

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Planning
(DLS Control No. 16-134)**

Overview and Legal and Fiscal Impact

The regulation alters the loan terms and requirements for the Maryland Historical Trust Historic Preservation Loan Program, including (1) acceptable forms of collateral; (2) loan modification; (3) recording the loan in the land records; (4) evidence of insurance; (5) title insurance; (6) property appraisals; and (7) the conveyance of a perpetual deed of easement containing preservation covenants applicable to historic real property assisted by a loan.

There are no legal issues of concern.

There is no expected significant fiscal impact on State agencies. Small businesses and local governments borrowing under the program may benefit.

Regulation of COMAR Affected

Department of Planning:

Historical and Cultural Programs: Maryland Historical Trust Historic Preservation Loan Program: COMAR 34.04.02.08

Legal Analysis

Background

The Maryland Historical Trust was established in 1961 to preserve, protect, and enhance districts, sites, buildings, structures, and objects significant in the prehistory, history, upland, and underwater archaeology, architecture, engineering, and culture of the State. The trust is a division of the Department of Planning. Among other things, the trust (1) acquires and maintains properties of historic or architectural merit by gift, grant, or purchase and, through an easement program, holds partial interest in such properties in order to monitor their condition and appearance without the necessity of public ownership; (2) helps organizations, local governments, businesses, and individuals restore and acquire historic properties through State grants and a revolving loan fund program; (3) gives grants to local jurisdictions surveying Maryland historic sites; and (4) administers a local volunteer network represented by advisory organizations.

Summary of Regulation

This regulation alters the loan terms and requirements for the Maryland Historical Trust Historic Preservation Loan Program. The regulation specifies acceptable forms of collateral for a loan from the trust, and authorizes the trust to modify the terms of a loan, including the interest rate and the time or amount of payment. If the loan is secured by real property or historic real property is assisted by the loan, a mortgage or deed of trust must be recorded in the land records where the property is located and the mortgage or deed of trust may be subordinate to other recorded mortgage liens under certain circumstances. The regulation also requires that a borrower provide evidence that insurance has been obtained and will be maintained on the property, including owner's liability insurance, contractor's liability insurance, and owner's property risk insurance, hazard risk insurance, or builder's risk insurance. The insurance must meet certain requirements and name the trust as an additional insured and be in effect for the duration of the loan.

The trust may require the borrower to obtain certain title insurance for loans of \$15,000 and above and may require the borrower to provide certain evidence of title for loans of less than \$15,000. The title insurance or evidence of title may not include exceptions for survey matters, general or blanket exceptions, materialman's liens, or taxes or assessments that are due and payable as of the date of closing. For a loan over \$25,000, the trust may request an appraisal of the historic real property securing the loan showing the value of the property after completion of any scheduled restoration or rehabilitation or any other real property securing the loan, showing that the property has sufficient value, taking into account any senior liens, to secure the lien at a certain loan to value ratio. The regulation also clarifies the requirement that the borrower and the owner of the historic real property must convey to the trust a perpetual deed of easement containing preservation covenants applicable to the historic real property assisted by the loan.

Legal Issues

There are no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 5-7B-01 through 5-7B-10 and 5A-327 of the State Finance and Procurement Article and Executive Orders 01.01.1992.27C and 01.01.1998.04 as statutory authority for the regulations. More specifically, § 5A-327 of the State Finance and Procurement Article establishes the Maryland Historic Preservation Loan Program and Loan Fund. The section requires the department to adopt regulations to carry out the loan program, including application procedures, loan terms, selection procedures, provisions for the review of plans and specifications, and provisions for the inspection of construction projects. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no expected significant fiscal impact on State agencies. Small businesses and local governments borrowing under the program may benefit.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services generally disagrees that the regulation has no fiscal impact. The regulation expands the Maryland Historical Trust's ability to modify the terms of a loan prior to default, which could affect the timing and amount of State special fund (Historic Preservation Loan Fund) loan repayment revenues. The regulation likely does not have a significant fiscal impact though, since the revenues are subject to a borrower's ability to repay, whether the terms of a loan are modified prior to default or after default.

A local government borrower under the program could conceivably benefit from the trust's expanded authority to modify the terms of a loan.

Impact on Budget

There is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs that the regulation does not have a negative impact on small businesses; however, small businesses that borrow under the program and have difficulty meeting the terms of a loan may benefit if the loan terms can be modified before rather than after default (avoiding adverse consequences of a default).

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