# Shared Appreciation Mortgages

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## Issue

Explain shared appreciation mortgages (SAMs), including if Connecticut or nearby states regulate them and arguments for and against their use.

## Summary

SAMs are home loans in which a lender receives an interest in the appreciated value of a borrower's property (a contingent interest), often in return for a lower interest payment. Thus, a lender receives a share of the home's appreciation if the home's value rises and the borrower is only responsible for the principle amount if the home value declines. Compared to reverse mortgages, which pay the borrower in exchange for existing equity, SAMs offer borrowing capability in exchange for future equity.

Connecticut does not regulate SAMs, though in 2019 the legislature considered a bill to regulate them as residential mortgage loans. New York limits the use of SAMs to helping borrowers who are at risk of foreclosure by adjusting the principal amount owed in exchange for a share of the appreciation in the borrower's home.

Because SAMs offer the lender an interest in future equity, they may ease borrowing restrictions (i.e., allowing more borrowers into the housing market) or provide lower payment options (potentially alleviating foreclosures). But SAMs may result in fewer funds from equity after a sale than a seller anticipates and they can have more complicated terms than other mortgage options.

# State Regulation

## *Connecticut*

According to the state's Department of Banking, six companies currently offer SAMs in Connecticut. But the state does not regulate SAMs.

State law allows the state's Department of Housing to offer shared appreciation mortgages through a homeownership loan program (CGS § 8-286a). However, according to the Connecticut Housing Finance Authority, which administers the program, these loans do not contain shared appreciation provisions.

In 2019, the legislature considered a bill to regulate SAMs in the same manner as residential mortgage loans, thus subjecting them to existing licensing and disclosure requirements (HB 6995). The Banking Committee reported the bill favorably; the House took no further action.

## *Other States*

Only one nearby state regulates SAMs: New York. (California also regulates these loans (see Cal. Civil Code § 1917 et seq.).

In New York, SAMs may only be used to assist a borrower at risk of foreclosure by forgiving or reducing the principal owed in exchange for a share in the appreciation of the borrower's home. A mortgage holder may offer a borrower a SAM if:

1. the unpaid principal balance is more than the appraised house value (i.e., the house is underwater);
2. the borrower is at least 60 days late on payments or subject to an active foreclosure action; and
3. other loan modification options, such as those offered through the federal Home Affordable Refinance Program (HARP), have been assessed and disclosed.

Lenders offering SAMs must provide specific disclosures to the borrower, including a notice in bold type that the borrower is giving away a portion of a future increase in value of the borrower's home and a statement that the borrower should obtain independent counseling from a lawyer, federally certified mortgage counselor, or tax advisor.

State regulations also specify the fees and charges that may be assessed as part of a SAM and how to calculate the principal amount, appreciation in value, and assessed value (N.Y. Comp. Codes R. of Regs. Tit. 3 § 83.1 et seq.).

## Pros and Cons

SAMs may provide a way for a borrower to more easily qualify for a loan or afford a loan's monthly payment because they often offer a borrower a lower interest rate in exchange for future property value. In this respect, SAMs may serve as a foreclosure mitigation tool, as allowed in New York (see above). SAMs can also be beneficial in areas where home values do not fluctuate greatly, thus allowing a borrower to take advantage of more favorable mortgage terms without much risk.

However, because of the appreciation sharing, SAMs may result in fewer funds for a seller from the equity after a sale. SAMs have also been criticized for their more complicated loan structure. SAMs may contain prepayment penalties for repaying a certain percentage of the outstanding balance within a certain number of years of the loan's origination to prevent a borrower from refinancing to avoid sharing the future appreciation with the lender. Appreciation may also, depending on the mortgage's terms, include the equity associated with property improvements and upgrades.

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