

The Commonwealth of Massachusetts DIVISION OF BANKS



**27th Annual AARMR
Conference:**

**State Hot Topics
East Region**

Wednesday August 3, 2016



REGULATIONS

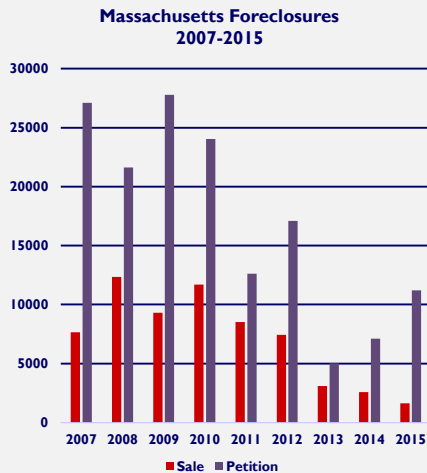
Executive Order # 562- Regulation Reform

As directed by Massachusetts Governor Baker's Executive Order # 562, the Division has conducted a thorough examination of ALL regulations. Examples of reviewed mortgage related regulations include:

- 209 CMR 41.00: The Licensing of Mortgage Loan Originators
- 209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers
- 209 CMR 54.00: Mortgage Lender Community Investment
- 209 CMR 56.00: Foreclosure Prevention Options



FORECLOSURE TRENDS



Foreclosure Laws

2007: Chapter 206

Established a requirement for lenders to provide borrowers with a 90-day Right To Cure a Default notice.

2010: Chapter 258

Completely rewrote the 90-Day Right To Cure a Default law to extend to a 50-day Right to Cure Default requirement.
Note: Sunset 1/1/16 to 90 days/FAQ/Reg to be amended

2012: Chapter 194

Requires lenders to provide a notice of a Right to Request a Loan Modification for certain mortgage loans. In connection with the implementation of this new requirement, the Division was charged with making additional amendments to its regulation. These final amendments became effective in June 2013.



INDUSTRY LETTER: CYBER-SECURITY

Cyber-security Assessments

- **Two-Part Assessment:**

- 1.) **Inherent Risk Profile** - to identify the level of risk posed to entity based on its use of technology.
- 2.) **Cyber-security Maturity:** a five-level measurement path:
 1. **Baseline**
 2. **Evolving**
 3. **Intermediate**
 4. **Advanced**
 5. **Innovative**

- Issued Industry Letter on November 30, 2015; Assessments examined by July 1, 2016

- **DOB work program** is available to review on the website and here

<http://www.mass.gov/ocabr/docs/dob/it-work-program.pdf>



CYBER-SECURITY



- **The financial services industry continues to rely on information technology services to interact with consumers through websites, mobile applications and other means.**
- **The industry needs to recognize the increase in volume and the sophistication of internal/external cyber threats including:**
 - **Distributed denial of service (DDoS)**
 - **Corporate account takeover (CATO)**
 - **Ransomware**
- **To combat cyber threats companies must have strong cyber-security to:**
 - **Prevent**
 - **Detect**
 - **Respond**



CYBER-SECURITY RESOURCES



201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth: www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf

Office of Consumer Affairs and Business Regulation- 201 CMR 17.00 Compliance Checklist: <http://www.mass.gov/ocabr/docs/idtheft/compliance-checklist.pdf>

FFIEC IT Examination Handbooks: <http://ithandbook.ffiec.gov/it-booklets.aspx>

FFIEC Cyber-security: www.ffiec.gov/cybersecurity.htm

Cyber-security Assessment Tool:

https://www.fsscc.org/files/galleries/FSSCC_ACAT_November_2015_VI_0_TLP_WHITE.xlsx

Federal Trade Commission - Gramm-Leach-Bliley Act:

<http://www.business.ftc.gov/privacy-and-security/gramm-leach-bliley-act>



EXAMINATION TRENDS & COMMON VIOLATIONS

- **Duplicate Discharge/Recording Fees**
 - Recording fee collected by previous lien holder on payoff statement and again by settlement attorney
- **Delays in funding**
 - The licensee and its settlement agents must make loan proceeds available to the mortgagor and third parties:
 - Purchase Transaction- upon consummation of the mortgage loan
 - Refinance Transaction- at the beginning of business on the day following the expiration of the rescission period
 - Settlement agents may not record security instruments unless they have received “good funds”
- **Unlicensed/Unregistered Servicing Activity/Debt Collector/Servicer**



EMERGING ISSUES

Vendor Management

- **Marketing Services Agreements (MSA)/RESPA (Section 8) : CFPB Bulletin 2015 – 05 (prohibition of referral fees)**
- **Lender/Broker networks; Settlement Agents; Software Providers**
- Ensure partners doing business with are properly licensed or exempt
- Ensure settlement agents are disbursing funds in timely manner; charging appropriate fees; recording documents and closing loans in accordance with state laws



LICENSING ISSUES AND TRENDS

- **Missing or Late Report Filings**
 - **Lenders' Quarterly Financial Statements**
 - ✘ To be filed based on calendar year not fiscal year for continuity purposes to match MCR filings
 - ✘ Uploaded within 45 days of quarter's end
 - ✘ Need consistency with fiscal year-end audited report amounts or ratios
 - **Fiscal Year End Audited Financials**
 - ✘ Uploaded within 90 days of fiscal year end
 - ✘ All schedules and notes
 - Including any supplemental notes for government approvals
 - **Increase in Broker Licenses**
 - ✘ MLOs seeking to be licensed as brokers
 - ✘ Increase in mergers and acquisitions activity
 - Banks buying mortgage companies
 - Consolidation of mortgage companies
 - ✘ Number of licensed mortgage brokers is nearing previous all time high



REGIONAL REGULATORY COORDINATION

Coordinating Entities

New England Regional Mortgage Committee (NERMC) is made up of the 6 New England States

- **Goals:**
 - Coordinate joint state examinations of licensed mortgage entities which are headquartered in one of the New England States
 - Reduce regulatory burden on licensees
 - ✘ One examination instead of up to 6
 - ✘ Completion of one Officer's Questionnaire and fulfilling one Document Request List
 - NERMC examinations began in 2015
 - Identified licensees will be contacted 45-60 days prior to onsite visit

State of Connecticut Department of Banking



AARMR East Region Hot Topics

August 3, 2016

Carmine Costa
Director, Consumer Credit

MORTGAGE CORRESPONDENT LENDER VS MORTGAGE LENDER

“**Mortgage correspondent lender**” means a person engaged in the business of making residential mortgage loans in such person’s own name where the loans are not held by such person for more than ninety days and are **funded by another person** through a warehouse agreement, table funding agreement or similar agreement.

“**Mortgage lender**” means a person engaged in the business of making residential mortgage loans in such **person’s own name** utilizing such person’s own funds or by **funding** loans through a warehouse agreement, table funding agreement or similar agreement.



MORTGAGE SERVICING



Number of Licensed Mortgage Servicers as of July 28, 2016

- **85 Main Office Locations**

- **50 Branch locations**

Escrow Related Issues

- **Use of escrow funds to pay operating expenses**
- **Use of escrow funds to pay P&I or other expenses on non-performing loans when the servicing agreement calls for the servicer to make payments**
 - **DOB considers this a misappropriation of funds.**
 - **Is a red flag that there is very likely a liquidity issue**

MORTGAGE SERVICERS HANDLING OF ESCROW ACCOUNTS



Effective July 1, 2016 (Section 8 of Public Act 16-65):

- **Receipt of monies for taxes and insurance must be deposited in a segregated deposit or trust account in a federally insured bank or credit union**
- **Account must reflect the fact that the funds are being held for escrow purposes**
- **Funds shall not be commingled with funds belonging to the mortgage servicer licensee and may not be used to pay business operating expenses**
- **The mortgage servicer licensee shall adopt, implement and maintain internal accounting controls that are reasonably designed to ensure compliance**



VIOLATIONS



- **Failure to timely file MCR's**
 - Companies are subject to a Consent Order and Fine for not timely filing their MCR's.

- **Failure to timely file ACN's**
 - Companies are subject to a Consent Order and Fine for not filing ACN's at least 30 days in advance

- **Late Funding**
 - Connecticut is a wet funding state
 - Loans must fund at the closing or at the expiration of the right of rescission

MORTGAGE LEAD GENERATORS



- Attempted to create a separate license for mortgage lead generators

- Intent was to distinguish lead generators from mortgage brokers

- Create a statutory scheme more in line with the actual business of lead generation

- CT Bankers Association and CT Mortgage Bankers Associations were opposed to legislation

MORTGAGE FRAUD



- **Alteration of documents**
 - **Cut and paste of signatures**
 - **Whiting out deductions for alimony/child support from paystubs**
 - **Whiting out deposits from bank statements to avoid the need for a gift letter**

Defense: “Everyone is doing it”

Quote from Mark Dubois, former CT Chief Disciplinary Counsel, in an article in the CT Law Tribune



- <http://www.ctlawtribune.com/id=1202759953170/Mark-Dubois-Lawyers-Should-Beware-of-Mortgage-Fraud-Scams?slreturn=20160626161956>

*“Judging from real estate closings coming into our office, deals lawyers have been calling me about, as well as a family member's experience in trying to sell her condo, I am afraid the same things are happening again. One common scam involves **inflating the sales price and then kicking back the excess in the form of buyer's credits**. One lawyer told me how the real estate agent who rewrote a contract to do just that explained that it was the only way that the buyer could come up with enough cash to close. He assured us that our client, the seller, would not suffer in the bargain because the real estate commission would be based on the "real" selling price. In another deal, the agent was going to pay the increased conveyance tax occasioned by the inflation. When quizzed on how this could be legal, the response was **'it's done all the time'**.”*

Quote from Mark Dubois, former CT Chief Disciplinary Counsel, in an article in the CT Law Tribune



*“Colleagues have taken me to task for my strident and inflexible approach to this stuff, arguing, just like they did the last time around, that it **can't be a crime because everyone is doing it**, they need the work, and I really need to get out of my ivory tower. My response is that on any given day in the last five years, I think I have had at least one lawyer-client (and sometimes two or three) in the federal system. As a result, I have become extremely gunshy when it comes to what we call "low-profit, high-risk" schemes. I don't know if the U.S. Attorney's Office gives advisory opinions, but unless or until one is issued saying that it's OK to "fool the bank" (actual words one fellow used), I won't touch these deals.”*



State Hot Topics (East): Maryland

Cliff Charland
Director of Mortgage Examination Process
Office of the Commissioner of Financial
Regulation





Property Preservation: Lockouts

Property owners are being improperly denied access to their homes

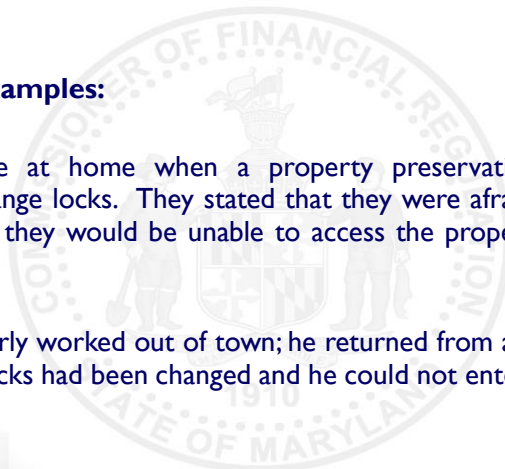
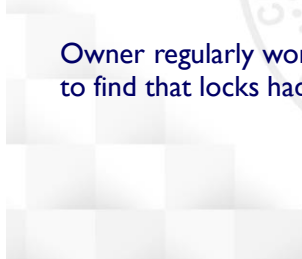


Property Preservation: Lockouts

Maryland examples:

Owners were at home when a property preservation contractor arrived to change locks. They stated that they were afraid to leave the home, fearing they would be unable to access the property upon their return.

Owner regularly worked out of town; he returned from a four-week job to find that locks had been changed and he could not enter his home.





Property Preservation: Lockouts

Maryland example:

Home was listed for sale, with a sign in the yard. Servicer was aware, based on a property inspection report. The servicer's property preservation contractor removed and discarded the real estate agent's lockbox and changed the locks, preventing the agent from showing the home.



Property Preservation: Lockouts

Maryland example:

Home was unoccupied, but, per the servicer's comment records, the owner was negotiating a modification and intended to re-occupy the home. While negotiations were in progress, locks were changed. The owner and his family were unable to enter the home.



Property Preservation: Lockouts

NEWS

Jordan v. Nationstar Mortgage:

Washington State Supreme Court rules that provisions in mortgages allowing servicers to enter, secure, and maintain a property prior to a foreclosure sale are in conflict with state law that prohibits a lender from taking possession of a property prior to foreclosure, and thus are invalid.



Property Preservation: Lockouts

NEWS

State of New York enacts statute imposing a pre-foreclosure duty on banks and servicers to maintain vacant and abandoned properties. Previously, a bank or mortgagee had the responsibility of maintaining a vacant property once a judgment of foreclosure and sale was obtained.



Property Preservation: Lockouts

The Commissioner's position is that entry and maintenance are not prohibited, but the legal owner may not be denied access and use of the property.

Md. Code Ann., Real Property Article, §14-132(c):

A person may not hold possession of property unless the person is entitled to possession of the property under the law.



Property Preservation: Lockouts

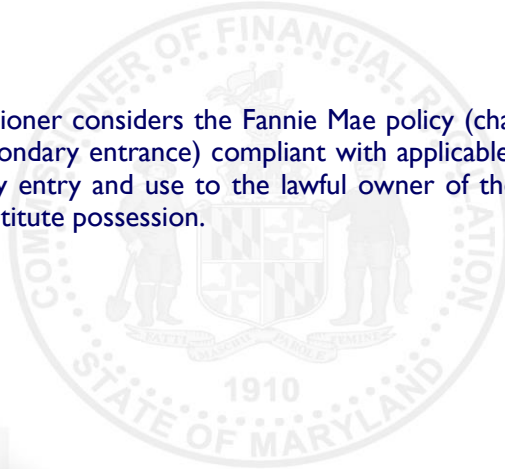
From the Fannie Mae Property Preservation Matrix and Reference Guide:

LOCK CHANGES (KNOB/PAD/SLIDER/WINDOW LOCKS) Servicers are required to secure an exterior rear or a secondary door for access on the main dwelling of vacant properties. Only one lock is allowed to be changed on main dwellings for access. The main entrance should be rekeyed when it is the only option for gaining access...



Property Preservation: Lockouts

The Commissioner considers the Fannie Mae policy (changing only one lock, on a secondary entrance) compliant with applicable state law, as it does not deny entry and use to the lawful owner of the property, and does not constitute possession.

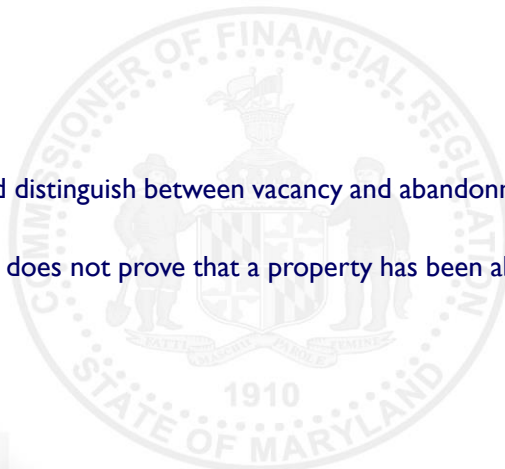


Property Preservation: Lockouts

Servicers:

Policies should distinguish between vacancy and abandonment.

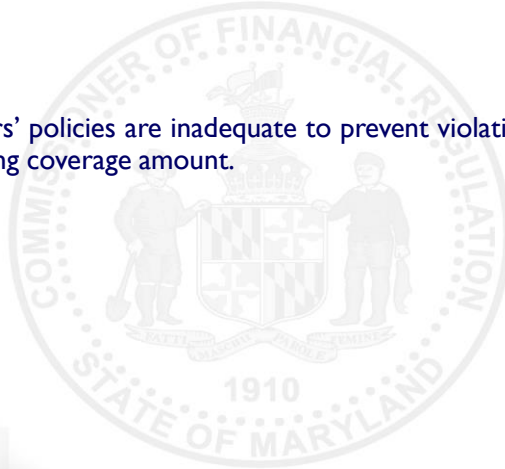
Vacancy alone does not prove that a property has been abandoned.





Lender-Placed Hazard Insurance

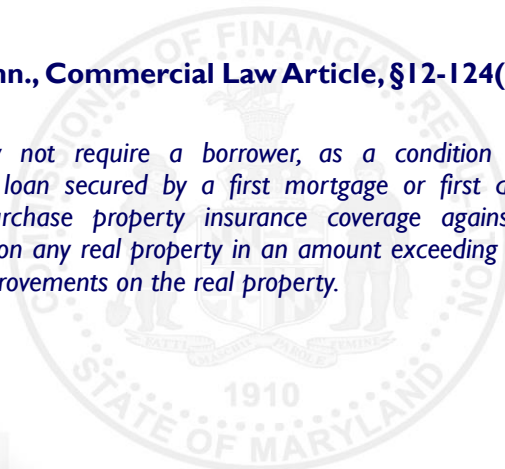
Some servicers' policies are inadequate to prevent violation of Maryland statutes limiting coverage amount.



Lender-Placed Hazard Insurance

Md. Code Ann., Commercial Law Article, §12-124(a)(2):

A lender may not require a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement cost of the improvements on the real property.





Lender-Placed Hazard Insurance

Internal policies regarding coverage amount may be inadequate to prevent violations.

Example:

A policy stating that coverage will be obtained in the amount of the unpaid balance would result in a violation if the unpaid balance exceeds the replacement cost of the improvements.



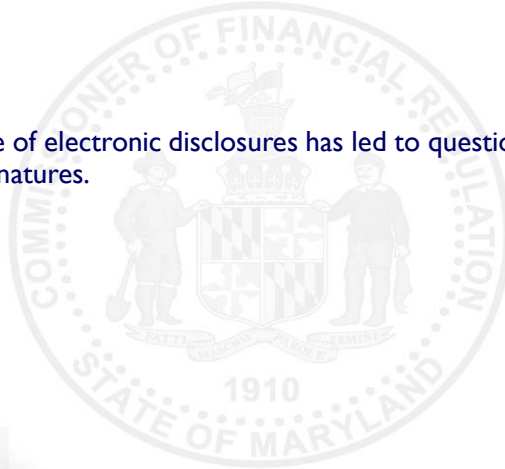
Lender-Placed Hazard Insurance

While this is a state-specific issue, it serves as a reminder that a licensee must ensure that its policies promote compliance in all states in which the licensee conducts business.



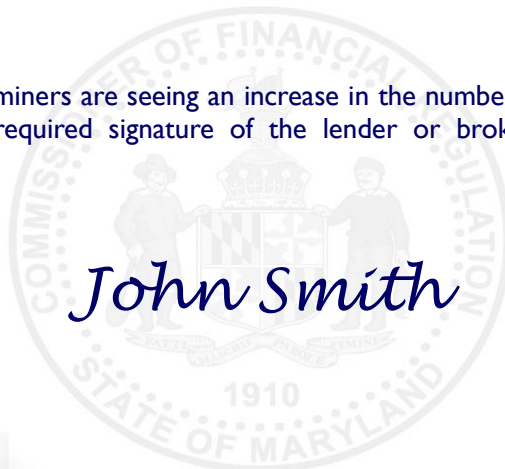
Electronic Signatures

Increasing use of electronic disclosures has led to questions regarding electronic signatures.



Electronic Signatures

Maryland examiners are seeing an increase in the number of disclosures on which a required signature of the lender or broker is simply a printed name.



John Smith





Electronic Signatures

Md. Code Ann., Commercial Law §21-108(a)

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person.

(2) The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.



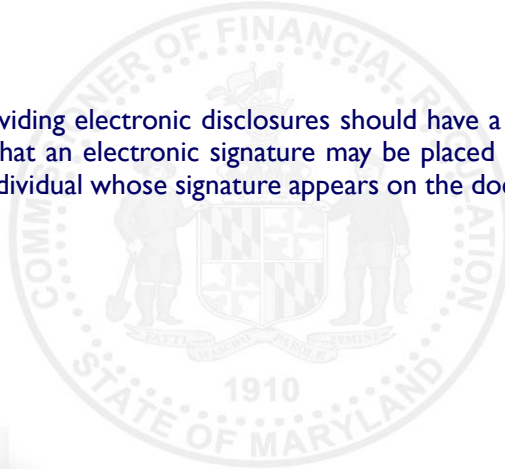
Electronic Signatures

It is the Commissioner's position that a simple, printed signature is not clearly attributable to the person represented, as there is no reasonable way to show that only the person represented by the signature could have placed the signature on the document.



Electronic Signatures

Licenses providing electronic disclosures should have a robust process for ensuring that an electronic signature may be placed on a document only by the individual whose signature appears on the document.



Missing Disclosures

**It's my LOS's
fault!**





Missing Disclosures

Maryland examples:

During his first examination (18 months after licensure), licensee stated that he was unaware that the Maryland-specific disclosures weren't being automatically generated by his LOS.

Licensee stated that he had selected the proper Maryland disclosures, but his LOS subsequently reorganized the document packages, and he didn't realize that the Maryland disclosures were no longer being generated until a Maryland examiner discovered the issue more than a year later.



Missing Disclosures

The licensee, not the LOS or other document vendor, is responsible for compliance with applicable laws.

LOS provider is a third-party vendor, and its services should be subject to appropriate oversight by the licensee.

A licensee's compliance management system should not be based on an assumption that the licensee's LOS will always be compliant.



Risk and Compliance Management

All licensees should be able to identify, assess, and prioritize the risks their businesses face; establish strategies for managing these risks; and monitor and evaluate the effectiveness of its risk management strategies.

“To maintain legal compliance, a supervised entity must develop and maintain a sound compliance management system that is integrated into the overall framework for product design, delivery, and administration — that is, the entire product and service lifecycle.” CFPB Supervision and Examination Manual, Version 2



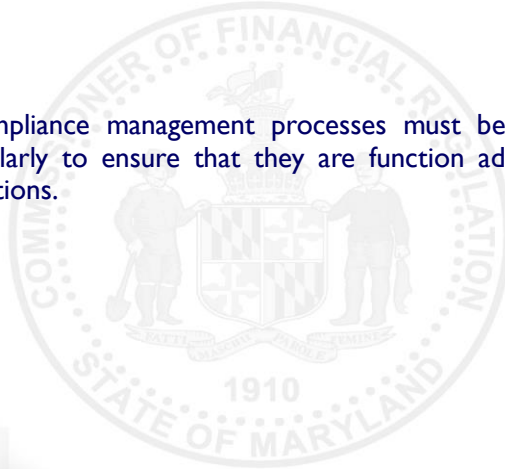
Risk and Compliance Management

Examination findings have led to concern that, for licensees experiencing rapid growth, risk and compliance management systems may not be adequately scalable, and may not be keeping pace with growth. Systems designed when your company was smaller may be inadequate if your company has grown.



Risk and Compliance Management

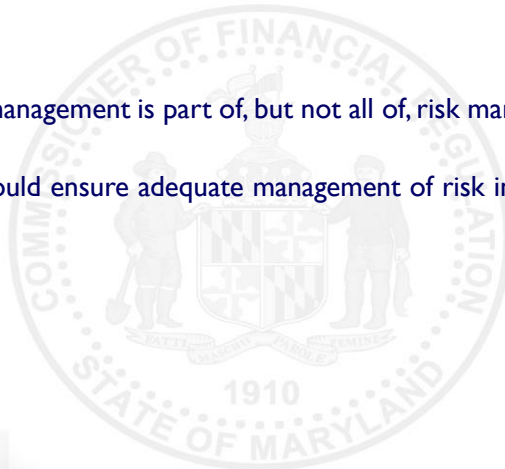
Risk and compliance management processes must be reviewed and assessed regularly to ensure that they are function adequately under current conditions.



Risk and Compliance Management

Compliance management is part of, but not all of, risk management.

A licensee should ensure adequate management of risk in all areas of its operations.



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Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Kelly M. Schulz, Secretary
Gordon Cooley, Commissioner

