HOUSE BILL 360

N1 8lr0978
CF SB 217

By: **The Speaker (By Request – Administration) and Delegates Niemann, Aumann, Barkley, Barnes, Barve, Benson, Bobo, Bohanan, Braveboy, Bronrott, Burns, G. Clagett, V. Clagett, Conway, Doory, Eckardt, Gaines, George, Griffith, Gutierrez, Guzzone, Haddaway, Healey, Hecht, Heller, Holmes, Howard, Hucker, Ivey, James, Jones, Kaiser, Krysiak, Lafferty, Lee, Levi, Love, Manno, Mathias, McIntosh, Montgomery, Morhaim, Nathan–Pulliam, Pena–Melnyk, Riley, Ross, Rudolph, Shewell, Sophocleus, Stein, Stukes, Tarrant, F. Turner, V. Turner, Vaughn, Waldstreicher, and Walker**

Introduced and read first time: January 25, 2008
Assigned to: Economic Matters and Environmental Matters

A BILL ENTITLED

AN ACT concerning

Real Property – Maryland Mortgage Fraud Protection Act

FOR the purpose of prohibiting a person from committing mortgage fraud; authorizing the Attorney General or the Commissioner of Financial Regulation to seek an injunction to prohibit a violation of this Act; authorizing the Attorney General and the State's Attorney to conduct the criminal investigation and prosecution of mortgage fraud under this Act; authorizing a private right of action for a violation of this Act under certain circumstances; imposing certain penalties for a violation of this Act under certain circumstances; providing for the forfeiture of property used in a violation of this Act under certain circumstances; defining certain terms; and generally relating to mortgage fraud.

BY repealing and reenacting, without amendments,
Article – Financial Institutions
Section 11–501(k) and (m)
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY adding to
Article – Real Property
Section 7–401 through 7–409 to be under the new subtitle "Subtitle 4. Maryland Mortgage Fraud Protection Act"
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(2003 Replacement Volume and 2007 Supplement)

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

Article – Financial Institutions

11–501.

(k) (1) "Mortgage loan" means any loan or other extension of credit that is:

(i) Secured, in whole or in part, by any interest in residential real property in Maryland; and

(ii) 1. If for personal, household, or family purposes, in any amount; or

2. If for commercial purposes, not in excess of $75,000.

(2) "Mortgage loan" does not include any loan for commercial purposes that is:

(i) Secured, in whole or in part, by any interest in residential real property in Maryland;

(ii) In excess of $75,000; and

(iii) Supported by independent evidence of the commercial purpose.

(m) "Residential real property" means any owner–occupied real property located in Maryland, which property has a dwelling on it designed principally as a residence with accommodations for not more than 4 families, but does not include any real property held primarily for rental, investment, or the generation of income through any commercial or industrial enterprise.

Article – Real Property

SUBTITLE 4. MARYLAND MORTGAGE FRAUD PROTECTION ACT.

7–401.

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

(B) "DOCUMENT" INCLUDES APPLICATIONS, APPRAISAL REPORTS, HUD–1 SETTLEMENT STATEMENTS, W–2 FORMS, VERIFICATIONS OF INCOME OR EMPLOYMENT, BANK STATEMENTS, TAX RETURNS, PAYROLL STUBS, AND ANY REQUIRED DISCLOSURE.

(C) "HOMEOWNER" MEANS:

(1) A RECORD OWNER OF RESIDENTIAL REAL PROPERTY; OR

(2) AN INDIVIDUAL OCCUPYING THE RESIDENTIAL REAL PROPERTY UNDER A USE AND POSSESSION ORDER ISSUED UNDER TITLE 8, SUBTITLE 2 OF THE FAMILY LAW ARTICLE.

(D) "MORTGAGE FRAUD" MEANS ANY ACTION BY A PERSON MADE WITH THE INTENT TO DEFRAUD THAT INVOLVES:

(1) KNOWINGLY MAKING ANY DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION DURING THE MORTGAGE LENDING PROCESS WITH THE INTENT THAT THE MISSTATEMENT, MISREPRESENTATION, OR OMISSION BE RELIED ON BY A MORTGAGE LENDER, BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE LENDING PROCESS;

(2) KNOWINGLY USING OR FACILITATING THE USE OF ANY DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION DURING THE MORTGAGE LENDING PROCESS WITH THE INTENT THAT THE MISSTATEMENT, MISREPRESENTATION, OR OMISSION BE RELIED ON BY A MORTGAGE LENDER, BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE LENDING PROCESS;

(3) RECEIVING ANY PROCEEDS OR ANY OTHER FUNDS IN CONNECTION WITH A MORTGAGE CLOSING THAT THE PERSON KNOWS RESULTED FROM A VIOLATION OF ITEM (1) OR (2) OF THIS SECTION;

(4) CONSPIRING TO VIOLATE ANY OF THE PROVISIONS OF ITEM (1), (2), OR (3) OF THIS SECTION; OR

(5) FILING OR CAUSING TO BE FILED IN THE LAND RECORDS IN THE COUNTY WHERE A RESIDENTIAL REAL PROPERTY IS LOCATED, ANY DOCUMENT THE PERSON KNOWS TO CONTAIN A DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

(E) (1) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS BY WHICH A PERSON SEEKS OR OBTAINS A MORTGAGE LOAN.

(2) "MORTGAGE LENDING PROCESS" INCLUDES:

(I) THE SOLICITATION, APPLICATION, ORIGINATION, NEGOTIATION, SERVICING, UNDERWRITING, SIGNING, CLOSING, AND FUNDING OF A MORTGAGE LOAN; AND

(II) THE NOTARIZING OF ANY DOCUMENT IN CONNECTION WITH A MORTGAGE LOAN.

(F) "MORTGAGE LOAN" HAS THE MEANING STATED IN § 11–501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(G) "PATTERN OF MORTGAGE FRAUD" MEANS TWO OR MORE INCIDENTS OF MORTGAGE FRAUD THAT:

(1) INVOLVE TWO OR MORE RESIDENTIAL REAL PROPERTIES; AND

(2) HAVE SIMILAR INTENTS, RESULTS, ACCOMPLICES, VICTIMS, OR METHODS OF COMMISSION OR OTHERWISE ARE INTERRELATED BY DISTINGUISHING CHARACTERISTICS.

(H) "RESIDENTIAL REAL PROPERTY" HAS THE MEANING STATED IN § 11–501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

7–402.

A PERSON MAY NOT COMMIT MORTGAGE FRAUD.

7–403.

FOR THE PURPOSE OF VENUE UNDER THIS SUBTITLE, A VIOLATION OF THIS SUBTITLE SHALL BE CONSIDERED TO HAVE BEEN COMMITTED:

(1) IN THE COUNTY IN WHICH THE RESIDENTIAL REAL PROPERTY IS LOCATED FOR WHICH A MORTGAGE LOAN IS BEING SOUGHT;

(2) IN THE COUNTY IN WHICH AN ACT WAS PERFORMED IN FURTHERANCE OF THE VIOLATION;

(3) IN THE COUNTY IN WHICH A PERSON ALLEGED TO HAVE VIOLATED THIS SUBTITLE HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF THE VIOLATION;

(4) IF A CLOSING OCCURRED, IN THE COUNTY IN WHICH THE CLOSING OCCURRED; AND

(5) IN THE COUNTY IN WHICH A DOCUMENT CONTAINING A DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION IS FILED IN THE LAND RECORDS.

7–404.

(A) THE ATTORNEY GENERAL OR THE COMMISSIONER OF FINANCIAL REGULATION MAY SEEK AN INJUNCTION TO PROHIBIT A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.

(B) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:

(1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED PRACTICE;

(2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED PRACTICE; OR

(3) APPOINT A RECEIVER IN THE CASE OF A WILLFUL VIOLATION OF THIS SUBTITLE.

(C) IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL OR COMMISSIONER UNDER THIS SECTION, THE ATTORNEY GENERAL OR COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE ACTION FOR THE USE OF THE STATE.

7–405.

(A) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE AUTHORIZED TO CONDUCT THE CRIMINAL INVESTIGATION AND PROSECUTION OF ALL CASES OF MORTGAGE FRAUD UNDER THIS SUBTITLE.

(B) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY, AS APPROPRIATE, SHALL PROMPTLY REPORT A CONVICTION UNDER THIS SUBTITLE TO THE UNIT OF STATE GOVERNMENT THAT HAS REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE PERSON CONVICTED.

7–406.

(A) IN ADDITION TO ANY ACTION AUTHORIZED UNDER THIS SUBTITLE AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A PERSON MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A VIOLATION OF THIS SUBTITLE.

(B) A PERSON WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO IS AWARDED DAMAGES MAY ALSO SEEK, AND THE COURT MAY AWARD, REASONABLE ATTORNEY'S FEES.

(C) IF THE COURT FINDS THAT THE DEFENDANT VIOLATED THIS SUBTITLE, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE AMOUNT OF ACTUAL DAMAGES.

7–407.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $5,000 OR IMPRISONMENT NOT EXCEEDING 10 YEARS OR BOTH.

(B) IF A VIOLATION INVOLVES A VICTIM WHO IS A VULNERABLE ADULT AS DEFINED UNDER § 3–604(A) OF THE CRIMINAL LAW ARTICLE, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $15,000 OR IMPRISONMENT NOT EXCEEDING 15 YEARS OR BOTH.

(C) IF A VIOLATION INVOLVES ENGAGING OR PARTICIPATING IN A PATTERN OF MORTGAGE FRAUD OR A CONSPIRACY OR ENDEAVOR TO ENGAGE OR PARTICIPATE IN A PATTERN OF MORTGAGE FRAUD, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100,000 OR IMPRISONMENT NOT EXCEEDING 20 YEARS OR BOTH.

(D) (1) A PERSON CONVICTED OF VIOLATING THIS SUBTITLE SHALL PAY RESTITUTION TO ANY PERSON DAMAGED BY THE VIOLATION.

(2) RESTITUTION SHALL BE ORDERED IN ADDITION TO A FINE OR IMPRISONMENT OR BOTH.

(E) EACH RESIDENTIAL REAL PROPERTY TRANSACTION SUBJECT TO A VIOLATION OF THIS SUBTITLE CONSTITUTES A SEPARATE OFFENSE, AND SHALL NOT MERGE WITH ANY OTHER CRIMES SET FORTH IN THE CRIMINAL LAW ARTICLE.

(F) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO § 5–106(B) OF THE COURTS ARTICLE.

7–408.

(A) ALL REAL AND PERSONAL PROPERTY USED OR INTENDED FOR USE IN THE COURSE OF, DERIVED FROM, OR REALIZED THROUGH A VIOLATION OF THIS SUBTITLE SHALL BE SUBJECT TO FORFEITURE TO THE STATE.

(B) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE AUTHORIZED TO COMMENCE FORFEITURE PROCEEDINGS UNDER THIS SUBTITLE.

7–409.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND MORTGAGE FRAUD PROTECTION ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2008.