

HOUSE BILL 1399

I2, I1, I3

(0lr2559)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by ~~Delegate Lafferty~~ Delegates Lafferty and Stein

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

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

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.

Italics indicate opposite chamber/conference committee amendments.



1 of the notice required under this Act; requiring the Department, in adopting the
2 regulations, to consult with the mortgage lending industry to determine the
3 most effective time for delivery of the notice; defining certain terms; repealing
4 certain definitions; providing for the application of certain provisions of this Act;
5 providing for a delayed effective date for certain provisions of this Act; and
6 generally relating to mortgage loans.

7 BY repealing and reenacting, with amendments,
8 Article – Commercial Law
9 Section 12–124.1, 12–311, and 12–1029
10 Annotated Code of Maryland
11 (2005 Replacement Volume and 2009 Supplement)

12 BY adding to
13 Article – Commercial Law
14 Section 12–1201 through 12–1204 to be under the new subtitle “Subtitle 12.
15 Mortgage Loans – Notice of Housing Counseling Programs and Services”
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2009 Supplement)

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

20 **Article – Commercial Law**

21 12–124.1.

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

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

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

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

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

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

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

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

9 [(8) (7) “Premium” has the meaning stated in § 1–101 of the
10 Insurance Article.

11 [(9) (8) “Single premium coverage” means insurance for which the
12 total premium is payable in one lump sum at or before the time coverage commences.

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

16 (i) Credit health insurance;

17 (ii) Credit involuntary unemployment benefit insurance; or

18 (iii) Credit life insurance.

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

22 [(c) (1) In this subsection, “loan application” has the meaning stated in §
23 12–125 of this subtitle.

24 (2) At the time a borrower completes a loan application for a covered
25 loan, the lender 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.]

31 12–311.

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

2 ~~(2) “Covered loan” means a mortgage loan made under this subtitle~~
 3 ~~that meets the criteria for a loan subject to the federal Home Ownership Equity~~
 4 ~~Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by~~
 5 ~~Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the~~
 6 ~~mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §~~
 7 ~~1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.~~

8 ~~(3)~~ **(2)** “Fully indexed rate” means the index rate, as defined in the
 9 mortgage loan documents, prevailing at the time the mortgage loan is approved by the
 10 lender, plus the margin that will apply after the expiration of an introductory interest
 11 rate.

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

15 ~~[(5) (4) (3)~~ (i) “Mortgage loan” has the meaning stated in § 11–501
 16 of the Financial Institutions Article.

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

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

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

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

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

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

24 (i) The principal amount of the loan;

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

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

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

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

29 or

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

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

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

7 (d) A lender may not make a mortgage loan without giving due regard to the
8 borrower's ability to repay the mortgage loan in accordance with its terms, including
9 the fully indexed rate of the mortgage loan, if applicable, and property taxes and
10 homeowner's insurance whether or not an escrow account is established for the
11 collection and payment of these expenses.

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

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

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

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

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

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

22 (iii) Payroll receipts;

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

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

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

27 (i) Approved for government guaranty by the Federal Housing
28 Administration, the Veterans Administration, the United States Department of
29 Agriculture, the Maryland Department of Housing and Community Development, or
30 the Community Development Administration; or

31 (ii) That refinances an existing mortgage loan if the refinance
32 mortgage loan is:

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

3 2. Made available by the Federal Home Loan Mortgage
4 Corporation or the Federal National Mortgage Association.

5 **[(f)** (1) In this subsection, “loan application” has the meaning stated in §
6 12–125 of this title.

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

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

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

14 12–1029.

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

16 ~~(2) “Covered loan” means a mortgage loan made under this subtitle~~
17 ~~that meets the criteria for a loan subject to the federal Home Ownership and Equity~~
18 ~~Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by~~
19 ~~Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the~~
20 ~~mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §~~
21 ~~1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.~~

22 ~~(3)~~ **(2)** “Fully indexed rate” means the index rate, as defined in the
23 mortgage loan documents, prevailing at the time the mortgage loan is approved by the
24 credit grantor, plus the margin that will apply after the expiration of an introductory
25 interest rate.

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

29 **[(5)** ~~(4)~~ **(3)** (i) “Mortgage loan” has the meaning stated in § 11–501
30 of the Financial Institutions Article.

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

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

6 (c) (1) Due regard to a borrower's ability to repay a mortgage loan must
7 include:

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

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

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

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

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

16 (iii) Payroll receipts;

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

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

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

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

25 (ii) That refinances an existing mortgage loan if the refinance
26 mortgage loan is:

27 1. Offered under the federal Homeowner Affordability
28 and Stability Plan; and

29 2. Made available by the Federal Home Loan Mortgage
30 Corporation or the Federal National Mortgage Association.

31 [(d) (1) In this subsection, "loan application" has the meaning stated in §
32 12-1022 of this subtitle.

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

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

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

8 **SUBTITLE 12. MORTGAGE LOANS – NOTICE OF HOUSING COUNSELING**
9 **PROGRAMS AND SERVICES.**

10 **12-1201.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) “BORROWER” HAS THE MEANING STATED IN § 11-501 OF THE
14 FINANCIAL INSTITUTIONS ARTICLE.

15 (C) “HOME BUYER EDUCATION OR HOUSING COUNSELING” MEANS
16 INSTRUCTION ON PREPARING FOR HOME OWNERSHIP, SHOPPING FOR A HOME,
17 OBTAINING A MORTGAGE, LOAN CLOSING, AND LIFE AS A HOMEOWNER.

18 (D) “LENDER” MEANS A PERSON THAT MAKES A MORTGAGE LOAN.

19 (E) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11-501 OF THE
20 FINANCIAL INSTITUTIONS ARTICLE.

21 (F) “SECONDARY MORTGAGE LOAN” MEANS A MORTGAGE LOAN
22 SECURED BY RESIDENTIAL REAL PROPERTY THAT IS SUBJECT TO THE LIEN OF
23 ONE OR MORE PRIOR MORTGAGE LOANS.

24 **12-1202.**

25 (A) THIS SUBTITLE APPLIES TO ANY LENDER THAT MAKES A MORTGAGE
26 LOAN SECURED BY OWNER-OCCUPIED RESIDENTIAL REAL PROPERTY LOCATED
27 IN THE STATE.

28 (B) THIS SUBTITLE DOES NOT APPLY TO:

29 (1) A SECONDARY MORTGAGE LOAN; ~~OR~~

1 (2) AN OPEN-END OR REVOLVING HOME EQUITY LINE OF CREDIT;

2 (3) A CONSTRUCTION LOAN;

3 (4) AN INDIVIDUAL WHO TAKES BACK A DEFERRED PURCHASE
4 MONEY MORTGAGE IN CONNECTION WITH THE SALE OF RESIDENTIAL REAL
5 PROPERTY OWNED BY, AND TITLED IN THE NAME OF, THE INDIVIDUAL; OR

6 (5) AN INDIVIDUAL WHO MAKES A MORTGAGE LOAN TO A
7 BORROWER WHO IS THE INDIVIDUAL'S SPOUSE, CHILD, CHILD'S SPOUSE,
8 PARENT, SIBLING, GRANDPARENT, GRANDCHILD, OR GRANDCHILD'S SPOUSE.

9 12-1203.

10 (A) ~~A~~ UNLESS THE LENDER IS OTHERWISE REQUIRED BY FEDERAL OR
11 STATE LAW TO REFER THE BORROWER TO HOUSING COUNSELING, A LENDER
12 SHALL PROVIDE TO A BORROWER A WRITTEN NOTICE, IN THE FORM SPECIFIED
13 IN REGULATIONS ADOPTED BY THE DEPARTMENT OF HOUSING AND
14 COMMUNITY DEVELOPMENT, IN CONSULTATION WITH THE COMMISSIONER OF
15 FINANCIAL REGULATION, THAT INCLUDES:

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

18 (2) INFORMATION ABOUT ~~NONPROFIT~~ HOME BUYER EDUCATION
19 AND HOUSING COUNSELING PROGRAMS AND SERVICES PROVIDED BY
20 NONPROFIT AND GOVERNMENT ORGANIZATIONS CERTIFIED BY THE U.S.
21 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT THAT ARE AVAILABLE
22 TO RESIDENTS OF THE STATE.

23 (B) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
24 SHALL PROVIDE AND MAINTAIN THE INFORMATION REQUIRED UNDER
25 SUBSECTION (A)(2) OF THIS SECTION.

26 12-1204.

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

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

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

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

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

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

10 (c) If the Department has not adopted the regulations required under
 11 subsection (a) of this section on or before October 1, 2010, the Department, within 5
 12 days after the date the regulations are adopted, shall send a notice to the Department of
 13 Legislative Services certifying the date on which the regulations were adopted.

14 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
 15 take effect January 1, 2011, contingent on the adoption, on or before October 1, 2010, of
 16 the regulations required by Section 2(a) of this Act. If the regulations are not adopted
 17 on or before October 1, 2010, Section 1 of this Act shall take effect 60 days after the date
 18 of adoption certified in the notice sent by the Department of Housing and Community
 19 Development to the Department of Legislative Services under Section 2(c) of this Act.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.