



## COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

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## **Industry Guidance Relative to Compliance with Reverse Mortgage Counseling Requirements under Chapter 65 of the Acts of 2020**

The Massachusetts Division of Banks (Division) is issuing this industry guidance related to recent developments regarding the in-person counseling requirement for reverse mortgage loans as a result of the outbreak of the 2019 novel Coronavirus (COVID-19).

### ***Background – Chapter 65 of the Acts of 2020***

The Governor declared a state of emergency on March 10, 2020 to respond to COVID-19 (State of Emergency). Subsequently, Governor Baker signed into law Chapter 65 of the Acts of 2020, *An Act Providing for a Moratorium on Evictions and Foreclosures during the COVID-19 Emergency* (Chapter 65 or the Act) on April 20, 2020, which became effective on that date.

The Act, in SECTION 2, provides that from the effective date of the Act until the termination of the Governor's declaration of the State of Emergency, the in-person counseling requirement under M.G.L. c. 167E, s. 7A and M.G.L. c. 171, s. 65C½ can be met by synchronous, real-time video conference or telephone in lieu of the in-person requirement. In short, the Act provides that counseling for reverse mortgages may be conducted via one of the following options: (1) in person, (2) by synchronous, real-time video conference, or (3) by telephone. This change is in effect only from April 20, 2020 until Governor Baker declares an end to the current State of Emergency. Once the State of Emergency has concluded, in-person counseling shall once again be required.

### ***Guidance***

The Division issues the following guidance for compliance with matters related to counseling requirements during the State of Emergency:

- **In-Person Counseling Requirements Expanded to Include Counseling via Synchronous, Real-Time Video or by Telephone**

It is the position of the Division that the in-person counseling requirements set forth at 209 CMR 55.04 are met if the counseling takes place via synchronous, real-time video or by telephone, while the State of Emergency is in effect.

During this temporary timeframe, the requirement remains that the third party counseling organization must be one approved to provide reverse mortgage counseling by the Commonwealth's Executive Office of Elder Affairs.

- **HUD Certificate of HECM Counseling**

Requirements for written certification of in-person counseling are set forth in M.G.L. c. 167E, s. 7A and M.G.L. c. 171, s. 65C½ (Section 7A and Section 65C½) as well as in the Division's regulation at 209 CMR 55.04. As noted above, Chapter 65 includes a requirement for written certification of counseling for in-person counseling; synchronous real-time video conferencing; or telephone counseling during the State of Emergency.

The Division notes that the counseling certificate form promulgated by HUD (HUD Certificate of HECM Counseling or the Certificate) only includes the options of face-to-face counseling or counseling via telephone. If the counseling takes place via synchronous, real-time video, then the counselor would check the box on the Certificate for telephonic counseling.

It is the position of the Division that the use of the Certificate remains acceptable for compliance with the written certification requirement under the Division's regulation at 209 CMR 55.04. In addition, with regard to borrowers who receive counseling via synchronous, real-time video, it is the position of the Division that written certification shall be in compliance with the provisions of SECTION 2 of Chapter 65, Section 7A, Section 65C½, and 209 CMR 55.04 if the counselor checks the box for telephonic counseling on the HUD Certificate of HECM Counseling.

- **Other Reverse Mortgage Programs**

With regard to non-HECM programs (so-called "proprietary" programs) for reverse mortgages, it is also the position of the Division that the counseling options permitted under the Act apply to all types of approved reverse mortgage programs in Massachusetts, including HUD HECM and any approved proprietary reverse mortgage program.

If you have any questions about these changes, please contact Kevin M. Cuff, Deputy Commissioner – Mortgage Supervision at 617-956-1539 or kevin.cuff@mass.gov.

Sincerely,

Mary L. Gallagher  
Commissioner of Banks