The American Dream Shattered:

The Dream of Homeownership and the Reality of Predatory Lending

A Report on Comments and Hearings, and the New Consumer Protection Regulations Governing Mortgage Lenders and Brokers

Commonwealth of Massachusetts

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Introduction

On October 17, 2007, the Massachusetts Attorney General's Office (AGO) issued new regulations governing the conduct of mortgage brokers and mortgage lenders in Massachusetts. These regulations, 940 CMR 8.00, amend and expand regulations first issued in 1992, and significantly extend the applicability of the regulations to purchase-money and refinance mortgage loans. These consumer protection regulations now address an array of unfair and deceptive practices in home lending that have contributed to the ongoing foreclosure crisis and harmed thousands of Massachusetts residents and their communities.

The AGO issued the regulations after many weeks of hearings, comments, and analysis of the concerns presented by the current lending and foreclosure crisis. The AGO first sought public comment on a number of issues relative to the current crisis before announcing proposed regulations, holding public hearings in Worcester, Springfield, Brockton, and Boston. That public process supplemented our own experience investigating and litigating cases against lenders, brokers, attorneys, appraisers, and other professionals who have engaged in unfair and deceptive lending practices. In creating these regulations, we carefully considered this experience, as well as the comments and testimony of Massachusetts residents, mortgage lenders and brokers, consumer and housing advocates, and many public officials.

We thank everyone who participated in this valuable process of comments and hearings. Their efforts and the time they took to share their experience and knowledge with us have resulted in regulations that will better serve borrowers as well as scrupulous lenders and brokers. The Attorney General's Office offers this report to share some of the information we have gathered with the residents and businesses of Massachusetts, as well as state, local and federal officials who are also considering remedies to address the foreclosure crisis. In addition, the report briefly describes the reasons that stronger consumer protection regulations are a necessary and appropriate step in making the mortgage lending marketplace more transparent, fair and effective for those who borrow and lend money for home buying or refinancing.

I. The Burgeoning Subprime Foreclosure Crisis

In Massachusetts, as in many parts of the country, we are experiencing a dramatic surge in home mortgage foreclosures, particularly in the subprime mortgage market where adjustable rate mortgages (ARMs) are the norm. Subprime loans ostensibly were intended for borrowers who were perceived to have a higher credit risk. In recent years, however, the percentage of all loans that fall in this category of "subprime loans" has increased significantly.

Subprime ARM loans typically carry an artificially low, fixed interest rate for two or three years, sometimes called a "teaser" rate. That initial rate eventually adjusts to a higher, variable rate for the remaining term of the loan, causing monthly payments to increase, often dramatically. In recent years, many subprime lenders qualified borrowers based only on their ability to make payments during the "teaser" rate period, ignoring the fact that the borrowers would not be able to make payments when the rate adjusted upwards. As a result, many borrowers had to continually refinance. Borrowers were forced to obtain new loans, each one higher than the last, at increasingly high loan to value (LTV) ratios, in order to replace the current loan, cover the cost of refinancing, and avoid the escalating monthly payments. Homeowners also used the refinance loans to access home equity, often to pay off unsecured credit card debt, while increasing the debt secured by their home. Exacerbating the effects of serial refinancing, subprime mortgages often carry burdensome prepayment penalties, as well as high transaction costs including lender and broker commissions and other fees.

Increasingly aggressive promotion and marketing by some subprime lenders and their brokers and sales force pushed many people to refinance, and even to "cash out" of traditional fixed rate mortgages that had been paid for many years. As we now know, this cycle could continue only so long as home valuations continued to increase, as they have for several years in Massachusetts. As soon as real estate prices flattened, however, homeowners – especially those who used high LTV loans – no longer had the same options when monthly payments began to adjust upward. Indeed, in

recent months, many subprime products and many of the lenders who sold and serviced them have gone out of business or into bankruptcy. And the subprime market's structural excesses have come home to roost in the form of a burgeoning foreclosure crisis.

Foreclosure rates are at historic highs across the United States. The number of residential foreclosure filings nationwide in September 2007 was double the number of filings in September 2006.[1] In July 2007, almost 15 percent of subprime ARMs were delinquent more than 90 days. This is roughly triple the percentage seen in mid-2005.[2]

Massachusetts homeowners have been hit especially hard as foreclosures reached record-breaking levels in the third quarter of 2007. More than 25,600 foreclosures were initiated in the Commonwealth this year, up 76 percent over the same period last year.[3] Foreclosures increased in 303 of the Commonwealth's 351 communities, with 102 communities suffering at least a doubling of foreclosure rates. Suffolk County experienced a 93 percent increase in foreclosures. The majority of mortgage defaults were in the subprime ARM market with Alt-A[4] and prime ARMs also experiencing increased defaults.[5]

Unfortunately, we should not expect this trend to end soon. The lax or sometimes nonexistent underwriting that fueled bad subprime loans is said to have reached its peak in 2006, and even continued in 2007. Loans from 2006 and 2007 have yet to reach their first ARM adjustment – even though they are already performing poorly – so we can expect delinquency and foreclosure rates to continue to skyrocket. As Federal Reserve Board Chairman Ben S. Bernanke noted, since "many borrowers of recent-vintage subprime ARMs [are] still facing their first interest-rate resets, delinquencies and foreclosure initiations in this class of mortgages are likely to rise further."[6] One expert estimates that in November 2007 alone, 450,000 home mortgages in the United States will move from their low initial rates to higher, full-term adjustable rates.[7] One half of these loans are expected to default and one quarter have already missed a payment, making them ineligible for Federal Housing Administration assistance.[8]

The Broad Public Impact of Increasing Foreclosures

Foreclosures have a devastating impact on both homeowners and the community, as local officials and others testified at the AGO's recent hearings. Boston Mayor Thomas M. Menino, testifying in support of the proposed regulations, noted the corrosive impact of foreclosures on the city: "Predatory lenders have been able to operate in our neighborhoods for too long without reprisal. … [Such lending] really destroys neighborhoods."[9]

Barbara Haller, a city councilor from Worcester, described the problems tied to increased foreclosures and abandoned houses which she has observed in areas of her city:

> We're seeing our neighborhoods suffer as a result of abandonment, trash, people taking over the buildings, moving into the buildings, unauthorized tenants … it doesn't have to happen very often or very long before a neighborhood feels the impact. We

> have concerns about arson. We have concerns about the … trickle-down effect of a bad property in a neighborhood and what effect that will have in terms of future development and prosperity of that neighborhood.[10]

As noted in the April 2007 Report of the Massachusetts Mortgage Summit Working Group:

> Each foreclosure of a residential mortgage is a personal, social and financial tragedy for the household facing foreclosure. The loss of a home represents the loss of a family's shelter and its most precious financial resource. Foreclosures also have a destabilizing effect on the neighborhood in which the homes are located due to homeowner turnover and because absentee speculators may replace the families who were forced from the homes.

Chairman Bernanke has echoed those sentiments:

> The consequences of default may be severe for homeowners, who face the possibility of foreclosure, the loss of accumulated home equity and reduced access to credit. In addition clusters of foreclosures can lead to declines in the values of nearby properties and do great damage to neighborhoods.[11]

Indeed, subprime-driven foreclosures may completely offset the hard-won gains in home ownership observed in recent years. One study determined that foreclosures will put more people out of their homes than the number of people who have been able to buy their first home in recent years, resulting in a net loss of homeownership due to subprime lending.[12]

The foreclosure crisis did not "just happen." Rather, the link between unsustainable, unfair, and, in many cases, deceptive mortgage lending practices and the current foreclosure crisis is clear. The Attorney General's consumer protection regulations are intended to address such practices.

II. Unfair and Deceptive Practices in Mortgage Lending and Mortgage Brokering

Based on evidence from our investigations and litigation of unlawful lending practices, it is clear that improper conduct in the mortgage marketplace that has flourished in recent years played a large role in the current foreclosure crisis. The comments and testimony we received as we considered these new regulations has bolstered that determination.

While it is difficult to catalogue all the misconduct we have observed in different segments of the mortgage industry, listed below are some of the practices and products that are most prevalent and, collectively, result in broad-scale harm to borrowers. While one or more of the loan products described below may, in certain limited circumstances, be appropriate to the needs and informed wishes of certain borrowers, all too often these products and practices were layered on top of each other, or used alone in circumstances that showed utter disregard for the interests of the borrower. We acknowledge that many, indeed most, mortgage lenders and brokers have not engaged in improper practices. However, we have found the types of conduct described below prevalent enough in today's market to warrant strong regulation in this area.

Exceedingly Risky Loan Products

The following practices and products, used alone or collectively and in connection with inappropriate borrowers are among the circumstances that gave rise to the need for regulatory action.

- Use of ARMs with short-term "teaser" rates where the borrower is qualified based only on the "teaser" rate, resulting in severe but predictable "payment shock" when the interest rate adjusts.[13]

- "Interest-only" loans, where the borrower pays only interest for an initial period, resulting in a monthly payment that is even more artificially low, and which requires a large "balloon" payment at the end of the loan.
- Loans that, as a result of predictable payment shock, are designed to be refinanced in the short term, with each refinancing resulting in a new round of costs that reduces home equity.
- High LTV provisions, including widespread use of 100 percent LTV. Particularly when serial refinancing can be expected, a 100 percent LTV ratio presents a huge risk if home prices flatten or decrease.
- "80/20" loans, where the homeowner takes out two mortgages, a first mortgage for 80 percent of the value and a second mortgage for the remaining 20 percent of the value.
- Hefty prepayment penalties which hamper the consumer's ability to refinance or sell, especially in a flat real estate market and especially for high LTV loans.[14]
- Availability of "stated income" or "no-doc" loan products far beyond their initial purpose, posing immense risks of abuse.
- Cash-out mortgage products that, by design, transfer unsecured credit card debt to debt secured by the home, increasing the risk of default and foreclosure.

None of these product features by itself necessarily is unlawful in every instance. The collection of layers of risk, however, into a single loan product – for instance, a stated income, 100 percent LTV loan with a 2/28 ARM, qualified only on the "teaser" rate – is usually so structurally unsound and so contrary to the borrower's ability to repay the loan over time, that it can only be viewed as designed to fail, resulting in widespread harm to the borrower and public alike.

The Absence of Meaningful Underwriting for Risky Products

Making the tactics and practices more risky is the lack of meaningful underwriting. In some cases, certain products like "no-doc" or "stated income" loans became remarkably prevalent. These are, by their nature, simply not subject to meaningful underwriting.

When lenders qualify borrowers for ARM loans based only on the "teaser" rate period, that reflects an utter lack of diligence in determining whether the borrower could actually pay back the loan. This problem is systemic.

Often brokers routinely provided, and lenders accepted, inflated income claims to qualify loans. Finally, investigators observed lenders steering a borrower to a higher-cost mortgage when he or she qualified for a lower rate.

Some borrowers may have participated in inflating incomes to qualify for loans, or otherwise been complicit in evading lender requirements. Other borrowers should have known that they were overextended, and some certainly understood the risks of the loans they obtained. But too often the professionals who arrange the transactions, and the lenders who fund them, choose to be willfully blind to the facts and therefore should be held responsible for the wrongdoing. Those lenders, brokers, and other industry participants to the transaction are in the best position to know the facts and the nature of the loan, and to ensure fair and honest lending.

Mortgage Broker or Loan Originator Misconduct

Too often the lender's risky products are combined with little or no oversight of loan originators, whether in-house or third-party mortgage brokers. The lack of sufficient oversight is characterized by:

- Total or near-total reliance on third-party mortgage brokers to originate loans without adequate oversight or monitoring of those brokers and without meaningful protection against fraudulent loan applications.
- False assurances by some mortgage originators and brokers, made orally, that contradict and are inconsistent with the loan documents. These assurances include promises that the lender will refinance the loan when the "teaser" rate expires.
- Brokers and lenders sometimes asked borrowers to execute blank forms, facilitating application fraud and undermining lending disclosure laws.
- False assurances by brokers that the loan offered is the best rate available and that the broker has shopped around for the best rate available to the borrower, without disclosing the financial incentives that may be driving the broker's loan selection.
- Fees payable to mortgage brokers for putting consumers into higher-priced loans than those for which they are eligible.
- Loan products with terms that are difficult for the consumers to understand, resulting in heavy reliance on brokers to represent their clients' interests.

The Impact of the Sale of Mortgage Loans to the Secondary Market

The mortgage lending industry has seen significant changes in recent years. Historically, the vast majority of home mortgages were written by banks which held the loans in their own portfolios, knew their borrowers, and earned profit by writing good loans and collecting interest over many years. Those banks had to live with their "bad paper" and thus had a strong incentive to avoid

making bad loans. In recent years, however, the mortgage market has been driven and funded by the sale and securitization of the vast majority of loans.[15]

Lenders now frequently make mortgage loans with the intention to promptly sell the loan and mortgage to one or more entities. An intermediary purchaser, or "securitizer," then "pools" many loans together, slices the pool into various tranches of perceived risk and return, and creates securities backed by the mortgages. The securities are sold to investors with the promise to pay the cash flow from the mortgages. These investors may be companies, pension funds, foreign banks, and other large institutions. The loan originator takes an up-front fee and, with the assistance of Wall Street investment firms, seeks to pass along all risk of non-performance to a third party. The lenders' incentives thus changed from writing good loans to writing a huge volume of loans to re-sell, extracting their profit at the front end, with considerably less regard to the ultimate performance of the loans.

Several other developments accompanied this change in mortgage lending. First, an increasing number of non-bank entities, often thinly capitalized, began originating mortgage loans. This new breed of lenders sought high-volume activity, relied on extensions of credit from large financial institutions, and spun the loans into securitized products for sale (often by the same large financial institutions) to institutional and other large investors. Second, these lenders increasingly relied on third-party mortgage brokers to market and "originate," or sell their loan products, and to feed the lenders' high-volume goals. Often, the lenders tied the brokers' compensation to the volume of loan applications they processed, the interest rate they persuaded the borrower to pay, and factors other than the quality of those loans. Third, securitization not only distorts the incentive of the lender to make good loans, but according to some in the financial industry, prevents the borrowers from asserting against the purchasers all claims for fraud and unfair and deceptive conduct in the origination of those loans.

> "The closing of the Best Rate loan took place in the parking lot of a Friendly's Restaurant on a Sunday. We signed the closing papers on the hood of the closing agent's car while he rushed through the closing with us because his grandchildren were waiting in the car."

Chairman Bernanke has explained:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.[16]

Combining risky loan products with deceptive or unfair sales tactics and the prompt sale to a secondary market proved an improvident business model. Though masked for a time by increasing real estate values and repetitive refinancing, the dangers posed by this kind of lending model are now clear. We know that when loan applications are falsified to inflate someone's income, that person will not be able to keep up with mortgage payments. We know that when someone borrows 100 percent of the value of his or her home, that borrower will have difficulty refinancing when the market subsides. We now know that the record number of foreclosures we are experiencing in Massachusetts – which will harm thousands of borrowers but also hundreds of neighborhoods – can be attributed in large measure to unfair and deceptive conduct by some mortgage brokers and lenders.

III. The Process for 93A Regulations

On June 1, 2007, the Attorney General's Office announced two regulatory initiatives.

First, the AGO issued an emergency regulation banning so-called foreclosure rescue schemes (940 CMR 25.00, included here in Appendix B). The new emergency regulation, which went into effect immediately, dealt with the increasingly prevalent scam perpetrated by a person or business that claims to assist consumers facing foreclosure, usually by promising replacement mortgage financing. When foreclosure is imminent, the rescue schemer convinces the homeowner to convey the home to a 'straw' buyer in order to 'save' his or her home. The mortgage loan is then arranged in the name of the straw buyer. The true homeowner remains in the home, paying rent essentially, with a promise that he can reacquire the home at a certain date in the future. Inevitably, in the several enforcement actions litigated by the AGO, the promise is illusory and the homeowner eventually loses his home to the so-called "rescuer."[17] Whatever equity the homeowner once had is stripped away in the process, all to the benefit of the "rescuer." The emergency regulations prohibit such transactions as unfair or deceptive acts.[18] These regulations became final on September 1, 2007.[19]

Second, the AGO sought comment on potential amendments to regulations (940 CMR 8.00, included here in Appendix A) governing mortgage lenders and mortgage brokers under the Consumer Protection Act. It had been 15 years since the AGO had issued regulations that identified certain unfair and deceptive conduct in the business of mortgage brokering and mortgage lending. The existing regulations applied only to second mortgages and refinance loans because, at the time, they were designed to address the specific problem of fraud and abuse in connection with home improvement mortgage loans. They did not apply to purchase money mortgage loans – the loans used to finance a consumer's initial acquisition of a home. The recent and dramatic changes in the mortgage lending market as well as the rise in a new collection of unfair and deceptive practices warranted review and revision of the regulations.

The Comment Period and the Subsequent Public Hearings

As a first step in the review of the mortgage broker and lending regulations, in June 2007, we requested comment from all interested parties on the following list of topics:

- Mortgage brokers and lenders inflating the income of borrowers on application forms and misstating the source of the borrowers' income;
- Mortgage brokers making mortgage loans which are not in the borrowers' interests;
- Mortgage brokers and lenders processing and making mortgage loans without considering whether the borrowers can repay them;
- Mortgage lenders making mortgage loans which are not suited to the borrowers by evaluating criteria other than credit and bona fide credit qualification criteria; and
- Businesses being assigned predatory loans without allowing the borrowers the means of asserting claims against the assignees.

We received 57 written comments.[20] Some supported the proposed regulations; others opposed them in whole or in part. Many offered valuable insights, as well as suggestions for drafting potential regulations based on their unique expertise and perspective.

After carefully considering the comments, the AGO issued a set of proposed regulations governing mortgage brokers and lenders on August 22, 2007. We sought to draw those proposed regulations narrowly, defining with specificity the precise conduct to be regulated. We sought to establish fair, common-sense rules protecting borrowers who are making what is for most people the biggest and most complex financial investment they will ever make, while also avoiding unnecessary or duplicative regulation.

"The broker told me that ... I would have to travel to Brooklyn, New York, to close the loan. ... I traveled to New York with my wife to close the loan at a café in Brooklyn."

In accordance with statutory requirements, the AGO filed a notice of the public hearing schedule with the Office of the Secretary of the Commonwealth. Copies of the regulations were made available on the AGO website, **www.mass.gov/ago**. Notice of the public hearings and the proposed regulations was mailed to all parties who had requested notice, as well all individuals and organizations who had submitted written comments. A notice was also published in *The Boston Globe*.

The AGO held a series of public hearings in Brockton, Worcester, Springfield, and Boston, between September 17 and 20, 2007. More than 50 witnesses from across Massachusetts testified at the hearings. Witnesses represented the banking, mortgage lending, mortgage brokering and real

estate appraisal industries; housing and elder affairs organizations; legal services organizations; bar associations and consumer advocacy groups. A number of public officials, including members of the Governor's administration, legislators, mayors, city councilors, and other local officials, also offered testimony. We also heard from homeowners from throughout Massachusetts who have been touched by the foreclosure crisis. Many others submitted written testimony.

IV. Principal Findings

Many witnesses described substantial unfair and deceptive practices in mortgage lending and mortgage brokering. Below are several examples of the practices discussed at the hearings. Unfortunately, they are not unique or even rare instances of bad conduct. Similar stories can be told with respect to hundreds, perhaps thousands, of Massachusetts borrowers.

Point 1. *Too often lenders made loans where they knew or should have known that the borrower could not repay the loan.*

State Representative Jeffrey Sánchez, of the 15th Suffolk District, described one of his Boston neighbors, an immigrant from Dominican Republic. She is a single mother who supports her three children by working two jobs. When she saw an opportunity to buy a home for her family, she investigated whether she could afford it. Unfortunately, she was put into a loan where the lender knew, based on all the information she provided at the inception of the loan, that she could not afford the loan once the low "teaser" rate expired and the monthly payments increased. At the initial rate of 5 percent, she could shoulder the monthly payments without a problem. But a few years later, when the higher interest rate of almost 13 percent kicked in, her payments rose far beyond her ability to pay. Representative Sánchez told us: "For a woman who is trying to raise a family in this city, this is just unheard of. She doesn't know what she's going to do. She's trying to figure out where she should go."

Representative Sánchez compared the mortgage lender's duty to that of a securities dealer who recommends a stock purchase. That securities dealer is required to understand his client's financial picture completely. "It essentially works as a know-your-customer rule," Representative Sánchez said. The dealer must be able to answer the questions, 'Why did you put this customer in this product? What led you to believe that your customer had the tolerance, the risk tolerance to be able to invest

in this particular investment?' Similarly, Representative Sánchez suggested, lenders should be required to evaluate the totality of the customer's financial situation in order to determine whether the borrower will be able to meet his or her loan obligations.[21]

Virginia Pratt, of Ensuring Stability Through Action (ESAC) in Boston, described one of her clients, a mother of two children. The client was approved for a $300,000 mortgage shortly after moving out of a homeless shelter and while unemployed. Her partner earned less than $30,000 annually. Her mortgage broker worked for her mortgage lender and, simultaneously, the company which performed the real estate appraisal on the Dorchester property. Her initial interest rate was at 4.95 percent, adjustable with a cap of more than 15 percent. Within a year, she defaulted and the home was foreclosed upon. Not only is her family now at risk of homelessness, but her credit score has been damaged by the foreclosure.[22]

> "During the closing, when we attempted to read the loan disclosures, the closing agent pressured us to sign the loan documents and told us not to bother to read them."

Point 2. *Unscrupulous mortgage brokers arranged and processed loans which were not in the borrower's interest, while assuring the borrower that he or she had obtained the best rate and terms available.*

Unscrupulous mortgage brokers steer their clients to "no documentation" or "stated income" loans, which carry higher costs than that which the borrower is eligible.

Attorney Andrea Bopp-Stark, of the Legal Aid Alliance of Northeast Massachusetts, gave a vivid example of such abuses. Her client, a 45-year-old mentally and physically disabled woman, speaks only Spanish and has a third-grade education. She lived in subsidized housing for which she paid $200 per month. Despite her limited income of social security benefits, she managed to save $2,000 over several years and had a good credit score. When a mortgage broker who was a member of her church told her she could afford a home, she trusted him and relied on his advice. He told her a lender had approved her for a $350,000 loan. Bopp-Stark explained:

> However, a month after she signs the loan documents that were all in English, she gets a monthly statement from the lender saying she owes $1,000 on one loan. Then she receives another statement saying she owes $500 on a second loan; a second loan she had no idea she entered into, a second loan that would make it impossible for her to make her monthly mortgage payment. She exhausts what little savings she has and after three months is in default and having had to surrender her housing voucher when she moved into the house, she is on the brink of being homeless. … [She] should have been able to trust that the mortgage broker would assess her financial circumstances and find a loan product that would fit her needs for many years to come – not abuse the products

> that existed, such as no doc or stated income loans, so that [the broker] could benefit financially.[23]

Abuse of "stated income" loans also is at the heart of several enforcement actions brought by the Attorney General's Office. In the case against Zeus Capital and Champagne Real Estate Associates,[24] the defendant professionals routinely completed loan applications with income information that was wholly fictional. Likewise, the investigation of Fremont Investment & Loan showed that a majority of loans ending in foreclosure included the "stated income" feature.

Point 3. ***In order to generate higher fees for themselves, certain brokers put their customers into loans which were far more costly than loans for which the customer qualified, causing the customer to be saddled with thousands of dollars in additional interest charges.***

Brokers purport to be acting in the borrower's best interest when, in fact, their conduct is detrimental to the borrower.

Some brokers accept a "kickback" from lenders in order to steer the prospective borrower to a higher-priced loan product. Such brokers typically deceive the customer by hiding these fees or by misidentifying them in their accounting.

One borrower, a window washer, and his partner, both of Chelsea, refinanced their home mortgage with a mortgage with a rate higher than that for which they qualified. In addition, the company charged them a $3,600 origination fee, as well as other points and fees, and a $6,400 payment to the broker for placing them in the high-cost loan. No one discussed or disclosed these fees with the pair prior to the loan closing. Had the broker's deceitful actions and the higher-priced loan terms been disclosed, they never would have entered in to the refinance transaction.[25]

It is not just housing and homeless advocates who advocate imposition of a duty to borrowers on mortgage brokers. Alan Blanker, Senior Vice President and General Counsel of Greenfield Savings Bank, supports imposing a duty to borrowers on mortgage brokers. He testified:

> Many mortgage brokers currently market themselves as advocates for borrowers, able to secure funding through a secondary market investor at the best interest rate and terms for the borrower. However, as you know, most brokers are compensated based on factors other than obtaining the lowest cost for the borrower through yield-spread premiums and other measures. [The regulations] would … be a significant step in reigning in some of the more egregious practices that have become common in the mortgage lending market in recent years. Questionable practices including providing borrowers with loans that have extremely low initial "teaser" rates, loan flipping and placing borrowers into loans with onerous prepayment penalties could be virtually eliminated …[26]

Kevin Kiley and John Skarin, of the Massachusetts Bankers Association, echoed the concerns expressed by Mr. Blanker in their testimony at the hearings in Worcester, Brockton and Boston.

Professor Elizabeth Warren, of Harvard Law School, a leading scholar on debtor/creditor law and secured transactions, recently commented that:

> A mortgage broker can offer wise advice to guide a buyer through a dangerous thicket of complex mortgage deals. But you are just as likely to encounter a broker who is working only for himself. There are brokers who take what amounts to a bribe from a mortgage company to steer a client into a higher-priced mortgage than it could qualify for, all the while assuring the client that this is the best possible deal.
>
> The practice is sufficiently widespread that it has a technical name, a "yield spread premium." The yield spread premium is a payment the mortgage company makes to the broker to persuade the broker to sell the homeowner a higher-priced loan. ...
>
> Yield spread premiums are present in 85 to 90 percent of subprime mortgages, which suggests some brokers are needlessly pushing clients into more expensive products. The costs are staggering: Fannie Mae estimates that 50 percent of those who were sold ruinous subprime mortgage would have qualified for prime-rate loans.[27]

Point 4. *Some lenders deceive borrowers about the terms of a loan, often "baiting" the borrower with a promised loan, only to change the terms at the closing.*

Some lenders fail to provide the borrower sufficient time and reasonable opportunity to review the loan documents.

Some lenders and brokers steer borrowers to loans that are more expensive than ones for which they qualify based on their credit scores and financial picture.

An example of lender misrepresentation was given by another female borrower, who refinanced an existing home mortgage, a 15-year loan with an adjustable interest rate of 6.4 percent and an annual percentage rate of 8.488 percent. Like most good consumers, she started to investigate the various loan products offered by different lenders, including Best Rate Funding. Best Rate warned her "not to talk to any other lenders about obtaining a loan because it would undermine your credit score and adversely affect the terms of credit available." Best Rate made the representation, she believes, in order to prevent her from shopping for a loan with better terms than the one Best Rate offered. Despite its promise to provide her the best rate, the lender put her into a loan much less favorable than her existing mortgage, one with a large balloon payment, an adjustable interest rate of 8.5 percent, and an APR of 11.38 percent.

The borrower points out, "The closing of the Best Rate loan took place in the parking lot of a Friendly's Restaurant on a Sunday. We signed the closing papers on the hood of the closing agent's car while he rushed through the closing with us because his grandchildren were waiting in the car."[28]

Richard Goldman, Esq., Chair of the Real Estate Section of the Hampden County Bar Association, echoed those concerns about the time pressures placed on borrowers to complete closings, without a real opportunity to review and understand the documents: "All of us out here in Western Massachusetts have faced loan transactions that are closed at the Kentucky Fried Chicken shop on the corner of State and Main Streets by a title agent from out-of-state and who was just sent the closing documents that day and by a borrower who desperately wants to buy and will sign almost anything."[29]

Another homeowner of Dorchester had a similar experience. He had an excellent credit score, which would have qualified him for a mortgage in the prime market. But when a broker contacted him and suggested he refinance, he was given a loan more costly than that for which he qualified. "The broker told me that … I would have to travel to Brooklyn, New York, to close the loan … I traveled to New York with my wife to close the loan at a café in Brooklyn." In fact, the loan turned out to be two loans; this was never disclosed to him prior to the loan closing. Settlement costs of $11,950 on the first mortgage included $7,696 in "loan origination fees" to the broker. This fee was not disclosed to him. In addition, the lender paid the broker an additional $6,734 as "mortgage broker compensation." Likewise, this fee was not discussed or disclosed before the closing. The borrower believes the lender paid that fee to compensate the broker for putting him into a higher-priced mortgage with that lender.[30]

"All of us out here in Western Massachusetts have faced loan transactions that are closed at the Kentucky Fried Chicken shop on the corner of State and Main Streets by a title agent from out-of-state and who was just sent the closing documents that day and by a borrower who desperately wants to buy and will sign almost anything."

At the time one family received a refinancing solicitation from lender Home Consultants, Inc. (HCI), they had lived in their East Boston home for a decade and had a 30-year fixed-rate mortgage on which they made monthly payments of $1,408. HCI promised to refinance them on terms which would provide a minimal increase in monthly payments as well as a small amount of cash. During the loan application process, the family always believed the product would be a fixed-rate 30-year mortgage. Their belief was reasonable, but proved incorrect because they were deceived by HCI. According to the family:

> The loan closing took place at our home at nighttime, with only us and HCI's closing agent present. During the closing, when we attempted to read the loan disclosures, the closing agent pressured us to sign the loan documents and told us not to bother to read them. At the loan closing, we discovered that the loan was a 2-year adjustable rate loan. When we expressed our concern, the closing agent pressured us to close the loan,

> by assuring us that we could refinance the loan before the interest rate reset. We now know that we paid over $13,000 in other points and fees to close the loan, which were never disclosed to us.

The family's monthly payments have risen to over $1,800, which they cannot afford. They have been unable to refinance.[31]

Similarly, another family was deceived by a mortgage company about the terms – especially the cost – of a loan that was far above their means. The company "baited" them with a low fixed rate, then "switched" them to a high-cost variable rate loan. The couple both "are on Social Security and our income was not that high." When their monthly payments rose sharply after the "teaser" rate expired, they could not longer meet the monthly payment obligation. Their home was foreclosed upon and they were left with the problem of finding a new residence. Because the husband is confined to a wheelchair, "there was nothing available for someone with these problems." His wife stated:

> The family would have to be split up, my husband to a nursing home and I would have to go to old age housing, of which there was none available. Everything had a one to two year waiting period. This caused health problems … the anxiety rose so quickly, I ended up on medication due to depression.[32]

Point 5. *Lenders made loans to borrowers whom they knew did not understand the terms of the loans due to the complexity of terms which were buried in lengthy documents, an inability to understand English, a lack of business sophistication or a lack of mental capacity.*

Attorney Denise Pappalardo, who has served for more than 12 years as the Chapter 13 Trustee for central and western Massachusetts, has overseen thousands of consumer bankruptcy cases. More than 90 percent of those cases are filed to avert foreclosure. Many debtors have "80/20" loans – two mortgage whereby first is for 80 percent of the value of the home and the second is for the remaining 20 percent. According to Attorney Pappalardo:

> There is little understanding on the part of these debtors that they are borrowing 100 percent of the value of the home. … Many do not understand when the interest rate will change and how much it will change over the life of the loan. They do not understand that when it does, the mortgage will become unaffordable. Many in this situation default early on in the life of their mortgage at a time when the interest rates start to adjust upwards. It has been my experience in the last several years that many debtors are defaulting on mortgages within the first or second year of buying their homes … Many debtors could not afford their mortgage in the first place. … They often believe that they will be able to refinance … This belief often comes from the mortgage broker who assured them that they will be in a position to refinance to a fixed rate mortgage at some time in the future.[33]

Attorney Bopp-Stark of Lawrence likewise explained that her legal aid clients were often unable to grasp the terms of the loans being sold because the broker involved did not undertake to explain the loans, or flatly misrepresented the terms. Further, even if the borrower sought to understand the terms on their own, the relevant documents were provided only in English to Spanish-speaking borrowers.[34]

Point 6. *Statistical evidence and testimony indicates that racial and ethnic minorities were more likely to be sold subprime loans with unfair or deceptive terms.*

Senator Dianne Wilkerson, of the 2nd Suffolk District, pointed out the disparate treatment black and Latino loan applicants receive as compared to white loan applicants. Many lenders reject minority loan applicants even when their credit history is comparable to that of white applicants. As a result, minority borrowers have no alternative but to do business with subprime lenders. "The requirement in the new regulations that similarly-situated applicants be treated in the same way is important" to rectifying that discrimination, Senator Wilkerson noted.[35]

The Federal Reserve Bank has found that substantial disparities across racial and ethnic lines exist in higher-priced lending and in denial rates.[36] The reason for those disparities is unclear, however the data may suggest discriminatory treatment, including marketing practices. James T. Campen, Associate Professor of Economics at the University of Massachusetts Amherst, and the Massachusetts Community and Banking Council, recently conducted a study which analyzed Home Mortgage Disclosure Act (HMDA) data for Massachusetts for several years, up to 2005. Professor Campen found a troubling pattern: high cost loans made up more than half of all home purchase loans to African-American and Latino borrowers. In Greater Boston, the percentage of high-APR loans for African-Americans is nearly four times greater than the percentage or rate for Caucasians with respect to home purchases. The high-APR share for Latinos is also nearly four times greater than the share for Caucasians.[37] This is consistent with the finding that African-American and Latino borrowers are more likely to receive higher-rate subprime loans than white borrowers, even when legitimate risk factors are considered.[38]

> "It has been my experience in the last several years that many debtors are defaulting on mortgages within the first or second year of buying their homes."

Geraldine McCafferty, Deputy Director of the Springfield Office of Housing, testified that predatory lending has had a significant impact on the minority communities in Springfield:

> The proposed regulations … directly target predatory lending practices. Lenders using these practices exploit inexperienced borrowers and borrowers with low levels of education. Not all subprime loans are predatory loans, but most predatory lending occurs in the subprime market. At the same time, subprime lending takes place

> disproportionately in low-income communities of color. It is predominantly low-income communities of color that are exploited by predatory lending, likely due to the fact that these communities have historically been underserved by reputable lenders. Because predatory loans have high rates of foreclosure, our low-income communities of color are the communities heavily impacted when victims of predatory lending are subject to foreclosure.

Ms. McCafferty also describes in detail the effects of foreclosure on Springfield's low-income communities of color.[39] Jamie Williamson, the director of the Massachusetts Fair Housing Center, also in the Springfield area, noted that 70 percent of consumer complaints received by the Center during 2007 were from people of color, even though minorities comprise only 10 percent of the area's population.[40]

Point 7. *Some lenders and mortgage brokers engage in false and deceptive advertising.*

Alan Blanker, Senior Vice President and General Counsel of Greenfield Savings Bank, testifying in Springfield on September 19, 2007, discussed the problem of false advertising. As an example, he cited one of his existing customers who has a 30-year fixed-rate mortgage at a market rate. That customer showed Mr. Blanker a solicitation he received which falsely described the bank as a "subprime institution." The advertisement falsely implied that the borrower was a subprime borrower. It further stated that "the federal government has raised interest rates 17 times over the past two years," falsely and deceptively suggesting that the customer's loan payments would increase, despite the fact that he had a fixed-rate mortgage. "Our borrower was concerned and upset to receive this advertising. The bank is also most concerned and upset."

The AGO's enforcement experience, both with respect to subprime lending and foreclosure rescue schemes, also shows that unfair and deceptive lending practices often start with deceptive advertising. Lenders have used aggressive sales techniques – push marketing through direct mail and telemarketing – to sell loans, especially cash-out refinancing loans. Unscrupulous professionals have used postcards and direct marketing to contact distressed homeowners, promising replacement financing but instead arranging unfair foreclosure rescue transactions.

V. The Revised Chapter 93A Regulations

The Consumer Protection Act, Massachusetts General Laws Chapter 93A, Section 2(c), provides the Attorney General, acting in the public interest, the authority to issue regulations interpreting the Consumer Protection Act. By regulation, the Attorney General can identify business conduct that is unfair or deceptive and thus violates the Act. The regulations have the force of law in the Commonwealth of Massachusetts.[41] The state legislature has delegated to the Attorney General the power to promulgate rules and regulations defining with specificity acts and practices which violate the statute.[42]

The testimony gathered during the hearing process on the new regulations, combined with the earlier written comments, as well as the AGO's broad experience in subprime lending enforcement, all support the issuance of 93A regulations to guard against any repeat of the practices that have led to the current foreclosure crisis.

Some who commented on the regulations argue that the statutory and regulatory changes necessary are the jurisdiction of federal regulators and Congress. Some argue that lenders and brokers are already overregulated.

While there is certainly a role for the federal government to play in addressing this crisis on the national level, we feel that there is also an important role for the Attorney General's Office to play in addressing the crisis in Massachusetts. First, several lenders and virtually all brokers who have engaged in unscrupulous lending practices have no federal charter and are subject to regulation by the states. Second, several federal consumer protection statutes provide that the states are permitted to amplify and expand consumer protections. And, lastly, under the Bush Administration, effective regulation and enforcement by federal agencies to aggressively curb the most harmful and common practices which precipitated the foreclosure crisis in recent years has not been a priority. It is not in the best interests of Massachusetts to wait for others to act.

Even federal authorities who previously espoused a more "hands-off" approach to regulation have expressed interest in stronger action by the states now. For example, when asked the cause of the subprime mortgage foreclosure crisis, former Federal Reserve Chairman Alan Greenspan replied:

> There is no question in my mind that there is a good deal of predatory lending going on. This type of action, which is essentially fraud, is a criminal offense. … I have argued very strenuously that this is the job of state attorneys general. … [We] are dealing with a situation in which you need more, not less, addressing of fraud because it's very dangerous for the market and it's very dangerous for the people who get caught up in it.[43]

Critics of tighter lending regulations argue that looser underwriting standards enabled people who otherwise would not have qualified for mortgages to realize the American dream of home ownership. They also argue that stricter rules will hamstring the efforts of lenders to offer more flexible, creative loan products to subprime borrowers. These arguments ignore the immediate and long term impacts of foreclosure, as compared to the ephemeral benefit of a home that one cannot afford. Those arguments also ignore that unscrupulous business conduct designed to generate fees and profits, is far too prevalent and will harm not only the specific borrowers involved, but also the community at large. Prospective regulation is critical to ensure this does not happen again.

The time is right to amend the existing 93A regulations to apply to mortgages for the purchase or refinance of real estate. It is time to update and modernize the form disclosures under the Consumer Protection Act. And it is time to expand the scope of the existing regulations and to add new substantive requirements to address unfair deceptive practices in mortgage lending and brokering. Each of the proposed new regulations is tied directly to concerns of the AGO: as a result of our investigations and litigation against mortgage lenders and brokers; as a result of the evidence gathered at the public hearings and through the written documents submitted; through discussions with federal, state and local officials; and through the Mortgage Summit Working Group.

Accordingly, the Attorney General's Office has issued amended 940 CMR 8.00, governing mortgage brokers and lenders. The regulations will be effective November 15, 2007, with the exception of the new disclosure forms (940 CMR 8.04), which will be effective January 2, 2008. A copy of the new regulation and a copy of the earlier foreclosure rescue regulation are attached as appendices to this report.

Lastly, we would like to take this opportunity to express our sincere appreciation to all the residents, public officials, members of the banking and lending industry, and advocates, who helped formulate the policies reflected in these regulations.

Endnotes

1. Report by Realtytrac.com. October 11, 2007.

2. Chairman Ben S. Bernanke, Testimony before U.S. House of Representatives, Committee on Financial Services. Available online at **www.federalreserve.gov/newsevents/testimony/bernanke20070920.htm**. September 20, 2007.

3. Report by ForeclosuresMass.com. October 3, 2007.

4. "Alternative-A (Alt-A) Loan" – a conventional single-family mortgage made to a borrower who typically provides limited income or asset verification or no evidence of an employer. Such loans may have other non-standard underwriting (Office of Federal Housing Enterprise Oversight).

5. Julia Reade, Foreclosure Trends in Massachusetts, Federal Reserve Bank. January 2007.

6. Testimony of Chairman Bernanke, *Id*.

7. Bob Ivry, "Subprime Borrowers to Lose Homes at Record Pace as Rates Rise." Available online at **www.bloomberg.com/apps/news**. September 19, 2007

8. *Id*.

9. Transcript of Boston Hearing, page 26. September 20, 2007.

10. Transcript of Worcester Hearing, page 5. September 17, 2007.

11. Testimony before House Committee on Financial Services. September 20, 2007.

12. “Subprime Lending: a net drain on homeownership, Center for Responsible Lending, CRL issue paper. March 14, 2007.

13. The proportion of subprime mortgages made between 2004 and 2006 that come with “exploding” adjustable interest rates is 89 to 93 percent, according to D.W. Berson. “Challenges and emerging risks in the home mortgage business,” presented at the National Housing Forum, Office of Thrift Supervision. December 11, 2006.

14. *Id*. Also, Doug Duncan, Sources and Implications of the Subprime Meltdown, Manufactured Housing Institute. July 13, 2007.

15. See e.g., “Turning a Blind Eye,” Fordham Law Review. April 2007. Julia Reade of the Federal Reserve Bank of Boston, Issue 3, of New England Community Development. 2007.

16. Congressional Testimony. September 20, 2007.

17. Commonwealth v. Sohmer, Suffolk Superior Court Civil Action No. 06-3664A; Commonwealth v. Walter Ribeck, Middlesex Superior Court No. 06-3101-F; and Commonwealth v. Leo Desire, Suffolk Superior Court Civil Action 07-1387-BLS.

18. The foreclosure rescue scheme regulation does not apply to legitimate transactions that are not conducted for profit, such as between family members.

19. See 940 CMR 25.00, et seq.

20. The June 2007 request for public comment was issued by press release and by letter to a broad spectrum of interested parties, including mortgage lenders, mortgage bankers, consumer advocates, housing specialists, elder affairs specialists, state and federal agencies and consumer bankruptcy experts. The AGO reached out to every participant in the Mortgage Summit Working Group, as well as all persons or groups who filed written request for notice. We sent the request via email to more than 100 attorneys, housing and consumer advocates who participated in the AGO’s Foreclosure Assistance Pro Bono Hotline project. We also sought comment from members of the Massachusetts legislature, the Division of Banks, elected local officials, and state and local agencies.

21. Transcript of Boston hearing, pages 28 to 33. September 20, 2007.

22. Transcript of Boston hearing, pages 50 to 53. September 20, 2007.

23. Testimony of Worcester hearing, pages 16 to 19. September 17, 2007.

24. Suffolk Superior Court Civil Action No. 06-3657.

25. Affidavit (written testimony) submitted September 16, 2007.

26. Transcript of Springfield Hearing, pages 10 to 11. September 19, 2007.

27. *The Boston Globe*, October 2, 2007.

28. Written statement submitted September 27, 2007.

29. Transcript of Springfield Hearing, page 32. September 19, 2007.

30. Written statement submitted September 24, 2007.

31. Declaration of the Laffarellos filed September 25, 2007.

32. Statement filed September 24, 2007.

33. Transcript of Worcester hearing, pages 47 to 50. September 17, 2007.

34. Transcript of Worcester Hearing, pages 16 to 19. September 17, 2007.

35. Transcript of Boston Hearing, pages 15 to 16. September 20, 2007.

36. R. Avery, et al, "The 2006 Home Mortgage Disclosure Act (HMDA) Data," forthcoming in the Federal Reserve Bulletin, at page 41.

37. James Campen, "Borrowing Trouble VII: Higher-cost Mortgage Lending in Boston, Greater Boston and Massachusetts," pages 6 to 8. 2005.

38. "Unfair Lending: the effect of race and ethnicity on the price of subprime mortgages," D.G. Bocian et al., Center for Responsible Lending. Available online at **www.responsiblelending.org/pdfs/rr011-unfairlending**. March 31, 2006.

39. Transcript of Springfield Hearing, pages 47, 51. September 19, 2007.

40. Transcript of Springfield Hearing, page 20. September 19, 2007.

41. Purity Supreme v. Attorney General, 380 Mass. 762 (l980).

42. American Shooting Sports Council, Inc. et al v. Attorney General, 429 Mass. 871 (1999).

43. Fresh Air Interview by Terry Gross on National Public Radio. September 18, 2007.

Appendix A

940 CMR 8.00: Mortgage Brokers and Mortgage Lenders

After a series of public hearings on the proposed regulations in September, 2007 the regulations were made final and filed with the Secretary of State on October 17, 2007. The regulations will be effective beginning November 15, 2007, with new disclosure forms effective January 2, 2008.

The amended regulations expand the scope of the previous version from home improvement loans to include all mortgage loans, and also specifically to:

Prohibit mortgage brokers or lenders from making a loan if they do not have a reasonable belief that the borrower is able to repay the loan.

Restrict the abuse of no-documentation or "stated income" loans by requiring that the mortgage broker or lender disclose how the interest rates or other charges will increase under a "no-doc" loan, and obtain the borrower's signed statement of income in order to process those types of loans.

Prohibit mortgage brokers from arranging or processing loans that are not in the borrower's interest, and prohibit brokers from brokering loans if the broker's financial interest conflicts with the borrower's interest.

Prohibit mortgage lenders from steering borrowers to loan products that are more costly than those that the borrower qualifies for, and prohibits lenders from discriminating between similarly qualified borrowers.

940 CMR 8.00. Mortgage Brokers and Mortgage Lenders

Section

8.01: Purpose
8.02: Scope
8.03: Definitions
8.04: Advertising Practices
8.05: Mortgage Disclosures
8.06: Prohibited Practices
8.07: Severability
8.08: Effective Date

8.01: Purpose

In 1992, the Attorney General of Massachusetts promulgated 940 CMR 8.00 relating to mortgage lenders and mortgage brokers pursuant to the Attorney General's authority in M.G.L. c. 93A, s. 2(c). These regulations were designed to protect Massachusetts consumers seeking residential mortgage loans for home improvements and other purposes, other than for the purchase or initial construction of residential property or open end home equity lines of credit, and to ensure that the mortgage industry is operating fairly and honestly by means of legitimate and responsible business acts and practices that are neither unfair nor deceptive.

In 2007 it is now clear that certain widespread acts and practices in the area of residential mortgage lending continue to unfairly harm consumers. The Attorney General, therefore, has updated and amended the 1992 mortgage broker and lender regulations to address problems experienced by consumers when they seek or obtain mortgage loans for the purchase or initial construction of residential homes, or when consumers refinance. The regulations will continue to address problems experienced by consumers when they obtain mortgage loans for purposes other than purchase money financing and initial construction, including the purpose of refinancing an existing loan.

8.02: Scope

The Attorney General's regulations define unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, s. 2(a). Acts or practices not specifically prohibited by 940 CMR 8.00 are not necessarily consistent with Chapter 93A or otherwise deemed legitimate by the absence of regulation here. 940 CMR 8.00 is designed to supplement existing regulations. All references in 940 CMR 8.00 to statutes and other regulations shall include amendments made to such statutes and regulations after the promulgation of 940 CMR 8.00.

940 CMR 8.00 shall cover any mortgage lender or broker advertising or doing business within Massachusetts, regardless of whether or not the lender or broker maintains an office in Massachusetts.

940 CMR 8.00 applies to all residential mortgage loan transactions in the Massachusetts, as more particularly defined in these regulations, except that it does not apply to either (i) reverse mortgages governed by M.G.L. c. 167E, s. 7, or (ii) open end home equity lines of credit. Reduced interest rate mortgages originated under the auspices of affordable housing programs which are administered by state, quasi public, or local government entities are also excluded.

8.03: Definitions

Advertisement (including the terms **advertise** and **advertising**) shall be defined in a manner which is consistent with the definition provided by the applicable sections of the Attorney General's Retail Advertising Regulations, 940 CMR 6.00, and means any oral, written, graphic, or pictorial statement made by a mortgage broker or lender in any manner in the course of the solicitation of business. Advertisement includes any representation made in a newspaper, magazine, or other publication or on the Internet, radio or television or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog, or letter. Advertisement includes any representation disseminated or accessible within Massachusetts if the advertisement is directed to consumers in Massachusetts.

Bait advertising means an offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage on terms which the broker or lender cannot, does not intend, or want to provide, or which the broker or lender knows cannot be reasonably provided. Its purpose is to switch borrowers from buying the advertised mortgage loan product to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the broker or lender.

Borrower means any natural person seeking, using, or paying for, directly or indirectly, the services of a mortgage lender or broker in connection with a mortgage loan.

Broker fee means any money, compensation, commission, fee, charge or other valuable consideration directly or indirectly imposed by a mortgage broker for the broker's services in negotiating, placing, finding, or otherwise assisting a borrower in obtaining a mortgage loan. The term broker fee does not include a fee charged by the lender (such as a commitment fee or a lock in fee), wages or commissions paid to an employee of the mortgage broker or mortgage lender by his or her employer, nor does such term include bona fide and reasonable payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports or payments or remittances to the mortgage lender.

Clear and conspicuous (including the terms **clearly and conspicuously**) shall be defined in a manner which is consistent with the definition provided by the applicable sections of the Attorney General's Retail Advertising Regulations, 940 CMR 6.00. 940 CMR 6.01 provides that clear and conspicuous (including the terms clearly and conspicuously) shall mean that:

the material representation being disclosed is of such size, color, contrast, or audibility and is so presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Further, without limiting the requirements of the preceding sentence, regulation 940 CMR 6.01 states that a representation in an advertisement is not clear and conspicuous unless:

1. for a printed, written, typed or graphic advertisement, such material representation appears in type which is at least one third the size of the largest type of information which it modifies and is a minimum of eight point type;

2. for the video portion of a television advertisement, such material representation:

a. is displayed in type not less than 14 scan lines in height;

b. contains letters of a color or shade that noticeably contrast with the background, and the background does not consist of colors and/or images which obscure or detract attention from the representation or are disparaging to its meaning or importance; and

c. appears on the screen for a duration equal to at least one second for every three words of the material representation but not less than a total of five seconds.

3. for a radio advertisement or the audio portion of a television advertisement, such material representation complies with the requirements of 940 CMR 6.01(c).

Commissioner means the Commissioner of Banks.

Commitment for mortgage loans (or the word **commitment**) means an oral or written agreement to loan or to advance funds for a mortgage loan. A commitment can specify a loan amount, repayment terms, interest rate or conditions necessary to close the loan.

Contractor or **home improvement contractor** means any person who owns or operates a residential contracting business or who undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, by him or herself or through others, residential contracting work as defined in M.G.L. c. 142A.

Mortgage broker or **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, or as otherwise defined by M.G.L. c. 255E, s. 2 or by the Commissioner. Notwithstanding anything to the contrary in these regulations, the following persons shall not be deemed to be a mortgage broker:

a. any person who is exempt from the licensing requirements of M.G.L. c. 255E, s. 2; provided, however, that individuals who work for or on behalf of brokers that are licensed pursuant to M.G.L. c. 255E, s. 2, shall not be exempt from these regulations; and

b. any financial institution which is regulated by a federal and/or state bank regulatory agency and which, 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 a direct or indirect affiliate or subsidiary of such financial institution.

Mortgage lender or **lender** means any person engaged in the business of making mortgage loans or issuing commitments for mortgage loans, including, but not limited to, mortgage lenders licensed or regulated by M.G.L. c. 255E, s. 2 or the Commissioner, and shall include all individuals who work on behalf of such lenders.

Mortgage loan or **loan** means a loan to a natural person primarily for personal, family or household use secured wholly or partially by a mortgage on residential property, or as otherwise defined by M.G.L. c. 255E or the Commissioner, and shall include loans to refinance a mortgage. "Mortgage loan" or "loan" shall not include either (i) reverse mortgages governed by M.G.L. c. 167E, s. 7, or (ii) open end home equity lines of credit.

Person means a natural person or organization including a corporation, partnership, association, cooperative or trust or any other legal entity.

Point means an origination fee, finder's fee, or other fee, premium, service charge, or any other charge calculated as a percentage of the principal amount of the loan or a percentage of the amount financed, however such point may be called, which is charged by a mortgage lender at or before the time the mortgage loan is made as additional compensation for the mortgage loan, or as otherwise defined by M.G.L. c. 183, s. 63 or the Commissioner. A point does not include:

a. bona fide and reasonable fees for actual services performed including, but not limited to, attorney's fees, appraisal fees, credit reporting fees, private mortgage insurance premiums, and title insurance premiums or mortgage broker fees; or

b. a charge which is credited to closing costs or other costs relating to such loan.

Residential property means real property located in Massachusetts having thereon a dwelling house with accommodations for four or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor of the mortgage debt, or as otherwise defined in M.G.L. c. 255E.

8.04: Advertising Practices

1. It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact in an advertisement if the representation or statement is false

or misleading or has the tendency or capacity to be misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

2. It is an unfair or deceptive act or practice for a mortgage broker or lender to advertise without clearly and conspicuously disclosing its business name, and if required to be licensed pursuant to M.G.L. c. 255E, the words “broker” or “lender”, as applicable, and the license number.

3. It is an unfair or deceptive act or practice for a mortgage broker to represent in any advertisement that the mortgage broker will fund a mortgage loan.

4. It is an unfair or deceptive act or practice for a mortgage broker or lender to engage in bait advertising or to misrepresent (directly or by failure to adequately disclose) the terms, conditions or charges incident to the mortgage loan being advertised in any advertisement. Violations of 940 CMR 8.04(4) shall include, but shall not be limited to:

> a. the advertisement of “immediate approval” of a loan application or “immediate closing” of a loan or words of similar import, such as “instant closing;”
>
> b. the advertisement of a “no point” mortgage loan when points are required or accepted by the lender as a condition for commitment or closing;
>
> c. the advertisement of an incorrect specific number of points required for commitment or closing;
>
> d. the advertisement through terms such as “bad credit no problem” or words of similar import or that an applicant will have unqualified access to credit without clearly and conspicuously disclosing the material limitations on the availability of credit that may exist, such as:
>
> > 1. requirements for the availability of credit (such as income);
> >
> > 2. that a higher rate or more points may be required for a consumer with bad credit; and
> >
> > 3. that restrictions as to the maximum principal amount of the loan offered may apply.
>
> e. the use of “avoid foreclosure” or words of similar import in an advertisement unless the advertisement also clearly and conspicuously discloses, that:
>
> > 1. the borrower must refinance the mortgage in default and/or take a new mortgage loan;

2. the borrower may be required to pay interest rates significantly higher than what other borrowers not facing foreclosures might pay; and

3. the warning that "you may lose your home if you cannot make all the payments or if you miss any of the payments on this loan."

5. It is an unfair or deceptive act or practice for a mortgage broker or lender who advertises any finance terms to fail to comply with the applicable state and federal advertising laws, Truth in Lending laws, M.G.L. c. 140D, s. 1, et seq., and 15 U.S.C. s. 1601, et seq., and any regulations promulgated thereunder.

8.05: <u>Mortgage Disclosures</u>

1. It is an unfair or deceptive act or practice for a mortgage broker to fail to provide the following Attorney General's Mortgage Broker Disclosure Form (the "Form"). This Form shall be completed with as much information as is available at the time the Form must be provided pursuant to 940 CMR 8.05(5), on a one-page separate document, in at least 11-point Times New Roman font. In those fields for which no information is available and/or applicable at the time the Form is provided, the Broker shall state "not applicable," or words of similar import. The Form must strictly conform to the following:

- Important Notice of Loan Terms - Brokers [*attachment at close of regulation text; available for download on the Attorney General's website,* ***<u>www.mass.gov/ago</u>***]

2. It is an unfair or deceptive act or practice for a mortgage lender to fail to provide the following Attorney General's Mortgage Lender Disclosure Form (the "Form"). The Form shall be completed with as much information as is available to the lender at the time the Form must be provided pursuant to 940 CMR 8.05(6), on a one-page separate document in at least 11-point Times New Roman font. In those fields for which no information is available and/or applicable at the time the Form is provided, the Lender shall state "not applicable," or words of similar import. The Form must strictly conform to the following:

- Important Notice of Loan Terms - Lender or Bank [*attachment at close of regulation text; available for download on the Attorney General's website,* ***<u>www.mass.gov/ago</u>***]

3. It is an unfair and deceptive act or practice for the mortgage broker or lender to fail to take reasonable steps to communicate the material facts of the transactions in a language that is understood by the borrower. Reasonable steps which shall comply with this regulation may include but shall not be limited to:

a. using adult interpreters; and

b. providing the borrower with a translated copy of the Attorney General's Disclosure Forms described in 940 CMR 8.05(1) or (2) in a language understood by the borrower.

4. It is an unfair or deceptive act or practice for a mortgage lender to fail to give to the borrower legible copies of the mortgage deed, promissory note, and the settlement statement when completed or at the time of closing.

5. It is an unfair or deceptive act or practice for a mortgage broker to fail to provide or mail to the borrower legible copies of the applicable disclosures described in 940 CMR 8.05(1) or (3), no later than three business days after the earliest of the following events:

a. the acceptance by the broker of an oral or written application for a mortgage loan;

b. any communication which leads the broker to incur any expenses on behalf of the borrower, other than the expense of obtaining a credit report; or

c. any oral or written agreement between the mortgage broker and the borrower.

6. It is an unfair or deceptive act or practice for a lender to fail to provide or mail to the borrower legible copies of the applicable disclosures described in 940 CMR 8.05(2) or (3), no later than three business days after the earliest of the following events:

a. the receipt by the lender of an oral or written application for a mortgage loan;

b. any communication which leads the lender to incur any expenses on behalf of the borrower;

c. any oral or written agreement by the mortgage lender and the borrower; or

d. the issuance of any commitment.

7. It is an unfair or deceptive act or practice for a mortgage broker or lender to conceal or to fail to disclose to a borrower any fact relating to the loan transaction, disclosure of which may have influenced the borrower not to enter into the transaction with the broker or lender.

8. It is an unfair or deceptive act or practice for a broker or lender to fail to disclose in writing to borrowers, as soon as practicable, but in no event not later than at least three business days before the closing of the loan, any information contained on the disclosures mandated by 940 CMR 8.05(1) or (2), as applicable, which has been changed by the broker or by the lender.

9. It is an unfair or deceptive act or practice for a mortgage lender to fail to provide any documents or disclosures required by any other state or federal law.

8.06: <u>Prohibited Practices</u>

1. It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact if the representation or statement is false or misleading or

has the tendency or capacity to be misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or representations include, but are not limited to the availability, terms, conditions, or charges, incident to the mortgage transaction and the possibility of refinancing. In addition, other such claims and representations by the broker may include the amount of the brokerage fee, the services which will be provided or performed for the brokerage fee, the borrower's right to cancel any agreement with the mortgage broker, the borrower's right to a refund of the brokerage fee, and the identity of the mortgage lender that will provide the mortgage loan or commitment.

2. It is an unfair or deceptive act or practice for a broker or lender to charge an application and/or broker fee which significantly deviates from industry wide standards or is otherwise unconscionable.

3. It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any broker fee, application fee or other fee, prior to the borrower's receipt of the applicable disclosure forms mandated by 940 CMR 8.05(1), (2) or (3). Notwithstanding the foregoing, an appraisal fee may be accepted if the lender or brokers provides oral or written notice, prior to the receipt of such fee, as to whether the fee is refundable.

4. It is an unfair or deceptive act or practice for a mortgage broker or lender to engage the services of (another) mortgage broker that will charge the borrower an additional fee without obtaining in advance the written permission of the borrower to charge that fee, the amount of which shall be specified in writing.

5. It is an unfair or deceptive act or practice for a mortgage broker or lender to directly or indirectly, regardless of the receipt or the expectation of receipt of compensation from the contractor, to:

a. provide loan application documents to home improvement contractors for use by such contractor in connection with the financing by mortgage loans of home improvement contracts;

b. use a home improvement contractor as an agent for its business; or

c. accept mortgage applications from contractors.

This provision shall not prohibit contractors from referring consumers to mortgage brokers or lenders, or lenders from purchasing executed home improvement contracts.

6. It is an unfair or deceptive act or practice for a mortgage broker or lender to procure or negotiate for a borrower a mortgage loan with rates or other terms which significantly deviate from industry wide standards or which are otherwise unconscionable. To determine whether the Annual Percentage Rate ("APR"), for example, is unconscionable, factors to consider include whether the APR at the time the loan was made is more than, the greater of:

a. ten percent above the highest domestic "Prime Rate" listed in the Money Rates section of *The Wall Street Journal*; or

b. twenty percent; and

whether the APR is consistent with comparable rates for borrowers in similar financial circumstances.

7. It is an unfair or deceptive act or practice for a mortgage lender to act also as a mortgage broker directly or indirectly in the same mortgage loan transaction, or to violate 209 CMR 42.04(4) or 42.07(4).

8. It is an unfair or deceptive act or practice for a lender to fail to disburse funds in accordance with any commitment or agreement with the borrower.

9. It is an unfair or deceptive act or practice for a mortgage broker or lender to conduct business with a person which should be licensed under M.G.L. c. 255E, and which it knows or should know is an unlicensed mortgage broker or lender.

10. It is an unfair or deceptive act or practice for any mortgage lender to charge a prepayment fee which:

a. violates M.G.L. c. 183, s. 56;

b. significantly deviates from industry wide standards; or

c. is otherwise unconscionable.

11. It is an unfair or deceptive act or practice for a mortgage broker or lender to fail to give to the borrower or his or her attorney the time and reasonable opportunity to review every document signed by the borrower and every document which is required pursuant to these regulations, and other applicable laws, rules or regulations, prior to the disbursement of the mortgage funds.

12. It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any fees which were not disclosed in accordance with these regulations or applicable law.

13. It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any attorneys' fees in excess of the fees that have been or will be remitted to its attorneys.

14. It is an unfair or deceptive act or practice for a mortgage broker or lender to refuse to permit the borrower to be represented by the attorney of his or her choice. Nothing contained herein shall limit the lender's right to choose its own attorney, which shall be paid for by the borrower.

15. It is an unfair or deceptive act or practice for a mortgage broker to arrange or mortgage lender to make a mortgage loan unless the mortgage broker or lender, based on information

known at the time the loan is made, reasonably believes at the time the loan is expected to be made that the borrower will be able to repay the loan based upon a consideration of the borrower's income, assets, obligations, employment status, credit history, and financial resources, not limited to the borrower's equity in the dwelling which secures repayment of the loan. The determination under this section of a borrower's ability to repay a loan shall take into account, without limitation: i) the borrower's ability to repay at the fully indexed rate, assuming a fully amortizing repayment schedule, and the resulting scheduled payments that may be charged under the loan accounting for interest rates, financial terms or scheduled payments that may adjust upward; and ii) the property taxes that are required on the subject property at the time the loan is expected to be made and the reasonably anticipated insurance costs if the loan requires that insurance be maintained on the property, regardless whether the broker or lender will collect an escrow for such taxes or insurance in connection with loan payments. For purposes of this subsection, the "fully indexed rate," with respect to loan rates that may adjust upward, shall mean the index rate prevailing at the date of loan origination plus the margin to be added to it after the expiration of an introductory interest rate. For purposes of illustration, assume that a loan with an initial fixed rate of 7 percent will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6 percent. If the six-month LIBOR rate equals 5.5 percent at the date of origination, the determination of ability to pay under this subsection shall take into account the borrower's ability to repay at 11.5 percent (5.5 percent plus 6 percent), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

16. It is an unfair or deceptive act or practice for a mortgage broker or lender to process or make a mortgage loan without documentation to verify the borrower's income (a so-called "no documentation," "no doc," "stated income" or "limited documentation" loan) unless the broker or lender, as applicable, first provides a written document to the borrower, which must be signed by the borrower in advance of the closing, and which: a) identifies the borrower's income and the source of the income; and b) provides detailed information, if true, that by applying for a mortgage loan on a no- or limited documentation basis, the consumer will pay a higher interest rate or increased charges, or have less favorable terms for the mortgage loan (including information concerning the precise increase in interest rate, charges, or the nature of the less favorable terms). It is an unfair or deceptive act or practice for a mortgage lender or broker to process or make a mortgage loan on a no- or limited documentation basis if the stated income provided by the borrower with respect to the no- or limited documentation loan contradicts information previously obtained by the broker or lender with respect to that borrower in connection with the same proposed loan, absent a documented change in circumstances or other documented explanation for the discrepancy between the prior information and latter income representation. Notwithstanding the foregoing, it shall be an unfair or deceptive act or practice for a mortgage lender to underwrite or close a loan without first verifying the employment or income of the borrower when the amount of the income stated is not reasonable for the actual employment status or experience of the borrower known to the lender, or when the borrower's stated employment or stated income is not reasonable in light of the borrower's circumstances known to the lender.

17. It is an unfair or deceptive act or practice for a mortgage broker to process, make or arrange a loan that is not in the borrower's interest. Where the financial interest of a mortgage broker

conflicts with the interests of the borrower (for example, where the broker's compensation will increase directly or indirectly if the borrower obtains a loan with higher interest rates, increased charges or less favorable terms than those for which a borrower would otherwise qualify), the broker shall disclose the conflict and shall not proceed to process, make or arrange the loan so long as such a conflict exists. It is an unfair or deceptive act or practice for a mortgage broker to disclaim the duty established by this subsection (17) in a written contract or to assert in oral representations that a broker does not have such a duty in communications with the borrower.

18. It is an unfair or deceptive act or practice for a mortgage lender (a) to use a pricing model for its mortgage loans which treats borrowers with similar credit criteria and bona fide qualification criteria differently; or (b) to make a mortgage loan when any or all of the cost features of the mortgage loan are based on criteria other than the borrower's credit and other bona fide qualification criteria. For purposes of this paragraph, "bona fide qualification criteria" shall mean those criteria that a lender, pursuant to written loan underwriting or origination policies, takes into account in determining whether to extend a mortgage loan, including by way of example, income, assets, credit history, credit score, income-to-debt ratios or loan-to-value ratios. For purposes of sub-paragraph (b), the term "cost features" shall include, but not be limited to, the interest rate; the index; margin; and other adjustment features if the interest rate is adjustable; points; and prepayment penalties.

8.07: Severability

If any provision of these regulations or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected.

8.08: Effective Date

The amendments to 940 CMR 8.00 shall be effective on November 15, 2007, except that the provisions of Section 8.05 (requiring new disclosure forms) shall be effective on January 2, 2008.

IMPORTANT NOTICE OF LOAN TERMS

OFFERED BY:

____	MB No.:________________________
Name of LICENSED MORTGAGE BROKER Business	
____	______________________________
Name of Person Arranging the Loan	Address of Mortgage Broker

1. MORTGAGE BROKER FEES WHICH YOU WILL PAY:

We are a MORTGAGE BROKER. We do not fund loans. We are charging you fees to arrange a mortgage loan from a mortgage lender. These are the fees we are charging you:

Application fee:	$___________________	Processing Fee:	$_____________________
Origination fee:	$___________________	Broker Fee:	$_____________________
Other:	$___________________	**TOTAL:**	$_____________________

2. MORTGAGE BROKER FEES WHICH THE LENDER WILL PAY:

We may be receiving a fee or other compensation from the lender for arranging this loan. We are receiving fees in this amount from the lender: $_______________. This payment from the lender to us was calculated as follows:

____

____

Note: Massachusetts regulations (940 C.M.R. 8.06(17)) make it unlawful for us, as mortgage broker, to arrange a loan if our financial interest conflicts with your interests. For example, as broker we cannot increase our own compensation by arranging a loan for you with higher interest rates or less favorable terms than those for which you would otherwise qualify.

3. YOUR MORTGAGE LOAN TERMS:

You have applied for a mortgage loan based on the following terms:

(a) **Total loan amount**: $_____________________.

(b) **Term**: 30 yrs:____ 20 yrs:____ 15 yrs:____ Other: ____ yrs.

(c) **Fixed or Adjustable Interest Rates and Scheduled Payments** (complete (1) or (2), as applicable):

(1) ___________ This loan provides a **fixed interest rate** for the full term.

Your Fixed Interest Rate: ________%.

Your Scheduled Monthly payment, at present, will be: $____________.

This monthly payment _____ **INCLUDES** ___ **DOES NOT INCLUDE** property tax and insurance payments on this property. If this monthly payment does not include tax and insurance, those payments will be approximately:

$_________ per month for property taxes, and

$_________ per month for insurance.

(2) ___________ The interest rate on this loan is **adjustable**.

Your initial rate: _______%. This rate will last for _____ years.

Your interest rate will first adjust in ___________ years.

Your interest rate will then adjust every _____ months.

Your interest rate will never be lower than: _______%.

Your interest rate may go as high as (if capped): ______%.

Your scheduled monthly payments:

During the initial rate period, your payment will be: $______.

After your first adjustment, your payment (based on current rates) will be: $__________.

After your second adjustment, your payment (based on current rates) will be: $__________.

Your monthly payment under this loan (based on current rates) could be up to: $_______.

This monthly payment _____ **INCLUDES** ___ **DOES NOT INCLUDE** property tax and insurance payments on this property. If this monthly payment does not include tax and insurance, those payments will be approximately:

$_________ per month for property taxes, and

$_________ per month for insurance.

(d) **Prepayment penalties**: This loan allows the lender to charge prepayment penalties.
YES: ______ NO: ______

(e) Caution: No mortgage lender or broker can “guarantee” or assure you that you will qualify for refinancing in the future, for example, to avoid increased monthly payments under an adjustable rate loan. If a lender or broker has made such a promise, it is untrue, because they cannot know all future circumstances that may affect the extension of credit.

Borrower: ______________________________ Co-Borrower: ___________________________

Signature: _______________________________ Signature: ______________________________

Date: _________________________

IMPORTANT NOTICE OF LOAN TERMS

OFFERED BY:

______________________________	ML No.:__________________
Name of MORTGAGE LENDER or BANK	(if applicable)
______________________________	______________________________
Name of Person Arranging the Loan	Address of Mortgage Lender or Bank

YOUR MORTGAGE LOAN TERMS:

You have applied for a mortgage loan based on the following terms:

(a) **Total loan amount**: $_____________________.

(b) **Term**: 30 yrs:____ 20 yrs:____ 15 yrs:____ Other: ____ yrs.

(c) **Fixed or Adjustable Interest Rates and Scheduled Payments** (complete (1) or (2), as applicable):

(1) ___________ This loan provides a **fixed interest rate** for the full term.

Your Fixed Interest Rate: ________%.

Your Scheduled Monthly payment, at present, will be: $____________.

This monthly payment _____ **INCLUDES** ___ **DOES NOT INCLUDE** property tax and insurance payments on this property. If this monthly payment does not include tax and insurance, those payments will be approximately:

$_________ per month for property taxes, and

$_________ per month for insurance.

(2) ___________ The interest rate on this loan is **adjustable**.

Your initial rate: _______%. This rate will last for _____ years.

Your interest rate will first adjust in ___________ years.

Your interest rate will then adjust every _____ months.

Your interest rate will never be **lower** than: _______%.

Your interest rate may go as high as (if capped): ______%.

Your scheduled monthly payments:

During the initial rate period, your payment will be: $______.

After your first adjustment, your payment (based on current rates) will be: $__________.

After your second adjustment, your payment (based on current rates) will be: $__________.

Your monthly payment under this loan (based on current rates) could be up to: $_______.

This monthly payment _____ **INCLUDES** ___ **DOES NOT INCLUDE** property tax and insurance payments on this property. If this monthly payment does not include tax and insurance, those payments will be approximately:

$_________ per month for property taxes, and

$_________ per month for insurance.

(d) **Prepayment penalties**: This loan allows the lender to charge prepayment penalties. YES: ______ NO: ______

This means that if you were to prepay your loan in full within the first _________ years of this loan (including by refinancing this loan), you could pay a charge as high as $______.

(e) This loan has a balloon payment at the end of the term. YES: ______ NO: ______

If yes, at the end of the term, if you make all payments as scheduled, your balloon payment is expected to be: $_______________.

(f) The lender is charging you the following fees:

Application fee:	$___________________	Processing Fee:	$_____________________
Origination fee:	$___________________	Underwriting Fee:	$_____________________
Loan discount fee:	$___________________	Commitment Fee:	$_____________________
Other:	$___________________	**TOTAL:**	$_____________________

(g) You are also paying a mortgage broker fee of $________________.

Borrower: ____________________________ Co-Borrower: _________________________

Signature: _____________________________ Signature: ____________________________

Date: _______________________

Appendix B

940 CMR 25.00: Foreclosure Rescue Transactions and Foreclosure-Related Services

On June 1, 2007, the Attorney General issued emergency regulations under the Consumer Protection Act (M.G.L. c. 93A) banning foreclosure rescue schemes. The emergency regulations are now final and were filed with the Secretary of the Commonwealth on August 31, 2007.

The regulations prohibit predatory, for-profit foreclosure rescue transactions, where the homeowner transfers title to the rescuer while maintaining future interests, including a lease interest or right to reacquire the home. Foreclosure rescue transactions between family members or arranged by a nonprofit community or housing organization are not banned under these regulation.

940 CMR 25.00. Foreclosure Rescue Transactions and Foreclosure-Related Services

Section

25.01: Definitions
25.02: Prohibition on Foreclosure Rescue Transactions and Advance Fees for Foreclosure-Related Services
25.03: Marketing of Foreclosure-Related Services

25.01: Definitions

Foreclosure Rescue Transaction shall mean a transaction (a) by which residential property is conveyed where the person conveying the property (hereafter "homeowner") maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and (b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.

Foreclosure-Related Services shall mean any goods or services related to, or promising assistance in connection with: (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation. Foreclosure-Related Services shall include the offer, arrangement or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered or promoted in the context described in (a) and (b) immediately above.

25.02: Prohibition on Foreclosure Rescue Transactions and Advance Fees for Foreclosure-Related Services

(a) It is an unfair or deceptive act in violation of M.G.L. c. 93A, s. 2(a) to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a Foreclosure Rescue Transaction in the Commonwealth or concerning residential property in the Commonwealth. Nothing in this subparagraph (a) shall be interpreted to prohibit Foreclosure Rescue Transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including, by way of example, such transactions engaged in between or among family members or arranged by a nonprofit community or nonprofit housing organization.

(b) It is an unfair or deceptive act in violation of M.G.L. c. 93A, s. 2(a) to solicit, arrange, or accept an advance fee in connection with offering, arranging or providing Foreclosure-Related Services; provided, however, that this subsection shall not prohibit a licensed attorney from soliciting, arranging or accepting a fee for legal services in connection with filing a bankruptcy petition. For purposes of this section, an advance fee is any money or

consideration paid in advance of actually receiving services. If the Foreclosure-Related Services at issue concern the offer, arrangement or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, then this section (b) shall not prohibit the solicitation, payment or acceptance of a loan application fee provided that the fee conforms with applicable law, including any rules or regulations of the Commissioner of Banks.

25.03: Marketing of Foreclosure-Related Services

It is an unfair or deceptive act in violation of M.G.L. c. 93A, s. 2(a):

(a) to advertise, offer or promote the availability of Foreclosure Rescue Transactions or services related to Foreclosure Rescue Transactions.

(b) to advertise, offer or promote Foreclosure-Related Services if the person so promoting intends to provide Foreclosure-Related Services by offering, engaging in, arranging, promoting, promising, or soliciting participation in, a Foreclosure Rescue Transaction.

(c) to advertise, offer or promote Foreclosure-Relate Services without disclosing, clearly and conspicuously, (i) the precise goods and/or services offered and to be provided by the promoter of Foreclosure-Related Services, and (ii) a precise description of how the promoter will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

(d) for a licensed mortgage broker or licensed mortgage lender to advertise, offer or promote Foreclosure-Related Services, where the goods or services promoted concern the offer, arrangement or placement of a residential mortgage loan (i.e., replacement financing), without complying with all laws and regulations that apply to the marketing of mortgage loans, including, without limitation, the regulations of the Commissioner of Banks (209 C.M.R. 32.00 et seq.) and the Office of the Attorney General (940 C.M.R. 8.00 et seq.).

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