Senate Bill 621 – Maryland Mortgage Lender Law – Considerations of a Mortgage Servicer – Borrower's Ability to Repay

Senate Finance Committee
March 10, 2020

Oppose

The Maryland Bankers Association (MBA) opposes SB 621 – Maryland Mortgage Lender Law – Considerations of a Mortgage Servicer – Borrower's Ability to repay. According to the Fiscal and Policy Note, "this bill prohibits a mortgage servicer from making a mortgage loan or modifying a mortgage loan without giving "due regard" to the borrower's ability to repay the mortgage loan (or the modified mortgage loan) in accordance with its terms, including the fully indexed rate of the mortgage loan or the modified mortgage loan, if applicable, and property taxes and homeowner's insurance associated with the property."

the Maryland Bankers Association is very much opposed to this legislation. This issue, which was not on the agenda, did come up at a Maryland Consumer Financial Protection Commission meeting with very little discussion and no detailed information as to what the problem was or the harm that needed to be addressed. It was not part of the Commission legislation last year.

For initial loans, Maryland law already requires that a mortgage lender take into consideration the borrower's ability to repay when making a mortgage loan. See Commercial Law Article Section 12-127 which was enacted in 2008 as a result of Governor O'Malley's Home Ownership Preservation Task Force. However, applying these requirements to modifications will have a chilling effect on the granting of mortgage modifications for borrowers facing or in foreclosure. Any borrower in foreclosure receives numerous notices of where to seek counselling and advice. In addition, every borrower can elect to go to mediation which is supervised by the Office of Administrative Hearings.

While we do not have specific data as to the number of modifications that are entered into or how many go into default, the practical result is that no matter what, the borrower more than likely gets to stay in the house for an additional period of time whether they pay as agreed or not. Further, there is absolutely no reason for a lender to enter into a modification unless they believe the borrower may be able to make the payments. The downside to any modification is for the lender, not the borrower.

For these reasons, MBA urges an unfavorable Committee report.