

# HOUSE BILL 1399

I2, I1, I3

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By: ~~Delegate Lafferty~~ Delegates Lafferty and Stein

Introduced and read first time: February 18, 2010

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Residential Mortgage Loans – Required Notice of Housing Counseling**  
3 **Programs and Services**

4 FOR the purpose of repealing certain provisions of Maryland lending laws that require  
5 a lender or credit grantor to provide a borrower with certain information  
6 regarding home buyer education or housing counseling in connection with  
7 certain high interest or high fee mortgage loans; requiring a lender, under  
8 certain circumstances, to provide to a borrower a certain written notice  
9 regarding home buyer education or housing counseling in connection with a  
10 certain mortgage loan; requiring the Department of Housing and Community  
11 Development to provide and maintain certain information; prohibiting a lender  
12 from closing on a certain mortgage loan unless the lender has provided to the  
13 borrower the notice required under this Act; requiring the Department, in  
14 consultation with the Commissioner of Financial Regulation, to adopt  
15 regulations, on or before a certain date, specifying the form and time of delivery  
16 of the notice required under this Act; requiring the Department, in adopting the  
17 regulations, to consult with the mortgage lending industry to determine the  
18 most effective time for delivery of the notice; defining certain terms; repealing  
19 certain definitions; providing for the application of certain provisions of this Act;  
20 providing for a delayed effective date for certain provisions of this Act; and  
21 generally relating to mortgage loans.

22 BY repealing and reenacting, with amendments,  
23 Article – Commercial Law  
24 Section 12–124.1, 12–311, and 12–1029

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2009 Supplement)

3 BY adding to  
4 Article – Commercial Law  
5 Section 12–1201 through 12–1204 to be under the new subtitle “Subtitle 12.  
6 Mortgage Loans – Notice of Housing Counseling Programs and Services”  
7 Annotated Code of Maryland  
8 (2005 Replacement Volume and 2009 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Commercial Law**

12 12–124.1.

13 (a) (1) In this section the following words have the meanings indicated.

14 (2) “Covered loan” means a mortgage loan made under this subtitle  
15 that meets the criteria for a loan subject to the federal Home Ownership Equity  
16 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
17 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
18 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
19 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

20 (3) “Credit health insurance” has the meaning stated in § 13–101 of  
21 the Insurance Article.

22 (4) “Credit involuntary unemployment benefit insurance” has the  
23 meaning stated in § 13–101 of the Insurance Article.

24 (5) (i) “Credit life insurance” means insurance on the life of a  
25 borrower that provides indemnity for repayment of a specific loan or credit transaction  
26 on the death of the borrower.

27 (ii) “Credit life insurance” does not include life insurance  
28 payable to a beneficiary designated by the borrower other than the obligee of a specific  
29 loan or credit transaction.

30 [(6) “Home buyer education or housing counseling” means instruction  
31 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
32 closing, and life as a homeowner.]

33 [(7) (6) “Mortgage loan” has the meaning stated in § 11–501 of the  
34 Financial Institutions Article.

1           **[(8)] (7)**       “Premium” has the meaning stated in § 1–101 of the  
2 Insurance Article.

3           **[(9)] (8)**       “Single premium coverage” means insurance for which the  
4 total premium is payable in one lump sum at or before the time coverage commences.

5           (b)   (1)    Except as provided in this subsection, a lender making a covered  
6 loan may not finance as a part of the covered loan transaction single premium  
7 coverage for:

8                           (i)    Credit health insurance;

9                           (ii)   Credit involuntary unemployment benefit insurance; or

10                          (iii)   Credit life insurance.

11                       (2)    Nothing in this subsection shall prohibit the financing of any  
12 insurance coverage in connection with a mobile home or its premises, as those terms  
13 are defined in § 8A–101 of the Real Property Article.

14           **[(c)] (1)**    In this subsection, “loan application” has the meaning stated in §  
15 12–125 of this subtitle.

16                       (2)    At the time a borrower completes a loan application for a covered  
17 loan, the lender shall provide the borrower with:

18                           (i)    A written recommendation that the borrower seek home  
19 buyer education or housing counseling; and

20                           (ii)   A list of agencies and organizations approved by the county  
21 in which the residential real property securing the covered loan is located to provide  
22 home buyer education or housing counseling.]

23 12–311.

24           (a)   (1)    In this section the following words have the meanings indicated.

25                       (2)    “Covered loan” means a mortgage loan made under this subtitle  
26 that meets the criteria for a loan subject to the federal Home Ownership Equity  
27 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
28 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
29 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
30 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

31                       (3)    “Fully indexed rate” means the index rate, as defined in the  
32 mortgage loan documents, prevailing at the time the mortgage loan is approved by the

1 lender, plus the margin that will apply after the expiration of an introductory interest  
2 rate.

3 [(4) “Home buyer education or housing counseling” means instruction  
4 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
5 closing, and life as a homeowner.]

6 [(5) (4) (i) “Mortgage loan” has the meaning stated in § 11–501  
7 of the Financial Institutions Article.

8 (ii) “Mortgage loan” does not include a reverse mortgage loan.

9 (b) A lender may not take as security for a loan any:

10 (1) Confession of judgment or power of attorney to him or to a third  
11 person to confess judgment or appear for the borrower in a judicial proceeding;

12 (2) Assignment or order for payment of wages;

13 (3) Instrument in which blanks are left to be filled after execution; or

14 (4) Note, promise to pay, or security instrument which does not state:

15 (i) The principal amount of the loan;

16 (ii) A schedule of payments or a description of the schedule; and

17 (iii) The agreed amount and rate of interest, charges, and fees.

18 (c) (1) A lender may not take any security interest in:

19 (i) Real property for any loan under \$2,000 in value or amount;

20 or

21 (ii) Personal property for any loan under \$700 in value or  
22 amount.

23 (2) Any lien taken in violation of this subsection is void.

24 (3) This subsection does not apply to or affect a lien on an interest in  
25 real property which results from a judgment obtained by the lender based on a loan  
26 otherwise secured or unsecured.

27 (d) A lender may not make a mortgage loan without giving due regard to the  
28 borrower’s ability to repay the mortgage loan in accordance with its terms, including  
29 the fully indexed rate of the mortgage loan, if applicable, and property taxes and

1 homeowner's insurance whether or not an escrow account is established for the  
2 collection and payment of these expenses.

3 (e) (1) Due regard to a borrower's ability to repay a mortgage loan must  
4 include:

5 (i) Consideration of the borrower's debt to income ratio,  
6 including existing debts and other obligations; and

7 (ii) Verification of the borrower's gross monthly income and  
8 assets by review of third-party written documentation reasonably believed by the  
9 lender to be accurate and complete.

10 (2) Acceptable third-party written documentation includes:

11 (i) The borrower's Internal Revenue Service form W-2;

12 (ii) A copy of the borrower's income tax return;

13 (iii) Payroll receipts;

14 (iv) The records of a financial institution; or

15 (v) Other third-party documents that provide reasonably  
16 reliable evidence of the borrower's income or assets.

17 (3) This subsection does not apply to a mortgage loan:

18 (i) Approved for government guaranty by the Federal Housing  
19 Administration, the Veterans Administration, the United States Department of  
20 Agriculture, the Maryland Department of Housing and Community Development, or  
21 the Community Development Administration; or

22 (ii) That refinances an existing mortgage loan if the refinance  
23 mortgage loan is:

24 1. Offered under the federal Homeowner Affordability  
25 and Stability Plan; and

26 2. Made available by the Federal Home Loan Mortgage  
27 Corporation or the Federal National Mortgage Association.

28 [(f) (1) In this subsection, "loan application" has the meaning stated in §  
29 12-125 of this title.

30 (2) At the time a borrower completes a loan application for a covered  
31 loan, the lender shall provide the borrower with:

1 (i) A written recommendation that the borrower seek home  
2 buyer education or housing counseling; and

3 (ii) A list of agencies and organizations approved by the county  
4 in which the residential real property securing the covered loan is located to provide  
5 home buyer education or housing counseling.]

6 12–1029.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) “Covered loan” means a mortgage loan made under this subtitle  
9 that meets the criteria for a loan subject to the federal Home Ownership and Equity  
10 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
11 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
12 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
13 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

14 (3) “Fully indexed rate” means the index rate, as defined in the  
15 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
16 credit grantor, plus the margin that will apply after the expiration of an introductory  
17 interest rate.

18 [(4) “Home buyer education or housing counseling” means instruction  
19 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
20 closing, and life as a homeowner.]

21 ~~[(5)]~~ (4) (i) “Mortgage loan” has the meaning stated in § 11–501  
22 of the Financial Institutions Article.

23 (ii) “Mortgage loan” does not include a reverse mortgage loan.

24 (b) A credit grantor may not make a mortgage loan without giving due  
25 regard to the borrower’s ability to repay the mortgage loan in accordance with its  
26 terms, including the fully indexed rate of the mortgage loan, if applicable, and  
27 property taxes and homeowner’s insurance whether or not an escrow account is  
28 established for the collection and payment of these expenses.

29 (c) (1) Due regard to a borrower’s ability to repay a mortgage loan must  
30 include:

31 (i) Consideration of the borrower’s debt to income ratio,  
32 including existing debts and other obligations; and

1 (ii) Verification of the borrower's gross monthly income and  
2 assets by review of third-party written documentation reasonably believed by the  
3 credit grantor to be accurate and complete.

4 (2) Acceptable third-party written documentation includes:

5 (i) The borrower's Internal Revenue Service form W-2;

6 (ii) A copy of the borrower's income tax return;

7 (iii) Payroll receipts;

8 (iv) The records of a financial institution; or

9 (v) Other third-party documents that provide reasonably  
10 reliable evidence of the borrower's income or assets.

11 (3) This subsection does not apply to a mortgage loan:

12 (i) Approved for government guaranty by the Federal Housing  
13 Administration, the Veterans Administration, the United States Department of  
14 Agriculture, the Maryland Department of Housing and Community Development, or  
15 the Community Development Administration; or

16 (ii) That refinances an existing mortgage loan if the refinance  
17 mortgage loan is:

18 1. Offered under the federal Homeowner Affordability  
19 and Stability Plan; and

20 2. Made available by the Federal Home Loan Mortgage  
21 Corporation or the Federal National Mortgage Association.

22 [(d) (1) In this subsection, "loan application" has the meaning stated in §  
23 12-1022 of this subtitle.

24 (2) At the time a borrower completes a loan application for a covered  
25 loan, the credit grantor shall provide the borrower with:

26 (i) A written recommendation that the borrower seek home  
27 buyer education or housing counseling; and

28 (ii) A list of agencies and organizations approved by the county  
29 in which the residential real property securing the covered loan is located to provide  
30 home buyer education or housing counseling.]





1 **12-1203.**

2 (A) ~~A~~ UNLESS THE LENDER IS OTHERWISE REQUIRED BY FEDERAL OR  
3 STATE LAW TO REFER THE BORROWER TO HOUSING COUNSELING, A LENDER  
4 SHALL PROVIDE TO A BORROWER A WRITTEN NOTICE, IN THE FORM SPECIFIED  
5 IN REGULATIONS ADOPTED BY THE DEPARTMENT OF HOUSING AND  
6 COMMUNITY DEVELOPMENT, IN CONSULTATION WITH THE COMMISSIONER OF  
7 FINANCIAL REGULATION, THAT INCLUDES:

8 (1) A STATEMENT RECOMMENDING THAT THE BORROWER  
9 COMPLETE HOME BUYER EDUCATION OR HOUSING COUNSELING; AND

10 (2) INFORMATION ABOUT ~~NONPROFIT~~ HOME BUYER EDUCATION  
11 AND HOUSING COUNSELING PROGRAMS AND SERVICES PROVIDED BY  
12 NONPROFIT AND GOVERNMENT ORGANIZATIONS CERTIFIED BY THE U.S.  
13 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT THAT ARE AVAILABLE  
14 TO RESIDENTS OF THE STATE.

15 (B) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
16 SHALL PROVIDE AND MAINTAIN THE INFORMATION REQUIRED UNDER  
17 SUBSECTION (A)(2) OF THIS SECTION.

18 **12-1204.**

19 A LENDER MAY NOT CLOSE ON A MORTGAGE LOAN UNLESS THE LENDER  
20 HAS PROVIDED TO THE BORROWER THE NOTICE REQUIRED UNDER § 12-1203  
21 OF THIS SUBTITLE.

22 SECTION 2. AND BE IT FURTHER ENACTED, That:

23 (a) On or before October 1, 2010, the Department of Housing and  
24 Community Development, in consultation with the Commissioner of Financial  
25 Regulation, shall adopt regulations that specify:

26 (1) the form of the notice required under § 12-1203 of the Commercial  
27 Law Article, as enacted by Section 1 of this Act; and

28 (2) the time for delivery of the notice to a borrower.

29 (b) In adopting the regulations required under subsection (a) of this section,  
30 the Department shall consult with the mortgage lending industry to determine the  
31 most effective time for delivery of the notice to a borrower.

32 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
33 take effect January 1, 2011.

1           SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
2 Section 3 of this Act, this Act shall take effect June 1, 2010.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.