

SENATE, NO. 2382

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 so appearing, is hereby amended by
10 adding 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 commonwealth for all employees,

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

21 (b) Businesses offering an employer assisted housing program may establish
22 requirements for employee participation, including incentives that encourage
23 neighborhood revitalization or encourage employees to locate housing near their place of
24 employment and that are consistent with the procedures adopted by the department.
25 Grants and loans from the business' employer assisted housing fund shall be spent in the
26 commonwealth and may be used: (i) for the cost to purchase housing that is to be a
27 principal residence, including cooperative housing, and that falls within price guidelines
28 established by the department, including costs for down payments, mortgage interest rate
29 buy-downs, closing costs and other costs determined to be eligible by the department; (ii)
30 for payments for security deposits and advance payments for rental housing; and (iii) to
31 contribute to the production of housing units that fall within price guidelines and that
32 meet other requirements as may be established by the department.

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

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

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

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

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

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

66 SECTION 4. Said chapter 183, as so appearing, is hereby further amended by adding the
67 following section:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

239 (h) Any person who fails to comply with any requirement imposed under this section
240 relative to a mortgagor shall be liable to the mortgagor in an amount equal to the actual
241 damages sustained by the mortgagor as a result of the failure, but in no event less than
242 \$1,000.

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

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

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

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

255 SECTION 9. Chapter 255E of the General Laws, as so appearing, is hereby amended by
256 adding the following section:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316 CHAPTER 255F.

317 LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

320 “Division”, the division of banks.

321 “Commissioner”, the commissioner of banks.

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

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

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

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

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

343 Section 3. (a) The application for a mortgage loan originator license shall be in writing
344 and in the form prescribed by the commissioner, signed under the pains and penalties of
345 perjury, and shall contain the name, address and license number of the entity with whom
346 a mortgage loan originator is employed or associated and other information as the
347 commissioner may require, including evidence of compliance with subsection (b). The
348 application shall also include a description of the activities of the applicant, in such detail
349 and for such periods as the commissioner may require, and such further information as
350 the commissioner may require. The division shall investigate each applicant and shall
351 file a request for criminal offender record information, as authorized by section 172J of
352 chapter 6 and such request shall include the fingerprints of the applicant. The division

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

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

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

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

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

397 transferred to another entity within 1 year of termination of employment shall be
398 cancelled.

399 Each license shall state the name and address of the mortgage loan originator
400 licensee.

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

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

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

418 originator ineligible for renewal and his license shall be deemed inactive. The license of
419 a mortgage loan originator who fails to file such application or fails to amend the same
420 within 15 days of receipt of notice from the commissioner directing the mortgage loan
421 originator to so file or amend shall be deemed inactive. A mortgage loan originator
422 holding an inactive license shall be prohibited from engaging in business as a mortgage
423 loan originator.

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

432 Except as provided in section 7, no license shall be revoked or suspended except
433 after notice and a hearing thereon pursuant to chapter 30A. Any order issued pursuant to
434 this section shall be subject to judicial review in accordance with section 14 of chapter
435 30A.

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

439 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for
440 a hearing, that a licensee has engaged in or is about to engage in an act or practice
441 constituting a violation of this chapter or a rule, regulation or order hereunder, the
442 commissioner may order such licensee to cease and desist from such unlawful act or
443 practice and take such affirmative action as, in his judgment, will effect the purposes of
444 this chapter.

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

458 (c) No order under this section, except an order issued pursuant to subsection (b), may be
459 entered without prior notice of and opportunity for a hearing. The commissioner may
460 vacate or modify an order under this section upon finding that the conditions which

461 required such an order have changed and that it is in the public interest to so vacate or
462 modify.

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

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

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

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

481 violation of this chapter, or any rule or regulation adopted thereunder, plus the costs of
482 investigation.

483 (b) Nothing in this section shall limit the right of any individual or entity who has been
484 injured as a result of any violation of this chapter by a licensee, or any person other than a
485 licensee, to bring an action to recover damages or to seek restitution in a court of
486 competent jurisdiction.

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

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

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

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

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

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

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

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

522 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
523 an order issued under subsection (b) or (c) has been prohibited from participating in
524 whole or in part as a mortgage loan originator, shall not, while the order is in effect,
525 continue or commence to perform in the capacity of a mortgage loan originator, or
526 otherwise participate in any manner, if so prohibited by order of the commissioner, to act
527 as:

528 (1) a licensee under this chapter;

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

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

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

541 Section 14. Each licensee shall, when directed by the commissioner, permit the
542 commissioner or his duly authorized representative to inspect its relevant records and

543 evidence of compliance with this chapter or any rule or regulation issued hereunder and
544 with any other law, rule and regulation applicable to the conduct of a mortgage loan
545 originator licensed under this chapter.

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

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

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

562 Section 34. Whoever, with intent to defraud and by a false pretence, induces
563 another to part with property of any kind or with any of the benefits described in section
564 33 shall be guilty of larceny and, if the dollar amount of the credit obtained or the value

565 of the benefit lost exceeds \$250, shall be punished as if he had stolen property of a value
566 exceeding \$250 as provided in clause (1) of section 30.

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

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

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

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

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

584 “Pattern of residential mortgage fraud”, a violation of subsection (b), in connection with
585 3 or more residential properties within a 5 year period, and which violations have the
586 same or similar purposes, results, participants, victims, or methods of commission or are
587 otherwise interrelated by distinguishing characteristics;

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

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

596 (b) Any person who knowingly:

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

602 (2) uses or facilitates the use of any material statement that is false or any
603 statement that contains a material omission, knowing the same to be false or to contain a
604 material omission, during or in connection with the mortgage lending process with the

605 intent that the statement be relied upon by a mortgage lender, borrower or any other party
606 to the mortgage lending process;

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

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

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

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

618 (7) represents or implies that a real estate appraiser will not be paid for an appraisal
619 unless the appraiser agrees in advance to a value, range of values or a minimum value for
620 the real property shall be punished by imprisonment in the state prison for not more than
621 5 years or by imprisonment in the house of correction for not more than 2 1/2 years or by
622 a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000
623 in the case of any other person, or by both such fine and imprisonment.

624 Any person who engages in a pattern of residential mortgage fraud shall be
625 punished by imprisonment in the state prison for not less than 10 nor more than 15 years
626 or by a fine of not more than \$50,000 in the case of a natural person or not more than
627 \$500,000 in the case of any other person, or by both such fine and imprisonment.

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

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

639 SECTION 12. Item 7006-0010, in section 2 of chapter 61 of the acts of 2007 is hereby
640 amended by striking out the figure "\$12,240,355" each time it appears and inserting in
641 place thereof, in each instance, the following figure:- "\$13,240,355"

642 SECTION 13. Said section 2 of said chapter 61 is hereby further amended by inserting
643 after item 7006-0010 the following item:-

644 “7006-0011 For costs incurred by the division of banks pursuant to chapter 255F of the
645 General Laws; provided, that the division may expend revenues in an amount not to
646 exceed \$3,000,000 from the revenue received from investigation and licensing fees under
647 chapter 255F and from filing fees collected under section 14A of chapter 244 of the
648 General Laws; provided further, that not more than \$500,000 shall be expended on grants
649 to approved third-party nonprofit organizations in order to provide counseling on the
650 advisability of loan transactions to mortgagees who are considering variable or adjustable
651 rate loans; provided further, that funds may be expended on the maintenance of the state-
652 wide foreclosure database; and provided further, that funds may be expended on the
653 division’s responsibilities regarding oversight and monitoring as provided in section 13
654 of chapter 255E of the General Laws.... \$3,000,000

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

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

664 SECTION 14B: The commissioner of banks shall adopt rules and regulations relative to
665 the lending practices relative to reverse mortgages. The commissioner shall adopt such
666 regulations on or before July 1, 2008.

667 SECTION 15. Sections 1 to 9, inclusive, and sections 11 and 14 shall take effect on
668 January 1, 2008. Section 10 shall take effect 7 months after the effective date of this act.

