

A Comparison of Massachusetts Predatory Mortgage Lending Laws and Regulations

	HOEPA	Massachusetts Regulations (Older Version)	Predatory Home Loan Practices Act
15 U.S.C. §§ 1602(aa); 1639	Regulation Z (and commentary); Title 12 C.F.R. §§ 226.31-226.34	209 C.M.R. 40.00; 209 C.M.R. 42.00; 209 C.M.R. 32.32; and 209 C.M.R. 32.34. Rev. effective 10/1/02	Mass. Gen. Laws ch. 183C, § 1, et seq., effective 11/7/04. 209 C.M.R. 40.00 et seq. (revised)
Requires an advance warning to the homeowner; restricts certain loan terms and practices. Only a small percentage of are covered due to high thresholds. All limits noted below apply only to loans that are covered and exceed at least one of the thresholds.	Division of Bank's regulation for licensing of brokers and lenders; restrictions and limitations on High Cost Home Loans (HCL). Unless otherwise noted, all rules below apply only to HLCs.	Substantive regulation of "high cost home mortgage loans." Provisions amending other parts of current Mass. law were enacted in conjunction with this Act.	Covers all loans exceeding thresholds (except reverse mortgages).
Sections in [] do not apply to loans entered into before 10/1/02. Covers only refinancing or home equity loans exceeding the thresholds. Does not cover purchase money mortgages or reverse mortgages. Yes, unless structured to evade requirements of § 226.32. Not addressed.	No. No. No.	No. Cannot exceed 5% of total loan amount or \$800, whichever is greater.	No. Cannot exceed 5% of total loan amount or \$800, whichever is greater.
T-bills of comparable maturity as loan.	T-bills of comparable maturity as loan. If economic conditions require commissioner can order use of other index.	T-bills of comparable maturity as loan.	T-bills of comparable maturity as loan.
None.	Up to 3 bona fide loan discount	Up to two "bona fide" discount points	Up to two "bona fide" discount points

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<p>Benchmark + 10% points [+8% points for first lien and 10% points for 2nd liens]</p> <p>All items required to be disclosed under §§ 226.4 (a) and 226.4 (b), except interest or the time-price differential; and all compensation paid to brokers; and unreasonable charges or items in which creditor or affiliate receives compensation of the type listed in § 226.4(c)(7) [and voluntary credit insurance premiums paid in a lump sum].</p>	<p>points.</p> <p>1st Mortgage: Benchmark + 8% points; 2nd Mortgage: Benchmark + 9% points</p> <p>All items required to be disclosed under 209 C.M.R. 32.04(1) & 32.04 (2); except interest or the time-price differential; all compensation paid to mortgage brokers; and all items listed in 209 C.M.R. 32.04(3)(g) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.</p>	<p>OR a "conventional" prepayment penalty.</p> <p>1st Mortgage: Benchmark + 8% points; 2nd Mortgage: Benchmark + 9% points.</p> <p>All items required to be disclosed under Reg. Z §§ 226.4 (a) and 226.4 (b) or under 290 C.M.R. 32.04 (1) & 32.04 (2), except interest or the time-price differential; and all compensation paid directly or indirectly to mortgage brokers; and charges in which creditor or affiliate receives direct or indirect compensation of the type listed in § 226.4(c)(7); and premiums for voluntary credit insurance and similar products if financed; max. prepayment penalty that may be collected under the loan; prepayment fees incurred if the loan refinanced a previous loan make or currently held by the same lender; but does not include: a "conventional" prepayment penalty or up to 2 "bona fide" discount points; taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and fees paid to a person other than a lender or to the mortgage broker for the following:</p>

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<p>Greater of 8% of the loan amount or \$400 (adjusted for CPI).</p>		<p>fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed before closing; credit reports; surveys; notary fees; escrow charges; title insurance premiums; and fire insurance and flood insurance premiums. For open-end loans, the points and fees shall be calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.</p>
<p>Notice required at least 3 days before closing that includes a warning that a mortgage will be obtained on the home as a result of the loan and includes the APR, monthly payment, balloon payment (if applicable), additional information if an ARM; [the total amount borrowed; if the total amount borrowed does not include charges for credit insurance or debt</p>	<p>Total points and fees exceed the greater of 5% of the total loan amount or \$400, excluding up to 3 bona fide discount points.</p> <p>Notice that includes a warning that a mortgage will be obtained on the home as a result of the loan; the APR, monthly payment (including balloon payment if applicable); information if an ARM (maximum monthly payment); amount borrowed; high-cost warning on the application; and list of housing counselors.</p>	<p>Total points and fees exceed the greater of 5% of loan or \$400, adjusted for CPI.</p>
		<p>None.</p>

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cancellation, that is stated].		
Prohibited unless: applicable only within the first 60 months of the loan date; and source of funds is not a refinance by same lender; and borrower's monthly debt payments are under 50% of gross income; and sources of income and expenses are verified; and applicable state law permits the penalty. Not addressed.	Prohibited unless: applicable only within the first 36 months of loan date; and source of funds is not a refinance by same lender; and borrower's monthly debt payments are under 50% of monthly income.	Prohibited for high cost loans. Addressed for all "home loans" in Mass. Gen. Laws ch. 183 § 56; permitted up to a certain amount for first 3 years.
Not addressed.	Prohibited.	Addressed for all "home loans" in Mass. Gen. Laws ch. 183 § 66; Prohibited.
Not addressed.	Not addressed.	Charges for debt cancellation or suspension agreements financed in the loan principal are counted towards the fee trigger for high cost loans. Addressed for all "home loans" in Mass. Gen. Laws ch. 183 § 66; Financing of the single premium product is prohibited.

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<p>Within first 12 months - prohibits creditors (broker, holder, assignee, servicer or an affiliate) from refinancing HOEPA loan with another HOEPA loan without benefit to borrower or engaging in practices to evade this prohibition.]</p>	<p>No refinancing HCL loan with another HCL within 2 years except if in borrower's interest. No evading provision by refinancing with an affiliate.</p>	<p>Addressed for all "home loans" in Mass. Gen. Laws ch. 183 § 28C: Loans refinanced within 60 months of consummation or loan pays off other consumer debt must be in the borrower's interest; lender's burden of proof; several factors; if lender makes a reasonable offer to cure before an action instituted by borrower and borrower rejects the offer, court may deny attorney fees and costs.</p>
<p>Prohibited.</p>	<p>Prohibited.</p>	<p>Prohibited.</p>
<p>Prohibited, except for: 1) borrower lack of payment; 2) borrower fraud; 3) action or inaction by borrower that impairs lender's security.]</p>	<p>Prohibited, except for: 1) borrower fraud; 2) borrower does not repay loan; 3) bona fide action or inaction by borrower that impairs lender's security.</p>	<p>Addressed for all "home loans" in Mass. Gen. Laws ch. 183 § 59: Consumers entitled to 15 day grace period if payment is monthly, 10 days if bi-weekly; late fee may not exceed 3% of principal and interest overdue and only one charge may be collected for each single late payment. Prohibited, except for: 1) borrower lack of payment; 2) borrower fraud; 3) bona fide action or inaction by borrower that impairs lender's security.</p>
<p>Prohibited on any loan with a term of less than 5 years (except "bridge" loans).</p>	<p>Prohibited on any loan less than 7 years in maturity (except "bridge" loans).</p>	<p>Prohibited.</p>

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Negative amortization	Prohibited	Prohibited	Prohibited.
Reverse Securitization	Prohibited	Prohibited	Prohibited.
Prepayment penalties	No more than two allowable.	No more than two allowable.	No more than two allowable.
Acceleration		Prohibited if it doesn't comply with standards set by National Consumer Dispute Advisory Committee.	Provision that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory than a state judicial forum is prohibited.
Prepayment penalties		Lender must give disclosure statement at least 3 days before settlement suggesting borrower consider homeownership counseling.	Lender may not make a high cost loan without a certificate of attendance at counseling about the loan in question. The loan is unenforceable if made without counseling.

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<p>Lender cannot engage in a pattern or practice of making loans without regard to ability to repay. [Lender must verify and document borrower's ability to repay or a presumption of a violation arises].</p>	<p>For borrowers under 120% of median income, all monthly debt payments cannot exceed 50% of monthly gross income as verified by application, financial statement, credit report, etc.</p>	<p>Lender must verify gross income; cannot make a loan unless it reasonably believes the consumer can repay; presumption of ability to repay if monthly housing costs plus scheduled payments for all other debt do not exceed 50% of gross monthly income and the borrower has sufficient residual income to pay monthly expenses.</p>
<p>Loan proceeds payable only to: borrower; or borrower and contractor; or 3rd party escrow agent.</p>	<p>Loan proceeds payable only to: borrower; or borrower and contractor; or 3rd party escrow agent.</p>	<p>Loan proceeds payable only to: borrower; or borrower and contractor; or 3rd party escrow agent.</p>
<p>Not addressed.</p>	<p>Restricted, except as part of work-out of loan in default.</p>	<p>Prohibited.</p>
<p>Yes, broad liability for all types of claims unless a reasonable person using due diligence could not tell from the documentation that the loan is a HOEPA loan.</p>	<p>Yes, same as HOEPA.</p>	<p>Yes, broad liability for all types of affirmative claims unless the assignee shows that it has a policy in place that prohibits it from purchasing high cost loans; it requires the seller to warrant that it will not sell high cost loans or it has a similar warranty from a previous holder, and it exercised due diligence to prevent its purchase of high cost loans. Consumers can raise non-class affirmative claims against</p>

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			assignee up to the amount it would take to extinguish the mortgage debt for up to 5 years for violations of this law; can raise claims defensively in an action to collect the debt or to foreclose or when the debt has been accelerated or in an action to enjoin foreclosure or preserve or obtain possession of the home.
NOTICE OF ASSIGNMENT	Lender must give notice to purchaser/assignee of the loan that informs them that purchasers/assignees could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.	Lender must give this notice to loan buyer or assignee; "Notice: This is a mortgage subject to special rules under the federal TL Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."	
UNLAWFUL AND DECEPTIVE PRACTICES		Violations of these regulations qualify; plus rates and fees that significantly deviate from industry standards and are otherwise unconscionable; and unreasonable charges.	Violation of this law violates chapter 93A.
DAMAGES	Lender faces civil liability under 15 U.S.C. § 1640(a)(actual and statutory damages) and enhanced damages pursuant to § 1640(a)(4).		Consumer may sue for "damages."

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<p>To the extent available under TILA.</p>		<p>May seek injunctive relief; court may rescind or modify the loan; may enjoin a foreclosure; may prohibit future conduct.</p>
<p>Yes, for violations of certain prohibitions and the consumer disclosure requirement.</p>		<p>Yes, in the discretion of the court.</p>
<p>Lender has 60 days from discovery to notify and make changes to the mortgage and may not be held liable for bona fide errors.</p>		<p>Lender has 30 days from closing and before institution of an action if it makes appropriate restitution; and within 60 days of discovery and before institution of an action if lender notifies the consumer and makes changes to the mortgage for bona fide errors.</p>
<p>One year statute of limitations for damages claims; three year for rescission.</p>	<p>Lender must accurately report payment history to nationally recognized credit bureau at least once per year.</p>	<p>Five year statute of limitations for individual affirmative cases and damages are capped; can raise claims defensively at any time.</p>