940 CMR 39.00: SHARED APPRECIATION MORTGAGES

Section

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39.01: Authority, Purpose, Scope

Authority. These regulations are issued pursuant to M.G.L. c. 244 § 35C(i)(5).

Purpose. General Laws chapter 244, § 35C(i) creates an exemption from liability for the use or terms of shared appreciation mortgages made by tax-exempt entities and their affiliates, so long as the eligible entity makes full written disclosure of the shared appreciation mortgage, and so long as both the shared appreciation mortgage and a contemporaneously executed first priority mortgage loan comply with statutory requirements. M.G.L. c. 244, § 35C(i)(5) provides the attorney general with authority to promulgate rules and regulations implementing this subsection. The purpose of these regulations is to implement this subsection by clearly defining the requirements such an eligible entity and such a shared appreciation loan transaction must meet to be entitled to the statutory exemption from liability.

Scope. These regulations apply only to the following, pursuant to M.G.L. c. 244, § 35C(i)(5): any eligible entity making a shared appreciation mortgage, and the maker, lender, grantor or holder of the contemporaneously executed new first priority mortgage loan, as defined herein.

39.02: Definitions

For the purposes of these regulations, the following definitions apply:

Acquiring or Re-acquiring shall include instances where a property is acquired by a trust for the benefit of a person.

Appreciated Property Value shall mean the appraised value or other reasonable valuation of the property at the time the shared appreciation mortgage note becomes payable less the full value of any documented capital improvements over $5,000 paid for by the homeowner during the term of the shared appreciation mortgage, other than capital improvements required by, financed through, and accounted for in the underwriting of the Shared appreciation loan transaction. If the shared appreciation mortgage becomes payable due to an arms-length sale of the property in which the borrower did not retain an interest in the property, the reasonable valuation of the property shall not exceed the sale price.

Clear and Conspicuous (including the terms clearly and conspicuously) means that the material representation being disclosed is of such size, color, contrast or audibility and is so presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed. Without limiting the requirements of the preceding sentence, this definition shall be interpreted in a manner consistent with the definition of "clear and conspicuous" set forth in 940 CMR 6.01: *Definitions*.

Closing Disclosure shall refer to the disclosures required by 12 CFR § 1026.38.

Closing Payment means the amount due from the borrower at the closing of the shared appreciation loan transaction, as defined by 12 CFR § 1026.38(j)(1), excluding the new principal balance and any amounts paid at closing to third parties unaffiliated with either the mortgagee or maker of the new first priority mortgage loan.

39.02: continued

Eligible Borrower means a person acquiring or re-acquiring a residential property who has received a notice pursuant to M.G.L. c. 244, § 14 or is otherwise shown to be at least 90 days past due on their prior mortgage loan.

Eligible Entity means an entity with a tax-exempt filing status under section 501(c)(3) of the Internal Revenue Code or an entity controlled by an entity with such tax-exempt filing status.

Loan Estimate shall refer to the disclosures required by 12 CFR § 1026.37.

Maximum SAM payment shall mean the maximum amount for which a mortgagor may be liable under a shared appreciation mortgage note expressed as a specific dollar amount.

Mortgagee means an eligible entity which makes a shared appreciation mortgage.

New Principal Balance shall be the principal balance of the new first priority mortgage loan.

Person shall mean a natural person or the heirs and assigns of such person so long as such heirs and assigns are also natural persons.

Prior Mortgage Loan shall mean any loan secured by a mortgage on a residential property prior to a shared appreciation loan transaction for which a person shall no longer be liable following the shared appreciation loan transaction.

Prior Principal Balance shall mean the combined unpaid principal balance of all prior mortgage loans.

Residential Property shall have the same meaning as defined in M.G.L. c. 244, § 35C(a).

Percentage of Shared Appreciation means the percentage share of the appreciation in the value of a residential property provided for in a shared appreciation mortgage and shared appreciation promissory note, as defined by M.G.L. c. 244, § 35C(i)(1); any amount due thereunder shall be calculated by applying the percentage of shared appreciation to the difference between the starting property value and the appreciated property value.

Shared Appreciation Loan Transaction means a transaction that includes the execution of a shared appreciation mortgage in connection with a person acquiring or re-acquiring a residential property and includes all agreements in connection with such acquisition or re-acquisition executed between the person and the mortgagee, and all agreements between the person and the maker, lender, grantor or holder of the contemporaneously executed new first priority mortgage loan.

Shared Appreciation Mortgage means a mortgage or security instrument that is a second lien on the residential property for the percentage of shared appreciation required to be paid under the accompanying shared appreciation promissory note and secured by such shared appreciation mortgage, as defined by M.G.L. c. 244, § 35C(i)(1).

Starting Property Value means the value of the property used as a baseline from which to calculate any shared appreciation amount due under a shared appreciation mortgage, which shall not be less than the greatest of:

(a) the appraised or estimated fair market value used to determine approval of the shared appreciation loan transaction;

(b) the loan amount, as defined in 12 CFR § 1026.38(e)(1), of the shared appreciation loan transaction; and

(c) the sale price of the property as defined in 12 CFR § 1026.38(a)(3)(vii).

39.03: Mortgage Disclosures

(1) No mortgagee shall make a shared appreciation mortgage to a borrower unless the borrower affirmatively opts in writing for the shared appreciation mortgage by signing and dating a required "Initial Notice of Shared Appreciation Mortgage Agreement" consistent with M.G.L. c. 244, § 35C(i)(3). The Notice of Shared Appreciation Mortgage Agreement shall be substantially in the form contained here as Appendix A. The notice shall initially be provided to all consumers who submit an application (as defined in 12 CFR § 1026.2(a)(3)(ii)), and where applicable, it shall use or be based on the same values as the Loan Estimate. Such notice shall be provided, at the latest, contemporaneously with the Loan Estimate, but in no event shall the mortgagee require or encourage a consumer to materially change their position with respect to a prior mortgage loan before providing the notice.

(2) Contemporaneously with the Initial Notice of Shared Appreciation Mortgage Agreement, the mortgagee shall provide the borrower with form copies of a shared appreciation mortgage and a shared appreciation promissory note. Such sample copies shall include all the terms and conditions of the shared appreciation mortgage and a shared appreciation promissory note but may leave borrower-specific details blank.

(3) Any Mortgagee shall also provide a "Final Notice of Shared Appreciation Mortgage Agreement", as specified in M.G.L. c. 244, § 35C(i)(3). The notice should be provided no later than the earlier of three days prior to the closing of a shared appreciation loan transaction or contemporaneously with the Closing Disclosure. Where applicable, it shall use or be based on the same values used in the Closing Disclosure.

(4) The notices required by 940 CMR 39.03(4) shall further disclose in a manner no less conspicuous than the disclosures in the first page of the Loan Estimate or Closing Disclosure:

(a) The shared appreciation percentage to be paid to the mortgagee

(b) The maximum SAM payment as designated by the Eligible Entity, expressed as a dollar amount

(c) The total effective interest rate of the shared appreciation loan transaction if the maximum SAM payment is paid on the maturity date of the new first priority mortgage loan

(d) The amount that will be due upon maturity of Shared Appreciation Mortgage if the property appreciates from its fair market value at a 6.5% annualized rate

(e) The total effective interest rate of the shared appreciation loan transaction if the property appreciates from its fair market value at a 6.5% annualized rate

The initial disclosure must reflect good faith estimates of the credit terms and, where appropriate, may be based on information provided by an eligible borrower. The final disclosure must reflect the actual terms of the legal obligations between the parties.

(5) The notices required by this subsection shall further clearly and conspicuously disclose, with specificity, all events that trigger the right of the mortgagee to receive a percentage share of the appreciation in value of such residential property. Any event that is not clearly and conspicuously disclosed with specificity, both in the "Notice of shared appreciation mortgage agreement" and in the underlying documents, will not trigger any payment obligation by the borrower.

(6) Each "Notice of Shared Appreciation Mortgage Agreement" shall be provided in a person's preferred language.

(7) The Loan Estimate and Closing Disclosure required by Regulation Z for a shared appreciation loan transaction shall be issued consistently with Regulation Z.

39.04: Servicing of shared appreciation mortgages

(1) The mortgagee shall provide statements to the borrower at least annually during the life of the shared appreciation mortgage. Each such statement shall contain an estimate of the current property value, the amount that would be due on the shared appreciation mortgage based on that value, a statement that the valuation is an estimate and may change, and a restatement of all events that trigger the right of the mortgagee to receive a percentage share of the appreciation in value of the residential property.

39.04: continued

(2) Mortgagees and servicers of mortgages originated as part of shared appreciation loan transactions must also provide notification of transfer of servicing and transfer of ownership of the shared appreciation mortgage to the borrower. Such requirements shall be the same and on the same timing as those found under TILA and RESPA even if the mortgagee is not otherwise subject to the federal TILA or RESPA.

(3) The mortgagee and the servicer of the loan shall follow the provisions of Regulation X, Subpart C - Mortgage Servicing § 1024.30 through § 1024.41 in servicing the loan and to prevent the loss of the home even if the lender is not otherwise subject to the federal RESPA.

(4) A mortgagee shall not exercise a due-on-sale clause upon the circumstances stated in 12 U.S.C. 1701j-3(d)(1) through (9).

39.05: Acts or Practices Not Subject to Limitation on Liability

(1) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) is strictly limited to the terms of the statute, as implemented by these regulations.

(2) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to the eligible entity and the maker, lender, grantor or holder of the new first priority mortgage loan.

(3) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to the use of or the terms of a shared appreciation mortgage or shared appreciation promissory note. It does not include other acts or practices, including but not limited to those pertaining to:

(a) Advertising and marketing,
(b) Loan servicing,
(c) Underwriting, and
(d) Collection practices.

(4) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note given by an eligible entity to an eligible borrower.

(5) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note executed upon a person's entering into a new first priority mortgage loan.

(6) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note where a person receives a full disclosure. Full disclosure includes:

(a) The timely and complete provision of accurate information as required by § 39.03 of these regulations.

(b) The timely and accurate provision of all disclosures required by federal lending laws in connection with a shared appreciation loan transaction, including the Truth in Lending Act, the Real Estate Settlement Procedures Act, and Regulation Z.

(7) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note that secures the right to receive a percentage share of the appreciation in value of such residential property, calculated in a manner consistent with this regulation. A mortgagee may not undervalue the starting property value, inflate the appreciated property value, or otherwise structure the transaction to increase the payment to the mortgagee based on factors other than the appreciation in the value of the home.

(8) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note that defines a percentage share of appreciation in the value of a residential property. This definition must identify the manner in which the appreciated property value will be determined, which shall not use an unreliable or unfair method, and shall identify the borrowers' rights should they disagree with the appreciated

39.05: continued

property value. Any appraisal performed for the purpose of determining the starting or appreciated value of the property must be performed by an unaffiliated third-party state certified or state licensed appraiser whose identity is disclosed to the borrower.

(9) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note that is part of a shared appreciation loan transaction which results in a reduction of the prior delinquent mortgage loan principal the person owes or owed.

(10) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note if the percentage of shared appreciation does not exceed the percentage that a person's prior mortgage debt has been reduced, calculated as: (prior principal balance - closing payment - new principal balance) / prior principal balance.

(11) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note securing payment upon one or more of:

(a) the sale, conveyance, assignment or other transfer thereof;

(b) refinancing or other payoff or satisfaction of the new first priority mortgage loan encumbering such residential property;

(c) reaching a defined maturity date, which shall not be earlier than the maturity date of the new first priority mortgage loan encumbering such residential property, or

(d) the occurrence of other events specified in the shared appreciation mortgage or shared appreciation promissory note which would also cause the new first priority mortgage loan encumbering the residential property to become due and payable.

(12) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) does not apply to a shared appreciation mortgage or shared appreciation promissory note where a mortgagee prohibits or discourages a borrower in a shared appreciation loan transaction from discussing the agreement with family, community service providers, housing counselors or others, including independent legal counsel, at any time during this mortgage process. This includes the use of any requirement that a person keep any or all terms of financing confidential.

(13) The limitation on liability contained in M.G.L. c. 244, § 35C(i)(2) applies only to a shared appreciation mortgage or shared appreciation promissory note made and serviced in compliance with this implementing regulation.

39.06: Reporting Requirements

(1) Any eligible entity offering or intending to offer a shared appreciation mortgage and seeking the protections of M.G.L. c. 244, § 35C(i) and these regulations must provide notice of its intent to offer said shared appreciation mortgage product in the Commonwealth at least 30 days prior to offering said shared appreciation mortgage product. Notice must be provided to the Attorney General's Consumer Protection Division by email at MassAGO@mass.gov, and by mail to:

Office of the Attorney General
Consumer Protection Division
One Ashburton Place
Boston, MA 02108-1518

(2) The mortgagee providing a shared appreciation mortgage pursuant to M.G.L. c. 244, § 35C(i) and these regulations must also provide an annual report by email and mail via the same means described above, including the following information, which must be updated on an annual basis:

(a) The name, address, tax ID number, and registered agent of the mortgagee.

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(b) A template copy of any shared appreciation mortgage(s), shared appreciation promissory note(s), and all other associated documents utilized in a Massachusetts shared appreciation loan transaction by the mortgagee or its affiliates during the period covered by the report or that the mortgagee plans to utilize going forward in its shared appreciation loan transactions.
(c) A copy of the mortgagee's policies designed to ensure compliance with these regulations.
(d) The total number of Massachusetts shared appreciation mortgages entered into during the period covered by the report and whether they had an accompanying new first lien mortgage, the total number of shared appreciation mortgages paid off during the period covered by the report, and the total number of shared appreciation mortgages foreclosed upon during the period covered by the report.
(e) The dollar amount owed, and the amount paid if different, pursuant to each shared appreciation mortgage that became due and payable during the previous twelve-month period, identified *via* a unique identifying number.
(f) A spreadsheet containing the following data for each Massachusetts shared appreciation loan transaction or application:

1. A unique identifying number for the shared appreciation loan transaction or application, the date the application was received, and whether it resulted in a denial or in an origination;
2. The location of the property to which the shared appreciation loan transaction or application relates, by metropolitan area, state, county, and census tract;
3. The ethnicity, race, and sex of the applicant or mortgagor, if known;
4. the gross annual income relied on in processing the application, if any; and
5. the amount of the new first priority mortgage loan for which the applicant applied.

(g) For each originated Massachusetts shared appreciation mortgage, the mortgagee shall also provide

6. the total principal of each shared appreciation loan transaction,
7. The annual percentage rate (APR) of the shared appreciation loan transaction;
8. the appraised or estimated fair market value used to determine approval of the shared appreciation loan transaction,
9. the starting property value of each shared appreciation mortgage,
10. the prior principal balance,
11. the new principal balance
12. the percentage of shared appreciation, and
13. the maximum SAM payment. This spreadsheet should not include personal identifying information.

(3) Upon demand, the records underlying the information provided in the annual report described in 940 CMR 39.04(2) shall be made available to the Attorney General's Office for inspection. Such records shall be retained by the mortgagee for a period of at least three years after the end of the period to which the annual report relates.

(4) Within 30 days of receipt of the annual report and/or the records underlying the annual report, the Attorney General may require the submission of additional information or documentary material relevant to the mortgagee's compliance with M.G.L. c. 244, § 35C(i) and these regulations, including but not limited to business documents or data, communications, and/or interviews with mortgagee's personnel and borrowers.

39.07: Severability

If any provision of these regulations or the application of such provision to any particular circumstances is held to be invalid, the validity of the remainder and applicability of such provision to other circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 39.00: M.G.L. c. 244 § 35C(i)(5).

Appendix A: [Initial/ Final] Notice of Shared Appreciation Mortgage Agreement

In connection with your acquisition or re-acquisition of your property at [[*ADDRESS*]], [*the undersigned entity*] intends to make an offer to you to enter into a shared appreciation mortgage and shared appreciation promissory note.

Your Obligation to Repay [percentage of shared appreciation]% "Shared Appreciation"

A shared appreciation mortgage means that in addition to any monthly payments you may owe your lender as part of your first mortgage, you will also owe a portion of the increase in value of your home if you sell, refinance, or pay-off the loan. You could owe:

Anticipated Amount at End of Loan Term	$[Payment at maturity assuming 6.5% annual appreciation]
Assumed Home Value at End of Loan Term	$[Home value at maturity assuming 6.5% annual appreciation]
Effective Interest Rate if Anticipated Amount is Paid	[APR of shared appreciation loan transaction, if above amount is paid at maturity

Maximum Shared Appreciation Amount	**$[maximum SAM payment]**
Assumed Home Value at End of Loan Term for Max SAM Payment	≥$[Home value that would result in maximum SAM payment]
Effective Interest Rate if Maximum is Reached	[APR of shared appreciation loan transaction, if above amount is paid at maturity]

Your shared appreciation amount will depend on the value of your property at the time of sale, refinancing, or when your mortgage comes due.

Please be advised that under the shared appreciation mortgage and promissory note:

• You must pay the shared appreciation mortgage, including the portion of the value of your property, upon refinancing your new first priority mortgage loan or upon the sale of the property. [[*If other conditions trigger a borrower's obligation to pay under the terms of the Shared appreciation mortgage, they must also be disclosed here. Any prepayment penalty or date certain after which the borrower can repay the loan must also be disclosed here.*]]
• Your percentage of shared appreciation will be based on the amount that your prior mortgage debt has been reduced. Your prior mortgage debt [will be / has been] reduced by [(prior principal balance - closing payment - new principal balance) / prior principal balance]% and your percentage of shared appreciation is [percentage of shared appreciation]%.
• You will not be required to make any payment on the shared appreciation mortgage or shared appreciation note during the mortgage term, although you will still need to make any monthly payments required by your first mortgage. **However, if you plan to refinance your first mortgage in order to secure a lower interest rate, you will be required to pay off this shared appreciation mortgage!**

Legal Help Is Strongly Advised

A shared appreciation mortgage could have serious legal and financial consequences for you, your family, and your estate. You are <u>strongly advised</u> to speak to a lawyer before agreeing to the shared appreciation mortgage. The lawyer who is present at the closing represents the lender, not you. You have a right to retain your own lawyer to represent you at the closing if you choose. You may also want to discuss this important decision with trusted friends and family or other trusted advisors. You may include these individuals in the closing process. You are also encouraged to complete counseling regarding shared appreciation mortgages with a housing counselor. A list of housing counselors certified by the U.S. Department of Housing and Urban Development (HUD) or Citizens' Housing and Planning Association (CHAPA) who can provide this training is enclosed with this notice.

Appendix A: continued

You May Reject This Offer

You can change your mind and decide not to get this shared appreciation mortgage.

Possible Costs to Pay Off "Shared Appreciation"

Below is an example of the amounts that may be required to pay off your shared appreciation mortgage, in addition to whatever remains on your first mortgage, if your home appreciates from its starting value at the historical average for homes in Massachusetts of 6.5%:

Two Years (Assumed Home Val: $X)	$X first mortgage principal + $Y shared appreciation = $Z Total Pay-off Amount
Ten Years (Assumed Home Val: $X)	$X first mortgage principal + $Y shared appreciation = $Z Total Pay-off Amount
Thirty Years (Assumed Home Val: $X)	$X first mortgage principal + $Y shared appreciation = $Z Total Pay-off Amount

Starting Value of Property: $_____

Shared Appreciation %: _____

These are examples only; your actual final payment amount could be higher or lower than shown here and could be as high as $[maximum SAM payment]. Remember, your shared appreciation amount will depend on the value of your property at the time you sell, refinance, or pay off the loan.

If you want to go forward with this transaction, you must sign, date and return this notice to us.
[For initial notice only: You should take at least seven days to review this notice and consider the transaction.]

Please provide the signed notice back to us on [[*DATE*]].

Date: _____ Entity: _____
Name:
Title:

Date: _____ Consumer Signature: _____