

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 262

(The President, *et al.*) (By Request - Office of the
Attorney General)

Finance

Maryland Collection Agency Licensing Act - Definitions and Legislative Intent

This bill clarifies the definition of “consumer claim” and defines “mortgage lender” under the Maryland Collection Agency Licensing Act (MCALA). The bill also declares the intent of the General Assembly that the bill be applied and interpreted to (1) abrogate the Court of Appeals ruling in *Blackstone v. Sharma*, 461 Md. 87 (2018) and (2) adopt the rationale of the dissenting opinion in that Court of Appeals decision. In addition, the bill specifies that it is the intent of the General Assembly that the bill (1) not be construed as making any substantive changes to MCALA, but rather be construed as clarifying MCALA and (2) applies only prospectively to those sales of real property to bona fide purchasers that are made in accordance with Title 14, Chapter 200 of the Maryland Rules. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: Special fund revenues increase, likely minimally, beginning in FY 2020, due to additional entities obtaining licensure under the bill. Expenditures are not materially affected.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill clarifies that the definition of a “consumer claim” under MCALA includes, for a transaction creating a lien (or other security interest in real property or personal property), (1) a monetary claim against a consumer and (2) a claim to, against, or otherwise involving the secured property based on a mortgage, a deed of trust, or any other contract or instrument. The bill also defines “mortgage lender” as a person who is duly

licensed under the Maryland Mortgage Lender Law (Title 11, Subtitle 5 of the Financial Institutions Article).

Current Law:

Maryland Collection Agency Licensing Act

MCALA requires a person to be licensed by the State Collection Agency Licensing Board whenever the person does business as a collection agency, generally defined as engaging, either directly or indirectly, in the business of (1) collecting a consumer claim; (2) collecting a consumer claim acquired when the claim was in default; (3) collecting a consumer claim using a name or other artifice that indicates that another party is attempting to collect a consumer claim; (4) using a system of forms that indicates that a person other than the owner is asserting a consumer claim; and (5) employing services to solicit a collection system to be used for collection of a consumer claim.

A “consumer claim” is defined as a claim for money owed or said to be owed by a resident of the State that arises from a transaction in which a private party sought credit, money, property, or services.

MCALA does not apply to (1) banks; (2) federal or State credit unions; (3) mortgage lenders; (4) persons acting under an order of court; (5) certain real estate brokers or those acting on their behalf; (6) savings and loan associations; (7) title companies as to their escrow businesses; (8) trust companies; (9) certain lawyers collecting debt on behalf of a client; and (10) specified persons who are collecting debt on behalf of another person. In addition, the following persons are excluded from the license requirement: (1) a regular employee of a creditor while the employee is acting under the general direction and control of the creditor to collect a consumer claim that the creditor owns; and (2) a regular employee of a licensed collection agency while the employee is acting within the scope of employment.

An applicant for a license must submit an application under oath and pay a fee set by the board. (The fee is \$350 per year.) An applicant is also required to execute a \$5,000 surety bond for the benefit of any member of the public who has a loss or other damage as the result of a violation of MCALA or the Maryland Consumer Debt Collection Act. The board may deny a license if an applicant fraudulently uses or attempts to obtain a license, or if the applicant or an associate has had a license revoked.

A person may not do business as a collection agency without a State license. A person who violates this law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 or imprisonment for up to six months or both.

Maryland Rules

[Title 14, Chapter 200](#) of the Maryland Rules applies to foreclosures under lien instruments and statutory liens.

Background: The Office of the Commissioner of Financial Regulation (OCFR) advises that the bill is a response to a recent Court of Appeals [decision](#), *Blackstone v. Sharma*, 461 Md. 87 (2018). The decision held that a trust that purchases defaulted mortgages is not subject to licensing under MCALA. OCFR notes that the bill requires mortgage trusts formed to acquire (or acquire and own) defaulted Maryland residential mortgages to be licensed as collection agencies. OCFR further advises that these pass-through vehicles holding and owning mortgage-backed securities are typically structured as a trust in which mortgage payments are collected and passed through to investors.

State Fiscal Effect: OCFR advises that it is unaware of any reliable data source regarding the number of trusts or other entities purchasing defaulted mortgage debt other than the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). OCFR notes that, over a recent four-year period, Fannie Mae sold 101 pools of defaulted mortgage loans and Freddie Mac sold 70 such pools of defaulted mortgage debt. Of the buyers of these pools, 16 were entities not licensed in Maryland as either mortgage lenders or collection agencies.

For illustrative purposes only, assuming the number of such entities increases by about four each year, OCFR anticipates as many as 20 new licensees when the bill takes effect. A collection agency license is \$350; however, a portion of the fee – \$100 – is paid to the Nationwide Multistate Licensing System and Registry. Thus, \$250 is retained for the Nondepository Special Fund. Accordingly, in fiscal 2020, special fund revenues could increase by \$5,000 as those entities become subject to licensure requirements under MCALA. In fiscal 2021, special fund revenues could increase by as much as \$6,000, assuming (1) the 20 licenses issued in June 2020, which must expire by December 31, 2020, are renewed as of January 1, 2021, and (2) four new entities covered by the bill become licensees. In subsequent years, as the number of licensees grows, special fund revenues continue to increase with the issuance of new and renewal licenses. Assuming the number of licensees increases by about four each year, special fund revenues could increase by as much as \$9,000 in fiscal 2024 (the fifth year of implementation).

However, if the increase in licensees under the bill is greater, special fund revenues may increase more than anticipated. Given the likely limited number of new licenses, expenditures to regulate additional licensees are not anticipated to increase.

Additional Information

Prior Introductions: HB 593, an identical bill as amended, passed the House and was referred to the Senate Rules Committee, but no further action was taken. Its cross file, SB 485, received an unfavorable report by the Senate Finance Committee.

Designated Cross File: HB 334 (The Speaker, *et al.*) (By Request - Office of the Attorney General) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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