

**MEMORANDUM**

**TO:** Darryl Hicks  
NRMLA

**FROM:** Jim Milano  
Emily Rugg

**PRIVILEGED AND CONFIDENTIAL**

**DATE:** November 8, 2006

**RE:** Applicability of Massachusetts Emergency Rule to Reverse Mortgage Brokers

You asked us if new Massachusetts Regulations apply to mortgage brokers originating reverse mortgages in that state. Below are our findings.

The Massachusetts Division of Banks enacted an Emergency Rule, 209 C.M.R. § 42.12A (“the Rule”), effective September 8, 2006. The first two provisions of the Rule apply limitations to brokers originating high cost home loans. However, 209 CMR s 32.32(b)(1) provides that Section 32.32 (high cost home loan statute) does not apply to reverse mortgages. Therefore, the provisions making it a prohibited act or practice to make or broker a high cost home loan that violates the disclosure requirements, loan limitations and high cost home loan acts and practices does not apply to brokers originating reverse mortgage loans. The second provision prohibiting purchase of a high cost home loan does not apply to brokers originating reverse mortgage loans for the same reason.

The provisions of the Rule that apply to *all* brokers are:

1. Mortgage brokers are prohibited from issuing a mortgage loan rate lock commitment on its own behalf or on behalf of a mortgage broker, or to imply that it can lock a rate on behalf of a consumer. A mortgage broker can take a rate lock commitment fee for transmittal to a mortgage lender prior to the issuance by the mortgage lender of a commitment or approval if: (1) the broker the loan rate lock commitment is from the lender which intends to make the loan and

conforms with 209 CMR s 42.11A, and (2) the rate lock commitment fee is made payable by the consumer to the mortgage lender which intends to make the loan. 209 C.M.R. § 42.12A(3). The broker may transmit the fee to the mortgage lender that intends to make the loan. Id.

2. Mortgage brokers may not advertise any of the following: (1) The amount or percentage of any down payment, (2) The number of payments or period of repayment, (3) The amount of any payment, or (4) The amount of any finance charge in any media without the following statement: "We arrange but do not make loans." 209 C.M.R. § 42.12A(4). No broker advertisement in any media may contain language that indicates or suggests that any broker will fund or approve a mortgage loan or guarantee a note. Id.

3. Mortgage brokers must provide the loan origination and compensation agreement to the consumer at the time of application. 209 C.M.R. § 42.12A(5). The content of the agreement must conform to 209 CMR § 42.16 and include signatures and dates by the consumer(s) and mortgage broker. Id.

4. A mortgage broker cannot have a consumer sign a blank or incomplete mortgage loan application or mortgage loan documents. 209 C.M.R. § 42.12A(6).

5. A mortgage broker may not sign a loan application or mortgage loan documents on behalf of a consumer. 209 C.M.R. § 42.12A(7).

6. A mortgage broker may not falsify income or asset information on a mortgage loan application or mortgage loan documents. 209 C.M.R. § 42.12A(8).

7. A mortgage broker may not make false promises to influence, persuade or induce a consumer to sign a mortgage loan application or mortgage loan documents. 209 C.M.R. § 42.12A(9).

8. A mortgage broker may not pressure or coerce a consumer to sign a mortgage loan application or mortgage loan documents by misrepresenting or omitting crucial information about the terms of the mortgage. 209 C.M.R. § 42.12A(10).

9. A mortgage broker may not discourage a consumer in a mortgage loan transaction from seeking or obtaining independent legal counsel or legal advice. 209 C.M.R. § 42.12A(11).

10. A mortgage broker may not engage in a pattern or practice of failing to make any disclosure to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive. 209 C.M.R. § 42.12A(12).

11. A mortgage broker must disclose the type and number of its license in an advertisement. 209 C.M.R. § 42.12A(13).

12. Employees and persons associated with a mortgage broker must name the licensee and license number of the mortgage broker under whose license the individual is acting. 209 C.M.R. § 42.12A(14).

13. A mortgage broker may not require a consumer to use the real estate services of a particular entity, agent or broker. 209 C.M.R. § 42.12A(15).

14. Violation of the Rule constitutes grounds for the issuance of a cease and desist order, license suspension or license revocation. 209 C.M.R. § 42.12A(16).

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In summary, the first two provisions of the Rule do not apply to reverse mortgage brokers. All mortgage brokers, including those that broker reverse mortgages are subject to the Rule's remaining 14 provisions.

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Attorneys within our firm actively engage in the practice of law only in the District of Columbia, Maryland and Virginia. Therefore, the information provided in this memorandum and the enclosed chart does not constitute an opinion of our firm. However, if you would like us to obtain from local counsel confirmation of the information herein or in the enclosed chart or to obtain any information on local customs and practices in such jurisdictions, we would be pleased to do so. The fees and expenses of locally licensed counsel would be the responsibility of NRMLA.

This memorandum and the enclosed chart have been prepared solely for NRMLA and may not be shared with or relied upon by others. We trust you will find this memorandum responsive. Please let us know if you have any questions.