

## Rate Lock Regulations

209 CMR 42.02 is hereby amended by inserting after the definition of Mortgage Loan the following definitions:

Mortgage loan rate lock commitment, a written or electronically transmitted confirmation issued to a consumer by a mortgage lender for a mortgage loan which, subject to the terms set forth therein, obligates the mortgage lender to make a mortgage loan at a specified interest rate.

Rate lock commitment fee, points or other fees, or discounts taken by a mortgage broker for transmittal to a mortgage lender or taken directly by a mortgage lender as consideration for the making of a mortgage loan rate lock commitment.

209 CMR 42.09 is hereby amended by striking out Section 209 CMR 42.09(1)(b) and inserting in place thereof the following:

(b) Mortgage Brokers. Each mortgage broker required to be licensed by M.G.L. c. 255E, § 2 and 209 CMR 42.08 shall retain for a minimum of three years after a mortgage loan is made the following: the original loan origination and compensation agreement as set out in 209 CMR 42.16; a copy of the settlement statement; an account of fees received in connection with the loan; correspondence; papers or records relating to the loan; and such other documents as the Commissioner may require.

209 CMR 42.09 is hereby amended by inserting after paragraph (4) the following new paragraph:

(5) Every mortgage broker or mortgage lender shall maintain a copy of each separate advertisement (including commercial scripts of all radio broadcasts, television broadcasts and electronic media) for examination by the Commissioner for a period of three years from the date of publication. If the exact same advertisement is used multiple times and in different media, only one copy need be retained.

209 CMR 42.11A is hereby amended by striking out Section 209 CMR 42.11A(4) and inserting in place thereof the following:

(4) Required disclosures and notices. Prior to taking of a rate lock commitment fee or otherwise offering or entering a mortgage loan rate lock commitment with a consumer, a mortgage lender must provide the consumer, directly or indirectly, with a mortgage loan rate lock commitment dated by the mortgage lender which incorporates the following information:

- (a) Identification of property, principal amount and term of loan, locked interest rate, and rate lock commitment fees.
- (b) The length of the lock-in period, which must be a time period within which the lender can reasonably expect to close the loan given the prevailing market conditions at time of lock-in; and the consequence of failing to close the loan within the lock-in period. This shall not prevent the parties from locking-in a rate that was in effect before the mortgage loan rate lock commitment was issued by the mortgage lender, provided that such rate shall not be higher than the rate that would otherwise be locked-in in the mortgage loan rate lock commitment.
- (c) Whether the rate lock commitment fee is refundable, and the terms and conditions necessary to obtain the refund.

(5) A violation of 209 CMR 42.11A shall constitute grounds for the issuance of a cease and desist order under M.G.L. c. 255E, § 7 and shall constitute grounds for license suspension or revocation under M.G.L. c. 255E, § 6.

209 CMR 42.12A is hereby amended by striking out Section 209 CMR 42.12A(3) and inserting in place thereof the following:

(3) It is a prohibited act or practice for a mortgage broker to issue a mortgage loan rate lock commitment on its own behalf or on behalf of a mortgage lender, or to imply to a consumer that it can lock a rate on behalf of the consumer. Nothing herein shall be construed to prohibit a mortgage broker from taking a rate lock commitment fee for transmittal to a mortgage lender prior to the issuance by the mortgage lender of a commitment or approval, provided that prior to the taking of a rate lock commitment fee:

(a) the mortgage broker provides the consumer with a mortgage loan rate lock commitment from the mortgage lender which intends to make the loan, which conforms with the requirements of 209 CMR 42.11A; and

(b) the rate lock commitment fee is made payable by the consumer to the mortgage lender which intends to make the loan. A mortgage broker may only take a rate lock commitment fee for transmittal to the mortgage lender which intends to make the loan.

Nothing herein shall prohibit a mortgage broker from negotiating the terms or conditions of a mortgage loan, including the interest rate, on behalf of a consumer. A mortgage broker may also use such forms or other evidence as desired to allow a consumer to indicate a preference to enter into a mortgage rate lock commitment with a mortgage lender. However, any such forms or evidence must clearly and conspicuously contain the following statement: "This is a request, not a commitment, to lock your interest rate with a mortgage lender".

(4) It is a prohibited act or practice for a mortgage broker to advertise any interest rate or loan term described in 209 CMR 32.24(3)(a) in any media without the following statement: "We arrange but do not make loans". No advertisement by a mortgage broker in any media shall contain language which indicates or suggests that the mortgage broker will fund or approve a mortgage loan or guarantee any rate.

(5) It is a prohibited act or practice for a mortgage broker to fail to provide to the consumer at the time of application the loan origination and compensation agreement required under 209 CMR 42.16. The content of the agreement shall strictly conform to 209 CMR 42.16 and include signatures and dates by the consumer(s) and the mortgage broker.

(6) A violation of 209 CMR 42.12A shall constitute grounds for the issuance of a cease and desist order under M.G.L. c. 255E, § 7 and shall constitute grounds for license suspension or revocation under M.G.L. c. 255E, § 6.

209 CMR 42.00 is hereby amended by adding at the end thereof the following section:

#### 42.16 Loan Origination and Compensation Agreement

The Loan Origination and Compensation Agreement must be provided to the consumer at the time of application and must strictly conform to the following:

### **LOAN ORIGINATION AND COMPENSATION AGREEMENT**

Mortgage Broker Name: \_\_\_\_\_

Massachusetts Mortgage Broker License Number: \_\_\_\_\_

You (the mortgage applicant) agree to enter into this Loan Origination and Compensation Agreement with \_\_\_\_\_ (“Mortgage Broker”) as an independent contractor to apply for a residential mortgage loan from a participating lender with which the Mortgage Broker, from time to time, may contract upon such terms and conditions as you may request or a lender may require.

**SECTION 1. NATURE OF RELATIONSHIP.** In connection with this mortgage loan:

- **The Mortgage Broker is acting as an independent contractor and not as your agent.**
- **The Mortgage Broker does not approve or fund loans and can not offer or guarantee an interest rate.**
- **The Mortgage Broker may enter into independent contractor agreements with various lenders.**
- **While the Mortgage Broker seeks to assist you in meeting your financial needs, the Mortgage Broker does not distribute the products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available in the market. The lender underwrites, approves or denies your loan application, and sets the terms and conditions for your loan. The Mortgage Broker acts only to facilitate your mortgage loan application.**

**SECTION 2. OUR COMPENSATION.** The lenders whose loan products the Mortgage Broker distributes generally provide their loan products to the Mortgage Broker at a discounted interest rate.

- **Your interest rate, points and fees offered to you by the lender may include our compensation.**
- **In some cases, the Mortgage Broker’s compensation may be paid by either you, or the lender, or some combination thereof. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees.**
- **Also, in some cases, if you would rather pay less money up-front, you may be able to pay some or all of our compensation indirectly through a higher interest rate in which case the Mortgage Broker will be paid directly by the lender.**
- **The Mortgage Broker may also be paid by the lender based on services, goods or facilities performed or provided by us to the lender.**

Based on the terms and conditions of your current loan application dated \_\_\_\_\_, the following fees will be paid by you directly to us for services provided:

Application Fee	\$ _____	Origination Fee	\$ _____
Other Broker Fee(s)	\$ _____		
Third Party Appraisal Fee	\$ _____	Other Third Party Fees	\$ _____

**By signing below, applicant(s) acknowledges receipt of a copy of this signed Agreement.**

MORTGAGE BROKER

APPLICANT(S)

By \_\_\_\_\_

Name(s) \_\_\_\_\_

Print Name \_\_\_\_\_

Address \_\_\_\_\_

Date: \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_