



# Bankers Advisory

## COMPLIANCE MONITOR

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### *Massachusetts Updates Mortgage Licensing Provisions*

By Adam Faria, JD

#### **Massachusetts updates provisions of 209 CMR 41 the Licensing of Mortgage Loan Originators**

Effective immediately the Massachusetts Division of Banks has updated the provisions of 209 CMR 41 in order to clarify and reduce reporting requirements in part due to the NMLS.

##### **41.04 Application Procedure**

Revised section 41.04(2)(b) maintains the requirement that an applicant submit evidence of sufficient surety bond meeting the requirements of the commissioner but allows the surety bond of the applicants employing entity to be used to satisfy such requirement.

Revised section 41.04 (2)(f) modifies the test score requirement as well as the waiting period for retesting upon consecutive failures of the written test. Previously, an applicant must have passed a written test developed by the NMLS and administrated by a NMLS approved test provider. The NMLS test included a national component and a Massachusetts component each of which the applicant must pass with a score of not less than 75%. The requirement that the applicant pass each component with a 75% percent score has been removed. An applicant must now pass the test with a total score of not less than 75%. Further, the waiting period of 180 days imposed upon failing 4 consecutive tests has been modified. Under revised section 41.04(2)(f) upon failing 3 consecutive written examinations an applicant shall not be eligible to take another examination for a period of at least 6 months.

##### **41.05 Licensing Standards**

Revised section 41.05(3)(b) allows an application to be denied due to a violation of state or federal law applicable to the conduct of other financial service providers. Previously an application could only be denied if the applicant had violated or engaged in violations of state or federal law applicable to the business of a mortgage loan originator, mortgage broker or mortgage lender.

##### **41.06 Termination and Reassignment**

Revised section 41.06(1) maintains the requirement that an employing entity is required to notify the Division of Banks of the termination of the relationship between the employing entity and a MLO within 5 business days after the termination. It also continues to require that the employing entity submit a statement setting forth the reason for termination through the NMLS. However, an employing entity may now submit said statement directly to the Division of Banks if it is unable to do so through the NMLS.

Revised section 41.06(4) requires that a MLO license that has been inactive for over one year shall be cancelled.

##### **41.10 Prohibited Acts and Practices**

Pursuant to revised section 41.10(21) it is now a prohibited act or practice for a MLO to fail to maintain accurate and up to date information in their NMLS license record.

The complete text of the revised regulation may be found at: <http://www.mass.gov/ocabr/docs/dob/209cmr41-00-final-amend-08262016.pdf>

## **Massachusetts updates provisions of 209 CMR 42 the Licensing of Mortgage Lenders and Mortgage Brokers.**

Effective immediately the Massachusetts Division of Banks has updated the provisions of 209 CMR 42 in order to clarify and reduce reporting requirements in part due to the NMLS.

### **42.09 Books and Records**

Revised section 42.09(1)(a) makes changes to the documents a licensee is required to maintain by more specifically identifying the types of documents required to be kept. Under the revised regulation each licensee is now required to maintain for a minimum of three years after final payment or sale of any mortgage loan copies of: mortgage loan applications, all required mortgage disclosures, the note, closing documents, rate lock commitments, the results of any automated underwriting submissions, correspondence including electronic communications, paper records relating to the loan and any other documents as the Commissioner of the Division of Banks may require.

In addition to the requirements above, section 42.09(1)(b) similarly requires that each mortgage broker shall be required to retain for at least three years after a mortgage loan is made copies of mortgage loan applications, all required mortgage disclosures whether provided by the broker or the lender, the note, closing documents, rate lock commitments, results of any automated underwriting submissions, correspondence including electronic communications, accounts of fees received in connection with the loan, papers or records relating to the loan and any other documents the Commissioner may require.

### **42.11 Client Funds Account**

All fees paid by clients or residential loan applicants to a licensed mortgage lender or broker must be deposited in client fund accounts. Revised section 42.11(2) requires client fund accounts to be titled 'trust account,' 'client funds account,' 'clients trust account,' or other similar name that indicates the fiduciary nature of the account. Revised section 42.11(3) requires that the licensee provides a written notice to the bank, and receives from the bank a written acknowledgment of receipt from a duly authorized representative of the bank; said notice must explain the fiduciary nature of the account and that the account is for the purpose of holding client funds.

### **42.13 Office Locations**

Under revised section 42.13, a licensee who intends to carry on its business at any location, in addition to the address on its original license, shall no longer notify the Commissioner in writing, but must file for a branch license through NMLS.

The complete text of the revised regulation may be found at:

<http://www.mass.gov/ocabr/docs/dob/209cmr42-00-final-amend-08262016.pdf>

### **About the Author**

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