

DOUGLAS F. GANSLER  
ATTORNEY GENERAL

KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General



DAN FRIEDMAN  
Counsel to the General Assembly

SANDRA BENSON BRANTLEY  
BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 7, 2009

The Honorable Martin J. O'Malley  
Governor of Maryland  
State House  
Annapolis, Maryland 21401-1991

**RE: House Bill 635**

Dear Governor O'Malley:

We have reviewed House Bill 635, "Criminal Procedure - Occupational Licenses or Certificates - Criminal Conviction," for constitutionality and legal sufficiency. This bill was approved on a form letter on April 24, 2009. We now write to discuss the possible preemption of its provisions with respect to mortgage originators. For the reasons discussed below, it is our view that Chapter 4, signed April 14, 2009 would be the applicable law with respect to the licensing of mortgage originators in this State. Even if this were not the case, however, the preemption of House Bill 635 in this single aspect would not require veto of the bill.

House Bill 635 applies to six cabinet level departments in State government, including the Department of Labor, Licensing and Regulation, and the units of those Departments, including the Division of Financial Regulation. It prohibits those departments and units from denying an occupational license or certificate solely on the basis that the applicant has previously been convicted of a crime,<sup>1</sup> unless the department or unit determines that there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought, or that the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. In making this determination, the department or unit must consider the policy of the State to encourage the employment of ex-offenders, the specific duties and responsibilities required of a licensee or certificate holder, whether the applicant's conviction has any impact on the

<sup>1</sup> ~~The protections of the bill do not apply to a person who has committed a crime of violence.~~

The Honorable Martin J. O'Malley  
May 7, 2009  
Page 2

applicant's fitness or ability to perform the duties and responsibilities authorized by the license or certificate, the age of the applicant at the time of the conviction and the amount of time that has elapsed, the seriousness of the offense, information concerning the applicant's rehabilitation and good conduct, and the legitimate interest of the department or unit in protecting the property and the safety and welfare of specific individuals or the general public.

The Safe and Fair for Mortgage Licensing Act of 2008, Title V of Pub.L. 110-289, also known as the SAFE Act, establishes minimum standards for the licensing of mortgage originators which prohibit the issuance of a mortgage originator license to a person who has been convicted of a felony. Specifically, under the SAFE Act:

The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

- (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—
  - (A) during the 7-year period preceding the date of the application for licensing and registration; or
  - (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. ...

12 U.S.C. § 5104(b)(1) and (2). These minimum standards were included in Chapter 4 of 2009. Specifically, new Financial Institutions Article § 11-605(a)(2) provides that the Commissioner of Financial Regulation may not issue a mortgage loan originator license unless the Commissioner makes certain findings, including that:

- (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
  - (i) during the 7-year period immediately preceding the date of the application for licensing; or
  - (ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

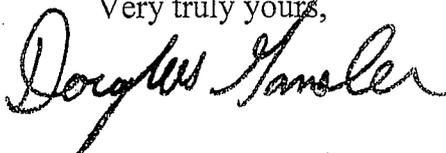
The Honorable Martin J. O'Malley

May 7, 2009

Page 3

To the extent that House Bill 635 would require the Commissioner of Financial Regulation to consider the issuance of a mortgage originator license to a person who had been convicted of a felony within the last seven years, or who had ever been convicted of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, it would appear to be in conflict with both Chapter 4 and the SAFE Act. It is well-established that where provisions of one statute deal with a subject generally and those of another statute do so more specifically, the more specific statute will be viewed as an exception to the more general one. *GEICO v. Insurance Commissioner*, 332 Md. 124, 132-133 (1993). Applying this rule, it is clear that the provisions of Financial Institutions Article § 11-605(a)(2) would apply to applicants for mortgage originator licenses in Maryland, rather than the more general provisions enacted by House Bill 635. Thus, there is no conflict between the operation of House Bill 635 and federal law. Even if there were such a conflict, however, it would only prevent the application of House Bill 635 to mortgage originator licenses, it would not invalidate the bill as a whole. For this reason, it is our view that House Bill 635 may be signed into law.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable Gerron S. Levi  
The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro