

940 CMR 25.00: FORECLOSURE RESCUE TRANSACTIONS AND FORECLOSURE-RELATED SERVICES

Section

25.01: Definitions

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25.03: Marketing of Foreclosure-related Services

25.01: Definitions

- (1) Foreclosure Rescue Transaction shall mean a transaction:
 - (a) by which residential property is conveyed where the person conveying the property (homeowner) maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and
 - (b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.
- (2) Foreclosure-related Services shall mean any goods or services related to, or promising assistance in connection with:
 - (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or
 - (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation. Foreclosure-related Services shall include the offer, arrangement or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered or promoted in the context described in 940 CMR 25.01(2)(a) and/or (b).

25.02: Prohibition on Foreclosure Rescue Transactions and Advance Fees for Foreclosure-related Services

- (1) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a Foreclosure Rescue Transaction in the Commonwealth or concerning residential property in the Commonwealth. Nothing in 940 CMR 25.02(1) shall be interpreted to prohibit Foreclosure Rescue Transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including, by way of example, such transactions engaged in between or among family members or arranged by a non-profit community or non-profit housing organization.
- (2) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to solicit, arrange, or accept an advance fee in connection with offering, arranging or providing Foreclosure-related Services; provided, however, that 940 CMR 25.02(2) shall not prohibit a licensed attorney from soliciting, arranging or accepting an advance fee or retainer for legal services in connection with the preparation and filing of a bankruptcy petition, or court proceedings, to avoid a foreclosure. Provided further, however, that a licensed attorney accepting an advance fee or legal retainer must comply with all applicable laws and regulations pertaining to such fees, including the Massachusetts Rules of Professional Conduct, specifically Rules 1.5 and 1.6. For purposes of 940 CMR 25.02, an advance fee is any money or consideration paid in advance of actually receiving services. If the Foreclosure-related Services at issue concern the offer, arrangement or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, then 940 CMR 25.02(2) shall not prohibit the solicitation, payment or acceptance of a loan application fee provided that the fee conforms with all applicable laws and regulations, including any rules or regulations of the Commissioner of Banks.

25.03: Marketing of Foreclosure-related Services

- It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a):
- (a) to advertise, offer or promote the availability of Foreclosure Rescue Transactions or services related to Foreclosure Rescue Transactions;

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(b) to advertise, offer or promote Foreclosure-related Services if the person so promoting intends to provide Foreclosure-related Services by offering, engaging in, arranging, promoting, promising, or soliciting participation in, a Foreclosure Rescue Transaction;

(c) to advertise, offer or promote Foreclosure-related Services without disclosing, clearly and conspicuously:

1. the precise goods and/or services offered and to be provided by the promoter of Foreclosure-Related Services; and

2. a precise description of how the promoter will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

(d) for a licensed mortgage broker or licensed mortgage lender to advertise, offer or promote Foreclosure-related Services, where the goods or services promoted concern the offer, arrangement or placement of a residential mortgage loan (*i.e.*, replacement financing), without complying with all laws and regulations that apply to the marketing of mortgage loans, including, without limitation, the regulations of the Commissioner of Banks (209 CMR 32.00 *et seq.*) and the Office of the Attorney General (940 CMR 8.00 *et seq.*).

REGULATORY AUTHORITY

940 CMR 25.00: M.G.L. c. 93A, § 2(c).