

TITLE 209: DIVISION OF BANKS
CHAPTER 41.00: THE LICENSING OF MORTGAGE LOAN ORIGINATORS

41.01: Purpose and Scope

The purpose of *209 CMR 41.00* is to establish procedures and requirements for the licensing and supervision of Mortgage Loan Originators under the provisions of M.G.L. c. 255F.

Nothing contained in *209 CMR 41.00* shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the applicant.

41.02: Definitions

As used in *209 CMR 41.00* the following words shall, unless the context otherwise requires, have the following meanings:

Applicant, any Mortgage Loan Originator who is required to be licensed under the provisions of M.G.L. c. 255F, § 2.

Commissioner, the Commissioner of Banks.

Division, the Division of Banks.

Entity, a mortgage broker and/or mortgage lender that is licensed under M.G.L. c. 255E.

Licensee, any person who is licensed by the Commissioner as a Mortgage Loan Originator under M.G.L. c. 255F and *209 CMR 41.00*.

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

Mortgage Loan Originator, a natural person who: (a) is employed by or associated with one (1) and not more than 1 Entity; and (b) negotiates, solicits, arranges, provides, or accepts residential mortgage loan applications, or assists consumers in completing such applications, except that employees whose responsibilities are limited to clerical and administrative tasks and who do not solicit borrowers, accept applications, or negotiate the terms of residential mortgage loans on behalf of the employer shall not be

considered Mortgage Loan Originators and do not require a license under M.G.L. c. 255F.

For the purposes of clause (a) of this definition, a person is “associated with” an Entity if such person is retained as an independent contractor and is compensated directly by such Entity in whole, or in part.

Residential Property, real property located in the Commonwealth having thereon a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt.

Sponsoring Entity, the Entity with whom the Mortgage Loan Originator is employed or associated.

Termination, the ending of a Mortgage Loan Originator’s employment or association with a Sponsoring Entity, including but not limited to: voluntary resignation; discharge for cause; dismissal; forced resignation; layoff.

41.03: Application Procedure

(1) Application. Each Applicant for a license as a Mortgage Loan Originator shall submit an application on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may require.

(2) License Requirements. An Applicant shall be required to submit detailed information supporting the following general requirements:

(a) Financial Responsibility. An Applicant shall provide the Commissioner with evidence of his/her financial responsibility. Such information shall include a credit report dated not more than 30 days prior to the date of application, which shall be evaluated pursuant to the policies and standards determined by the Commissioner.

(b) Character and Fitness. An Applicant shall submit information demonstrating that the Applicant possesses the character, reputation, integrity, and fitness to engage in the business of a Mortgage Loan Originator in an honest, fair, sound, and efficient manner.

(c) Pre-Licensing Coursework. An Applicant shall submit information demonstrating that he/she has completed a residential mortgage lending course, approved by the Division. Such course must be completed within the 2 year period immediately preceding the date of the application.

(d) Payment of Fees. An Applicant shall pay all applicable fees as a condition of obtaining the Mortgage Loan Originator license.

(e) Other Information. An Applicant shall submit such other information as the Commissioner may require.

41.04: Licensing Standards

(1) A license to engage in the activity of a Mortgage Loan Originator will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 255F and 209 CMR 41.03 have been met.

(2)(a) The Commissioner may deny an application to engage in the business of a Mortgage Loan Originator if the Commissioner upon review of the application and any other relevant information, determines that the Applicant has not satisfied the requirements of M.G.L. c. 255F or 209 CMR 41.03.

(b) The Commissioner shall deny such an application if the Applicant has:

1. been convicted of or admitted to sufficient facts in a domestic, foreign, or military court to any felony offense(s);
2. been convicted of or admitted to sufficient facts in a domestic, foreign, or military court to any misdemeanor offense(s) involving fraud, false statements, theft, bribery, perjury, forgery, counterfeiting, or extortion; or
3. been subject to any adverse civil judgments involving fraud, misrepresentation, and/or wrongful taking of property.

(c) The Commissioner may also deny such an application if the Applicant has:

1. violated any provision of M.G.L. c. 255F or 209 CMR 41.00;
2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a Mortgage Loan Originator, including, but not limited to, M.G.L. chapters 93A, 183, 184, 255E and any rule, regulation or administrative order or directive promulgated thereunder;
3. conducted, or will conduct, its business in an unsafe and unsound manner; or
4. engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a Mortgage Loan Originator, mortgage broker or mortgage lender by the licensing authority of any other state.

Deleted: (b) The Commissioner may also deny such an application if the Applicant has:¶
¶
1. violated any provision of M.G.L. c. 255F or 209 CMR 41.00;¶
2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a Mortgage Loan Originator, including, but not limited to, M.G.L. chapters 93A, 183, 184, 255E and any rule, regulation or administrative order or directive promulgated thereunder;¶
3. conducted, or will conduct, its business in an unsafe and unsound manner; ¶
4. engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a Mortgage Loan Originator, mortgage broker or mortgage lender by the licensing authority of any other state;¶
5. been convicted of or admitted to sufficient facts in a domestic, foreign, or military court to any felony offense(s);¶
6. been convicted of or admitted to sufficient facts in a domestic, foreign, or military court to any misdemeanor offense(s) involving fraud, false statements, theft, bribery, perjury, forgery, counterfeiting, or extortion; or¶
7. been subject to any adverse civil judgments involving fraud, misrepresentation, and/or wrongful taking of property.¶

(3) An Applicant whose application has been denied under *209 CMR 41.04(2)* may appeal the Commissioner's action under M.G.L. c. 255F § 4.

41.05: Termination and Reassignment

(1) Each Mortgage Loan Originator license shall be provided to the Mortgage Loan Originator's Sponsoring Entity and such Sponsoring Entity shall be responsible for maintaining the license at the Sponsoring Entity's main office location.

(2) Upon the termination of the relationship between a Sponsoring Entity and the Mortgage Loan Originator, the Sponsoring Entity shall return the original Mortgage Loan Originator license to the Division within five (5) business days after the termination. The Sponsoring Entity shall fully set forth the reason(s) for termination and shall submit such statement in the form and in the manner prescribed by the Commissioner.

(3) For a period of one (1) year after the termination of employment or association, the Mortgage Loan Originator may request re-assignment of the license to another Entity by submitting an application for a change of sponsorship to the Division and paying the required fee, as determined by the Commissioner.

(4) When a Mortgage Loan Originator license is returned to the Division under *209 CMR 41.05(2)* or *41.05(3)*, the license shall become inactive and the Mortgage Loan Originator shall not be authorized to engage in any residential mortgage loan origination activity unless and until the Mortgage Loan Originator's license has been re-assigned to another Entity and all Division procedures have been followed to re-assign and reactivate such license. A Licensee shall be required to continue to submit a completed renewal application, with the applicable renewal fee, and to complete the required continuing education courses while the license is in an inactive status.

(5) The Mortgage Loan Originator license that has been returned to the Division and not re-assigned to another Entity within one (1) year of termination of employment or affiliation shall be cancelled.

41.06: License Renewal

(1) The license of a Mortgage Loan Originator shall not be transferable or assignable and shall expire on December 31st of each year unless the Mortgage Loan Originator has timely

submitted a complete application for renewal, in the form and in the manner prescribed by the Commissioner, and paid the renewal fee.

(2) If a Mortgage Loan Originator has failed to timely complete continuing education requirements during the time period in which completion of the education requirements is due, as described in *209 CMR 41.07*, the Mortgage Loan Originator's license shall be ineligible for renewal and shall be deemed to be inactive. A Mortgage Loan Originator shall be prohibited from engaging in business as a Mortgage Loan Originator during the period that the license is in an inactive status.

41.07: Continuing Education – **to be adopted on or before December 1, 2009.**

41.08: Notice of Significant Events

(1) A Licensee shall notify the Commissioner immediately, and in writing within 2 business days, of the occurrence of any of the following significant developments:

- (a) Being charged with or convicted of any criminal felony offense.
- (b) Being charged with or convicted of any criminal misdemeanor offense involving financial services or a financial services related business; or any charge involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion.
- (c) Receiving notification of the institution of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action, in any state against the Licensee, and the reasons thereof.
- (d) Receiving notification of the initiation of any action against the Licensee by the Attorney General of the Commonwealth or of any other state, pursuant to M.G.L. c. 93A, or any other comparable consumer protection statute, and the reasons thereof.
- (e) The settlement or resolution of any civil action or proceeding against the Licensee involving fraud, misrepresentation, and/or wrongful taking of property.
- (f) Termination of employment or association with a Sponsoring Entity.
- (g) Filing a personal bankruptcy petition or being the subject of an involuntary bankruptcy petition.

41.09: Prohibited Acts and Practices

- (1) It is a prohibited act or practice for a Licensee to engage in conduct prohibited under *209 CMR 42.12A*.
- (2) It is a prohibited act or practice for a Licensee to engage in mortgage loan origination activities after receiving notification of the denial of his/her mortgage loan originator license application or at any time that the license is expired, cancelled, revoked, or in an inactive status.
- (3) It is a prohibited act or practice for a Licensee to misrepresent his/her license status and type.
- (4) It is a prohibited act or practice for a Licensee to download or remove borrowers' or mortgage loan applicants' loan files or other information from the premises or the computer systems of Sponsoring Entities, unless the Licensee has obtained the written permission of the Sponsoring Entity.
- (5) It is a prohibited act or practice for a Licensee to allow any other person or entity to utilize the Licensee's mortgage loan originator license number to engage in mortgage loan origination activities.
- (6) It is a prohibited act or practice for a Licensee to simultaneously work for, or be associated with, more than one Sponsoring Entity.
- (7) It is a prohibited act or practice for a Licensee to conduct business with an entity or individual which should be licensed as a mortgage lender or mortgage broker under M.G.L. c. 255E, and which the Licensee knows or should know is an unlicensed mortgage broker or mortgage lender.

41.10: License Disclosure

A Licensee shall disclose his/her Mortgage Loan Originator license number to all clients and/or residential mortgage loan applicants in writing at the time a fee is paid or a mortgage loan application is accepted.

REGULATORY AUTHORITY

209 CMR 41.00: M.G.L. c. 255F, § 5.