

**Note: This regulation was repealed in its entirety effective January 28, 2005.**

209 CMR 39.00: THE ESTABLISHMENT, OPERATION AND PROCEDURES FOR REGIONAL MORTGAGE REVIEW BOARDS AND REGIONAL SMALL BUSINESS LOAN REVIEW BOARDS IN THE COMMONWEALTH

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39.01: Purpose and Scope

The purpose of 209 CMR 39.00 is to provide for the establishment and operation of four regional mortgage review boards and four small business loan review boards. 209 CMR 39.00 also provide mortgagees and lenders with procedures for implementing these provisions of law. Under 209 CMR 39.00 consumers and small businesses will also receive notice of their rights to appeal decisions on their loan applications to these boards.

39.02: Definitions

The following words as used in 209 CMR 39.00, unless the context requires otherwise, shall have the following meanings: -

Administrative Secretary, an employee of the Division of Banks who shall serve as clerk for each board operating under 209 CMR 39.00.

Commissioner, the commissioner of banks.

Lender, any person in the business of making commercial loans to a small business other than a person making such loans as part of any federal, state or local government sponsored program.

Member, a member of a board established by 209 CMR 39.00.

Mortgagee, any person making five or more mortgage loans in any calendar year on residential property located in the commonwealth of four units or less and occupied in whole or in part by the mortgagor.

Mortgage Review Board, the four regional Boards established by 209 CMR 39.00 pursuant to M.G.L. c. 167, § 14A.

Residential Mortgage Denial, a denial of an extension of credit to finance or refinance the purchase of a first lien on residential property located in the Commonwealth of four units or less and occupied in whole or in part by the mortgagor.

39.02: continued

Small Business, a business that had gross revenues of \$1,000,000.00 or less in its preceding fiscal year.

Small Business Loan Denial, a denial of an extension of credit to a small business.

Small Business Loan Review Boards, the four regional Boards established under 209 CMR 39.00 pursuant to M.G.L. c. 167, § 14C.

39.03: Establishment

The four mortgage review boards and the four small business loan review boards shall be established for regions as set out in M.G.L. c. 167, §§ 14A and 14C, respectively. The commissioner shall appoint members to each such board consistent with the requirements of the applicable provisions of law.

39.04: Administrative Secretary

The administrative functions of each Review Board, including the receipt of appeals, application files and the listing of applications for review shall be the responsibility of an Administrative Secretary. The Administrative Secretary shall notify both the mortgagee or lender and the applicant prior to the meeting at which the loan application will be reviewed.

39.05: Meetings

Each Mortgage Review Board and Small Business Loan Review Board shall meet on a regular basis at a scheduled time to be agreed upon by the members. All members will be notified in advance by the Administrative Secretary. The meetings of the Board shall be private and any information relating to individual cases and applications shall be kept strictly confidential. Copies of applications to be reviewed at each meeting will be distributed among those members of the Board present at the meeting. At the end of the meeting all copies are to be collected and destroyed by the Administrative Secretary. Neither the mortgagee or lender nor the applicant may attend the review meeting but the Board may, at its option, request that both parties present additional information or attend a subsequent meeting if necessary to assist in a final decision by the Board

A member who is unable to attend a meeting must notify the Administrative Secretary.

A member of the Board must disqualify himself/herself from consideration of any loan application to his/her employer. Any member with a conflict of interest relative to a particular loan application must disqualify himself/herself from that review.

39.06: Loan Applications Eligible for Review

Any applicant receiving a residential mortgage denial is eligible to have the loan application reviewed by the Board for the region in which the property is located. A written, residential mortgage loan application which a mortgagee refused to accept may also be reviewed by the appropriate Board.

39.07: Notice and Documentation by a Mortgagee

A mortgagee shall include with each residential mortgage denial a notice instructing the applicant/s of the right to appeal any such denial to the appropriate mortgage review board. The content of the notice shall strictly conform to Appendix A and include an envelope, pre-addressed to the Administrative Secretary of the Mortgage Review Boards as set out in Appendix A.

In conjunction with any appeal and upon the request of the Administrative Secretary, a mortgagee shall send the Administrative Secretary eight complete copies of the application file including but not limited to any credit report, appraisal and verification of employment.

39.08: Criteria for Review

A loan application shall be reviewed by the Board to determine whether it was denied on the basis that the property is located in a specific neighborhood or geographical area. A denial shall mean refusal either to grant financing at the terms and for the amount requested, to make a counter offer acceptable to the applicant or to accept a written mortgage application. Loans denied on the basis of insufficient assets; insufficient income; high debt or lack of lendable funds shall not be eligible for a determination under 209 CMR 39.09(2)(b) by the Board unless the Board determines that standards were not being applied fairly and uniformly by the mortgagee. The Board may consider whether the applicant/s meet the criteria necessary for participation in federal secondary mortgage market programs.

39.09: Action of the Board

- (1) Each Board shall review a loan application, make its determination and advise the applicant/s in writing within 45 days of an appeal of mortgage loan application denial.
- (2) By a majority vote of the members present, the Board shall take one of the following actions:
  - (a) Confirm the original denial; or
  - (b) Make a determination that the denial was made on the basis that the property is located in a specific neighborhood or geographic area.
- (3) Upon making a determination under 209 CMR 39.09(2)(b), the Board shall refer the loan application back to the original mortgagee with a recommendation that the denial be reversed.
- (4) After taking the action provided for in 209 CMR 39.09(2), a Board may also seek to place the loan with another mortgagee within the region.
- (5) The Administrative Secretary shall notify the applicant/s of the Board's action and that the action exhausts the applicant/s remedies before the Board. If a Board fails to complete its action on an appeal within 45 days, the Administrative Secretary shall notify the applicant/s that the administrative remedies before the Board have been deemed to be exhausted.
- (6) Any notice issued under 209 CMR 39.09(5) shall inform the applicant/s of any rights pursuant to M.G.L. c. 30A and/or M.G.L. c. 183, § 64.
- (7) In conjunction with any action a Board takes under 209 CMR 39.09, it may make whatever other recommendations it deems appropriate to the mortgagee and/or the applicant/s.
- (8) Upon making a determination under 209 CMR 39.09(2), the Board may also take such other action it deems appropriate including, but not limited to, referring any apparent violation of any applicable law or regulation to the appropriate state or federal enforcement agency.

39.10: Loan Applications Eligible for Review

Any applicant receiving a small business loan denial is eligible to have the loan application reviewed by the Board for the region in which the property is located. A written, small business loan application which a lender refused to accept may also be reviewed by the appropriate Board.

39.11: Notice and Documentation by a Lender

A lender shall include with each small business loan denial a notice instructing the applicant/s of the right to appeal any such denial to the appropriate Board. The content of the notice shall strictly conform to Appendix B and include an envelope, pre-addressed to the Administrative Secretary of the Small Business Loan Review Boards as set out in Appendix B.

In conjunction with any appeal and upon the request of the Administrative Secretary, a lender shall send the Administrative Secretary six complete copies of the application file.

39.12: Criteria for Review

A loan application shall be reviewed by the Board to determine whether it was denied on an unreasonable basis. A denial shall mean refusal either to grant financing at the terms and for the amount requested, to make a counter offer acceptable to the applicant or to accept a written loan mortgage application. Loans denied on the basis of insufficient assets; insufficient income; high debt, lack of lendable funds or other sound underwriting practices shall not be eligible for review by the Board unless the Board determines that standards were not being applied fairly and uniformly by the lender.

39.13: Action of the Board

By a majority vote of the members present, the Board shall take one of the following actions on a reviewed loan application.

- (1) Confirm the original denial
- (2) Recommend the lender reverse the original denial
- (3) Seek placement of the loan with another lender

39.14: Annual Reports

Annually on or before the first Wednesday in March, each Small Business Loan Review Board shall communicate to the commissioner, in writing, a report on the availability of credit to small businesses within their regions. Such reports shall include an analysis of the loan applications reviewed by each Board as well as any other information which the Board has reviewed based on information it has received or studies it has conducted.

(39.15 through 39.98: Reserved)

REGULATORY AUTHORITY

209 CMR 39.00: M.G.L. c. 167, § 14A.

39.99: Appendices

Appendix A

MORTGAGEE'S LETTERHEAD

Dear:

You have the right to appeal this denial of your loan application to a Mortgage Review Board composed of lenders and citizens from your area. The Board members are appointed by the Massachusetts Commissioner of Banks whose staff co-ordinates this review process as provided by law.

The Board will review the application to determine if it was declined for valid reasons or because the property is located in a specific neighborhood or geographical area. If the Board determined that your loan was, in fact, declined because of the property's location then the Board will refer the application back to the lender with the recommendation that the loan be made.

If you wish to have your application reviewed, you may do so by affixing your signature to the statement below, and returning the statement in the enclosed addressed envelope to:

Administrative Secretary  
Mortgage Review Boards  
Division of Banks  
One South Station  
Boston, MA 02110

The confidential information in your mortgage application and appeal to the Board will be released only to the members of the Mortgage Review Board and the Administrative Secretary. All copies are collected at the end of the review and destroyed.

If you have any questions concerning this process, please contact the Administrative Secretary of the Board at the Division of Banks at (617) 956-1500, who will, if you request, put you in touch with representatives of consumer credit organizations.

The Board will notify you of the disposition of your appeal.

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Notice of Appeal

In accordance with the provisions outlined above, I/We wish to appeal the denial of my/our mortgage application to the appropriate mortgage review board, and I/We hereby authorize the release of the confidential material in my/our application solely for the purpose of this review.

To be Completed by Mortgagee

To be Signed by Applicant/s

Mortgagee: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address of Property:

Telephone:

Date:

Name of Applicant/s:

Date:

Appendix B

LENDER'S LETTERHEAD

Dear:

Pursuant to the provisions of Massachusetts General Laws, chapter 167, section 14C, as amended by Chapter 102 of the Acts of 1990, and under the terms of a program coordinated by the Massachusetts Division of Banks, you have the right to appeal the denial of your loan application to a Small Business Loan Review Board composed of lenders and citizens from your area.

The Board will review the application to determine if it was unreasonably denied. If the Board determined that your loan was declined without valid reasons for denial, then the Board will refer the application back to the lender with the recommendation that the loan be made.

If you wish to have your application reviewed, you may do so by affixing your signature to the statement below, and returning the statement in the enclosed addressed envelope to:

Administrative Secretary  
Small Business Loan Review Boards  
Division of Banks  
One South Station  
Boston, MA 02110

The confidential information in your loan application and appeal to the Board will be released only to the members of the Small Business Loan Review Board and the Administrative Secretary. All copies are collected at the end of the review and destroyed.

If you have any questions concerning this process, please contact the Administrative Secretary of the Board at the Division of Banks at (617) 956-1500, who will, if you request, put you in touch with representatives of small business related agencies.

The Board will notify you of the disposition of your appeal.

Sincerely,

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Notice of Appeal

In accordance with the provisions outlined above, I/We wish to appeal the denial of my/our loan application to the appropriate Small Business Loan Review Board, and I/We hereby authorize the release of the confidential material in my/our application.

To be Completed by Lender

To be Signed by Applicant/s

Lender: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

Name of Applicant/s: \_\_\_\_\_

Address of Business: \_\_\_\_\_

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