

209 CMR 57.00: FLOOD INSURANCE

Section

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57.01: Purpose and Scope

(1) Purpose. The purpose of 209 CMR 57.00 is to implement the requirements of M.G.L. c. 183, § 69 when you require a purchaser or owner of residential property to purchase or pay for flood insurance coverage on residential property located in a designated special flood hazard area.

(2) Model Form. You must use the form of notice prescribed under 209 CMR 57.05(3) and provide such information as required under the notice by 209 CMR 57.00.

57.02: Definitions

The following definitions apply to 209 CMR 57.00 and the notice prescribed under 209 CMR 57.05:

Commonwealth means the Commonwealth of Massachusetts.

Creditor means a person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing a residential property, including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; provided that “creditor” shall also include any servant, employee or agent of a creditor; and provided, further, that the Massachusetts Housing Finance Agency and the Massachusetts Housing Partnership Fund established in St. 1966, c. 708 and in St. 1985, c. 405, § 35 respectively, shall not be a creditor.

Creditor’s Representative means a person who has the authority to negotiate and approve the terms of and modify a mortgage loan, or a person who, under a servicing agreement, has the authority to negotiate and approve the terms of and modify a mortgage loan.

Designated Loan means a mortgage loan secured wholly or partially by a mortgage on residential property located in a special flood hazard area and for which the sale of flood insurance is available under the National Flood Insurance Act of 1968 (42 U.S.C. §§4001through 4131).

Division of Insurance means the Division of Insurance, including the Commissioner of Insurance, established under M.G.L. c. 26, § 1.

Flood shall have the same meaning as set forth under the Federal Emergency Management Agency's National Flood Insurance Program Standard Flood Insurance Policy Dwelling Form.

Full Value means the maximum amount of credit available to the borrower under the terms of the home equity line of credit agreement.

Insurance Producer means an insurance producer as defined under M.G.L. c. 175, § 162H.

Mortgage Loan means a loan to a natural person made primarily for personal, family, or household purposes secured wholly or partially by a mortgage on residential property.

National Flood Insurance Program means the flood insurance program established under the National Flood Insurance Act of 1968 (42 U.S.C. §§ 4001 through 4131).

Notice About Flood Insurance Coverage means the written notice prescribed under 209 CMR 57.05 including such information as required under the notice by 209 CMR 57.00.

Principal Mortgage Balance means the portion of the original mortgage loan that remains unpaid, which does not include accrued interest or any other charges.

Residential Property means real property located in the Commonwealth, on which there is a dwelling house with accommodations of 4 or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt.

Special Flood Hazard Area means the area in the flood plain within a community having at least a 1 percent chance of flooding in any given year, as designated by the Director of the Federal Emergency Management Agency.

You means any association or corporation chartered by the Commonwealth under the provisions of M.G.L. chs. 168, 170, 171, or 172 or by similar authority of any state of the United States other than the Commonwealth; a national banking association, savings and loan association, or savings bank which exists by authority of the United States; a credit union organized under the provisions of the Federal Credit Union Act; a mortgage lender licensed under M.G.L. c. 255E, § 2; or any other creditor or creditor's representative.

57.03: Limitations on Required Flood Insurance

(1) Limitations on Required Coverage. You cannot require in a mortgage, note, or otherwise, that a purchaser or owner of residential property purchase or pay for flood insurance on the property that:

- (a) is at a coverage amount exceeding the outstanding principal mortgage balance at the beginning of the year that the flood insurance policy shall be in effect and, in the case of a home equity line of credit, home equity loan, or second or subsequent mortgage, the full value of the credit line, outstanding principal on the equity loan, or second or subsequent mortgage on that property at the beginning of the year that the flood insurance policy shall be in effect;
- (b) includes coverage for contents; or
- (c) includes a deductible of less than \$5,000.

(2) Coverage Adjustment upon Policy Renewal. The owner of the residential property may request a reduction in the amount of flood insurance coverage upon renewal of the flood insurance policy to an amount equal to the outstanding principal mortgage balance at the beginning of the year that the policy shall be in effect. You are required to accept such reduction upon request by the owner.

57.04: When to Provide the Notice About Flood Insurance Coverage

(1) Notice Requirement. At the time you require a purchaser or owner of a residential property to purchase or pay for flood insurance on the property in a designated loan transaction, you must provide a Notice About Flood Insurance Coverage to the purchaser or owner in accordance with 209 CMR 57.05.

(2) Delivery and Timing of Notice. You must mail or deliver the Notice About Flood Insurance Coverage to the purchaser or owner of the residential property by the same method, and at the same time, that the Notice of Special Flood Hazards issued pursuant to 42 U.S.C. § 4012a(b)(6) is provided to such purchaser or owner.

(3) Multiple Creditors or Creditor's Representatives.

- (a) If a transaction involves more than 1 creditor or creditor's representative, only 1 Notice About Flood Insurance Coverage must be given to the purchaser or owner, and the creditors and creditor's representatives shall agree among themselves which creditor or creditor's representative must comply with the notice requirements that 209 CMR 57.04 imposes on any or all of them.
- (b) If the creditor's representative has provided the Notice About Flood Insurance Coverage to the purchaser or owner, the creditor will not be required to provide an additional Notice About Flood Insurance Coverage for the same transaction. The creditor is responsible for ascertaining whether the creditor's representative has provided the Notice About Flood Insurance Coverage and must retain a record of a written assurance from the creditor's representative that the creditor's representative provided such notice to the purchaser or owner in accordance with the timing requirements set forth under 209 CMR 57.04(2).

(4) Notice Not Required at Policy Renewal.

- (a) Except as provided under 209 CMR 57.04(4)(b), you are not required to provide the Notice About Flood Insurance Coverage to the insured owner of the residential property on an annual basis at the time the owner is notified of the need to renew the existing flood insurance policy.
- (b) You must provide the Notice About Flood Insurance Coverage to the insured owner of the residential property at the time the owner is notified of the need to renew the existing flood insurance policy if there is an increase, extension, or renewal of the existing mortgage loan, or a new mortgage loan, made at that time, or the addition of new coverage or an increase in the amount of flood insurance coverage in excess of the policy amount which was in effect for the expiring policy period.

(5) Lender Placed Insurance. If during the term of the designated loan, you determine that the designated loan is not covered by flood insurance, or if the flood insurance

coverage is determined to be deficient pursuant to applicable guidelines for the National Flood Insurance Program, you must provide the Notice About Flood Insurance Coverage to the owner of the property at the time you provide notice to such owner of the requirement to obtain the necessary amount of flood insurance prior to the forced placement of insurance.

(6) Multiple Purchasers or Owners. When 2 or more purchasers or owners are joint obligors with primary liability on a designated loan, you may provide the Notice About Flood Insurance Coverage required under 209 CMR 57.04(1) through 209 CMR 57.04(5), inclusive, to any 1 of them. If 1 purchaser or owner is a surety or guarantor, you must provide the Notice About Flood Insurance to the principal debtor.

(7) Insurance Producers.

- (a) An insurance producer required to provide notice as set forth in M.G.L. c. 183, § 69 must provide such notice to the purchaser or owner of the residential property in clear and conspicuous print either:
 1. At the time the purchaser or owner is notified of the need to purchase or pay for flood insurance; or
 2. At the time the purchaser or owner submits an application for flood insurance.
- (b) The Division of Insurance shall administer and enforce the requirements set forth in 209 CMR 57.04(7)(a), including the determination of the form of notice to be provided by an insurance producer.

57.05 Format of Notice About Flood Insurance Coverage

(1) Clear and Conspicuous Standard. You must make the Notice About Flood Insurance Coverage clearly and conspicuously.

(2) Contents of the Notice. You must include the following in the Notice About Flood Insurance Coverage:

- (a) the name of the borrower(s);
- (b) the address of the residential property to be insured;
- (c) your name and address as the provider of the notice;
- (d) a statement on the limitations on required flood insurance coverage as set forth in M.G.L. c. 183, § 69; and
- (e) a section for the signature of the borrower to acknowledge receipt of the Notice About Flood Insurance Coverage; provided, however, you are not required to obtain such signature from the borrower when you are providing the notice prior to the forced placement of flood insurance pursuant to 209 CMR 57.04(5).

(3) Form of Notice. If you require in a mortgage, note, or otherwise, that a purchaser or owner of a residential property purchase or pay for flood insurance on the property, you must provide a Notice About Flood Insurance Coverage to the purchaser or owner of the property which strictly conforms to the following:

**IMPORTANT NOTICE ABOUT
YOUR REQUIRED FLOOD INSURANCE COVERAGE**

Borrower(s): _____

Property Address: _____

This Notice is being provided by your:

Creditor: _____

Creditor's Representative: _____

In this Notice, the term 'we' refers to your creditor or creditor's representative.

We have determined that the above address is located in a special flood hazard area. As a result, we are requiring that you purchase a minimum level of flood insurance on the property. This Notice provides important information about what protection this insurance will and will not provide.

- Please note that the flood insurance we are requiring you to purchase will only protect your creditor's or lender's interest in your property.
- Massachusetts law prohibits a creditor or lender from requiring you to purchase flood insurance in excess of the amount of your principal mortgage and, in the case of a home equity line of credit, home equity loan or second and subsequent mortgage, the full value of the credit line, outstanding principal on the equity loan or second or subsequent mortgage on that property at the beginning of the year for which the policy will be in effect.
- **The insurance may not be sufficient to pay for many needed repairs after a flood and may not compensate you for your losses in the property due to the flood.**
- If you wish to protect your home or investment, you may want to purchase more flood insurance than the amount we are requiring you to buy.

You should contact a licensed insurance professional to purchase required flood insurance on this property, and to determine if additional coverage is appropriate for your circumstances.

Please retain a copy of this Notice because it contains important information about your flood insurance coverage.

ACKNOWLEDGMENT OF RECEIPT

The undersigned acknowledges receipt of a copy of the above Notice About Your Required Flood Insurance Coverage.

Borrower's Signature

Date

REGULATORY AUTHORITY:

209 CMR 57.00: M.G.L. c. 183, § 69.