HB 1150

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1150 (Delegate Queen)
Economic Matters Finance

Commercial Law and Financial Institutions - Credit Regulation - Shared Appreciation Agreements

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This bill makes "shared appreciation agreements" subject to the Maryland Mortgage Lender Law and other provisions of law that regulate loans of single extensions of closed end credit and revolving credit plans. As a result, any entities engaged in those types of transactions are subject to the regulatory authority of the Office of the Commissioner of Financial Regulation (OCFR). OCFR is authorized to adopt regulations regarding enforcement and compliance. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: The bill generally codifies and clarifies existing practice and therefore does not materially affect State finances or operations.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill defines a "shared appreciation agreement" as a writing evidencing a transaction or any option, future, or any other derivative between a person and a consumer where the consumer receives money (or any other item of value) in exchange for an interest (or future interest) in a dwelling or residential real estate, or a future obligation to repay a sum on the occurrence of an event such as:

- the transfer of ownership;

- a repayment maturity date;
- the death of the consumer; or
- any other event contemplated by the writing.

Current Law: The Maryland Mortgage Lender Law does not explicitly address shared appreciation agreements.

Maryland Mortgage Lender Law, Generally

A mortgage lender is a person that brokers, makes, or services a loan or other extension of credit secured by a lien on residential real property. The mortgage may be categorized as a first or second mortgage loan, a secured open-end line of credit, or a closed-end mortgage.

Under Maryland's Mortgage Lender Law (Title 11, Subtitle 5 of the Financial Institutions Article), a mortgage loan is any loan or other extension of credit secured wholly or partly by an interest in residential real property in Maryland if made for (1) personal, household, or family purposes in any amount or (2) commercial purposes up to $75,000.

A person may not engage in the business of a mortgage lender in the State without first obtaining a license from the office. An applicant for a mortgage lender's license must pay a $1,000 annual license fee and a $1 investigation fee and must meet certain bond requirements that depend on the applicant's aggregate lending activity. Applications are processed through the Nationwide Mortgage Licensing System and Registry. Criminal history background checks are performed on all applicants. The office examines new mortgage lenders within 18 months after licensure and examines all mortgage lenders at least once every 60 months. The licensing provisions do not apply to certain financial institutions that take deposits, insurance companies, or certain federal corporations. A willful violation of the laws regarding mortgage lending is a felony and, on conviction, a violator is subject to a fine not exceeding $50,000 or imprisonment not exceeding 10 years or both.

There is no maximum rate of interest for first mortgages made in compliance with § 12-103(b) of the Commercial Law Article. All other loans secured by an interest in residential real property are subject to a maximum rate of 24% simple interest per year computed on the unpaid principal balance outstanding. The particular law governing the loan (Title 12, Subtitles 1, 9, or 10 of the Commercial Law Article) may restrict the allowable terms of repayment and security.

Legislation enacted in 2008 made a number of substantive changes to the laws relating to mortgage lending and the regulation of mortgage lenders. Lenders may not impose penalties, fees, premiums, or other charges for a mortgage loan if the loan is wholly or partly prepaid, except for reverse mortgage loans. For various types of mortgage loans, including both primary and secondary mortgage loans, the laws modified the factors that a lender or credit grantor must consider when making the loans to focus on the borrower's ability to repay a loan.

Small Business Effect: OCFR advises that, in general, small business lenders that make shared appreciation mortgages should already be licensed as mortgage lenders and should not be subject to additional requirements under the bill. However, certain small businesses may need to obtain licensure under the bill; any such businesses likely realize increased costs for licensure and compliance.

Additional Comments: OCFR advises that, in a typical shared appreciation mortgage transaction, a consumer homeowner agrees to share a percentage of the appreciation in the home's value with the lender in exchange for an advance of funds. The homeowner will generally not incur a periodic payment requirement but must repay the advance upon occurrence of a future event (such as the sale of the home). The amount repaid will depend, in part, on how the value of the home changed since the loan's inception. OCFR notes that such products are not common in Maryland's marketplace. However, OCFR advises that it has interpreted current mortgage regulatory law as applying to shared appreciation mortgages.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2023
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