

Mass. Suit Points To New Scrutiny For Home Equity Contracts

By **Fedor Kamensky, Timothy Ofak and Augustus Calabresi** (May 19, 2025)

Home equity contracts — also referred to as home equity investments, or HEIs — have become an increasingly popular alternative to mortgage loans.

Similar to a reverse mortgage, an HEI provides a homeowner with cash up front in exchange for repayment in an amount based on the home's future value. But because HEIs are not structured as loans, companies may not treat them as subject to the same requirements concerning mortgage loans.

Governments and private litigants have taken notice of this disparity. A February enforcement action filed by the Massachusetts attorney general, *Massachusetts v. Hometap Equity Partners LLC*, demonstrates how a government agency may respond to an HEI that it perceives to be harmful to consumers.

Additionally, in a Jan. 15 report, the Consumer Financial Protection Bureau's Office of Mortgage Markets cautioned that features like complex terms and nonstandard disclosures have caused consumer confusion about the true costs and risks associated with HEIs. Notably, the bureau found that:

- The repayment amount, under many contracts, increases by as much as 19.5% to 22% per year, which is significantly higher than interest rates on other credit secured by a home, but less than interest rates on unsecured debt, like that from a credit card.
- Homeowners may need to obtain additional financing or sell their home to satisfy their repayment obligation.
- Although homeowner complaints have been limited, they tend to report confusion about the terms of home equity financing, including the repayment amount.



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More generally, companies offering newer financial products, such as HEIs, should be aware of litigation contending that these products are subject to existing regulatory schemes.

The Massachusetts Lawsuit and Allegations of a Noncompliant Reverse Mortgage

In the Feb. 19 complaint filed in Suffolk County Superior Court, the Massachusetts Attorney General's Office accused a Boston-based fintech company, Hometap Equity Partners, of circumventing reverse mortgage restrictions with its HEI product. The complaint also alleges that the company's claim that borrowers will pay no interest is misleading because borrowers may have to repay over double the amount that they borrowed within 10 years.

By way of background, the Massachusetts statute concerning reverse mortgages provides

that repayment can be triggered only when the borrower dies, sells the house, moves out, or defaults, such as by failing to pay property taxes.

The statute also prescribes, among other conditions, that a borrower must be over the age of 60 and receive independent counseling about the risks of these mortgages and that the lender must provide a seven-day rescission period.

According to the complaint, Hometap offers a homeowner cash up front, less fees and costs, in exchange for an equity interest in the borrower's home, without requiring any documentation of the borrower's job, income or assets, other than the home itself. The complaint explains that the borrower need not make any payment for 10 years, at which point a single balloon payment becomes due.

Hometap's option purchase agreement, which was attached to the complaint, describes the arrangement as providing the company with an option in exchange for the upfront cash payment, which it calls the investment amount. Under the option, the company receives a single balloon payment based on a percentage of the home's value at the end of the 10-year term or if another enumerated event occurs, such as failure to pay property taxes.

The attorney general contends that the product is effectively a reverse mortgage because it is a nonrecourse loan that:

- Provides cash up front based on equity or appreciation in the borrower's principal residence, which under the loan's terms, they must occupy;
- Is secured by that residence; and
- Necessitates no payment of either principal or interest until the end of the term.

Notwithstanding this characterization, the HEI allegedly does not satisfy the conditions prescribed by the Massachusetts reverse mortgage statute. For example, according to the complaint, the HEI is available to borrowers under the age of 60 — who are more likely to reside in their home for more than 10 years — and requires repayment even if the borrower is not ready to move out or sell the home and has not defaulted.

Thus, the attorney general maintains that the HEI subverts a critical protection in the reverse mortgage statute by creating a situation in which a borrower may be forced to sell their house prematurely to satisfy the repayment obligation.

Allegations of a Deceptive Marketing Scheme and Unfair or Unconscionable Loans

Another aspect of the case shows that statutory or regulatory requirements are only a threshold consideration.

Regulators may be particularly concerned with the perceived fairness and risks of a financial contract's terms and whether consumers adequately understood the effect of those terms. State laws prohibiting unfair or deceptive acts or practices are often written broadly, so they may be used as an alternative or additional legal theory to challenge a product.

The Massachusetts attorney general alleges that Hometap deceived borrowers about the scope of the HEI, which purportedly gives the company an equity interest up to twice the amount lent to the borrower before factoring in appreciation in the home's value. To account for this, Hometap claims that it limits its annual rate of return to 20%.

The attorney general asserts, however, that the company's rate of return regularly exceeds this because the interest rate is compounding and the company retains some of the fees and costs charged to the borrower.

According to the attorney general's calculations, by the end of year three on a \$100,000 loan with \$3,000 in fees and costs, the company's equity interest would amount to \$172,800, which equates to an annual simple interest rate of 24.26% — or 26.05% if considering only the \$97,000 that the borrower actually received. And even if the home's value depreciates, the attorney general asserts that the company's equity percentage does not decrease correspondingly.

Given this breakdown, the complaint alleges that Hometap's previous representation that it would "invest alongside homeowners" — which would entail no "interest over the life of the investment" — was misleading. Additionally, the attorney general claims that the marketing materials mislead consumers by obscuring the fact that the HEI devalues the homeowner's equity.

Moreover, sales representatives allegedly explain to homeowners, along with using other deceptive language, that the HEI is an investment, not a loan, and that the company "would 'share in the loss' if a property were to depreciate," even though Hometap would rarely lose money on the transaction. According to the complaint, it appeared to homeowners that the cost was primarily the 3% fee and costs, and that any additional revenue would derive from the home's appreciation in value.

On top of that, the complaint continues, borrowers were sometimes sold a second HEI to pay off the first while providing additional cash — a process that results in further fees and greater equity devaluation. The complaint explains that referring to this additional cash advance as an "investment increase" is deceptive because it suggests that original HEI is being modified, when in fact the borrower is receiving a second HEI with additional costs and fees.

Further, the complaint maintains, the HEI's structure, combined with Hometap's lenient underwriting practices, creates a situation where borrowers are unable to make the balloon payment at the end of the 10-year term. Several current borrowers have signed an affidavit expressing concern that they will have to sell their house to pay off the HEI. The attorney general contends that offering such a product constitutes an unfair or unconscionable practice.

The Company's Response and Another Lawsuit

Hometap has stood by the integrity of its HEI product, publicly stating that it believes it offers homeowners financial flexibility and calling the lawsuit unfounded and predicated on meritless claims.

The company also maintains that its efforts to try to work constructively with the attorney general's office had "not been reciprocated." Accordingly, the company has served a motion to dismiss, and the matter remains pending before the superior court.

Still, the Massachusetts lawsuit is not the first to allege that an HEI constitutes a noncompliant reverse mortgage. Currently pending before the U.S. Court of Appeals for the Ninth Circuit is a similar case, *Olson v. Unison Agreement Corp.* This case demonstrates how a private litigant may respond to an HEI and provides insight into how one court viewed the legal issues.

In Olson, three homeowners alleged in the U.S. District Court for the Western District of Washington that the shared investment product offered by a California company, Unison, is a noncompliant reverse mortgage under Washington state law.

The complaint explains that Unison provides a cash advance, which Unison calls an investment payment, in exchange for equity in a borrower's home, which creates a nonrecourse consumer credit obligation that can become due when the borrower dies, sells the home, moves out or defaults, or after 30 years. These characteristics, the homeowners maintain, mirror the elements of a reverse mortgage set forth in the Washington reverse mortgage statute.

The homeowners contend that, even though it offers a product with these features, Unison did not comply with the conditions prescribed by the Washington reverse mortgage statute. For example, they maintain that the company did not refer them to an independent housing counseling agency to discuss the product's risks and benefits.

Additionally, the homeowners contend that the company violated the state's consumer protection act because, among other issues, its claims of "no monthly payments and no interest" and "no payments to [Unison] until you sell" were deceptive.

The Western District of Washington disagreed and dismissed the complaint. The court determined that the arrangement between Unison and a borrower is not a loan because the underlying agreement simply provides Unison with an option to acquire equity in the borrower's home, which the company could decline to exercise. Because the product is not a loan, the court reasoned, the statutory requirements for reverse mortgage loans do not apply.

Additionally, the district court determined that Unison had not engaged in deceptive conduct because the plaintiffs-homeowners adduced no fact suggesting that any of Unison's claims, such as that of no monthly payment, were misleading. Nor did they adduce any fact showing that Unison's product deceived consumers. Moreover, the court observed that the plain text of the agreement contradicts the homeowners' allegations because, for example, it strongly urges a prospective borrower to seek advice before proceeding with the transaction.

The homeowners appealed the district court's order dismissing their complaint, and the case remains pending before the Ninth Circuit. And although this case offers a useful example of one court's approach to the issues, it is not necessarily indicative of future outcomes.

For one thing, the Ninth Circuit may overturn the district court's decision. For another, the Massachusetts court may opt for another approach based on the differing facts or laws at issue in that case. Thus, careful consideration of the contractual terms and marketing of HEIs — and other mortgage alternatives — remains critical to legal compliance.

Conclusion

The recent proliferation of mortgage alternatives like HEIs has prompted increased scrutiny of these products, particularly challenges in court. Yet it is too soon to know what effect this litigation will have. For example, courts may determine that certain product terms are legally problematic, but others are legally permissible. This determination may also turn on the specific jurisdiction's law at issue.

As more courts reason through the legal questions, a clearer body of precedent will emerge.

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