



STATE OF CONNECTICUT  
DEPARTMENT OF BANKING  
Consumer Credit Division

260 CONSTITUTION PLAZA – HARTFORD, CT 06103-1800



MEMORANDUM

TO: All Connecticut Licensed Mortgage Correspondent Lenders

FROM: Carmine Costa, Director *cc*

RE: Funding Loans Through Warehouse Lines of Credit

DATE: July 7, 2017

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Unless an exemption applies,<sup>1</sup> both mortgage lenders and mortgage correspondent lenders require licensure under the Connecticut General Statutes.

Section 36a-486(a) of the Connecticut General Statutes provides that:

No person shall engage in the business of making residential mortgage loans . . . in this state unless such person has first obtained the required license for its main office and each branch office where such business is conducted in accordance with the provisions of sections 36a-485 to 36a-498f, inclusive, 36a-534a and 36a-534b. . . .

Pursuant to Section 36a-488(b) of the Connecticut General Statutes, a licensed mortgage lender may engage in all the activities of a mortgage correspondent lender pursuant to its license.<sup>2</sup> The converse is not true. With one very limited exception discussed below, a licensed mortgage correspondent lender cannot engage in the activities of a mortgage lender.<sup>3</sup>

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<sup>1</sup>Certain exemptions from mortgage lender and mortgage correspondent lender licensure are set forth in Section 36a-487 of the Connecticut General Statutes.

<sup>2</sup>A licensed mortgage lender can also engage in the activities of a mortgage broker and, if certain additional statutory requirements are met, a mortgage servicer. *See* Sections 36a-488(b) and 36a-718(b)(4) of the Connecticut General Statutes.

<sup>3</sup>A licensed mortgage correspondent lender can engage in the activities of a mortgage broker, *see* Section 36a-488(b), and may act as a mortgage servicer with respect to any residential mortgage loan it has made during the permitted 90-day holding period for such loan. *See* Section 36a-718(b)(5).

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### **Who is a “mortgage correspondent lender”?**

Section 36a-485(16) of the Connecticut General Statutes provides that:

“Mortgage correspondent lender” means a person engaged in the business of making residential mortgage loans<sup>4</sup> 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 . . . .

### **Who is a “mortgage lender”?**

Section 36a-485(17) of the Connecticut General Statutes provides that:

“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 . . . .

### **What’s the difference?**

Licensed mortgage correspondent lenders and licensed mortgage lenders both make residential mortgage loans in their own names. Licensed mortgage lenders may additionally fund loans made by others, which will be discussed below.

When making a residential mortgage loan in its own name, the distinction between permissible mortgage lender activity and permissible mortgage correspondent lender activity lies in the source of the funding for the loan being made.

A person licensed as a mortgage correspondent lender cannot be the source of the funding for the loan it has made. Instead, the funding for a loan it makes must come from “another person”. Additionally, the loan made by a licensed mortgage correspondent lender may not be held for more than 90 days.

When a licensed mortgage lender makes a residential mortgage loan in its own name, it funds the loan with its “own funds” and has no limitation on how long it may hold the loan.

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<sup>4</sup>Section 36a-485(24) provides that “residential mortgage loan” means:

[A]ny loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling . . . .

Section 36a-485(25) defines “residential real estate” to mean “any real property located in this state, upon which is constructed or intended to be constructed a dwelling”. Section 36a-485(6) provides that “dwelling” “has the same meaning as provided in Section 103 of the Consumer Credit Protection Act, 15 USC 1602”.

**Why can't a licensed mortgage correspondent lender utilize its own warehouse line of credit to fund a residential mortgage loan?**

The definition is clear that the activity of a mortgage correspondent lender requires "another person" to fund the loans through various mechanisms, one of which is a warehouse agreement.<sup>5</sup> The question presented is: Does utilizing a warehouse line of credit constitute funding by "another person"? For reasons set forth below, it is the Department's position that it does not.

The Department considers credit available to a person pursuant to a line of credit issued under a warehouse agreement to be the funds of the person to whom the credit was issued. Persons in the business of making lines of credit available for the purpose of allowing others to fund a residential mortgage loan do so without any commitment to fund any particular loan. It is up to the person to whom the line is issued to determine whether to commit those funds for use on a given loan. Licensed mortgage lenders routinely use their own warehouse lines of credit to fund residential mortgage loans that they make in their own names. When they do, they are considered by the Department to be utilizing their "own funds."<sup>6</sup>

Correspondingly, the Department views a licensed mortgage correspondent lender as utilizing its own funds when it draws upon a line of credit issued to it to fund a residential mortgage loan. When it does so, the mortgage correspondent lender is acting impermissibly in the capacity of a mortgage lender.

As noted at the outset of this Memorandum, the statutes are clear that a licensed mortgage correspondent lender cannot engage in the activities of a mortgage lender. This is emphasized by Section 36a-486(a), which provides, in pertinent part, that:

A mortgage correspondent lender shall not be deemed to be acting as a mortgage lender if such mortgage correspondent lender makes a loan utilizing its own funds in a situation where another person does not honor such person's commitment to fund the loan.

Other than in this very limited circumstance, a mortgage correspondent lender is statutorily deemed to be acting as a mortgage lender when it utilizes its own funds. As discussed above, "own funds" includes a warehouse line of credit issued to it.<sup>7</sup>

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<sup>5</sup>Section 36a-485(31) defines "warehouse agreement" to mean "an agreement to provide credit to a person to enable the person to have funds to make residential mortgage loans and hold such loans pending sale to other persons."

<sup>6</sup>The Department also does not view third-party providers of warehouse lines of credit to fall within the definition of "mortgage lender".

<sup>7</sup>To take a contrary position and to allow a licensed mortgage correspondent lender to utilize its own line of credit not only flies in the face of the statutory provisions cited above, but would also relegate the difference between the two types of lending activity to the 90-day hold period applicable only to mortgage correspondent lenders. The Department views the distinction between mortgage lending and mortgage correspondent lending as much more significant than a 90-day hold period. As set forth above, the Department views the distinction as hinging on the source of the funding and associated risks. The statutes require a mortgage lender to demonstrate significantly greater tangible net worth than a mortgage correspondent lender in connection with obtaining a license.

**What does the “mortgage correspondent lender” definition mean when it says that the loan can be “funded by another person through a warehouse agreement”?**

The definition of “mortgage correspondent lender” requires funding by another person through a warehouse agreement, table funding agreement or similar agreement. The definition of “mortgage lender” includes a person who funds loans made by others utilizing a warehouse agreement, table funding agreement or similar agreement. Together, the definitions provide that mortgage correspondent lenders make residential mortgage loans that are funded by other persons who are mortgage lenders.

The phrase quoted in the bolded question above means that a licensed mortgage correspondent lender may make (and hold for no greater than 90 days) a residential mortgage loan in its own name that is funded through a licensed mortgage lender’s line of credit.

This does not mean that a licensed mortgage correspondent lender is prohibited from having its own warehouse lines of credit. It may be a prudent practice to have such lines available because a licensed mortgage correspondent lender is permitted by statute to utilize its own line to fund a residential mortgage loan in the limited circumstance where a mortgage lender reneges on its commitment to fund. However, this is the only situation where such line of credit should be utilized by a licensed mortgage correspondent lender.

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