

Massachusetts Division of Banks Expands Reach of Mortgage Regulations

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The Massachusetts Division of Banks has recently focused its attention on the activities of private lenders who participate in the Massachusetts consumer loan marketplace. Armed with relatively new regulations regarding the licensure of mortgage loan originators, the Division has sought to penalize private lenders who have written residential mortgage loans without first obtaining a mortgage loan originator license. The Division's enforcement action has been without regard to the number of loans written by any particular lender. In the past, private lenders who wrote fewer than five residential mortgage loans in any given twelve-month period were effectively exempt from regulation. The new mortgage loan originator regulations apply regardless of the number of loans written. Since the originator regulations incorporate all requirements of the mortgage lender and mortgage broker regulations, the Division has taken the position that any private lender offering terms for a single residential mortgage loan must be licensed and must comply with all relevant mortgage lender and mortgage broker laws. These regulations include strict limits on interest rates and loan terms, as well as onerous loan closing requirements. It remains that the Division's originator regulations only apply to loans primarily for personal, family or household use; however, any loan secured by owner occupied property is suspect and merely reciting a business purpose may be insufficient to escape scrutiny. Prospective lenders should be sure to comply with all applicable licensure requirements and ensure that their loan terms comply with all relevant mortgage lender regulations, including limits on high cost loans. Any questions regarding the implications of these regulations should be discussed with qualified counsel.

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