



The Commonwealth of Massachusetts

DIVISION OF BANKS

Regulatory Bulletin 5.2-101

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Bond Requirements for Licensed Mortgage Lenders and Mortgage Brokers

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. The purpose of this bulletin is to enumerate guidelines relative to the establishment and maintenance of the corporate surety bond.

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

Required Principal Amount of Surety Bond

\$250,000,000 or more

\$500,000

\$50,000,000 - \$249,999,999

\$250,000

\$0 - \$49,999,999

\$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.

III. HISTORICAL NOTES

This Bulletin was first issued on January 24, 2008.

IV. AUTHORITY

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