

209 CMR 55.00: REVERSE MORTGAGE LOANS

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55.01: Authority, Purpose and Scope

- (1) Authority. 209 CMR 55.00 is issued pursuant to M.G.L. c. 167E, Section 7A and M.G.L. c. 171, Section 65C1/2.
- (2) Purpose. The purpose of 209 CMR 55.00 is to implement the additional consumer protections afforded by the law to reverse mortgage borrowers that fall within a certain income and asset threshold. Pursuant to M.G.L. c. 167E, Section 7 or M.G.L. c. 171, Section 65C, a mortgagee is prohibited from making a reverse mortgage loan unless the mortgagor has affirmatively opted in to the reverse mortgage and has received counseling from a counselor employed by a third party organization whose counseling program has been approved by the Executive Office of Elder Affairs.
- (3) Scope. 209 CMR 55.00 applies to any mortgagee engaged in making reverse mortgage loans to any mortgagor, as defined in 209 CMR 55.02.

55.02: Definitions

For the purposes of *209 CMR 55.00* the following definitions apply:

Commissioner, the Commissioner of Banks.

Counselor, an individual employed by a Third Party Organization that provides reverse mortgage counseling to Mortgagors through a program that has been approved by the Executive Office of Elder Affairs.

Mortgagee, any and all lenders, including but not limited to state or federally chartered financial institutions, licensed lenders, individuals or corporations who make a loan secured by a mortgage or lien on residential real estate.

Mortgagor, an applicant for a reverse mortgage who at the time of application: (1) has a gross income of less than 50 percent of the area median income, as periodically determined by the United States Department of Housing and Urban Development; and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

Residential Property, a 1 to 4 family dwelling owned and occupied in whole or in part by the mortgagor and located in the Commonwealth.

Reverse Mortgage Loan, a loan to an owner, at least 60 years of age, of real estate secured by a mortgage, deed of trust, or equivalent consensual security interest on residential property securing one or more advances; and any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after the consumer dies; the dwelling is transferred; or the consumer ceases to occupy the dwelling as a principal dwelling.

Third Party Organization, an Organization that provides reverse mortgage counseling pursuant to a program that has been approved by the Executive Office of Elder Affairs as published from time to time and made available to the public pursuant to M.G.L. c. 167E, Section 7(e) and M.G.L. c. 171, Section 65C(f).

55.03 Requirement For Mortgagor to Affirmatively Opt in Writing

- (1) No mortgagee shall make a reverse mortgage loan to a mortgagor unless the mortgagor affirmatively opts in writing for the reverse mortgage in accordance with the following requirements:
 - (a) The mortgagee shall provide the mortgagor with a form of written notice “Opt in Form”, segregated from all other information, setting forth important information about reverse mortgage loans, to be completed by the mortgagor to affirmatively consent, or opt in, to the reverse mortgage loan transaction.
 - (b) The mortgagee shall provide the Opt in Form to the mortgagor after the mortgagor has completed the required reverse mortgage counseling through a Counselor and a written certification of completion has been provided to the mortgagee.
 - (c) The content of the Opt in Form shall strictly conform to the form as set forth in 209 CMR 55.06.
 - (d) A mortgagor must sign the Opt in Form and return it to the mortgagee prior to the mortgagee’s issuance of a written commitment to make the reverse mortgage loan.
 - (e) A mortgagor may revoke his or her affirmative consent and elect not to proceed with the reverse mortgage loan at any time prior to the closing by providing oral or written notice to the mortgagee. In the event the mortgagor elects to revoke consent, the mortgagor shall be entitled to all fees collected by the mortgagee.

55.04 Requirement for Third Party Counseling

- (1) The Counselor shall provide a written certification to the mortgagee prior to the issuance of the Opt in Form that the mortgagor has received in person counseling relative to the appropriateness of the loan transaction and that the mortgagor has completed an approved reverse mortgage counseling program.
- (2) A written certification which complies with all the requirements of 209 CMR 55.04 used by the counselor and received by the mortgagee may be in the form of a validly completed counseling certificate promulgated by the U.S. Department of Housing and Urban Development in connection with its Home Equity Conversion Mortgage (HECM) program.
- (3) For other non-HECM reverse mortgage loan products, the form of certification shall be substantially similar to the form promulgated by the U. S. Department of Housing and Urban Development in connection with its HECM program.
- (4) All reverse mortgage counseling programs must be approved by the Executive Office of Elder

Affairs.

(5) Effective August 1, 2012, a mortgagor is required to receive in person counseling by a Counselor employed by a Third Party Organization whose reverse mortgage counseling program has been approved by the Executive Office of Elder Affairs.

(6) A reverse mortgage executed with a borrower that has not received counseling by a third party approved by the Executive Office of Elder Affairs shall render the terms of the reverse mortgage unenforceable.

55.05 Prohibited Acts or Practices

(1) It is a prohibited act or practice for a mortgagee to make a reverse mortgage loan in the Commonwealth without having a reverse mortgage program which has been approved by the Commissioner in accordance with M.G.L. c. 183, Section 67, M.G.L. c. 167E, Section 7 or M.G.L. c. 171, Section 65C.

(2) It is a prohibited act or practice for a reverse mortgage to be made to a mortgagor who has not received counseling by a third party approved by the Executive Office of Elder Affairs.

(3) It is a prohibited act or practice for a mortgagee to shift the burden of making a determination of whether a prospective borrower falls within the definition of “mortgagor” set forth in 209 CMR 55.02, to the mortgagor.

(4) In the event a determination is made by the mortgagee to not require a prospective borrower to complete the Opt In Form or to attend an in person counseling session, the burden is on the mortgagee to establish through documentation that the borrower was not within the parameters of the definition of “mortgagor”.

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

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

(7) It is a prohibited act or practice for a mortgagee to discourage a consumer in a reverse mortgage loan transaction from seeking or obtaining independent legal counsel or legal advice or to discourage including family members in the counseling session or from otherwise participating in the process.

(8) It is a prohibited act or practice for a mortgagee to engage in a pattern or practice of failing to make any disclosure to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive.

(9) A violation of 209 CMR 55.00 shall constitute grounds for the termination of a mortgagee’s reverse mortgage program approval and may constitute grounds for an administrative fine or penalty as authorized by applicable law.

55.06 Opt In Form-“Important Information for Elder Homeowners: Is a Reverse Mortgage Right for You?” The Opt In Form must strictly conform to the following:

Important Information for Elder Homeowners: Is a Reverse Mortgage Right for You?

A reverse mortgage loan lets you use the equity you have built up in your home (that is, the value of your home) as a source of income. **If you get a reverse mortgage loan, you will sign binding legal documents that have serious legal and financial consequences for you, your spouse, and your estate.** Therefore, it is important to understand the terms of the reverse mortgage and its potential risks.

- I understand that a reverse mortgage is a loan that I or my beneficiaries will have to repay.
- I understand that my loan balance will increase over time because I will be charged interest and other loan fees.
- I understand that there may be less expensive alternatives to a reverse mortgage, such as a home equity loan, that meet my needs.
- I understand that as part of my application for this loan, I am required by law to receive counseling about the features of a reverse mortgage as well as possible alternatives. This counseling must come from a government-approved counselor that is not affiliated with the lender in any way.
- I understand that I should also ask my own attorney, estate planner, financial advisor, and/or trusted family members whether a reverse mortgage is right for me.
- I understand that I will continue to own my home and therefore will be required to pay real estate taxes and homeowners insurance premiums. If I do not pay these costs I will be in default of the terms of the reverse mortgage loan. If this happens, the lender may require me to immediately pay back the entire amount of the loan, plus interest and fees.
- I understand that with a reverse mortgage I am required to maintain the property. If I do not properly maintain the property, I will be in default of the terms of the reverse mortgage loan. If this happens, the lender may require me to immediately pay back the entire amount of the loan, plus interest and fees.
- I understand that I can change my mind and decide not to get this reverse mortgage at any time prior to closing.

By signing below, I acknowledge that I have read and understand the information above and want to proceed with this reverse mortgage.

Borrower Name: _____
Signature: _____
Address: _____

Date: _____

REGULATORY AUTHORITY

M.G.L. c. 167E, § 7A, M.G.L. c. 171, §65C1/2; St. 2010, c. 258, § 2,3.

