



# *The Commonwealth of Massachusetts*

## **DIVISION OF BANKS**

### **Regulatory Bulletin 5.2-101**

***January 24xxxx, 20089***

## **Bond Requirements for ~~Licensed~~ Mortgage Lenders, ~~and~~ Mortgage Brokers and Mortgage Loan Originators**

### **I. APPLICABILITY AND SCOPE**

Each mortgage lender and mortgage broker licensed under General Laws chapter 255E, section 2 and the Division of Banks ("Division") implementing regulations at 209 CMR 42.00 et seq. shall file a corporate surety bond with the Treasurer and Receiver General of the Commonwealth of Massachusetts in a principal amount which is based upon its annual volume of business in Massachusetts. In addition, each mortgage loan originator licensed under General Laws chapter 255F and the Division's implementing regulations at 209 CMR 41.00 et seq. shall be covered by a surety bond. The purpose of this bulletin is to enumerate guidelines relative to the establishment and maintenance of said ~~the corporate~~ surety bonds.

### **II. POLICY**

#### **A. Mortgage Lenders**

Pursuant to the Division's regulation 209 CMR 42.03(2)(a)(2), as a condition of obtaining and holding a mortgage lender license, a mortgage lender must establish and maintain a corporate surety bond in a sum to be based on the volume of its mortgage loan business in Massachusetts, but in no event shall the sum of the corporate surety bond be less than \$100,000, up to a maximum of \$500,000. The sum of such bond may be increased by the Commissioner of Banks at any time to such amount as shall be shown to be necessary, up to the \$500,000 maximum. The amount of the corporate surety bond shall be established in accordance with the following:

#### Aggregate Annual Dollar Amount of Closed

##### Massachusetts Residential Loans

\$250,000,000 or more  
\$50,000,000 - \$249,999,999  
\$0 - \$49,999,999

##### Required Principal Amount of Surety Bond

\$500,000  
\$250,000  
\$100,000

The principal amount of the corporate surety bond shall be determined by the information reported by the licensee on the Mortgage Lender Annual Report for the preceding calendar year. The duration of the corporate surety bond must be continuous and shall be issued by a bonding company or insurance company authorized to do business in Massachusetts. An original surety bond must be signed by an authorized representative for the surety company and by the principal prior to submitting the surety bond to the Treasurer and Receiver-General of the Commonwealth. The name of the principal on the bond

shall match the name of the mortgage lender as it appears on the Massachusetts license. Surety bonds shall be properly notarized. The mortgage lender shall be required to submit annually an original Continuation Certificate to the Division which illustrates that the corporate surety bond remains in full force and which evidences that any adjustment to the principal amount based upon the mortgage lender's volume of business in Massachusetts during the prior calendar year has been made.

## **B. Mortgage Brokers**

Pursuant to the Division's regulation 209 CMR 42.06(2)(a)(2), as a condition of obtaining and holding a mortgage broker license, a mortgage broker must establish and maintain a corporate surety bond of \$75,000. The duration of the corporate surety bond must be continuous and shall be issued by a bonding company or insurance company authorized to do business in Massachusetts. An original surety bond must be signed by an authorized representative for the surety company and by the principal prior to submitting the surety bond to the Treasurer and Receiver-General of the Commonwealth. The name of the principal on the bond shall match the name of the mortgage broker as it appears on the Massachusetts license. Surety bonds shall be properly notarized. The mortgage broker shall be required to submit annually an original Continuation Certificate to the Division which illustrates that the corporate surety bond remains in full force and effect.

## **C. General Provisions Applicable to Mortgage Lenders and Mortgage Brokers**

Such bond shall be in favor of the Treasurer and Receiver-General of the Commonwealth of Massachusetts for use of the Commissioner of Banks for the protection of consumers in residential property transactions, as that term is defined in General Laws chapter 255E, section 1.

The corporate surety bond shall be conditioned upon the licensed mortgage lender or mortgage broker strictly complying with the following: faithfully performing any and all written agreements or commitments with consumers or borrowers; correctly and accurately accounting for all funds received from a consumer or borrower in the conduct of the licensed business; and operating the licensed business in conformity with General Laws chapter 255E and the statutes, regulations, rules, and regulatory bulletins applicable to the conduct of the licensed business in Massachusetts.

The corporate surety bond shall provide that in the event of the insolvency, liquidation, or bankruptcy of the mortgage lender or mortgage broker, or the expiration, surrender, or revocation of the relevant license, the proceeds of the corporate surety bond shall be used exclusively by the Commissioner of Banks to reimburse consumer fees or other charges determined by the Commissioner of Banks to be improperly charged or collected, to cover transitional costs attributable to the licensee's failure to perform any written agreement or commitment with consumers or borrowers, and to satisfy any past due Division examination/inspection costs and/or any assessments, penalties, or other obligations which have been charged to the licensee.

In the event of the insolvency, liquidation, or bankruptcy of the mortgage lender or mortgage broker, or the expiration, surrender, or revocation of the relevant license, the corporate surety bond shall continue to be held by the Treasurer for a period of twelve months from the date of such insolvency, liquidation, or bankruptcy of the mortgage lender or mortgage broker, or the expiration, surrender, or revocation and until the expiration of sixty days after final judgment in any action or suit commenced prior to the end of said period, unless otherwise directed by the order or judgment of a court of competent jurisdiction. Nothing contained herein shall prevent the Commissioner of Banks, through the Treasurer, from continuing to retain possession of the corporate surety bond, or its proceeds, in the event of ongoing litigation involving the mortgage lender or mortgage broker.

The provisions of the corporate surety bond shall provide that such bond may be cancelled exclusively by the Surety and shall require written notification to the principal, the Treasurer of the Commonwealth, and the Commissioner of Banks at least thirty (30) days prior to the date of cancellation of the surety bond for any reason. The Commissioner may automatically suspend the license on the date the cancellation takes effect, unless the licensee has replaced or renewed the surety bond. If a licensee files a new surety bond to replace a prior surety bond that has been cancelled, the effective date of the replacement surety bond must run concurrently with the cancellation date of the prior surety bond to ensure that no lapse in coverage occurs.

For clarification purposes, 209 CMR 42.03(2)(a)2 and 209 CMR 42.06(2)(a)2 set forth a corporate surety bond requirement for licensed mortgage lenders and mortgage brokers, respectively. Accordingly, any individual or entity which holds both a mortgage lender and a mortgage broker license will be required to maintain two corporate surety bonds as follows: (1) a mortgage lender surety bond for a principal amount determined in accordance with the provisions set forth in this regulatory bulletin and (2) a mortgage broker surety bond with a principal amount of \$75,000.

#### **D. Mortgage Loan Originators**

Pursuant to General Laws chapter 255F, section 12, as a condition of obtaining and holding a mortgage loan originator license, a mortgage loan originator must be covered by a surety bond. If a mortgage loan originator is an employee or exclusive agent of a licensed mortgage broker or mortgage lender, the surety bond of the mortgage broker or mortgage lender shall may be used to satisfy the mortgage loan originator's surety bond requirement.

If a mortgage loan originator is an employee or exclusive agent of an entity that is exempt from licensure as a mortgage broker or mortgage lender under General Laws, chapter 255E, section 2 ("exempt entity"), said mortgage loan originator must either: (i) establish and maintain an individual surety bond, as further described below; or (ii) be covered under an exempt entity's corporate surety bond, as described in Section E.

The individual surety bond shall be in the amount of \$25,000. The duration of the individual surety bond must be continuous and shall be issued by a bonding company or insurance company authorized to do business in Massachusetts. An original surety bond must be properly notarized and signed by an authorized representative for the surety company and by the mortgage loan originator prior to submitting the surety bond to the Treasurer and Receiver-General of the Commonwealth. The name of the principal on the bond shall match the name of the mortgage loan originator as it appears on the Massachusetts license. If the surety bond is canceled or terminated for any reason, the mortgage loan originator's license shall become inactive and the mortgage loan originator will not be authorized to engage in mortgage loan origination activity until the mortgage loan originator has replaced or renewed the surety bond.

The required surety bond shall be in the form prescribed by the Commissioner; such bond being in favor of the Treasurer and Receiver-General of the Commonwealth of Massachusetts for exclusive use of the Commissioner of Banks for the protection of consumers and for any fees or penalties due and owing to the Division.

#### **E. Mortgage Entities that are Exempt from Licensure under M.G.L. c. 255E, section 2**

Exempt entities that employ or are associated with Massachusetts mortgage loan originator(s) should ensure that all such mortgage loan originators are covered by a surety bond. An exempt entity may either:

(i) ensure that such mortgage loan originators establish and maintain individual surety bonds as described in Section D; or (2) establish and maintain a corporate surety bond to cover all mortgage loan originators employed by or associated with the exempt entity, as described below.

The duration of the corporate surety bond must be continuous and shall be issued by a bonding company or insurance company authorized to do business in Massachusetts. An original surety bond must be properly notarized and signed by an authorized representative for the surety company and by the exempt entity prior to submitting the surety bond to the Treasurer and Receiver-General of the Commonwealth. The name of the principal on the bond shall match the business name of the exempt entity. If the corporate surety bond is canceled or terminated for any reason, the licenses of all mortgage loan originators employed by or associated with the exempt entity shall become inactive and the mortgage loan originators will not be authorized to engage in mortgage loan origination activity until the exempt entity has replaced or renewed the corporate surety bond.

The corporate surety bond shall be in the form prescribed by the Commissioner; such bond being in favor of the Treasurer and Receiver-General of the Commonwealth of Massachusetts for exclusive use of the Commissioner of Banks for the protection of consumers and for any fees or penalties due and owing to the Division as a result of the activities of the mortgage loan originators employed by or associated with the exempt entity. The amount of the corporate surety bond shall be established in accordance with the following:

<u>Number of Individuals who are Required to be Licensed as Mortgage Loan Originators</u>	<u>Required Principal Amount of Surety Bond</u>
<u>less than 10</u>	<u>\$100,000</u>
<u>10-24</u>	<u>\$250,000</u>
<u>25 or more</u>	<u>\$500,000</u>

### **III. HISTORICAL NOTES**

This Bulletin was first issued on January 24, 2008.

### **IV. AUTHORITY**

G.L. c. 255E; 209 CMR 42.00, et seq.; G.L. c. 255F; 209 CMR 41.00, et seq.