

# HOUSE BILL 286

I2, N1

8lr0364

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By: **Delegate Bobo**

Introduced and read first time: January 23, 2008

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Loans Secured by Residential Real Property – Escrow**  
3 **Accounts**

4 FOR the purpose of requiring certain lenders and lending institutions that lend money  
5 secured by a first mortgage or first deed of trust on any interest in residential  
6 real property to establish an escrow account in connection with certain loans;  
7 requiring certain lenders, before the execution of a certain loan contract, to  
8 furnish a borrower with a written statement regarding the monthly payment  
9 amount to be paid by the borrower and placed in a certain escrow account;  
10 requiring certain financing agreements to provide the monthly payment amount  
11 to be paid by a borrower and placed in a certain escrow account; requiring  
12 certain lenders to deliver a certain statement to a borrower; defining certain  
13 terms; providing that existing obligations or contract rights may not be  
14 impaired in any way by this Act; providing for the application of this Act; and  
15 generally relating to residential real property and escrow accounts.

16 BY repealing and reenacting, with amendments,  
17 Article – Commercial Law  
18 Section 12–106, 12–109, 12–125(a) and (b), 12–301, 12–308(a), 12–922, and  
19 12–1022  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2007 Supplement)

22 BY adding to  
23 Article – Commercial Law  
24 Section 12–306.1  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2007 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Commercial Law**

2 12–106.

3 (a) This section does not apply to any loan:

4 (1) Described in § 12–103(e) of this subtitle; or

5 (2) Made under Title 18, Subtitle 10 of the Education Article.

6 (b) (1) Before the execution of a loan contract under this title, the lender  
7 shall furnish to the borrower a written statement which sets forth:8 (i) The total principal amount of the loan and the total amount  
9 of finance charge as defined in the federal Truth in Lending Act to be paid, stated in  
10 dollars, except that on loans payable on demand, the total amount of finance charge to  
11 be paid shall be stated on a per diem basis;12 (ii) The annual effective rate of simple interest charged, stated  
13 in percentage calculated to the nearest 0.2 percent; [and]14 (iii) The itemized amount of payments in addition to interest  
15 payable to the lender in connection with the loan at the time the loan is made, stated  
16 in dollars; **AND**17 **(IV) FOR A LOAN MADE UNDER § 12–109 OF THIS SUBTITLE,**  
18 **THE MONTHLY PAYMENT AMOUNT TO BE PAID BY THE BORROWER AND PLACED**  
19 **IN AN ESCROW ACCOUNT ESTABLISHED UNDER § 12–109(B) OF THIS SUBTITLE.**20 (2) If the loan is made to two or more borrowers, delivery of the  
21 statement to one borrower is sufficient, but a copy of the statement shall be furnished  
22 to each other borrower.23 (3) Paragraphs (1)(i), (ii), and (iii) of this subsection do not apply to  
24 any loan subject to the disclosure provisions of the federal Truth in Lending Act, if the  
25 lender complies with the applicable disclosure provisions of the federal act and its  
26 regulations.27 (4) A statement that complies with the applicable disclosure  
28 provisions of the federal Truth in Lending Act is sufficient to meet the requirements of  
29 this title.30 (c) At least annually and, on request of the borrower, at any other  
31 reasonable time or interval, a lender who receives scheduled monthly periodic  
32 payments on more than five loans secured by an interest in real property shall furnish  
33 to the borrower a written statement informing the borrower of the amount of:

- 1           (1)    Payments credited to reducing the principal;
- 2           (2)    Payments credited to interest as defined in this subtitle; and
- 3           (3)    The remaining unpaid principal balance.

4 12-109.

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

6                   (2)    “Lending institution” means a bank, savings bank, or savings and  
7 loan association doing business in Maryland.

8                   (3)    “Escrow account” means an expense or escrow account which tends  
9 to protect the security of a loan by the accumulation of funds for the payment of taxes,  
10 insurance premiums, or other expenses.

11           (b)    **NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT**  
12 **TO SUBSECTIONS (D) AND (E) OF THIS SECTION, AT THE TIME A LOAN IS MADE, A**  
13 **LENDING INSTITUTION WHICH LENDS MONEY SECURED BY A FIRST MORTGAGE**  
14 **OR FIRST DEED OF TRUST ON ANY INTEREST IN RESIDENTIAL REAL PROPERTY**  
15 **SHALL ESTABLISH AN ESCROW ACCOUNT IN CONNECTION WITH THE LOAN.**

16           (c)    (1)    After May 31, 1974, a lending institution which lends money  
17 secured by a first mortgage or first deed of trust on any interest in residential real  
18 property and creates or is the assignee of an escrow account in connection with that  
19 loan shall pay interest to the borrower on the funds in the escrow account at the  
20 greater of:

21                   (i)    A rate of 3 percent per annum simple interest; or

22                   (ii)   The rate of interest regularly paid by the lending institution  
23 on regular passbook savings accounts.

24           (2)    Interest on these funds shall be:

25                   (i)    Computed on the average monthly balance in the escrow  
26 account; and

27                   (ii)   Paid annually to the borrower by crediting the escrow  
28 account with the amount of interest due.

29           (3)    The lending institution shall annually provide the borrower with a  
30 statement of the escrow balance.

1            [(c)](D)        The provisions of this section do not apply to a lending institution  
2 which provides for the payment of taxes, insurance, or other expenses under the direct  
3 reduction method by which these expenses, when paid by the lender, are added to the  
4 outstanding principal balance of the loan.

5            [(d)](E)        This section does not apply if the loan is purchased by an  
6 out-of-state lender through the Federal National Mortgage Association, the  
7 Government National Mortgage Association, or the Federal Home Loan Mortgage  
8 Corporation and the out-of-state lender as a condition of purchase elects to service the  
9 loan. However, this section shall apply if the out-of-state lender sells the loan to a  
10 Maryland lender or places the loan with a Maryland lender for servicing.

11 12-125.

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

13                            (2)        “Borrower” means a person who makes an application for a loan  
14 secured by a first mortgage or first deed of trust on a 1- to 4-family home to be  
15 occupied by the borrower as the borrower’s primary residence.

16                            (3)        “Commitment” means a written, specific, binding agreement  
17 between a borrower and a lender which sets forth the terms of a loan being extended  
18 to the borrower.

19                            (4)        **“ESCROW ACCOUNT” HAS THE MEANING STATED IN § 12-109**  
20 **OF THIS SUBTITLE.**

21                            (5)        “Financing agreement” means a written agreement between a  
22 borrower and a lender which sets forth the terms of a purchase money loan or a  
23 refinancing of an existing loan that:

24    (i)        Results in or is secured by a first mortgage or a first deed of  
25 trust on a 1- to 4-family home to be occupied by the borrower; and

26    (ii)        Is offered or extended to the borrower.

27                            [(5)](6)        (i)        “Lender” means a person subject to the licensing  
28 requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

29    (ii)        “Lender” does not include a person exempt from licensure  
30 under § 11-502 of the Financial Institutions Article.

31                            [(6)](7)        (i)        “Loan application” means any oral or written request  
32 for an extension of credit that is made in accordance with procedures established by a  
33 lender for the purpose of inducing the lender to seek to procure or make a mortgage  
34 loan.

1 (ii) "Loan application" does not include the use of an account or  
2 line of credit to obtain a loan within a previously established credit limit.

3 (b) (1) A lender who offers to make or procure a loan secured by a first  
4 mortgage or first deed of trust on a 1- to 4-family home to be occupied by the borrower  
5 shall provide the borrower with a financing agreement executed by the lender within  
6 10 business days after the date the loan application is completed.

7 (2) The financing agreement shall provide:

8 (i) The term and principal amount of the loan;

9 (ii) An explanation of the type of mortgage loan being offered;

10 (iii) The rate of interest that will apply to the loan and, if the  
11 rate is subject to change or is a variable rate or is subject to final determination at a  
12 future date based on some objective standard, a specific statement of those facts;

13 (iv) The points, if any, to be paid by the borrower or the seller, or  
14 both; [and]

15 (v) The term during which the financing agreement remains in  
16 effect; AND

17 (VI) **THE MONTHLY PAYMENT AMOUNT TO BE PAID BY THE**  
18 **BORROWER AND PLACED IN AN ESCROW ACCOUNT ESTABLISHED UNDER**  
19 **PARAGRAPH (4) OF THIS SUBSECTION.**

20 (3) If all the provisions of the financing agreement are not subject to  
21 future determination, change, or alteration during its term, the financing agreement  
22 shall constitute the final binding agreement between the parties as to the items  
23 covered by the financing agreement.

24 (4) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AT THE**  
25 **TIME A LOAN IS MADE, A LENDER WHO LENDS MONEY SECURED BY A FIRST**  
26 **MORTGAGE OR FIRST DEED OF TRUST ON ANY INTEREST IN RESIDENTIAL REAL**  
27 **PROPERTY SHALL ESTABLISH AN ESCROW ACCOUNT IN CONNECTION WITH THE**  
28 **LOAN.**

29 12-301.

30 (a) In this subtitle the following words have the meanings indicated.

31 (b) "Commissioner" means the Commissioner of Financial Regulation.

32 (c) **"ESCROW ACCOUNT" MEANS AN EXPENSE OR ESCROW ACCOUNT**  
33 **THAT TENDS TO PROTECT THE SECURITY OF A LOAN BY THE ACCUMULATION OF**

1 **FUNDS FOR THE PAYMENT OF TAXES, INSURANCE PREMIUMS, OR OTHER**  
2 **EXPENSES.**

3 (D) “Lender” means a person who makes a loan under this subtitle.

4 [(d)](E) “Licensee” means a person who is licensed under Title 11, Subtitle  
5 2 of the Financial Institutions Article, the Maryland Consumer Loan Law — Licensing  
6 Provisions.

7 [(e)](F) “Loan” means any loan or advance of money or credit made under  
8 this subtitle.

9 [(f)](G) “Person” includes an individual, corporation, business trust, estate,  
10 trust, partnership, association, two or more persons having a joint or common interest,  
11 or any other legal or commercial entity.

12 [(g)](H) “Wages” means all remuneration paid to any employee for his  
13 employment, including the cash value of all remuneration paid in any medium other  
14 than cash.

15 **12-306.1.**

16 **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AT THE TIME A LOAN**  
17 **IS MADE, A LENDER WHO LENDS MONEY SECURED BY A FIRST MORTGAGE OR**  
18 **FIRST DEED OF TRUST ON ANY INTEREST IN RESIDENTIAL REAL PROPERTY**  
19 **SHALL ESTABLISH AN ESCROW ACCOUNT IN CONNECTION WITH THE LOAN.**

20 12-308.

21 (a) (1) At the time a loan is made, the lender shall deliver to the borrower  
22 a statement in the English language which:

23 (i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this  
24 subtitle, in their entireties; [and]

25 (ii) Complies with § 12-106(b) of this title; **AND**

26 **(III) DISCLOSES TO THE BORROWER THE MONTHLY**  
27 **PAYMENT AMOUNT TO BE PAID BY THE BORROWER AND PLACED IN AN ESCROW**  
28 **ACCOUNT ESTABLISHED UNDER § 12-306.1 OF THIS SUBTITLE.**

29 (2) If there are two or more borrowers, the lender:

30 (i) May deliver the statement to any one of the borrowers; and

1 (ii) At the request of any other borrower, shall deliver a copy of  
2 the statement to that borrower within 10 days after the request.

3 12-922.

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

5 (2) "Borrower" means a consumer borrower who makes an application  
6 for a loan secured by a first mortgage or first deed of trust on residential real property  
7 to be occupied by the borrower as the borrower's primary residence.

8 (3) "Commitment" means a written, specific, binding agreement  
9 between a borrower and a lender which sets forth the terms of a loan being extended  
10 to the borrower.

11 (4) **"ESCROW ACCOUNT" MEANS AN EXPENSE OR ESCROW**  
12 **ACCOUNT THAT TENDS TO PROTECT THE SECURITY OF A LOAN BY THE**  
13 **ACCUMULATION OF FUNDS FOR THE PAYMENT OF TAXES, INSURANCE**  
14 **PREMIUMS, OR OTHER EXPENSES.**

15 (5) "Financing agreement" means a written agreement between a  
16 borrower and a lender which sets forth the terms of a purchase money loan or a  
17 refinancing of an existing loan that:

18 (i) Results in or is secured by a first mortgage or a first deed of  
19 trust on residential real property to be occupied by the borrower; and

20 (ii) Is offered or extended to the borrower.

21 [(5)](6) (i) "Lender" means a credit grantor subject to the  
22 licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

23 (ii) "Lender" does not include a credit grantor exempt from  
24 licensing under § 11-502 of the Financial Institutions Article.

25 [(6)](7) (i) "Loan application" means any oral or written request  
26 for an extension of credit that is made in accordance with procedures established by a  
27 lender for the purpose of inducing the lender to seek to procure or make a mortgage  
28 loan.

29 (ii) "Loan application" does not include the use of an account or  
30 line of credit to obtain a loan within a previously established credit limit.

31 (b) (1) A lender who offers to make or procure a loan secured by a first  
32 mortgage or first deed of trust on residential real property to be occupied by the  
33 borrower shall provide the borrower with a financing agreement executed by the  
34 lender within 10 business days after the date the loan application is completed.

- 1           (2)    The financing agreement shall provide:
- 2                   (i)    The term and principal amount of the loan;
- 3                   (ii)   An explanation of the type of mortgage loan being offered;
- 4                   (iii)   The rate of interest that will apply to the loan and, if the  
5 rate is subject to change or is a variable rate or is subject to final determination at a  
6 future date based on some objective standard, a specific statement of those facts;
- 7                   (iv)   The points, if any, to be paid by the borrower or the seller, or  
8 both; [and]
- 9                   (v)    The term during which the financing agreement remains in  
10 effect; **AND**

11                               **(VI) THE MONTHLY PAYMENT AMOUNT TO BE PAID BY THE**  
12 **BORROWER AND PLACED IN AN ESCROW ACCOUNT ESTABLISHED UNDER**  
13 **SUBSECTION (D) OF THIS SECTION.**

14           (3)    If all the provisions of the financing agreement are not subject to  
15 future determination, change, or alteration during its term, the financing agreement  
16 shall constitute the final binding agreement between the parties as to the items  
17 covered by the financing agreement.

18           (c)    (1)    If any of the provisions of the financing agreement are subject to  
19 change or determination after its execution, the lender shall provide the borrower with  
20 a commitment, executed by the lender, at least 72 hours before the time of settlement  
21 agreed to by the parties, providing:

22                   (i)    The effective fixed interest rate or initial interest rate that  
23 will be applied to the loan; and

24                   (ii)   A restatement of all the remaining unchanged provisions of  
25 the financing agreement.

26           (2)    Subsequent to execution of the financing agreement, the borrower  
27 may waive in writing the 72-hour advance presentation requirement and accept the  
28 commitment at settlement only if compliance with the 72-hour requirement is shown  
29 by the lender to be infeasible.

30           (d)    **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AT THE TIME A**  
31 **LOAN IS MADE, A LENDER WHO LENDS MONEY SECURED BY A FIRST MORTGAGE**  
32 **OR FIRST DEED OF TRUST ON ANY INTEREST IN RESIDENTIAL REAL PROPERTY**  
33 **SHALL ESTABLISH AN ESCROW ACCOUNT IN CONNECTION WITH THE LOAN.**

1           (E) (1) A borrower aggrieved by any violation of this section shall be  
2 entitled to bring a civil suit for damages, including reasonable attorney's fees, against  
3 the lender.

4           (2) The penalties set out under § 12-918 of this subtitle do not apply  
5 to any violation of this section.

6 12-1022.

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

8           (2) "Borrower" means a consumer borrower who makes an application  
9 for a loan secured by a first mortgage or first deed of trust on residential real property  
10 to be occupied by the borrower as the borrower's primary residence.

11           (3) "Commitment" means a written, specific, binding agreement  
12 between a borrower and a lender which sets forth the terms of a loan being extended  
13 to the borrower.

14           (4) **"ESCROW ACCOUNT" MEANS AN EXPENSE OR ESCROW**  
15 **ACCOUNT THAT TENDS TO PROTECT THE SECURITY OF A LOAN BY THE**  
16 **ACCUMULATION OF FUNDS FOR THE PAYMENT OF TAXES, INSURANCE**  
17 **PREMIUMS, OR OTHER EXPENSES.**

18           (5) "Financing agreement" means a written agreement between a  
19 borrower and a lender which sets forth the terms of a purchase money loan or a  
20 refinancing of an existing loan that:

21                   (i) Results in or is secured by a first mortgage or a first deed of  
22 trust on residential real property to be occupied by the borrower; and

23                   (ii) Is offered or extended to the borrower.

24           [(5)](6) (i) "Lender" means a credit grantor subject to the  
25 licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

26                   (ii) "Lender" does not include a credit grantor exempt from  
27 licensing under § 11-502 of the Financial Institutions Article.

28           [(6)](7) (i) "Loan application" means any oral or written request  
29 for an extension of credit that is made in accordance with procedures established by a  
30 lender for the purpose of inducing the lender to seek to procure or make a mortgage  
31 loan.

32                   (ii) "Loan application" does not include the use of an account or  
33 line of credit to obtain a loan within a previously established credit limit.

1 (b) (1) A lender who offers to make or procure a loan secured by a first  
2 mortgage or first deed of trust on residential real property to be occupied by the  
3 borrower shall provide the borrower with a financing agreement executed by the  
4 lender within 10 business days after the date the loan application is completed.

5 (2) The financing agreement shall provide:

6 (i) The term and principal amount of the loan;

7 (ii) An explanation of the type of mortgage loan being offered;

8 (iii) The rate of interest that will apply to the loan and, if the  
9 rate is subject to change or is a variable rate or is subject to final determination at a  
10 future date based on some objective standard, a specific statement of those facts;

11 (iv) The points, if any, to be paid by the borrower or the seller, or  
12 both; [and]

13 (v) The term during which the financing agreement remains in  
14 effect; **AND**

15 **(VI) THE MONTHLY PAYMENT AMOUNT TO BE PAID BY THE**  
16 **BORROWER AND PLACED IN AN ESCROW ACCOUNT ESTABLISHED UNDER**  
17 **SUBSECTION (C) OF THIS SECTION.**

18 (3) If all the provisions of the financing agreement are not subject to  
19 future determination, change, or alteration during its term, the financing agreement  
20 shall constitute the final binding agreement between the parties as to the items  
21 covered by the financing agreement.

22 **(c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AT THE TIME A**  
23 **LOAN IS MADE, A LENDER WHO LENDS MONEY SECURED BY A FIRST MORTGAGE**  
24 **OR FIRST DEED OF TRUST ON ANY INTEREST IN RESIDENTIAL REAL PROPERTY**  
25 **SHALL ESTABLISH AN ESCROW ACCOUNT IN CONNECTION WITH THE LOAN.**

26 **(D) (1)** If any of the provisions of the financing agreement are subject to  
27 change or determination after its execution, the lender shall provide the borrower with  
28 a commitment, executed by the lender, at least 72 hours before the time of settlement  
29 agreed to by the parties, providing:

30 (i) The effective fixed interest rate or initial interest rate that  
31 will be applied to the loan; and

32 (ii) A restatement of all the remaining unchanged provisions of  
33 the financing agreement.

1           (2)     Subsequent to execution of the financing agreement, the borrower  
2 may waive in writing the 72-hour advance presentation requirement and accept the  
3 commitment at settlement only if compliance with the 72-hour requirement is shown  
4 by the lender to be infeasible.

5           [(d)](E)     If a lender fails to comply with the requirements of this section, the  
6 lender shall be subject to the penalties set forth in § 11-523 of the Financial  
7 Institutions Article.

8           [(e)](F)     (1)     A borrower aggrieved by any violation of this section shall be  
9 entitled to bring a civil suit for damages, including reasonable attorney's fees, against  
10 the lender.

11           (2)     The penalties set out under § 12-1018 of this subtitle do not apply  
12 to any violation of this section.

13           [(f)](G)     This section may not be construed to exempt a lender from the  
14 provisions of §§ 12-1027 and 12-1028 of this subtitle.

15           SECTION 2. AND BE IT FURTHER ENACTED, That a presently existing  
16 obligation or contract right may not be impaired in any way by this Act.

17           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be  
18 construed to apply only prospectively and may not be applied or interpreted to have  
19 any effect on or application to any contract for a loan secured by a first mortgage or  
20 first deed of trust on any interest in residential real property executed before the  
21 effective date of this Act.

22           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2008.