

209 CMR 42.00: THE LICENSING OF MORTGAGE LENDERS AND MORTGAGE BROKERS

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42.01: Purpose and Scope

The purpose of 209 CMR 42.00 is to establish procedures and requirements for the licensing and supervision of mortgage lenders and brokers under the provisions of M.G.L. c. 255E. Nothing contained in 209 CMR 42.00 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.

42.02: Definitions

As used in 209 CMR 42.00 the following words shall, unless the context otherwise requires, have the following meanings:

Applicant means any mortgage lender or mortgage broker who is required to be licensed under the provisions of M.G.L. c. 255E, § 2. Applicant shall include partners or members, if the applicant is a partnership or association, and officers, directors and principal employees, if the applicant is a corporation.

Bona Fide Nonprofit Affordable Homeownership Organization means a Massachusetts nonprofit corporation with a primary purpose of helping qualified low-income individuals build, repair and purchase affordable housing and meets the definition of Bona Fide Nonprofit Organization set forth in 12 CFR Part 1008.103(e)(7)(ii).

Commissioner means the Commissioner of Banks.

Government Sponsored Enterprise means a financial services corporation created by the United States Congress including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Government National Mortgage Association.

Instrumentality Created by the United States or Any State means a federal, state, municipal government, quasi-governmental entity or a nonprofit agency or corporation incorporated under the laws of the Commonwealth that has a tax exempt status granted under the provisions of section 501(c)(3) of the federal Internal Revenue Code, which exclusively makes or issues commitments for mortgage loans on residential property to be financed with public funds, or negotiates, places, assists in the placement of, finds, or offers to negotiate, place, assist in the placement of or find mortgage loans on residential property to be financed with public funds only under a contract with a federal, state, or municipal government, any instrumentality thereof or any quasi-governmental entity as determined by the commissioner. The making of a mortgage loan shall include being named as the lender or mortgagee on the note, mortgage or other loan documents.

Licensee means any person who is licensed by the Commissioner as a mortgage lender or mortgage broker under M.G.L. c. 255E and 209 CMR 42.00.

Mortgage Broker means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others. A person who collects and transmits information regarding a prospective mortgage loan borrower to a third party and conducts any one or more of the following activities is a mortgage broker:

- (a) collects a prospective mortgage loan borrower's Social Security number;
- (b) views a prospective mortgage loan borrower's credit report;
- (c) obtains a prospective mortgage loan borrower's authorization to access or view the prospective mortgage loan borrower's credit report or credit score;
- (d) accepts an application, as defined under 12 CFR § 1026.2(a); or
- (e) issues a prequalification letter.

Mortgage Lender means any person engaged in the business of making mortgage loans, or issuing commitments for mortgage loans.

Mortgage Loan means a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

Mortgage Loan Originator means a natural person who is not exempt from licensure pursuant to M.G.L. c. 255F, § 2(b) and 209 CMR 41.03, who is employed by no more than 1 entity and for

compensation or gain or in the expectation of compensation or gain: (a) takes a residential mortgage loan application; or (b) offers or negotiates terms of a residential mortgage loan.

Mortgage Loan Rate Lock Commitment means 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, obligates the mortgage lender to make a mortgage loan at a specified interest rate.

NMLS means the Nationwide Multi-State Licensing System & Registry, a multistate licensing system owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS), an association of state financial services regulators.

Net Worth means the applicant's or licensee's total assets less total liabilities, omitting the following assets:

- (a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;
- (b) any asset due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;
- (c) an amount in excess of the lower of the cost or fair market value of mortgage loans in foreclosure, or real property acquired through foreclosure;
- (d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
- (e) goodwill or value placed on insurance renewals or other similar intangible value;
- (f) organization costs;
- (g) the value of servicing contracts not determined in accordance with the Financial Accounting Standards Codification Topic 860 "Transfers and Servicing";
- (h) for an applicant that is applying to hold the mortgage broker or mortgage lender license as a natural person, any real property 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 applicant; and
- (i) any other intangible asset, as may be determined by the Commissioner.

Non-bank Affiliate means an affiliate that is not a savings bank, a co-operative bank, a trust company, a federal bank, an out-of-state bank, or an out-of-state federal bank, as defined in M.G.L. c. 167, § 1.

Non-bank Subsidiary means a subsidiary that is not a savings bank, a co-operative bank, a trust company, a federal bank, an out-of-state bank, or an out-of-state federal bank, as defined in M.G.L. c. 167, § 1.

Person means a natural person or an organization including a corporation, partnership, association, cooperative or trust.

Rate Lock Commitment Fee means 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.

Residential Property means 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.

Unique Identifier means a number or other identifier assigned by protocols established by the NMLS.

#### 42.02A: Licensing Exemptions

The following are not required to be licensed as a mortgage broker or mortgage lender:

- (1) Bona fide nonprofit affordable homeownership organizations determined by the Commissioner to be exempt from licensure pursuant to G. L. c. 255E, § 2;
- (2) Instrumentalities created by the United States or any state;
- (3) Mortgage lenders making fewer than five mortgage loans within any period of twelve consecutive months shall not be required to obtain a mortgage lender license; provided, however, that in computing the number of mortgage loans, there shall be counted in the loans of more than one partnership, association, trust or corporation, the majority interest of which are owned or controlled directly or indirectly by the same person or persons, partnerships, associations, trusts or corporations and including in the loans of a partnership or company not incorporated the loans of the several members thereof.
- (4) Persons who act as a mortgage broker fewer than five times within any period of twelve consecutive months shall not be required to obtain a mortgage broker license;
- (5) Banks as defined in G. L. c. 167, § 1, national banking associations, federally chartered credit unions, federal savings banks, or any subsidiary or affiliate of the above;
- (6) Insurance companies;
- (7) Banks, trust companies, savings banks and credit unions organized under the laws of any other state; provided, however, that such provisions shall apply to any subsidiary or affiliate, as described in 209 CMR 42.07;
- (8) any nonprofit, public or independent post-secondary educational institution within the Commonwealth authorized by law to grant degrees by the Commonwealth, or by any agency or instrumentality thereof, for mortgage loans made by any such educational institution to its faculty or staff;
- (9) any charitable organization originally created by a last will and testament before January first, nineteen hundred and fifty which makes no more than twelve mortgage loans during a twelve month period;
- (10) a real estate broker or real estate salesman as defined in G.L. c. 112, § 87PP who, in connection with services performed in a prospective real estate transaction, provides mortgage information or assistance to a buyer if such real estate broker or real estate salesman is not compensated for the same in addition to the compensation received from the seller for such real estate services; and
- (11) Persons whose activities are exclusively limited to collecting and transmitting one or more of the following types of information regarding a prospective mortgage loan borrower to a third party:
  - (a) Contact information;
  - (b) Property street address;
  - (c) Type of property;
  - (d) Property use;
  - (e) Property zip code;
  - (f) Estimated credit score;
  - (g) Foreclosure and/or bankruptcy history;
  - (h) Veteran or military status;
  - (i) Estimated existing home value;
  - (j) Existing home mortgage loan payoff amount;
  - (k) Estimated cash out from refinance; or
  - (l) Status as current FHA loan borrower.

Notwithstanding the foregoing, a person who collects and transmits any information regarding a prospective mortgage loan borrower to a third party and who receives compensation or gain, or expects to receive compensation or gain, that is contingent upon whether the prospective mortgage loan borrower in fact obtains a mortgage loan from the third party or any subsequent transferee of such information, is required to be licensed as a mortgage broker.

#### 42.03 Application Procedure – Mortgage Lenders

(1) Application. Each Applicant for a license as a mortgage lender shall submit an application for licensure through the NMLS, containing such information as the Commissioner may from time to time require.

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

(a) Financial responsibility. An Applicant shall demonstrate financial responsibility and shall maintain:

1. a net worth of not less than \$ 200,000;
2. a bond in such form and with such sureties as may be approved by the Commissioner in a sum to be based on the amount of the Applicant's aggregate mortgage loans, as determined by the Commissioner, but in no event shall the sum of the bond be less than \$100,000, up to a maximum of \$500,000; provided that the sum of such bond may be increased by the Commissioner at any time to such amount, up to the \$500,000 maximum, as shall be shown to be necessary. The surety bond must contain a clause that the insurance company will notify the Commissioner at least 30 days prior to canceling the surety bond for any reason. The Commissioner shall automatically suspend the license on the date the cancellation takes effect, unless the surety bond has been replaced or renewed; and

(b) Financial statements. An Applicant shall submit financial statements prepared in accordance with generally accepted accounting principles meeting the following minimum requirements:

1. Contents. The financial statements required by this subparagraph shall include, but are not limited to, a Balance Sheet, Income Statement, Statement of Cash Flows, and Statement of Changes in Stockholders' Equity and all relevant notes thereto. If an Applicant's audited or reviewed financial statements are consolidated, the Applicant shall include supplemental statements for each of the consolidated entities.
2. Initial Application. An Applicant under this subpart shall submit audited financial statements for the preceding fiscal year and such other financial information as the Commissioner may require.
3. Renewal Applications. Within 90 days of the close of its fiscal year, an Applicant for license renewal shall submit financial statements for the preceding fiscal year that have been audited by an independent certified public accountant and such other financial information as the Commissioner may require.
4. Audit Scope. All financial statements shall be audited in accordance with generally accepted auditing standards.

(c) 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 lender in an honest, fair, sound and efficient manner.

(d) Business Experience. An Applicant shall demonstrate to the Commissioner's satisfaction that the Applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the business of a mortgage lender.

(e) Other information. An Applicant shall submit such other information as the Commissioner may deem necessary to properly evaluate an application. In evaluating an application and requesting information from an Applicant, the Commissioner may be guided by or rely upon the standards set forth in the CSBS/American Association of Residential Mortgage Regulators NMLS Policy Guidebook, as published by the SRR.

#### 42.04: Licensing Standards – Mortgage Lenders

(1) A license to engage in the business of a mortgage lender 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. 255E, §§ 3 and 4* and *209 CMR 42.03* have been met.

(2)(a) The Commissioner may deny an application to engage in the business of a mortgage lender, 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. 255E, §§ 3 and 4* or *209 CMR 42.03*.

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

1. violated any provision of *M.G.L. c. 255E* or *209 CMR 42.00*;
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 lender, including, but not limited to, *M.G.L. chs. 93A, 140, 140D, 183, or 184* 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 lender by the licensing authority of any other state.

(3) An Applicant whose application has been denied under *209 CMR 42.04(2)* may appeal the Commissioner's action under *M.G.L. c. 255E § 4*.

(4) A person licensed as a mortgage broker under *209 CMR 42.05* through *42.07* may also be licensed as a mortgage lender under *209 CMR 42.03, 42.04, and 42.07*, provided, however, that such Licensee shall be prohibited from acting as a mortgage broker in any transaction in which the Licensee is acting as a mortgage lender.

#### 42.05: Application Procedure – Mortgage Brokers

(1) Application. Each Applicant for a license as a mortgage broker shall submit an application for licensure through the NMLS, 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 demonstrate financial responsibility and shall maintain:

1. a net worth of not less than \$25,000;
2. a bond of \$75,000 in such form and with such sureties as may be approved by the Commissioner. The surety bond must contain a clause that the insurance company will notify the Commissioner at least 30 days prior to canceling the surety bond for any reason. The Commissioner shall automatically suspend the license on the date the cancellation takes effect, unless the surety bond has been replaced or renewed; and

(b) Financial statements. An Applicant shall submit financial statements prepared in accordance with generally accepted accounting principles meeting the following minimum requirements:

1. Contents. The financial statements required by this subparagraph shall include, but are not limited to, a Balance Sheet, Income Statement, Statement of Cash Flows, and Statement of Changes in Stockholders' Equity and all relevant notes thereto. If an Applicant's audited or reviewed financial statements are consolidated, the Applicant shall include supplemental statements for each of the consolidated entities.
2. Initial Application. An Applicant under *209 CMR 42.05(2)(b)* shall submit financial statements for the preceding fiscal year that have been audited or reviewed by an independent certified public accountant and such other financial information as the Commissioner may require.
3. Renewal Applications. Within 90 days of the close of its fiscal year, an Applicant for license renewal shall submit financial statements for the preceding fiscal year that have been audited or reviewed by an

independent certified public accountant and such other financial information as the Commissioner may require.

4. Scope. An Applicant's audited financial statements shall be performed in accordance with generally accepted auditing standards and reviewed financial statements shall be performed in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(c) 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 broker in an honest, fair, sound and efficient manner.

(d) Business Experience. An Applicant shall demonstrate to the Commissioner's satisfaction that the Applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the business of a mortgage broker.

(e) Other information. An Applicant shall submit such other information the Commissioner may deem necessary to properly evaluate an application. In evaluating an application and requesting information from an Applicant, the Commissioner may be guided by or rely upon the standards set forth in the CSBS/American Association of Residential Mortgage Regulators NMLS Policy Guidebook, as published by the SRR.

#### 42.06: Licensing Standards – Mortgage Brokers

(1) A license to engage in the business of mortgage broker 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. 255E, §§ 3 and 4* and *209 CMR 42.05* have been met.

(2)(a) The Commissioner may deny an application to engage in the business of a mortgage broker, if the Commissioner upon review of the application and other relevant information, determines that the Applicant has not satisfied the requirements of *M.G.L. c. 255E* or *209 CMR 42.05*.

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

1. violated any provision of *M.G.L. c. 255E* or *209 CMR 42.00*;
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 broker, including, but not limited to, *M.G.L. chs. 93A, 112, § 87RR, 140, 140D, 183, or 184* 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 broker by the licensing authority of this or any other state.

(3) An Applicant whose application has been denied under *209 CMR 42.06(2)* may appeal the Commissioner's action under *M.G.L. c. 255E, § 4*.

(4) A person licensed as a mortgage lender under *209 CMR 42.03, 42.04, and 42.07* may also be licensed as a mortgage broker under *209 CMR 42.05* through *42.07*, provided, however, that such Licensee shall be prohibited from acting as a mortgage lender in any transaction in which the Licensee is acting as a mortgage broker.

#### 42.07: Licensing of Certain Subsidiaries and Affiliates

A non-bank subsidiary or non-bank affiliate of a bank, trust company, savings bank, savings and loan association, credit union or insurance company organized under the laws of any other state or of a bank holding company established in accordance with state or federal law shall be subject to the mortgage broker and mortgage lender licensing and other provisions of *M.G.L. c. 255E* and *209 CMR 42.00*.

#### 42.08: Minimum Financial Responsibility and Net Worth

(1) The financial responsibility and net worth requirements set out in *209 CMR 42.03(2)(a)*; *209 CMR 42.05(2)(a)* and *209 CMR 42.11A* are minimum acceptable standards for a Licensee whose overall financial condition is fundamentally sound, which is well managed and which has no material or significant financial weaknesses. Thus, the Commissioner is not precluded from requiring a Licensee to maintain a higher net worth based on the Licensee's particular risk profile. Where the Commissioner reasonably determines, as a result of an examination under *M.G.L. c. 255E, § 8*, the financial history or condition, managerial resources and/or active earnings prospects of a Licensee are not adequate, or where a Licensee has sizeable off- balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of classified or criticized assets, the Commissioner may prescribe a minimum net worth for a Licensee that is greater than the minimums specified in *209 CMR 42.03(2)(a)*; *209 CMR 42.05(2)(a)* and *209 CMR 42.11A*.

(2) The amount and time frames for attaining a higher net worth prescribed under *209 CMR 42.08* shall be set forth in either: (a) a corporate resolution executed by the Licensee and approved by the Commissioner; (b) a written Memorandum of Understanding or other agreement between the licensee and the Commissioner; or (c) as a provision in a temporary or permanent Cease and Desist Order issued pursuant to *M.G.L. c. 255E, § 7*.

(3) The maintenance of the minimum financial responsibility and net worth standards specified under *209 CMR 42.08* shall be a requirement for continued licensure under *M.G.L. c. 255E, § 2* and *209 CMR 42.00*. Failure to meet and maintain such minimum standards may constitute grounds for the issuance of a cease and desist order under *M.G.L. c. 255E, § 7* and may also constitute grounds for license suspension or revocation under *M.G.L. c. 255E, § 6*.

#### 42.09: Books and Records

(1) Each Licensee shall keep and use its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee is complying with the provisions of *M.G.L. c. 255E* and applicable state and federal laws and regulations. Each Licensee shall comply with the provisions of *209 CMR 48.00: Licensee Record Keeping*. The following records shall be maintained:

(a) Mortgage Lenders. Each mortgage lender required to be licensed by *M.G.L. c. 255E, § 2* and *209 CMR 42.04* shall retain for a minimum of three years after final payment is made on any mortgage loan or the mortgage loan is sold, whichever occurs first, copies of: mortgage loan application(s); all required mortgage disclosures; the note; closing documents; rate lock commitment(s); results of any automated underwriting submissions; correspondence including electronic communications; papers or records relating to the loan; and such other documents as the Commissioner may require.

(b) Mortgage Brokers. Each mortgage broker required to be licensed by *M.G.L. c. 255E, § 2* and *209 CMR 42.07* shall retain for a minimum of three years after a mortgage loan is made copies of: mortgage loan application(s); all required mortgage disclosures whether provided by the broker or the lender; the note; closing documents; rate lock commitment(s); results of any automated underwriting submissions; correspondence including electronic communications; accounts of fees received in connection with the loan; papers or records relating to the loan; and such other documents as the Commissioner may require.

(c) For each mortgage loan application taken by a Licensee that does not result in a closed loan (including but not limited to denied, withdrawn and abandoned applications), the Licensee shall retain all applicable books and records set forth in *209 CMR 42.09(1)(a)* and (b) for a minimum of three years after the date the loan application is taken or the date that the Licensee makes a credit decision, whichever is later.

(2) Every Licensee shall preserve its books and records for inspection for a minimum of three years. The Commissioner may also prescribe the extent to which such books, records and accounts shall be audited. Additional audits by independent certified public accountants shall be conducted whenever the Commissioner deems it expedient. Said audits shall be submitted to the Commissioner immediately upon completion. The cost of all such audits shall be borne by the Licensee.



(3) In addition to the reports required by law, a Licensee shall make such other statements and reports to the Commissioner as he or she may require. The Commissioner may require regular quarterly reports and may furnish blank forms for all such statements or reports, required by 209 CMR 42.09.

(4) 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.

#### 42.10: Annual Reports

On or before a date determined by the Commissioner, each Licensee shall file an annual report with the Commissioner in such form as the Commissioner shall prescribe for the preceding calendar year. The annual report shall be in writing, subscribed by the Licensee under the pains and penalty of perjury.

#### 42.11: Client Funds Account

(1) All fees paid by clients or residential mortgage loan applicants, to a licensed mortgage lender or mortgage broker, shall be deposited in one or more client funds accounts maintained at a federally insured bank. Said fees shall include, but not be limited to, application fees, rate-lock commitment fees, prepaid commissions or broker fees, prepaid attorney charges, and all other prepaid fees related to the mortgage loan transaction. Said account(s) shall contain only those funds collected from such clients or residential mortgage loan applicants.

(2) Each client funds account shall be titled "trust account," "client funds account," "clients' trust account," "escrow account," or other similar name that will evidence the fiduciary nature of the account.

(3) For each client funds account opened, the Licensee must provide a written notice to the bank explaining the fiduciary nature of the account and that the account is for the purpose of holding client funds. The Licensee shall obtain written acknowledgment of receipt of the notice from a duly authorized representative of the bank.

(4) Such Licensee may offset funds in the client funds account(s) against commissions to which it is entitled for services actually performed or for reimbursement for authorized fees paid directly to third parties. A Licensee is deemed to have performed when:

- (a) a residential mortgage loan has closed;
- (b) the client or mortgage loan applicant has withdrawn the loan application in writing; or
- (c) a loan has been denied.

All offsets shall be accounted for through written documentation evidencing the amount of offset.

(5) The Licensee shall maintain complete and accurate client funds account records. The Licensee shall produce, upon request, all documents pertaining to client funds account activity, including, but not limited to bank statements, check stubs, cancelled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.

(6) The Licensee shall reconcile the client funds account records at least once per month.

(7) No person licensed as a mortgage lender or mortgage broker shall commingle money collected for fees from clients with its own funds or use any part of a client's money in the conduct of the Licensee's business.

(8) A Licensee shall notify the Commissioner immediately of any shortage or improper or unauthorized offset to a client funds account.

(9) A violation of 209 CMR 42.11 shall constitute grounds for license suspension or revocation under M.G.L. c. 255E, §6

#### 42.11A: Mortgage Loan Rate Lock Commitments

(1)(a) Prior to entering into or issuing interest rate lock commitments to any mortgage loan applicant or any other mortgage lender, except as described in *209 CMR 42.11A(2)(a)*, a mortgage lender shall have and maintain a net worth, as defined by *209 CMR 42.02* of not less than \$ 500,000 and shall be approved to sell mortgages directly to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or to an institutional investor as approved by the Commissioner.

(b) A mortgage lender under *209 CMR 42.11A(1)(a)*, shall maintain a total net worth of at least 2% of the total dollar amount of pending loans for which it has issued rate lock commitments to a mortgage loan applicant or another mortgage lender at any one time, and which are not covered by a binding commitment for the sale of the mortgage loans in the secondary mortgage market. The portion of pending rate locked loans that are deemed to be covered are those loans which can be sold under an existing commitment from a mortgage lender or investor who is authorized to issue interest rate lock commitments under *209 CMR 42.11A(1)(a)*.

(c) For the purpose of *209 CMR 42.11A(1)*, the term "net worth" shall be defined as in *209 CMR 42.02* and shall exclude real property and fixed assets and shall require the value of mortgage loans held for sale and mortgage loan commitments entered into by the licensee to be adjusted to their fair market value according to generally accepted accounting principles for mark-to-market valuations.

(2)(a) Any mortgage lender who fails to meet the requirements of *209 CMR 42.11A(1)* is prohibited from entering into or issuing an interest rate lock commitment to any mortgage loan applicant or any other mortgage lender without having in place, in writing, a binding interest rate guarantee or takeout commitment from an outside investor, bank or a mortgage lender or investor, who is authorized to issue interest rate lock commitments under *209 CMR 42.11A(1)*.

(b) A mortgage lender, issuing rate lock commitments under *209 CMR 42.11A(2)(a)*, shall immediately obtain another binding interest rate guarantee or takeout commitment from a mortgage lender or investor who is authorized to issue interest rate lock commitments under *209 CMR 42.11A(1)*, if said rate guarantee or commitment expires at no fault of a mortgage loan applicant or his or her agents.

(c) A mortgage lender issuing rate lock commitments under *209 CMR 42.11A(2)(a)* shall immediately, and in writing within one business day, notify the Commissioner of the expiration of a binding interest rate guarantee or takeout commitment under *209 CMR 42.11A(2)(b)*.

(3) The provisions of *209 CMR 42.11A(1)(a)* and *209 CMR 42.11A(2)(a)* shall not apply to interest rate lock commitments entered into or issued in connection with mortgage loans which are to be held for investment purposes only and are not to be sold or held for less than six months for sale into the secondary mortgage market or to other investors.

(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.

#### 42.12: Notice of Significant Events and Proposed Change in Ownership or Personnel

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

- (a) Filing for bankruptcy or reorganization of the Licensee.
- (b) The Licensee, its owner(s), officer(s), director(s), or employee(s) being charged with a criminal offense that is in any way related to the mortgage lender or brokerage activities of a Licensee, including but not limited to, the handling and/or reporting of moneys received and/or instruments sold.
- (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 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) Expiration, termination or default, technical or otherwise, of any existing line of credit or warehouse credit agreement.
- (f) Suspension or termination of the Licensee's status as an approved seller or seller/servicer by a Government Sponsored Enterprise, or an investor approved under 209 CMR 42.11A(1)(a); or any administrative sanctions imposed against a FHA, VA, or USDA approved lender by the Mortgage Review Board; or any administrative sanctions imposed by the Consumer Financial Protection Bureau; or any other federal financial regulator.
- (g) Exercise of recourse rights by investors or subsequent assignees of mortgage loans if such loans, in the aggregate, exceed the licensee's net worth exclusive of real property and fixed assets.
- (h) Initiation of Trustee Process or any other form of attachment on any of the Licensee's assets.
- (i) Issuance of an interest rate lock commitment in violation of 209 CMR 42.11A.
- (j) Existence of negative balances, exceeding \$ 100, in any operating account at any time or the return of checks, exceeding \$ 100, for insufficient funds.
- (k) Any change to net worth resulting from market valuation or future loss liability or any other change which causes the net worth of the licensee to fall below the requirements of 209 CMR 42.03, 209 CMR 42.05, 209 CMR 42.08, and 209 CMR 42.11A(1)(a).
- (l) Cancellation by the Licensee of the surety bond required pursuant to 209 CMR 42.03(2)(a)2 or 209 CMR 42.05(2)(a)2 and shall provide a new surety bond to the Commissioner. If the Licensee does not replace the surety bond, the Commissioner shall automatically suspend the license until the Licensee has provided the required bond.

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

- (a) Filing for bankruptcy or reorganization of any of a Licensee's officers, directors, principal stockholders, or affiliates.
- (b) Criminal felony arraignment or conviction of any of a Licensee's officers, directors, principal stockholders, or affiliates.
- (3)(a) 15 days prior to any proposed change in control in the ownership of a Licensee, or among the officers, partners or directors of a Licensee, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he deems necessary, as if it were a new license. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire ten percent of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.
- (b) A notice of change in personnel or ownership shall contain the following information:

1. the name, address and occupation of each proposed officer, partner, director or shareholders; and
2. provide such other information as the Commissioner may require.

#### 42.12A: Prohibited Acts and Practices

(1) It is a prohibited act or practice for a Licensee to make or broker a high cost mortgage loan subject to *209 CMR 32.32*, or a higher-priced mortgage loan subject to *209 CMR 32.35* which have rates, fees, terms, or features that violate the following provisions, as applicable:

- (a) the disclosure requirements of *209 CMR 32.32(3)*;
- (b) the loan limitations set forth in *209 CMR 32.32(4)* or *209 CMR 32.35*;
- (c) the prohibited acts and practices provisions of *209 CMR 32.34(1)*; or
- (d) the unfair high cost loan practices provisions of *209 CMR 32.34(2)*.

(2) It is a prohibited act or practice for a person licensed as a mortgage lender to purchase or to make a high cost loan or a higher-priced mortgage loan originated by a mortgage broker that violates the provisions of *209 CMR 32.32*, *209 CMR 32.34*, *209 CMR 32.35*, or *209 CMR 42.12A(1)*.

(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 *12 CFR 1026.24(c)* 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 or mortgage lender to have a consumer sign a blank or incomplete mortgage loan application or mortgage loan documents.

(6) It is a prohibited act or practice for a mortgage broker or mortgage lender to sign a consumer's name to a mortgage loan application or mortgage loan documents on behalf of a consumer.

(7) It is a prohibited act or practice for a mortgage broker or mortgage lender to falsify income or asset information on a mortgage loan application or mortgage loan documents.

(8) It is a prohibited act or practice for a mortgage broker or mortgage lender to make false promises to influence, persuade or induce a consumer to sign a mortgage loan application or mortgage loan documents.

(9) It is a prohibited act or practice for a mortgage broker or mortgage lender to pressure or coerce a consumer to sign a mortgage loan application or mortgage loan documents by misrepresenting or omitting crucial information about the terms of the mortgage.

(10) It is a prohibited act or practice for a mortgage broker or mortgage lender to discourage a consumer in a mortgage loan transaction from seeking or obtaining independent legal counsel or legal advice.

- (11) It is a prohibited act or practice for a mortgage broker or mortgage lender to fail to make any disclosure, or fail to provide any document, to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive.
- (12) It is a prohibited act or practice for a mortgage broker or mortgage lender to fail to disclose the type and number of its license in an advertisement.
- (13) It is a prohibited act or practice for a mortgage broker or mortgage lender or an employee or a person associated with and acting under the direction of a mortgage broker or a mortgage lender to advertise residential mortgage loan services without naming the licensee and disclosing the license number of the mortgage broker or mortgage lender under whose license the individual is acting.
- (14) It is a prohibited act or practice for a mortgage broker or a mortgage lender to require a consumer to use the real estate brokerage services of a particular entity, agent or broker.
- (15) It is a prohibited act or practice for a mortgage lender to contract with a consumer through the underwriting and subsequent execution of mortgage loan closing documents and thereafter fail to fund the mortgage loan.
- (16) It is a prohibited act or practice for a mortgage broker or a mortgage lender to conduct business with an individual who should be licensed as a mortgage loan originator under M.G.L. c. 255F, and who the mortgage broker or mortgage lender knows or should know is an unlicensed mortgage loan originator.
- (17) It is a prohibited act or practice for a Licensee to fail to notify the Division through the NMLS, within five (5) business days after the termination of a relationship between the Licensee and a mortgage loan originator, as described in 209 CMR 41.06(1).
- (18) It is a prohibited act or practice for a mortgage broker or a mortgage lender to engage in conduct prohibited under 209 CMR 41.10.
- (19) 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; shall constitute grounds for license suspension or revocation under M.G.L. c. 255E, § 6 and shall constitute grounds for an administrative fine or penalty under M.G.L. c. 255E, § 11.

#### 42.13: Office Locations

- (1) Branch Offices. A Licensee who intends to carry on its business at any location in addition to the address on its original license shall file for a branch license through the NMLS, at least 30 days prior to the opening of the branch location. Such notice shall contain the address of any such place and such other information as the Commissioner may require.
- (2) Relocations and Closings Licensees shall provide thirty days prior written notice through the NMLS of any change or closing of a Massachusetts location and shall provide such other information as the Commissioner may require.

#### 42.14: License Disclosure

A Licensee shall disclose ~~the type and number of its license(s)~~ its NMLS unique identifier 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~~ provided to such client or mortgage loan applicant, or such application is presented to a client or mortgage loan applicant for signature. A Licensee shall also disclose the type and number of its license(s) in all advertisements.

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#### REGULATORY AUTHORITY

209 CMR 42.00: M.G.L. c. 255E, § 2, St. 1991, c. 144, § 4.