shall contribute \$1 to the business'
33 employer assisted housing fund for every \$2 expended by the business from the employer
34 assisted housing fund as provided in this section. The assistance granted pursuant to this

35 section to each business shall not exceed \$100,000 annually. The total amount of
36 assistance offered to all businesses under this section shall not exceed 5 million dollars
37 annually. No assistance shall be granted to any bank, bank and trust company, insurance
38 company, trust company, national bank, savings association, or building and loan
39 association or any other business entity for activities that are a part of its normal course of
40 business, except that such businesses may receive assistance pursuant to this section for
41 employer assisted housing funds for their own employees.

42 (d) The department shall adopt written procedures for the establishment and operation of
43 employer assisted housing funds eligible for the assistance provided in this section. Such
44 procedures shall include provisions for employee eligibility and shall specify expenses
45 for which grants and loans may be made and provide the documentation and procedures
46 necessary for businesses to qualify for the assistance. The department shall include
47 employer reporting requirements that will allow the department to determine the
48 effectiveness of the program established herein.

49 SECTION 2A. Chapter 36 of the General Laws, as appearing in the 2006 Official
50 Edition, is hereby amended by inserting after section 12A the following section:-
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52 Section 12B. If a beneficial or fiduciary interest in a residential mortgage is transferred
53 by sale, acquisition or any other means, the entity acquiring the interest shall cause to be
54 filed with the registry of deeds where the property is located notice of the interest and
55 shall provide notice thereof to the mortgagor in writing. Failure to do so shall preclude
56 foreclosure.

57 SECTION 3. Section 27 of chapter 183 of the General Laws, as so appearing, is hereby
58 amended by adding the following paragraph:-

59 The holder of a mortgage of real estate, or the holder's representatives, shall provide to
60 the mortgagor or the mortgagor's heirs, successors or assigns a written notice containing
61 an itemized accounting of the disposition of the proceeds arising from a sale under the
62 power of sale including, but not limited to, the sale price, legal fees, auctioneer fees,
63 publication costs and other fees, and any surplus due to the mortgagor or the amount of
64 any deficiency, within 30 days after the date of the sale.

65 SECTION 4. Said chapter 183 is hereby further amended by adding the following
66 section:-

67 Section 69. No mortgagee who makes a loan to be secured by a mortgage on owner-
68 occupied residential real property consisting of a dwelling house with accommodations
69 for 4 or less separate households, a condominium or a cooperative unit in the
70 commonwealth shall make a subprime the loan at a variable or adjustable rate of interest
71 unless: the mortgagor affirmatively opts in writing for the variable or adjustable rate loan
72 and receives certification from a counselor with a third-party nonprofit organization
73 approved by the United States Department of Housing and Urban Development, a
74 housing financing agency of the commonwealth, or the regulatory agency which has
75 jurisdiction over the creditor, that the mortgagor has received counseling on the
76 advisability of the loan transaction.

77 Counseling shall be conducted in-person. The commissioner of banks shall maintain a list
78 of approved counseling programs. At or before closing such a loan, the mortgagee shall
79 obtain evidence that the mortgagor has completed an approved counseling program. If a
80 mortgage loan is made by a mortgagee in violation of this section, the variable or
81 adjustable rate terms of the loan shall not be enforceable and the mortgagee shall only be
82 entitled to collect an interest rate equal to the lesser of the original interest rate, including
83 any discounted rate, or the current adjusted interest rate throughout the remaining term of
84 the loan. The commissioner may issue directives or guidelines or adopt regulations to
85 administer and carry out this section and to further define the terms used in this section.

86 SECTION 5. Section 3 of chapter 183C of the General Laws, as so appearing, is hereby
87 amended by striking out the second sentence and inserting in place thereof the following
88 sentence:- Counseling shall be performed in-person and shall include, at a minimum, a
89 review of the mortgagor's income and expenses, the terms of the proposed loan
90 transaction and the truth in lending and good faith estimate statements provided by the
91 lender.

92 SECTION 6. Said chapter 183C, as so appearing, is hereby further amended by inserting
93 after section 18 the following 2 sections:-

94 Section 18A. Any violation of chapters 167A or 167D, or advertising the availability of a
95 mortgage loan, as defined in section 1 of chapter 255E, shall constitute a deceptive act or
96 practice pursuant to chapter 93A unless a consumer warning or sufficient information is
97 provided in the same advertisement to enable the consumer to readily determine whether
98 the advertised financing would result in a variable or adjustable rate loan.

99 Advertising practices that shall be considered unfair and deceptive practices shall
100 include, but not limited to, the following:-

101 (a) advertisement that indicates the availability of instant mortgage financing
102 approval or financing for persons with no credit or bad credit without disclosing how the
103 terms of financing available to persons with impaired credit will differ from persons with
104 a standard credit rating;

105 (b) advertisement that indicates the availability of mortgage financing at a
106 particular interest rate or monthly payment amount that does not also disclose and specify
107 the term of the mortgage, the nature and amount of any change in interest rate and
108 monthly payments during the first 5 years, any prepayment penalty or prohibition, and
109 any negative amortization; or

110 (c) advertisement of the availability to refinance pre-existing debt that will result
111 in reduction of a borrower's aggregate monthly payment without also disclosing any
112 increase in the borrower's aggregate number of monthly debt payments and any increase
113 in the aggregate amount paid by the borrower over the term of the loan.

114 Section 18B. Any violation of chapters 167A or 167D, or the provision of a mortgage
115 loan, as defined in section 1 of chapter 255E, shall constitute a deceptive act or practice
116 pursuant to chapter 93A unless the mortgagee also provided the borrower with a plain
117 language summary of the estimated 10 year costs of the loan in a format proscribed by
118 the commissioner of banks. This summary shall provide the borrower with a calculation
119 of the maximum monthly required minimum payment the borrower could face under the

120 terms of the loan for each of the first 10 years of the loan in order to keep the loan in
121 good standing and the cost to the buyer to pay off the loan at the end of each of the first
122 10 years if the borrower makes the minimum required payments to keep the loan in good
123 standing. If the borrower is receiving more than 1 loan, the summary must provide the
124 same information for each loan separately and for the total of all of the loans together.

125 SECTION 7. Chapter 244 of the General Laws, as so appearing, is hereby
126 amended by inserting after section 14 the following 2 sections:—

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128 Section 14A. (a) After a breach of condition of a mortgage loan secured by
129 residential property in the commonwealth, a mortgagee or holder of the mortgage shall
130 not proceed against the mortgaged premises under a power of sale unless the mortgagee
131 or holder of the mortgage gives the mortgagor the notice required by this section.

132 (b) The notice shall be in writing and shall be mailed, postage prepaid, by
133 certified mail with return receipt requested, to the mortgagor at his last address then
134 known to the mortgagee, at least 90 days before exercising any rights under a power of
135 sale.

136 (c) The notice shall conspicuously state the rights of the mortgagor upon default
137 in substantially the following form: The heading shall read: “Notice of Intent To
138 Foreclose and Right To Cure.” The body of the notice shall read: “You are now in default
139 on a mortgage loan transaction dated _____. This mortgage loan is secured by property
140 located at _____. This loan was originated by (name of mortgagee), assigned to _____
141 (if applicable) and is being serviced by _____ (if applicable). The mortgage
142 broker/mortgage originator for this mortgage loan transaction was _____. You may cure

143 your default by paying all sums due on the mortgage loan on or before (a date which is at
144 least 90 days after the notice has been mailed). If you pay this amount within the time
145 allowed, you shall no longer be in default and may continue on with the transaction as
146 though the default had not occurred. You may contact the mortgagee or the mortgagee's
147 agent at (telephone number of mortgagee or mortgagee's agent) in order to obtain the
148 amount due to cure the default on your mortgage loan. If you do not cure your default by
149 the date stated above, (name of mortgagee) may begin foreclosure proceedings against
150 you, and you may lose your property.”

151 (d) A copy of this notice shall be filed with the commissioner of banks and shall
152 include the rate of interest on the loan and whether it is a variable or fixed rate of interest.
153 The filing fee for the notice shall be determined annually by the secretary of
154 administration and finance under section 3B of chapter 7.

155 (e) No attorney's fees or other fees or charges other than per diem interest may be
156 charged to the mortgagor during the mortgagor's 90-day right to cure. If the residential
157 property securing the mortgage loan is sold at a foreclosure sale, the mortgagee shall
158 notify the commissioner of banks, in writing, of the date of the foreclosure sale and the
159 purchase price obtained at the sale, and shall include a copy of the notice required under
160 this section.

161 Section 14B. The commissioner of banks shall maintain a foreclosure database that shall
162 include, but not be limited to, foreclosure activity by mortgage lenders, mortgage holders
163 and mortgage servicers, as well as the mortgage brokers and loan originators who placed
164 these mortgage loans in the commonwealth, including information relative to the original
165 mortgagee and any subsequent assignee. Based on the information received, the

166 commissioner shall produce a report, at least annually, to track developments and trends
167 of mortgage foreclosures on residential property in the commonwealth including, but not
168 limited to, an analysis of the pre-foreclosure notices submitted to the commissioner
169 compared to the final foreclosure notices, and any trends or patterns relative to the
170 geographic location of the residential properties and interest rates. The report shall be
171 available to the public upon request, and the commissioner shall make it available in any
172 other manner that he may choose.

173 SECTION 8. Said chapter 244, as so appearing, is hereby further amended by inserting
174 after section 35 the following section:-

175 Section 35A. (a) A mortgagor of residential real property consisting of a dwelling house
176 with accommodations for 4 or less separate households, a condominium or a cooperative
177 unit, and occupied in whole or in part by the mortgagor, shall have the right to cure a
178 default or breach of the security instrument and reinstate the loan. The mortgagor may
179 exercise this right at any time after the default or breach of a security agreement until the
180 property is sold at auction or otherwise transferred. The right to cure a default or breach
181 of a security agreement shall be granted once during any 5 year period, regardless of the
182 mortgage holder.

183 (b) Following a mortgagor's breach of the security instrument, and prior to acceleration, a
184 notice of the right to cure the default shall be delivered to the mortgagor informing the
185 mortgagor of the following:

186 (1) the nature of the default claimed on the home loan and of the
187 mortgagor's right to cure the default by paying the sum of money required to cure
188 the default, including the limitation that the right to cure is allowed only once
189 during any 5 year period. If the amount necessary to cure the default will change
190 during the 30 day period after the effective date of the notice due to the
191 application of a daily interest rate or the addition of late fees, the notice shall give
192 sufficient information to enable the mortgagor to calculate the amount due at any
193 point during the 30 day period;

194 (2) the date by which the mortgagor shall cure the default to avoid
195 acceleration and initiation of a foreclosure or other action to seize the home,
196 which date shall not be less than 90 days after the date the notice is mailed and the
197 name, address and local or toll-free phone number of a person to whom the
198 payment or tender shall be made;

199 (3) that the mortgagee or servicer may take steps to terminate the
200 mortgagor's ownership in the property by commencing a foreclosure proceeding
201 or other action to seize the home, if the mortgagor does not cure the default by the
202 date specified;

203 (4) the name and address of the mortgagee or servicer and the toll-free
204 telephone number of a representative of the mortgagee or servicer whom the
205 mortgagor may contact if the mortgagor disagrees with the mortgagee's or
206 servicer's assertion that a default has occurred or the accuracy of the mortgagee's
207 or servicer's calculation of the amount required to cure the default; and

208 (5) that a repayment plan, forbearance, loan modification, or other
209 workout tool may be available to help the mortgagor repay the arrears and the
210 name, address and local or toll-free telephone number of the creditor or servicer
211 whom the mortgagor may contact to request this assistance.

212 (c) To cure a default prior to acceleration, a mortgagor may be required to pay any
213 charge, fee or penalty attributable to the exercise of the right to cure a default that is
214 deemed reasonable by the division of banks.

215 (d) If a creditor or servicer asserts that grounds for acceleration of a home loan exist and
216 requires the payment in full of all sums secured by the security instrument, the
217 mortgagor, or anyone authorized to act on the mortgagor's behalf, shall have the right at
218 any time, up to the time title is transferred by means of a sale or otherwise, to cure the
219 default and reinstate the home loan by tendering the total amount of principal, interest,
220 late fees, escrow deposits in arrears, reasonable and necessary expenses incurred by the
221 mortgagee or servicer, and reasonable attorney fees. Cure of default, as provided in this
222 paragraph, shall reinstate the mortgagor to the same position as if the default had not
223 occurred and shall nullify as of the date of the cure any acceleration of any obligation
224 under the security instrument or note arising from the default. The cure shall constitute
225 payment in full satisfaction of all delinquent principal, interest, late fees, escrow
226 shortages, legal fees, and costs of any kind which may be imposed as a result of the
227 default.

228 (e) After the mortgagee or servicer initiates a foreclosure action or takes other action to
229 seize or transfer ownership of the home, the mortgagor shall only be liable for a

230 reasonable attorney fee actually incurred by the mortgagee or servicer based on a
231 reasonable hourly rate and a reasonable number of hours plus any other reasonable and
232 necessary expenses incurred by the creditor or servicer.

233 (f) If a default is cured after the initiation of any action to foreclose, the creditor or
234 servicer shall take such steps as are necessary to terminate the foreclosure proceeding.

235 (g) A copy of the notice required by subsection (b) and an affidavit demonstrating
236 compliance with said subsection (b) shall be filed in any action or proceeding to foreclose
237 on a home loan.

238 (h) Any person who fails to comply with any requirement imposed under this section
239 with respect to a mortgagor shall be liable to the mortgagor in an amount equal to the
240 actual damages sustained by the mortgagor as a result of the failure, but in no event less
241 than \$1,000.

242 Any action filed pursuant to this section shall be brought in any court of
243 competent jurisdiction within 3 years from the date of the occurrence. This paragraph
244 does not bar a person from asserting a violation of this chapter in an action to collect the
245 debt, or foreclose upon the home, or to stop a foreclosure upon the home, which was
246 brought more than 3 years from the date of the occurrence of the violation as a matter of
247 defense by recoupment or set-off in such action.

248 An action to enforce a violation of this section may also be brought in any court
249 of competent jurisdiction by the attorney general within 3 years of the violation.

250 An action filed pursuant to this section does not create an independent basis for
251 removal of an action to a court.

252 The prevailing party in an action brought pursuant to this section shall be awarded
253 the costs of the action and reasonable attorney's fees as determined by the court.

254 SECTION 9. Chapter 255E, as so appearing, is hereby further amended by adding the
255 following section:-

256 Section 13. It shall be the continuing and affirmative obligation of each mortgage lender,
257 who is licensed pursuant to this chapter and who, directly or indirectly, makes more than
258 50 residential real property mortgage loans in the commonwealth in any calendar year, as
259 reported under the Home Mortgage Disclosure Act, 12 U.S.C. section 1801 et seq., to
260 help meet the housing credit needs of the communities in the commonwealth, including
261 low and moderate income neighborhoods and residents, consistent with laws, rules and
262 regulations of the commonwealth and the federal government relative thereto, and with
263 safe and sound business practices.

264 The commissioner of banks shall assess the record of each such lender in
265 satisfying this continuing and affirmative obligation. To assist in carrying out this section,
266 the commissioner shall adopt regulations which shall include, but need not be limited to,
267 a consideration of such mortgage lender's: (a) origination of loans and other efforts to
268 assist low and moderate income residents, without distinction, to be able to acquire or to
269 remain in affordable housing in their neighborhoods; (b) origination of loans that show an
270 undue concentration and a systematic pattern of lending resulting in the loss of affordable

271 housing units; and (c) such other considerations, including notice of the schedule of
272 examinations and the right of interested parties to submit written comments relative to
273 any such examination to the commissioner as, in the judgment of the commissioner,
274 reasonably bear upon the extent to which a mortgage lender is helping to meet the
275 housing needs of communities in the commonwealth.

276 In considering an application from a licensed mortgage lender for a renewal of a
277 license under this chapter, the commissioner shall consider, but shall not be limited to,
278 the record of performance of any such lender relative to this section. This record of
279 performance may be the basis for the denial of any such renewal application.

280 Upon the completion of the examination of a mortgage lender pursuant to this
281 section, the commissioner shall prepare a written evaluation of such lender's record of
282 performance which shall be open to public inspection upon request. The written
283 evaluation shall include:-

284 (1) the assessment factors utilized to determine the mortgage lender's descriptive
285 rating;

286 (2) the commissioner's conclusions with respect to each such assessment factor;

287 (3) a discussion of the facts supporting such conclusions; and

288 (4) the mortgage lender's descriptive rating and the basis therefore.

289 Based upon such examination, the mortgage lender shall be assigned one of the
290 following ratings:

291 (a) outstanding record of performance in meeting the housing credit needs of
292 communities in the commonwealth;

293 (b) high satisfactory record of performance in meeting the housing credit needs
294 of communities in the commonwealth;

295 (c) satisfactory record of performance in meeting the housing credit needs of
296 communities in the commonwealth;

297 (d) needs to improve record of performance in meeting the housing credit needs
298 of communities in the commonwealth; or

299 (e) substantial noncompliance in meeting the housing credit needs of
300 communities in the commonwealth.

301 Notwithstanding the foregoing, the commissioner shall establish an alternative
302 examination procedure for any mortgage lender, who, as of the most recent examination,
303 has been assigned a rating of “outstanding” or “high satisfactory” for its record of
304 performance in meeting its community housing credit needs.

305 For the purposes of this section, no mortgage lender may include a loan
306 origination or loan purchase for consideration as part of its review under this section if
307 another mortgage lender claims the same loan origination or purchase for its review
308 under this section or any other section of the General Laws.

309 Annually, on or before March 1, the commissioner shall provide a written report
310 of the division of banks’ assessment of each lender’s record of performance under this

311 section to the house and senate chairs of the joint committee on housing and the house
312 and senate chairs of the joint committee on financial services.

313 SECTION 10. The General Laws are hereby amended by inserting after chapter 255E
314 the following chapter:-

315 CHAPTER 255F.

316 LICENSING OF MORTGAGE LOAN ORIGINATORS.

317 Section 1. As used in this chapter, the following words shall, unless the context
318 otherwise requires, have the following meanings:-

319 “Division”, the division of banks.

320 “Commissioner”, the commissioner of the division of banks.

321 “Entity”, a person or entity that is a licensee under chapter 255E, as regulated by the
322 division.

323 “Mortgage loan originator”, a natural person who: (a) is employed by or associated with
324 1 and not more than 1 entity; and (b) negotiates, solicits, arranges, provides or accepts
325 residential mortgage loan applications, or assists consumers in completing such
326 applications, except that employees whose responsibilities are limited to clerical and
327 administrative tasks and who do not solicit borrowers, accept applications, or negotiate
328 the terms of residential mortgage loans on behalf of the employer shall not be considered
329 mortgage loan originators and do not require licenses.

330 “Mortgage loan”, a loan or an extension of credit including, but not limited to, an
331 extension of credit pursuant to a contract or an assigned contract for the sale of goods or
332 services made to a natural person, the proceeds of which are to be used primarily for
333 personal, family or household purposes, and which is secured wholly or partially by a
334 mortgage on residential property.

335 “Residential property”, real property located in the commonwealth having thereon a
336 dwelling house with accommodations for 4 or less separate households and occupied, or
337 to be occupied, in whole or in part by the obligor on the mortgage debt.

338 Section 2. No natural person shall act as a mortgage loan originator unless such person
339 has first obtained a mortgage loan originator license from the commissioner. An entity
340 shall not knowingly employ or retain a mortgage loan originator unless the mortgage loan
341 originator is licensed under this chapter.

342 Section 3. (a) The application for a mortgage loan originator license shall be in writing
343 and in the form prescribed by the commissioner, signed under the pains and penalties of
344 perjury, and shall contain the name, address and license number of the entity with whom
345 a mortgage loan originator is employed or associated and other information as the
346 commissioner may require, including evidence of compliance with subsection (b). The
347 application shall also include a description of the activities of the applicant, in such detail
348 and for such periods as the commissioner may require, and such further information as
349 the commissioner may require. The division shall investigate each applicant and such
350 investigation shall a request for criminal offender record information, authorized by
351 section X of chapter 6 and such request shall include the fingerprints of the applicant.

352 The division shall require each applicant to submit to fingerprinting by a law enforcement
353 agency, which agency shall be determined by the division. The division shall also submit
354 a request and such fingerprints to the Criminal Investigation Bureau of the Department of
355 Justice and the Federal Bureau of Investigation for federal processing of a nationwide
356 criminal offender record check. Investigation and license fees, to be paid by the
357 mortgage loan originator license applicant, shall be determined annually by the secretary
358 of administration pursuant to the provisions of section 3B of chapter 7. Criminal history
359 record information provided to the division under this section shall be confidential and
360 the division may use such records only to determine if the applicant is eligible for
361 licensure.

362 (b) An applicant shall: (i) have completed a residential mortgage lending course, as
363 determined by the commissioner, during the 2 year period immediately preceding the
364 date of the application; (ii) provide evidence that the applicant has received a passing
365 grade on such residential mortgage lending course examination within such 2 year period;
366 and (iii) if requested by the commissioner, provide all documentation related to any
367 mortgage transaction or mortgage application sought or processed within the 2 years prior
368 to such application.

369 Section 4. If the commissioner finds that the financial responsibility, character,
370 reputation, integrity and general fitness of the applicant is such as to warrant belief that
371 the applicant will act honestly, fairly, soundly and efficiently in the public interest,
372 consistent with the purposes of this chapter, the commissioner shall issue the applicant a
373 license to engage in the business of a mortgage loan originator upon payment of the

374 required fees. If the commissioner shall not so find, or if the applicant's criminal history
375 demonstrates any felony criminal convictions or other convictions involving fraud or if
376 the applicant has had any adverse civil judgments involving fraudulent dealings, the
377 commissioner shall not issue a license and shall notify the applicant of the denial. Within
378 20 days thereafter, the commissioner shall enter upon the division's records a written
379 decision and findings containing the reasons supporting the denial and shall forthwith
380 give written notice thereof by registered mail to the applicant. Within 30 days after
381 receipt of such notice, the applicant may seek judicial review of the denial in accordance
382 with section 14 of chapter 30A.

383 Section 5. A loan originator may transact business only for an employing entity. Each
384 original license issued to a loan originator must be provided to and maintained by the
385 employing entity at the entity's main office. If the employment of a loan originator is
386 terminated, the entity shall return the loan originator's license to the division within 5
387 business days after termination. The reason for termination shall be given in a format
388 determined by rules or regulations of the commissioner. For a period of 1 year after the
389 termination of employment, the loan originator may request the transfer of the license to
390 another entity by submitting a relocation application to the division, along with a fee
391 established by the division by rule or regulation. The return of the license of any loan
392 originator to the division, that is not transferred to another entity, terminates the right of
393 the loan originator to engage in any residential mortgage loan origination activity until
394 division procedures have been followed to reinstate such license. The license of any loan
395 originator that has been returned to the division and not transferred to another entity
396 within 1 year of termination of employment shall be cancelled.

397 Each license shall state the name and address of the mortgage loan originator
398 licensee.

399 The commissioner may establish an expedited transfer process of a loan
400 originator's license to another entity if the reason for such transfer is directly related to
401 increased responsibilities or compensation.

402 The commissioner may adopt, amend or repeal rules and regulations to aid in the
403 administration and enforcement of this chapter.

404 Section 6. Each application for a license shall be accompanied by an investigation fee.
405 Investigation and license fees shall be determined annually by the secretary of
406 administration under section 3B of chapter 7. The license of a mortgage loan originator
407 shall expire annually. Each licensee, shall annually, on or before a date to be determined
408 by the commissioner, submit a license renewal application. The license renewal
409 application shall be on a form prescribed by the commissioner, signed under the pains
410 and penalties of perjury, contain such information as the commissioner may require,
411 including evidence satisfactory to the commissioner that the licensee has completed at
412 least 8 hours of residential mortgage lending continuing education courses accredited by
413 the division of professional licensure and the board of mortgage lending during the year
414 immediately preceding the filing of an application for license renewal. Failure of the
415 licensee to satisfy the continuing education requirement shall render the mortgage loan
416 originator ineligible for renewal and his license shall be deemed inactive. The license of
417 a mortgage loan originator who fails to file such application or fails to amend the same
418 within 15 days of receipt of notice from the commissioner directing the mortgage loan

419 originator to so file or amend shall be deemed inactive. A mortgage loan originator
420 holding an inactive license shall be prohibited from engaging in business as a mortgage
421 loan originator.

422 Section 7. The commissioner may suspend, revoke or refuse to renew any license issued
423 pursuant to this chapter if the commissioner finds that: (1) the licensee has violated this
424 chapter or any rule or regulation adopted hereunder, or any other law applicable to the
425 conduct of its business; (2) any fact or condition exists which, if it had existed at the time
426 of the original application for such license, would have warranted the commissioner in
427 refusing to issue such license; or (3) the licensee has committed any fraud,
428 misappropriated funds or misrepresented made a material misrepresentation during a
429 mortgage loan transaction.

430 Except as provided in section 7, no license shall be revoked or suspended except
431 after notice and a hearing thereon pursuant to chapter 30A. Any order issued pursuant to
432 this section shall be subject to judicial review in accordance with section 14 of chapter
433 30A.

434 A licensee may surrender a license by delivering to the commissioner written
435 notice that he thereby surrenders such license, but such surrender shall not affect the civil
436 or criminal liability of the licensee for acts committed before such surrender.

437 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for
438 a hearing, that a licensee has engaged in or is about to engage in an act or practice
439 constituting a violation of this chapter or a rule, regulation or order hereunder, the

440 commissioner may order such licensee to cease and desist from such unlawful act or
441 practice and take such affirmative action as, in his judgment, will effect the purposes of
442 this chapter.

443 (b) If the commissioner makes written findings of fact that the public interest will be
444 irreparably harmed by delay in issuing an order under subsection (a), the commissioner
445 may issue a temporary cease and desist order. Upon the entry of a temporary cease and
446 desist order, the commissioner shall promptly notify, in writing, the licensee and the
447 employing entity affected thereby that such order has been so entered, the reasons
448 therefore, and that, within 20 days after the receipt of a written request from such
449 licensee, the matter will be scheduled for hearing to determine whether such temporary
450 order shall become permanent and final. If no such hearing is requested and none is
451 ordered by the commissioner, the order shall remain in effect until it is modified or
452 vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
453 after giving notice of and opportunity for a hearing to the licensee and the employing
454 entity subject to said order, shall, by written findings of fact and conclusions of law,
455 vacate, modify or make permanent the order.

456 (c) No order under this section, except an order issued pursuant to subsection (b), may be
457 entered without prior notice of and opportunity for a hearing. The commissioner may
458 vacate or modify an order under this section upon finding that the conditions which
459 required such an order have changed and that it is in the public interest to so vacate or
460 modify.

461 Any order issued pursuant to this section shall be subject to judicial review in
462 accordance with section 14 of chapter 30A.

463 Section 9. The commissioner may enforce this chapter, or restrain any violations thereof,
464 by filing a civil action in any court of competent jurisdiction. Nothing herein shall be
465 construed so as to allow any justice of any court in the commonwealth to suspend or
466 revoke a license issued under this chapter or bar the renewal thereof.

467 Section 10. Whoever violates section 2 or any rule or regulation made thereunder by the
468 commissioner, shall be imprisoned in the house of correction for not more than 180 days
469 and may be fined not more than \$1,000, or by both such fine and imprisonment. Each
470 day such violation occurs or continues shall be deemed a separate offense.

471 Section 11. (a) Whenever the commissioner finds that any licensee has violated this
472 chapter or any rule or regulation adopted thereunder, or any other law of the
473 commonwealth applicable to the conduct of a mortgage loan originator on residential
474 property in the commonwealth, the commissioner may, by order, impose a civil
475 assessment not to exceed \$5,000 for each violation, the aggregate of which shall not
476 exceed \$100,000 plus the costs of investigation. The commissioner may impose a civil
477 assessment on a person other than a licensee which shall not exceed \$5,000 for each
478 violation of this chapter, or any rule or regulation adopted thereunder, plus the costs of
479 investigation.

480 (b) Nothing in this section shall limit the right of any individual or entity who has been
481 injured as a result of any violation of this chapter by a licensee, or any person other than a

482 licensee, to bring an action to recover damages or to seek restitution in a court of
483 competent jurisdiction.

484 (c) Any findings or order issued by the commissioner pursuant to this section shall be
485 subject to review as provided in chapter 30A.

486 Section 12. (a) Whenever the commissioner determines that any person has, directly or
487 indirectly, violated this chapter or any rule or regulation adopted thereunder, applicable to
488 the conduct of a mortgage loan originator on residential property in the commonwealth,
489 or any order issued by the commissioner under this chapter or any written agreement
490 entered between the licensee and the commissioner, the commissioner may serve upon
491 that person a written notice of intention:

492 (1) to prohibit the person from performing in the capacity of a principal
493 employee on behalf of any licensee for a period of time that the commissioner
494 considers necessary;

495 (2) to prohibit the person from applying for or obtaining a license from the
496 commissioner for a period up to 36 months following the effective date of an
497 order issued under subsection (b) or (c); or

498 (3) to prohibit the person from any further participation, in any manner, as
499 a mortgage loan originator in the commonwealth or to prohibit the person from
500 being employed by, an agent of, or operating on behalf of a licensee under this
501 chapter or any other business which requires a license from the commissioner.

502 (b) A written notice issued under subsection (a) shall contain a written statement of the
503 facts that support the prohibition and shall give notice of an opportunity for a hearing to
504 be held thereon. If the person fails to submit a request for a hearing within 20 days of
505 service of notice under subsection (a), or otherwise fails to appear in person or by a duly
506 authorized representative, the party shall be considered to have consented to the issuance
507 of an order of prohibition in accordance with the notice. If the person requests a hearing,
508 within 20 days of receipt of the commissioner's notice pursuant to subsection (a), the
509 hearing shall be fixed for a date not more than 30 days after filing of such request.

510 (c) In the event that consent is granted as provided in subsection (b), or if, after a hearing
511 the commissioner finds that any of the grounds specified in the notice have been
512 established, the commissioner may issue an order of prohibition in accordance with
513 subsection (a) as the commissioner finds appropriate.

514 (d) An order issued pursuant to subsection (b) or (c) shall be effective upon service on the
515 person. The commissioner shall also serve a copy of the order upon the licensee of which
516 the person is an employee or on whose behalf the person is performing. The order shall
517 remain in effect and enforceable until it is modified, terminated, suspended or set aside
518 by the commissioner or a court of competent jurisdiction.

519 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
520 an order issued under subsection (b) or (c) has been prohibited from participating in
521 whole or in part as a mortgage loan originator, shall not, while the order is in effect,
522 continue or commence to perform in the capacity of a mortgage loan originator, or

523 otherwise participate in any manner, if so prohibited by order of the commissioner, to act
524 as:

525 (1) a licensee under this chapter;

526 (2) a person engaged in any other business which requires a license from the
527 commissioner; or

528 (3) a bank, as defined under section 1 of chapter 167, or any subsidiary thereof.

529 Section 13. The commissioner may suspend, revoke or refuse to renew the license of an
530 entity employing any licensed mortgage originator if the commissioner finds that: (a) the
531 entity knew or should have known that the mortgage loan originator violated this chapter
532 or any rule or regulation adopted hereunder, or any other law applicable to the conduct of
533 its business; (b) the entity knew of any fact or condition exists which, if it had existed at
534 the time of the original application for such license, would have warranted the
535 commissioner in refusing to issue such license; or (c) the mortgage loan originator
536 committed any fraud, misappropriated funds or made a material misrepresentation in a
537 mortgage loan transaction approved by the entity.

538 Section 14. Each licensee shall, when directed by the commissioner, permit the
539 commissioner or his duly authorized representative to inspect its relevant records and
540 evidence of compliance with this chapter or any rule or regulation issued hereunder and
541 with any other law, rule and regulation applicable to the conduct of a mortgage loan
542 originator licensed under this chapter.

543 SECTION 10A . Chapter 266 of the General Laws is hereby amended by striking out
544 section 33, as so appearing, and inserting in place thereof the following section:-

545 Section 33. (1) Whoever, with intent to defraud, obtains for himself or for
546 another by a false pretence the making, acceptance or endorsement of a bill of exchange
547 or promissory note, the release or substitution of collateral or other security, an extension
548 of time for the payment of an obligation, or the release or alteration of the obligation of a
549 written contract, or (2) whoever, with intent to defraud, by a false statement in writing
550 respecting the financial condition, or means or ability to pay, of himself or of any other
551 person, obtains credit from any bank or trust company or any banking institution or any
552 mortgage lender as defined in section 1 of chapter 255E or any retail seller of goods or
553 services accustomed to give credit in any form whatsoever shall be guilty of larceny and,
554 if the value of the benefit described in clause (1) or the dollar amount of credit obtained
555 exceeds \$250, shall be punished as if he had stolen property of a value exceeding \$250 as
556 provided in clause (1) of section 30.

557 SECTION 10B. Said chapter 266 is hereby further amended by striking out
558 section 34, as so appearing, and inserting in place thereof the following section:-

559 Section 34. Whoever, with intent to defraud and by a false pretence, induces
560 another to part with property of any kind or with any of the benefits described in section
561 33 shall be guilty of larceny and, if the dollar amount of the credit obtained or the value
562 of the benefit lost exceeds \$250, shall be punished as if he had stolen property of a value
563 exceeding \$250 as provided in clause (1) of section 30.

564 SECTION 11. Chapter 266of the General Laws, as so appearing, is hereby amended by
565 inserting after section 35 the following section:-

566 Section 35A. (a) For the purposes of this section the following terms shall have the
567 following meanings:-

568 “Funds”, shall include, but not be limited to, a commission, fee, yield spread premium,,
569 or compensation in any form.

570 “Material omission”, the omission or concealment of a material fact, without which, in
571 the light of the circumstances under which a statement is made, renders the statement
572 misleading.

573 “Mortgage lending process”, the process through which a person seeks or obtains a
574 residential mortgage loan including, but not limited to, solicitation, application, or
575 origination, negotiation of terms, third-party provider services, underwriting, signing and
576 closing, and funding of the loan. Documents involved in the mortgage lending process
577 include, but are not limited to: uniform residential loan applications or other loan
578 applications; appraisal reports; HUD-1 settlement statements; supporting personal
579 documentation for loan applications such as W-2 forms, verifications of income and
580 employment, bank statements, tax returns and payroll stubs; and any required disclosures.

581 “Pattern of residential mortgage fraud”, a violation of subsection (b), in connection with
582 3 or more residential properties within a 5 year period, and which violations have the
583 same or similar purposes, results, participants, victims, or methods of commission or are
584 otherwise are interrelated by distinguishing characteristics;

585 “Person”, a natural person, corporation, company, limited liability company, partnership,
586 real estate trust, association or any other entity.

587 “Residential mortgage loan”, a loan or agreement to extend credit made to a person,
588 which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust,
589 or other document representing a security interest or lien upon any interest in real
590 property located in the commonwealth containing a dwelling home with accommodations
591 for 4 or fewer separate households, a condominium or a cooperative unit and occupied in
592 whole or in part by the mortgagor, including the renewal or refinancing of any such loan.

593 (b) Any person who knowingly:

594 (1) makes or causes to be made any material statement that is false or any statement
595 that contains a material omission, knowing the same to be false or to contain a material
596 omission, during or in connection with the mortgage lending process, with the intention
597 that it be relied on by a mortgage lender, borrower or any other party to the mortgage
598 lending process;

599 (2) uses or facilitates the use of any material statement that is false or any
600 statement that contains a material omission, knowing the same to be false or to contain a
601 material omission, during or in connection with the mortgage lending process with the
602 intent that the statement be relied upon by a mortgage lender, borrower or any other party
603 to the mortgage lending process;

604 (3) receives any proceeds or any other funds in connection with a residential
605 mortgage closing knowing such proceeds or funds to have resulted from a violation of
606 paragraph (1) or (2);

607 (4) files, or causes to be filed, with the registrar of deeds of any county in the
608 commonwealth any document that contains a material statement that is false or a material
609 omission;

610 (5) coerces or induces a real estate appraiser to inflate the value of real property
611 used as collateral for a residential mortgage loan;

612 (6) represents or implies that a real estate appraiser will not be selected to conduct
613 an appraisal of the real property or selected for future appraisal work unless the appraiser
614 agrees in advance to a value, range of values or minimum value for the real property; or

615 (7) represents or implies that a real estate appraiser will not be paid for an appraisal
616 unless the appraiser agrees in advance to a value, range of values or a minimum value for
617 the real property shall be punished by imprisonment in the state prison for not more than
618 5 years or by imprisonment in the house of correction for not more than 2 1/2 years or by
619 a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000
620 in the case of any other person, or by both such fine and imprisonment.

621 Any person who engages in a pattern of residential mortgage fraud shall be
622 punished by imprisonment in the state prison for not less than 10 nor more than 15 years
623 or by a fine of not more than \$50,000 in the case of a natural person or not more than
624 \$500,000 in the case of any other person, or by both such fine and imprisonment.

625 Each residential property transaction that is a violation of this section shall
626 constitute a separate offense and shall not merge with any other offenses prohibited in
627 this section.

628 (c) Any criminal violation of this section may be prosecuted and punished: in the county
629 in which the residential property for which a mortgage loan is being sought is located; in
630 any county in which any act was performed in furtherance of the violation; in any county
631 in which any person alleged to have violated this section had control or possession of any
632 proceeds of or other funds received as a result of the violation; in any county in which a
633 closing on the mortgage loan occurred; or in any county in which a document is filed and
634 know to contain a material statement that is false or a material omission with a registrar
635 of deeds.

636 SECTION 12. Item 7006-0010, in section 2 of chapter 61 of the acts of 2007 is hereby
637 amended by striking out the figure “\$12,240,355” each time it appears and inserting in
638 place, in each instance, the following figure:- “\$13,240,355”

639 SECTION 13. Said chapter 61 is hereby further amended by inserting after item 7006-
640 0010 the following item:-

641 “7006-0011 For costs incurred by the division of banks pursuant to chapter 255F of the
642 General Laws; provided, that the division may expend revenues in an amount not to
643 exceed \$3,000,000 from the revenue received from investigation and licensing fees under
644 chapter 255F and from filing fees collected under section 14A of chapter 244 of the
645 General Laws; provided further, that not more than \$500,000 shall be expended on grants
646 to approved third-party nonprofit organizations in order to provide counseling on the
647 advisability of loan transactions to mortgagees who are considering variable or adjustable
648 rate loans; provided further, that funds may be expended on the maintenance of the state-
649 wide foreclosure database; and provided further, that funds may be expended on the

650 division's responsibilities regarding oversight and monitoring as provided in section 13
651 of chapter 255E of the General Laws.... \$3,000,000

652 SECTION 14. The commissioner of banks shall grant an application for a mortgage loan
653 originator license to a natural person who, on the effective date of this act, is a mortgage
654 loan originator, as defined in section 1 of chapter 255F of the General Laws, and who
655 files such an application within 180 days of said effective date, notwithstanding such
656 applicant's noncompliance with subsection (b) of section 3 of said chapter 255F if such
657 applicant is otherwise qualified.

658 SECTION 14A. Notwithstanding the provisions of any general or special law to the
659 contrary, a tenancy of property occupied for dwelling purposes shall not be terminated by
660 operation of law by foreclosure of the owner's mortgage.

661 SECTION 14A: The commissioner of banks shall adopt rules and regulations relative to
662 the lending practices relative to reverse mortgages. The commissioner shall adopt such
663 regulations on or before July 1, 2008.

664 SECTION 15. Sections 1 to 9, inclusive, and sections 11 and 14 shall take effect on
665 January 1, 2008. Section 10 shall take effect seven months after the effective date of this
666 act.

