

Chapter 736

(House Bill 1399)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 12–124.1, 12–311, and 12–1029

Annotated Code of Maryland

(2005 Replacement Volume and 2009 Supplement)

BY adding to

Article – Commercial Law

Section 12–1201 through 12–1204 to be under the new subtitle “Subtitle 12.
Mortgage Loans – Notice of Housing Counseling Programs and Services”

Annotated Code of Maryland

(2005 Replacement Volume and 2009 Supplement)

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

Article – Commercial Law

12-124.1.

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

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

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

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

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

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

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

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

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

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

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

(i) Credit health insurance;

(ii) Credit involuntary unemployment benefit insurance; or

(iii) Credit life insurance.

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

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

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

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

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

12-311.

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

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

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

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

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

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

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

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

(2) Assignment or order for payment of wages;

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

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

(i) The principal amount of the loan;

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

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

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

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

or

(ii) Personal property for any loan under \$700 in value or

amount.

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

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

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

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

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

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

(2) Acceptable third-party written documentation includes:

- (i) The borrower's Internal Revenue Service form W-2;
- (ii) A copy of the borrower's income tax return;
- (iii) Payroll receipts;
- (iv) The records of a financial institution; or

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

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

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

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

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

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

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

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

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

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

12-1029.

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

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

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

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

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

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

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

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

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

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

(2) Acceptable third-party written documentation includes:

(i) The borrower’s Internal Revenue Service form W–2;

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

(iii) Payroll receipts;

(iv) The records of a financial institution; or

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

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

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

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

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

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

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

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

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

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

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

12-1201.

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

(B) "BORROWER" HAS THE MEANING STATED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

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

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

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

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

12-1202.

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

(B) THIS SUBTITLE DOES NOT APPLY TO:

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

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

(3) A CONSTRUCTION LOAN;

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

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

12-1203.

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

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

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

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

12-1204.

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

Approved by the Governor, May 20, 2010.