

39.01: Authority, Purposes & Scope.

1. Authority. These regulations are issued pursuant to St. 2024, c. 238, § 269 and M.G.L. c. 244 § 35C(i)(5).
2. Purpose. The purpose of these Regulations is to promulgate rules and regulations to implement and enforce subsection (i) of M.G.L. c. 244 § 35C, protections for shared appreciation mortgage borrowers.
3. Scope. These regulations apply only to the following, pursuant to St. 2024, c. 238, § 269: any mortgagee engaged in making shared appreciation mortgage loans to any borrower, as defined herein.

39.02: Definitions.

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

1. “Borrower” means any natural person seeking, using, or paying for, directly or indirectly, the services of a mortgagee in connection with a shared appreciation mortgage loan and who is shown to have received notice pursuant to G.L. c. 244, § 14 or is otherwise shown to be at least 90 days past due on their prior mortgage loan, or the heirs and assigns of such person so long as such heirs and assigns are also natural persons.
2. “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 C.M.R. 6.01.
3. “Mortgagee” means an “entity” as defined by St. 2024 c. 238, § 269 and M.G.L. c. 244, § 35C(i)(1), which makes a shared appreciation mortgage loan, as defined herein.
4. “Prior Mortgage Reduction Value” shall mean the amount that the Borrower’s prior mortgage debt is reduced (in dollars) due to the shared appreciation mortgage transaction, which shall be calculated by subtracting the Starting Value from the total dollar amount of the Borrower’s prior mortgage debt.
5. “Residential Property” means real property located in Massachusetts having thereon a dwelling house with accommodations for four or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor of the mortgage debt.
6. “Shared Appreciation” means the percentage share of the appreciation in the value of a residential property as defined in a shared appreciation mortgage and shared appreciation promissory note, as defined by St. 2024, c. 238, § 269 and M.G.L. c. 244, § 35C(i)(1), and

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any amount due thereunder shall be calculated by applying that percentage to the difference between the Starting Value of the property and its value at the time the shared appreciation mortgage is being repaid.

7. “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 St. 2024, c. 238, § 269 and M.G.L. c. 244, § 35C(i)(1).
8. “Starting 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 actual fair market value of the property as of the date of origination of the shared appreciation mortgage loan; (b) where the Shared Appreciation Mortgage is accompanied by a new first lien mortgage, the original principal balance of that first lien mortgage; or (c) where the Shared Appreciation Mortgage transaction includes a purchase of the property by the Borrower, the purchase price.

39.03: Reporting Requirements.

1. Any mortgagee providing 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 thirty (30) days prior to offering said shared appreciation mortgage product. Notice must be provided to the Attorney General’s [REDACTED] Division by email at [REDACTED]@mass.gov and by certified mail to:

Office of the Attorney General
[REDACTED] 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 certified 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.
 - b. A template copy of any shared appreciation mortgage(s), shared appreciation promissory note(s), and all other associated documents utilized by the mortgagee during the period covered by the report or that the mortgagee plans to utilize going forward in its shared appreciation mortgage transactions.
 - c. A copy of the mortgagee’s policies designed to ensure compliance with these regulations.
 - d. The total number of shared appreciation mortgages entered into during the period covered

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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. An itemization of the gross and net proceeds from each loan that was terminated or reached maturity as well as the total dollar amount of any payments to the mortgagee pursuant to each outstanding shared appreciation mortgage agreement (identified via a unique identifying number) during the previous twelve-month period.
 - f. A spreadsheet containing the following data for each shared appreciation mortgage loan or loan application: (i) A unique identifying number for the shared appreciation mortgage loan or loan application, the date the application was received, and whether it resulted in a denial or in an origination; (ii) The amount of the loan or the amount applied for; (iii) The location of the property to which the loan or application relates, by metropolitan area, state, county, and census tract; (iv) The ethnicity, race, and sex of the applicant or Borrower, if known; (v) the gross annual income relied on in processing the application, if any; (vi) The loan's annual percentage rate (APR); (vii) The fair market value at the time of purchase, (viii) the Starting Value of the shared appreciation mortgage, (ix) the amount of any mortgage on the property immediately prior to the initiation of the shared appreciation mortgage, and (x) the amount this prior mortgage debt was reduced due to the initiation of the shared appreciation mortgage. **This spreadsheet should not include personal identifying information of any Borrower.**
3. Upon demand, the records underlying the information provided in the annual report described in subpart (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 thirty (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.

39.04: Mortgage Disclosures

1. No mortgagee shall make a shared appreciation mortgage loan to a Borrower unless the Borrower affirmatively opts in writing for the shared appreciation mortgage by signing and dating the required "Notice of Shared Appreciation Mortgage Agreement", as specified in M.G.L. c. 238, § 269 and M.G.L. c. 244 § 35C(i)(3), a copy of which is contained here as **Appendix A**, at least fourteen (14) days prior to the closing. The notice should be given at the same time as the TILA-RESPA Integrated Disclosure (TRID) for the first mortgage, if applicable.

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2. Any shared appreciation mortgage shall include a maximum amount, in dollars, that could become due thereunder. The mortgagee shall clearly disclose in its Notice of Shared Appreciation Mortgage Agreement that the shared appreciation amount will depend on the value of the property at the time of sale, refinancing, or when the mortgage comes due and could be as high as the identified maximum amount.
3. When a shared appreciation mortgage is originated at or near the same time as a first mortgage, the TRID disclosure for the first mortgage should be based on Model Form H24(E) in Reg. Z, which shows a loan with a balloon payment, in order to show the effect of the shared appreciation mortgage:
 - a. The “Product” description in the top right should say that there is a shared appreciation second mortgage;
 - b. Under “Loan Terms”, the line that says “Does the loan have these features?” should say “Yes” for “Balloon Payment” and the text showing the amount should say “You may have to pay up to \$ [maximum balloon payment + last monthly payment on 1st mortgage] at the end of the term of the shared appreciation mortgage at year __.”
 - c. In the “Projected Payments” section, the disclosure should show the maximum shared appreciation mortgage payment + the last monthly payment as the final payment;
 - d. The APR, Total of Payments and other TILA disclosures should be calculated assuming the shared appreciation portion reaches the cap, so the Borrower must make the maximum payment (like a fully-indexed rate).

39.05: Servicing of the Loan

1. The mortgagee shall provide periodic statements to the Borrower during the life of the loan. The periodic statements requirements shall be the same, and on the same schedule, as those found in the TILA requirements for mortgage loans, 12 CFR § 1026.41 Periodic statements for residential mortgage loans, even if the lender is not otherwise subject to the federal TILA.
2. The mortgagee must also provide notification of transfer of servicing and transfer of ownership of the loan to the Borrower. Such requirements shall be the same and on the same timing as those found under TILA and RESPA even if the lender is not otherwise subject to the federal TILA or RESPA.
3. The mortgagee and servicer of the loan shall follow provisions copied from Subpart C - Mortgage Servicing § 1024.30-§ 1024.41 to ensure proper servicing of the loan and to prevent the loss of the home even if the lender is not otherwise subject to the federal RESPA.

39.06: Prohibited Acts or Practices

1. It shall be an unfair practice to market, originate, service or collect upon a shared appreciation mortgage for which the percentage of shared appreciation is not based on the

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amount that the Borrower's prior mortgage debt has been reduced. A shared appreciation mortgage is not based upon the amount that the Borrower's prior mortgage debt has been reduced, unless the Shared Appreciation percentage is less than or equal to the Prior Mortgage Reduction Value divided by the total dollar amount of the Borrower's prior mortgage debt.

2. It is a prohibited act or practice for a mortgagee to fail to make any disclosure, or fail to provide any document, to a Borrower required by and at the time specified by any applicable state or federal law, regulation or directive, including but not limited to M.G.L. c. 238, § 269 and M.G.L. c. 244, § 35C(i).
3. It is a prohibited act or practice for a mortgagee to make false promises to influence, persuade or induce a Borrower to sign a shared appreciation mortgage application or shared appreciation mortgage loan document.
4. It is a prohibited act or practice for a mortgagee to pressure or coerce a Borrower to sign a shared appreciation mortgage application or shared appreciation mortgage loan document by misrepresenting or omitting crucial information about the terms of the mortgage.
5. It is a prohibited act or practice for a mortgagee to discourage a Borrower in a shared appreciation mortgage transaction from seeking or obtaining independent legal counsel or legal advice and/or counseling from housing counselors certified by the United States Department of Housing and Urban Development, or to discourage others the Borrower wishes to include, including family members, from joining in the counseling session described herein or from otherwise participating in the process of obtaining the shared appreciation mortgage. For avoidance of doubt, it is a prohibited act or practice for a mortgagee to require that a Borrower keep any or all terms of financing confidential.
6. It is a prohibited act or practice for a mortgagee to fail to take reasonable steps to communicate the material facts of the transaction in a language that is understood by the Borrower, including but not limited to providing a copy of the required "Notice of Shared Appreciation Mortgage Agreement" (Appendix A) in the Borrower's preferred language. Reasonable steps include but shall not be limited to: (a) using adult interpreters; and (b) providing the Borrower with a translated copy of the "Notice of Shared Appreciation Mortgage Agreement" and any other forms required by any applicable state or federal law, regulation or directive, in a language understood by the Borrower.
7. It is a prohibited act or practice for a mortgagee to fail to give to the Borrower legible copies of the "Notice of Shared Appreciation Mortgage Agreement" (Appendix A), the shared appreciation mortgage deed, and the shared appreciation promissory note in the form of a hardcopy or emailed attachment prior to the closing.
8. It is a prohibited act or practice for the mortgagee to utilize an unreliable or otherwise unfair method for calculating the fair market value of the property that is the subject of the transaction to determine the Starting Value or the final value of the property for purposes of determining the amount owed on the shared appreciation mortgage.

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9. It is a prohibited act or practice for the mortgagee to perform any appraisal or valuation that forms the basis for the Starting Value or final value of the property that is subject to the shared appreciation mortgage transaction. Any appraisal or valuation performed for the purpose of determining the starting or final value of the property that is the subject of the shared appreciation mortgage must be performed by an unaffiliated third-party whose identity is disclosed to the Borrower.
10. It is a prohibited act or practice for a mortgagee to fail to 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, including but not limited to: the sale, conveyance, assignment or other transfer of the residential property; the refinancing or other payoff or satisfaction of the new first priority mortgage loan; or the end of a clearly defined term of years. 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.
11. The full value of any documented capital improvements over \$5,000 paid for by the Borrower after the loan is made shall be applied as a deduction to reduce the value at the time the shared appreciation mortgage is being repaid.

39.07: Violations Not Subject to Safe Harbor

1. Notwithstanding any other language in M.G.L. c. 244 § 35C(i) or these regulations, a mortgagee may still be held liable for violation of c. 93A for any unfair and/or deceptive conduct, other than the use of or the terms of the shared appreciation mortgage loan itself. This shall include, without limitation, unfair or deceptive marketing, servicing, underwriting, and collection acts or practices.
2. A violation of any provision of M.G.L. c. 244 § 35C with respect to any given shared appreciation mortgage may constitute grounds for forfeiture of the mortgagee’s coverage by M.G.L. c. 244 § 35C(i)(2) with respect to that particular shared appreciation mortgage. Habitual violations of these regulations may constitute grounds for loss of the safe harbor in § 35C(i) with respect to all future and existing shared appreciation mortgages.
3. Notwithstanding any other language in M.G.L. c. 244 § 35C(i) or these regulations, a Borrower and/or the Attorney General shall be entitled to bring claims against the lender for miscalculation of amounts owed and other servicing errors.

39.08: Severability

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

Appendix A: 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 shared appreciation amount will depend on the value of your property at the time of sale, refinancing, or when your mortgage comes due and could be as high as \$[maximum payment amount].

Your Obligation to Repay “Shared Appreciation”

A shared appreciation mortgage loan 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. Please be advised that under such 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. Here, your prior mortgage debt has been reduced by [X]% and your percentage of shared appreciation is [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 try to refinance your first mortgage in order to secure a lower interest rate, you will be required to pay off your shared appreciation mortgage!**

Legal Help Is Strongly Advised

A shared appreciation mortgage loan will have serious legal and financial consequences for you, your family, and your estate. You are strongly advised to speak to a lawyer before agreeing to the shared appreciation mortgage. It is important to understand that 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 also 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

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the U.S. Department of Housing and Urban Development who can provide this training is enclosed with this notice.

You May Reject This Offer

You have at least fourteen (14) days to review the shared appreciation mortgage before the closing. You can change your mind and decide not to get this shared appreciation mortgage.

Estimated Additional Costs to Payoff “Shared Appreciation”

Below is an example of the amount that may be required to pay off your shared appreciation mortgage, in addition to whatever payments are required on your first mortgage, if your home appreciates from its starting value at the historical average for homes in Massachusetts of 6.46%:

Two Years	\$X principal + \$Y shared appreciation = \$Z Total Pay-off Amount
Ten Years	\$X principal + \$Y shared appreciation = \$Z Total Pay-off Amount
Thirty Years	\$X 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.

Remember, your shared appreciation amount will depend on the value of your property at the time you sell, refinance, or pay off the loan and could be as high as \$[maximum payment amount].

If you want to go forward with this transaction, you must sign, date and return this notice to us. You should take at least seven (7) 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: _____