

The Commonwealth of Massachusetts



MICHAEL S. DUKAKIS
GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

February 2, 1978

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

I am today submitting to your Honorable Bodies the attached legislation entitled, "An Act to Prevent Geographic Discrimination in Residential Mortgage Lending" (Appendix A) and "An Act to License Mortgage Lenders" (Appendix B).

This legislation will strengthen this administration's ongoing efforts to revitalize our cities by assuring urban residents equal access to mortgages for buying and improving their homes. Over the past several years, we have been working closely with neighborhood organizations and banks to examine mortgage lending problems in urban areas of the commonwealth. In 1975, the first Mortgage and Deposit Disclosure Directive was issued to banks in the metropolitan area. The analysis of this information by the commissioner of banks, which indicates a positive trend toward urban reinvestment, is now available in a public report, "Home Mortgage Lending Patterns in Metropolitan Boston", which I released today in conjunction with the filing of this legislation. The Boston Urban Mortgage Review Board was created, early in 1976, to provide a voluntary appeal process for homebuyers denied mortgage loans by participating banks on one-to-four family residential property in the city of Boston. Through all of these efforts, we have found that lending policies which favor suburbs over cities are unnecessary deterrents to urban reinvestment. If our cities are to be revitalized -- and they must be -- mortgage loan practices which arbitrarily discriminate against urban areas must be eliminated.

Appendix A, "An Act to Prevent Geographic Discrimination in Residential Mortgage Lending" would prohibit residential mortgage lenders from using lending standards that arbitrarily discriminate against urban neighborhoods and which are not substantiated by economic evidence of the lending risks involved. A lender that denies a loan must tell the applicant why the loan was denied, and if such denial was based on the condition or location of the property, the lender would be required to disclose to the applicant the estimated market value of the property and any lending standards which made the property ineligible for financing on the terms applied for. This legislation also prohibits lenders and real estate brokers from discouraging prospective mortgage applicants from filing a written application.

I must emphasize that no provision of this legislation would preclude a mortgage lender from using sound underwriting standards or giving full consideration to the creditworthiness and financial ability of the applicant to repay the loan.

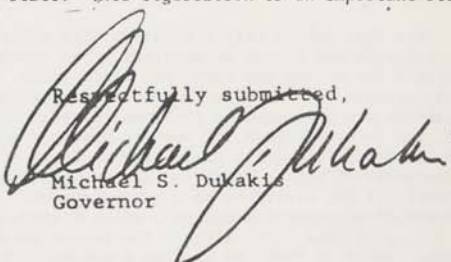
The legislation does not force banks to make unsound loans. Quite the contrary, it merely requires that each loan application be judged on the individual merits of the applicant and the property, rather than being approved or denied solely because it lies on one side or the other of a line drawn on a city map. Lending institutions will benefit as much as

prospective homeowners from this legislation because the abandonment of rigid lending formulas will allow them to adapt more quickly to rapid changes in our city housing markets. Today's aging inner-city neighborhood will often become tomorrow's urban showplace, and the institution that first recognizes and acts on such developments will be well ahead of its competitors.

Appendix B, "An Act to License Mortgage Lenders" would license persons who are in the business of making five or more mortgage loans a year, but who are currently not licensed or examined by any public agency. We have found that these businesses may often finance substantial numbers of home sales, particularly in urban neighborhoods. As such, their investment practices warrant public scrutiny similar to that of other lenders licensed and regulated by the commonwealth.

Many urban problems must be addressed creatively -- schools, jobs, real estate taxes, neighborhood public improvements, transportation -- but the key to any success in keeping our cities dynamic and livable lies ultimately in making decent housing available to present and prospective urban residents with mortgage financing on terms as reasonable as those offered in the rest of the state. This legislation is an important step to that goal.

Respectfully submitted,



Michael S. Dukakis
Governor

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Eight.

APPENDIX A

AN ACT TO PREVENT GEOGRAPHIC DISCRIMINATION IN RESIDENTIAL MORTGAGE LENDING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 183 of the General Laws is hereby amended by adding
2 after section 62 the following caption and section: —

3 GEOGRAPHIC DISCRIMINATION IN RESIDENTIAL
4 MORTGAGE LENDING

5 *Section 63.* No bank or other mortgage lender doing business in
6 the commonwealth shall discriminate, on a basis that is arbitrary
7 or unsupported by a reasonable analysis of the lending risks
8 associated with the applicant for a given loan or the condition of
9 the property to secure it, in the granting, denial, extension,
10 modification or renewal of any mortgage loan, or in the rates,
11 terms, conditions or provisions of such loan or mortgage, for the
12 purchase, lease, construction, rehabilitation or repair of residential
13 real property that is located within the reasonable service area of
14 such lender because of the neighborhood or geographic area in
15 which the property is located. The lender shall inform the applicant
16 in writing of the specific reasons for the refusal to grant a mortgage
17 loan or the denial of any requested extension, modification or
18 renewal of such loan. If the reason for any adverse action taken by
19 a lender is based in whole or in part on the location or condition of
20 the collateral property, the lender shall inform the applicant in
21 writing of its estimated market value of the property and the
22 lending standards pursuant to which the property was determined
23 to be ineligible for financing at the terms and amount requested.
24 No mortgage lender or any employee or agent of such lender, and
25 no real estate broker from whom prospective applicants for
26 mortgage loans may be referred, shall, by any oral or written
27 statement, in advertising or otherwise, discourage applicants or

28 prospective applicants from filing a written application for a
29 mortgage loan.

30 Nothing contained in this section shall preclude a lender from
31 utilizing sound underwriting practices and considering the
32 creditworthiness of the individual applicant in evaluating any
33 application for a mortgage loan. However, no lender shall use any
34 lending or underwriting standard, policy or practice which is
35 geographically discriminatory in effect or which has a dispropor-
36 tionate impact on particular neighborhoods or geographic areas,
37 unless the lender can demonstrate that such standard, policy or
38 practice is required to avoid an unsafe or unsound business
39 practice.

40 No residential mortgage loan made pursuant to a specific public
41 or private program, approved by the Board of Bank Incorpora-
42 tion, the purpose of which is to increase the availability of
43 mortgage loans within a specific neighborhood or geographic area,
44 shall be considered to violate the provisions of this section. The
45 Board of Bank Incorporation may issue any guidelines or
46 promulgate any rules or regulations necessary to implement this
47 section, which may include, but are not limited to, provisions
48 regarding the residential mortgage application process and
49 requiring public disclosure of the standards used by a lender for
50 evaluating individual applicants and property.

51 Any person claiming to have been aggrieved as a result of a
52 violation of this section may bring a civil action in the district court
53 or a housing court having territorial jurisdiction over the real
54 property involved. If the court finds that a lender has committed a
55 violation of this section, the court may award actual damages or
56 punitive damages of not more than five thousand dollars,
57 whichever is greater, and may in its discretion award court costs
58 and a reasonable attorney's fee.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Eight.

APPENDIX B**AN ACT TO LICENSE MORTGAGE LENDERS.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter
2 255D the following chapter: —

CHAPTER 255E**Mortgage Lenders**

3
4
5 *Section 1.* Definitions. In this chapter, unless the context
6 otherwise requires, the following words shall have the following
7 meanings: —

8 Mortgage lender — any person engaged in the business of
9 making loans secured by mortgages on residential real property
10 located in the commonwealth.

11 Commissioner — the commissioner of banks.

12 Residential property — improved real property used or
13 occupied, or intended to be used or occupied, primarily for
14 residential purposes, but not including real property upon which
15 dwellings have not been constructed.

16 *Section 2.* License Required. No person shall engage in the
17 business of making loans secured by mortgages on residential real
18 property located in the commonwealth without first obtaining a
19 license from the commissioner. The provisions of this section shall
20 not apply to any banking organization, foreign banking corpora-
21 tion licensed by the commissioner or Board of Bank Incorporation
22 to transact business in this state, national bank, federal savings and
23 loan association, federal credit union, licensed lender, insurance
24 company or to any bank, trust company, savings bank, savings and
25 loan association, credit union or insurance company organized
26 under the laws of any other state, or any subsidiary of any of such

27 entities as the commissioner may define, or to any instrumentality
28 created by the United States or any state. No person shall be
29 required to be licensed if within any period of twelve consecutive
30 months he shall make fewer than five loans on residential property.
31 The commissioner may adopt, amend or repeal reasonable rules
32 and regulations to aid in the administration and enforcement of
33 this chapter.

34 *Section 3.* Application for license; fees. The application for
35 such license shall be in writing and in the form prescribed by the
36 commissioner and shall contain the name and complete address or
37 addresses where the business of the applicant is located, and if the
38 applicant be a partnership, association, corporation or other form
39 of business organization, the names and complete addresses of
40 each member, director and principal officer thereof. Such
41 application shall also include a description of the activities of the
42 applicant, in such detail and for such periods, as the commissioner
43 may require, as well as such further information as the
44 commissioner may require. The applicant shall at the time of
45 making such application pay to the commissioner a non-
46 refundable investigation fee of fifty dollars, and shall pay a license
47 fee of fifty dollars upon and as a condition of granting of the
48 license.

49 *Section 4.* Conditions precedent to issuing license; procedure
50 where application denied. Upon the filing of an application for a
51 license, if the commissioner finds that the financial responsibility,
52 character, reputation, integrity, and general fitness of the applicant
53 and of the members thereof if the applicant is a partnership or
54 association, and of the officers, directors and principal employees
55 if the applicant is a corporation are such as to warrant belief that
56 the business will be operated honestly, fairly, soundly and
57 efficiently in the public interest consistent with the purposes of this
58 chapter, he shall thereupon issue the applicant a license to engage
59 in mortgage lending. If the commissioner shall not so find, he shall
60 not issue a license, and he shall notify the applicant of the denial.
61 The commissioner shall approve or deny every application for a
62 license within ninety days after the filing thereof, but any failure of
63 the commissioner to act within such period shall not be deemed to
64 be an approval of any such application.

65 *Section 5.* License provisions. Each license shall state the
66 address or addresses at which the business is to be conducted and

67 shall state fully the name of the licensee, and the date and place of
68 its incorporation if applicable. A copy of such license shall be
69 prominently posted in each place of business of the licensee. Such
70 license shall not be transferable or assignable. If the location at
71 which the business is to be conducted shall be changed, the licensee
72 shall forthwith notify the commissioner, who shall thereupon
73 without charge attach to the license a certificate setting forth such
74 changed location.

75 If there shall be any change among the officers, partners or
76 directors of any licensee, the licensee shall forthwith notify the
77 commissioner of the name, address and occupation of each new
78 officer, partner or director, and provide such other information as
79 the commissioner may require.

80 *Section 6.* Grounds for suspension or revocation of license;
81 procedure. The commissioner may suspend or revoke any license
82 issued pursuant to this chapter if he finds that either:

83 (a) The licensee has violated any provision of this chapter or any
84 rule or regulation adopted hereunder, or any other law applicable
85 to the conduct of its business.

86 (b) Any fact or condition exists which, if it had existed at the
87 time of the original application for such license, would have
88 warranted the commissioner in refusing originally to issue such
89 license.

90 The commissioner may, on good cause shown, suspend any
91 license for a period not exceeding thirty days, pending investiga-
92 tion.

93 Except as provided in the preceding paragraph, no license shall
94 be revoked or suspended except after notice and a hearing thereon.

95 Any licensee may surrender any license by delivering to the
96 commissioner written notice that it thereby surrenders such
97 license, but such surrender shall not affect such licensee's civil or
98 criminal liability for acts committed before such surrender.

99 No revocation, suspension or surrender of any license shall
100 impair or affect the obligation of any pre-existing lawful contract
101 between the licensee and any person.

102 Every license issued pursuant to this chapter shall remain in
103 force and effect until the same shall have been surrendered,
104 revoked or suspended in accordance with the provisions of this
105 chapter. The commissioner may reinstate a suspended license or
106 issue a new license to a licensee whose license has been revoked if

107 not fact or condition then exists which would have warranted the
108 commissioner in refusing originally to issue such license.

109 *Section 7.* Commissioner authorized to examine; expenses. For
110 the purpose of discovering violations of this chapter or securing
111 information lawfully required by him hereunder, the com-
112 missioner may at any time, and as often as he may determine, either
113 personally or by a person designated by him, investigate the
114 business and examine the books, accounts, records, and files used
115 therein of every licensee hereunder. The total charge for such an
116 examination, which shall be paid by the licensee within thirty days
117 after the conclusion of such examination, shall be ninety dollars
118 per day for each person participating therein, except that there
119 shall be a charge of one hundred and twenty dollars per day for the
120 examiner in charge. For that purpose the commissioner and his
121 duly designated representative shall have free access to the offices
122 and places of business, books, accounts, papers, records, files,
123 safes and vaults of all such licensees. The commissioner and any
124 person designated by him may require the attendance of and
125 examine under oath all persons whose testimony he may require
126 relative to such business.

127 *Section 8.* Licensee's books and records; reports. The licensee
128 shall keep and use in its business such books, accounts and records
129 as will enable the commissioner to determine whether such licensee
130 is complying with the provisions of this chapter and with the rules
131 and regulations lawfully made pursuant thereto by the com-
132 missioner. Every licensee shall preserve such books, accounts, and
133 records, for at least three years. Preservation by photographic
134 reproduction thereof or records in photographic form shall
135 constitute compliance with the requirements of this section.

136 Each licensee shall annually, on or before a date to be
137 determined by the commissioner, file a report with the com-
138 missioner giving such information as the commissioner may
139 require concerning its business and operations during the
140 preceding calendar year.

141 *Section 9.* The commissioner or any aggrieved party may
142 enforce the provisions of this chapter, or restrain any violations
143 thereof, by filing a civil action in any court of competent
144 jurisdiction.