
By: ~~Delegate Curran~~ Delegates Curran and Faulkner

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 13, 1997

CHAPTER ____

1 AN ACT concerning

2 **Consumer Credit - Mortgage Lenders - Regulatory Reform and Antifraud Protections**

3 FOR the purpose of altering the licensing and regulation of mortgage lenders and
 4 brokers; adding an exemption from licensure for affiliates of certain depository
 5 institutions; clarifying that employee benefit plans making loans to plan participants
 6 are exempt from licensure; imposing additional requirements for licensing; adding
 7 fees for failing to obtain licenses or to notify the Commissioner of ~~Consumer Credit~~
 8 Financial Regulation of changes in operating locations under certain circumstances;
 9 altering and increasing bonding requirements for mortgage lender licensees;
 10 defining certain terms; applying penalties for perjury to knowing false statements on
 11 a licensing application; altering the credit laws to authorize prepaid finance charges
 12 in connection with an extension of credit secured by a second mortgage in this State;
 13 ~~permitting Maryland-based financial institutions and nondepository lenders in the~~
 14 ~~business of making mortgage loans to offer extensions of credit secured by a second~~
 15 ~~mortgage on the same terms as are now available to out-of-state financial~~
 16 ~~institutions offering credit to Maryland homeowners; expressing a public policy~~
 17 ~~concerning the State law's applicability to certain home equity lines of credit~~
 18 ~~secured by secondary liens on residential real property~~ increasing the ceiling on the
 19 points and other fees that certain lenders in the State may charge when offering
 20 credit to certain consumers in the State; clarifying that under certain circumstances
 21 a mortgage broker is not an agent or fiduciary of the borrower; requiring certain
 22 disclosures to consumer borrowers explaining a mortgage broker's responsibilities;
 23 clarifying that mortgage brokers may not enter into exclusive dealing contracts with
 24 borrowers; establishing a Task Force to Examine the Mortgage Lending Business;
 25 specifying the purpose and responsibilities of the Task Force; requiring the Task
 26 Force to report to certain committees and certain persons by a certain date;
 27 providing for the composition of the Task Force; incorporating criminal penalties

2
1 for conviction of fraudulent misappropriation of moneys belonging to a borrower;
2 encouraging the retention and creation of jobs in the financial services industry in
3 this State; encouraging investment in second mortgages secured by property located
4 in this State; revising the payment schedule of certain licensing fees and altering the
5 term of certain licenses; making certain technical corrections; and generally relating
6 to the licensing and regulation of the mortgage lenders and brokers and the
7 regulation of residential mortgage lending in this State.

8 BY repealing and reenacting, with amendments,
9 Article - Financial Institutions
10 Section 11-501, 11-502, 11-505(e), 11-506, 11-507, 11-508, 11-511, 11-512, and
11 11-523
12 Annotated Code of Maryland
13 (1992 Replacement Volume and 1996 Supplement)

14 BY adding to
15 Article - Financial Institutions
16 Section 11-506.1 and 11-521.1
17 Annotated Code of Maryland
18 (1992 Replacement Volume and 1996 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Commercial Law
21 Section 12-903(a), 12-905(e), and 12-1005(a)
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1996 Supplement)

24 BY repealing
25 Article - Commercial Law
26 Section 12-905(g)
27 Annotated Code of Maryland
28 (1990 Replacement Volume and 1996 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - Financial Institutions**

32 11-501.

33 (a) In this subtitle the following words have the meanings indicated.

34 (b) "Borrower" means a person who makes a loan application for or receives a
35 loan or other extension of credit that is or is intended to be secured in whole or in part by
36 any interest in residential real property located in Maryland.

37 (c) "Federally approved seller-servicer" means a mortgage lender that has been
38 approved as a seller-servicer by:

3

- 1 (1) The Federal Home Loan Mortgage Corporation;
- 2 (2) The Federal National Mortgage Association; [or]
- 3 (3) The Government National Mortgage Association;
- 4 (4) THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
- 5 DEVELOPMENT; OR
- 6 (5) THE UNITED STATES DEPARTMENT OF VETERANS' AFFAIRS.

7 (d) (1) "Independent evidence of commercial purpose" means, where a
8 mortgage loan is made for a commercial purpose to an individual, any and all
9 documentation by which the mortgage lender, prior to the making or procurement of the
10 loan, establishes that the borrower is seeking funds for a legitimate commercial
11 enterprise.

12 (2) "Independent evidence of commercial purpose" does not include an
13 affidavit of the borrower without supporting evidence, except where:

14 (i) The borrower is seeking funds to start a business and has not yet
15 incorporated or prepared documentation or proof of ownership of a commercial
16 enterprise; and

17 (ii) The affidavit states the purpose for which the proceeds of the
18 mortgage loan are to be used and the nature of the business conducted or to be conducted
19 by the borrower.

20 (e) "Interest in real property" includes:

21 (1) A confessed judgment note or consent judgment required or obtained by
22 any person acting as a mortgage lender for the purpose of acquiring a lien on residential
23 real property;

24 (2) A sale and leaseback required or obtained by any person acting as a
25 mortgage lender for the purpose of creating a lien on residential real property;

26 (3) A mortgage, deed of trust or lien other than a judgment lien, on
27 residential real property; and

28 (4) Any other security interest that has the effect of creating a lien on
29 residential real property in Maryland.

30 (f) "License" means a license issued by the Commissioner under this subtitle to
31 authorize a person to engage in business as a mortgage lender.

32 (g) "Licensee" means a person who is licensed under the Maryland Mortgage
33 Lender Law.

34 (h) (1) "Loan application" means any oral or written request for an extension of
35 credit that is made in accordance with procedures established by a mortgage lender for
36 the purpose of inducing the lender to seek to procure or make a mortgage loan.

4

1 (2) A loan application does not include the use of an account or line of
2 credit to obtain a loan within a previously established credit limit.

3 (I) "MORTGAGE BROKER" MEANS A PERSON WHO:

4 (1) FOR A FEE OR OTHER VALUABLE CONSIDERATION, WHETHER
5 RECEIVED DIRECTLY OR INDIRECTLY, AIDS OR ASSISTS A BORROWER IN
6 OBTAINING A MORTGAGE LOAN; AND

7 (2) IS NOT NAMED AS A LENDER IN THE AGREEMENT, NOTE, DEED OF
8 TRUST, OR OTHER EVIDENCE OF THE INDEBTEDNESS.

9 [(i)] (J) (1) "Mortgage lender" means any person who:

10 (i) [For a fee or other valuable consideration, whether received
11 directly or indirectly, aids or assists any person in procuring a mortgage loan] IS A
12 MORTGAGE BROKER;

13 (ii) Makes a mortgage loan to any person; OR

14 (iii) [1. Has its principal place of business in this State; and

15 2. A. Engages in the business of servicing mortgage loans for
16 others; or

17 B. Collects or otherwise receives payments on mortgage loans
18 directly from borrowers for distribution to any other person; or

19 (iv) 1. Has its principal place of business outside this State; and

20 2. A.] 1. ~~Engages~~ ENGAGES in whole or in part in the
21 business of servicing mortgage loans [secured by residential real property located in this
22 State] for others; or

23 [B.] 2. Collects or otherwise receives payments on mortgage
24 loans [secured by residential real property located in this State] directly from borrowers
25 for distribution to any other person.

26 (2) [A mortgage lender] "MORTGAGE LENDER" does not include:

27 (i) A financial institution that accepts deposits and is regulated under
28 Title 3, 4, 5, OR 6[, or 9] of this article;

29 (ii) The Federal Home Loan Mortgage Corporation;

30 (iii) The Federal National Mortgage Association;

31 (iv) The Government National Mortgage Association; OR

32 (v) Any person engaged exclusively in the acquisition of all or any
33 portion of a mortgage loan under any federal, State, or local governmental program of
34 mortgage loan purchases.

5

1 (K) (1) "MORTGAGE LENDING BUSINESS" MEANS THE ACTIVITIES SET
2 FORTH IN THE DEFINITION OF "MORTGAGE LENDER" IN SUBSECTION (J) OF THIS
3 SECTION WHICH REQUIRE THAT PERSON TO BE LICENSED UNDER THIS SUBTITLE.

4 (2) "MORTGAGE LENDING BUSINESS" INCLUDES THE MAKING OR
5 PROCURING OF MORTGAGE LOANS SECURED BY RESIDENTIAL REAL PROPERTY
6 LOCATED OUTSIDE MARYLAND.

7 [(j)] (L) (1) "Mortgage loan" means any loan or other extension of credit that
8 is:

9 (i) Secured, in whole or in part, by any interest in residential real
10 property in Maryland; and

11 (ii) 1. If for personal, household, or family purposes, in any
12 amount; or

13 2. If for commercial purposes, not in excess of \$75,000.

14 (2) "Mortgage loan" does not include any loan for commercial purposes that
15 is:

16 (i) Secured, in whole or in part, by any interest in residential real
17 property in Maryland;

18 (ii) In excess of \$75,000; and

19 (iii) Supported by independent evidence of the commercial purpose.

20 [(k)] (M) "Person" includes an individual, corporation, business trust, estate,
21 trust, partnership, association, 2 or more persons having a joint or common interest, or
22 any other legal or commercial entity.

23 [(l)] (N) "Residential real property" means any owner-occupied real property
24 located in Maryland, which property has a dwelling on it designed principally as a
25 residence with accommodations for not more than 4 families, but does not include any
26 real property held primarily for rental, investment, or the generation of income through
27 any commercial or industrial enterprise.

28 [(m)] (O) "State" means the State of Maryland.

29 11-502.

30 (A) IN SUBSECTION (B)(11) OF THIS SECTION, "AFFILIATE" MEANS ANY
31 COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL
32 WITH AN INSTITUTION DESCRIBED IN SUBSECTION ~~(B)(11)(B)~~ (C) OF THIS SECTION.

33 [(a)] (B) The provisions of this subtitle do not apply to:

34 (1) Any bank, trust company, savings bank, savings and loan association, or
35 credit union incorporated or chartered under the laws of this State or the United States
36 or any other-state bank having a branch in this State [or any other financial institution
37 incorporated or chartered under the laws of this State or of the United States that accepts
38 deposits and is regulated under Title 3, Title 4, Title 5, Title 6, or Title 9 of this article];

6

1 (2) Any insurance company authorized to do business in the State;

2 (3) Any corporate instrumentality of the Government of the United States
3 including:

4 (i) The Federal Home Loan Mortgage Corporation;

5 (ii) The Federal National Mortgage Association; and

6 (iii) The Government National Mortgage Association;

7 (4) Any person who:

8 (I) [makes or brokers] MAKES 3 or fewer mortgage loans per
9 calendar year; AND

10 (II) BROKERS NO MORE THAN ONE MORTGAGE LOAN PER
11 CALENDAR YEAR;

12 (5) Any person who takes back a deferred purchase money mortgage in
13 connection with the sale of:

14 (i) Residential real property owned by, and titled in the name of, that
15 person; or

16 (ii) A new residential dwelling that the person built;

17 (6) A nonprofit charitable organization registered with the Maryland
18 Secretary of State or a nonprofit religious organization;

19 (7) An employer making a mortgage loan to an employee;

20 (8) A person making a mortgage loan to a borrower who is the person's
21 spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's
22 spouse;

23 (9) A real estate broker who:

24 (i) Is licensed in the State; and

25 (ii) Makes a mortgage loan providing a repayment schedule of 2 years
26 or less to assist the borrower in the purchase or sale of a residential real property through
27 the broker; [or]

28 (10) A home improvement contractor licensed under the Maryland Home
29 Improvement Law who assigns a mortgage loan without recourse within 30 days after
30 completion of the contract to a person licensed under this subtitle or to an institution that
31 is exempt from this subtitle under [paragraphs] PARAGRAPH (1) [and], (2), OR (11) of
32 this subsection;

33 (11) A SUBSIDIARY OR AFFILIATE OF AN INSTITUTION DESCRIBED IN
34 ~~SUBPARAGRAPH (II) OF THIS PARAGRAPH~~ SUBSECTION (C) OF THIS SECTION, WHICH
35 SUBSIDIARY OR AFFILIATE:

7

1 (I) IS SUBJECT TO AUDIT OR EXAMINATION BY A REGULATORY
2 BODY OR AGENCY OF THIS STATE, THE UNITED STATES, OR THE STATE WHERE THE
3 SUBSIDIARY OR AFFILIATE MAINTAINS ITS PRINCIPAL OFFICE; AND

4 (II) FILES WITH THE COMMISSIONER, PRIOR TO MAKING
5 MORTGAGE LOANS, INFORMATION SUFFICIENT TO IDENTIFY:

6 1. THE CORRECT CORPORATE NAME OF THE SUBSIDIARY
7 OR AFFILIATE;

8 2. AN ADDRESS AND TELEPHONE NUMBER OF A CONTACT
9 PERSON FOR THE SUBSIDIARY OR AFFILIATE;

10 3. A RESIDENT AGENT; AND

11 4. ANY ADDITIONAL INFORMATION CONSIDERED
12 NECESSARY BY THE COMMISSIONER FOR PROTECTION OF THE PUBLIC;

13 (12) ANY EMPLOYEE BENEFIT PLAN QUALIFIED UNDER THE INTERNAL
14 REVENUE CODE § 401, OR PERSONS ACTING AS FIDUCIARIES WITH RESPECT TO SUCH
15 A PLAN, MAKING MORTGAGE LOANS SOLELY TO PLAN PARTICIPANTS FROM PLAN
16 ASSETS; OR

17 (13) EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT
18 WITH:

19 (I) A LICENSED MORTGAGE LENDER; OR

20 (II) A PERSON WHO IS EXEMPT FROM LICENSURE UNDER THIS
21 SUBTITLE.

22 (C) THE EXEMPTION IN ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH THAT~~
23 SUBSECTION (B)(11) OF THIS SECTION APPLIES TO SUBSIDIARIES AND AFFILIATES OF:

24 (1) ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN
25 ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE
26 LAWS OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS PRINCIPAL
27 OFFICE IN THIS STATE;

28 (2) ANY OUT-OF-STATE BANK, AS THAT TERM IS DEFINED IN § 5-1001 OF
29 THIS ARTICLE, HAVING A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE; OR

30 (3) ANY INSTITUTION INCORPORATED UNDER FEDERAL LAW AS A
31 SAVINGS ASSOCIATION OR SAVINGS BANK THAT DOES NOT MAINTAIN ITS PRINCIPAL
32 OFFICE IN THIS STATE BUT HAS A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE.

33 [(b)] (D) The exemptions provided in subsection [(a)] (B) of this section do not
34 apply to any person who has been denied a license to engage in business as a mortgage
35 lender or real estate broker or whose license to engage in such activities has been
36 suspended or revoked within the 3 immediately preceding calendar years.

8

1 11-505.

2 (e) (1) A licensee may not receive any application for a loan secured by a
3 secondary mortgage or deed of trust, or allow any note, or LOAN contract for a loan,
4 mortgage, or evidence of indebtedness secured by a secondary mortgage or deed of trust
5 to be signed or executed at any place for which the person does not have a license, except
6 at the office of:

7 (i) The attorney for the borrower or for the licensee; or

8 (ii) A title insurance company, a title company, or an attorney for a
9 title insurance company or a title company.

10 (2) Notwithstanding paragraph (1) of this subsection, a licensee may accept
11 a loan application from a borrower by mail or telephone or in person at the borrower's
12 residence or place of employment to accommodate the borrower at the borrower's
13 request.

14 (3) The Commissioner shall adopt regulations to ensure that the loan
15 application process is conducted fairly and in a manner consistent with the best interests
16 of both the borrower and mortgage lender.

17 11-506.

18 (a) To qualify for a license, an applicant shall satisfy the Commissioner that the
19 applicant is of good moral character and has sufficient financial responsibility, business
20 experience, and general fitness to:

21 (1) Engage in business as a mortgage lender;

22 (2) Warrant the belief that the business will be conducted lawfully, honestly,
23 fairly, and efficiently; and

24 (3) Command the confidence of the public.

25 (B) (1) TO QUALIFY FOR A LICENSE, THE APPLICANT SHALL SATISFY THE
26 COMMISSIONER THAT THE APPLICANT HAS AT LEAST 3 YEARS OF EXPERIENCE IN
27 THE MORTGAGE LENDING BUSINESS.

28 (2) IF THE APPLICANT IS A SOLE PROPRIETOR, THE APPLICANT SHALL
29 HAVE THE REQUIRED EXPERIENCE.

30 (3) IF THE APPLICANT IS A JOINT VENTURE OR A GENERAL OR LIMITED
31 PARTNERSHIP, AT LEAST ONE OF THE COVENTURERS OR GENERAL PARTNERS
32 SHALL HAVE THE REQUIRED EXPERIENCE.

33 (4) IF THE APPLICANT IS A BUSINESS ENTITY OF ANY OTHER KIND,
34 TYPE, OR CLASSIFICATION, AT LEAST ONE OF THE PRINCIPAL OFFICERS OR
35 MEMBERS SHALL HAVE THE REQUIRED EXPERIENCE.

36 [(b)] (C) The Commissioner may deny an application for a license to any person
37 who has been officially reprimanded or has committed any act that would be a ground for
38 suspension or revocation of a license under this subtitle.

9

1 11-506.1.

2 (A) THIS SECTION DOES NOT APPLY TO ANY CORPORATION THE SECURITIES
3 OF WHICH ARE EXEMPT FROM REGISTRATION UNDER § 11-601(8) OR (12) OF THE
4 CORPORATIONS AND ASSOCIATIONS ARTICLE.

5 (B) IN CONNECTION WITH AN INITIAL APPLICATION AND AT ANY OTHER
6 TIME THE COMMISSIONER REQUESTS, EACH APPLICANT OR LICENSEE SHALL
7 PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL BUREAU OF INVESTIGATION
8 AND THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE
9 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO CONDUCT
10 CRIMINAL HISTORY RECORDS CHECKS.

11 (C) ANY APPLICANT OR LICENSEE REQUIRED BY THIS SECTION TO PROVIDE
12 FINGERPRINTS SHALL PAY ANY PROCESSING OR OTHER FEE REQUIRED BY THE
13 FEDERAL BUREAU OF INVESTIGATION OR THE CRIMINAL JUSTICE INFORMATION
14 SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
15 CORRECTIONAL SERVICES.

16 (D) IF THE APPLICANT OR LICENSEE IS A CORPORATION, THE
17 FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS SHALL
18 APPLY TO THE PRESIDENT AND TO ANY OTHER OFFICER, DIRECTOR, OR PRINCIPAL
19 OF THE CORPORATION AS REQUESTED BY THE COMMISSIONER.

20 11-507.

21 (a) (1) To apply for a license, an applicant shall complete, sign, and submit to
22 the Commissioner an application made under oath on the form that the Commissioner
23 requires.

24 (2) The applicant shall comply with all conditions and provisions of the
25 application for licensure AND BE ISSUED A LICENSE BEFORE ACTING AS A MORTGAGE
26 LENDER AT A PARTICULAR LOCATION.

27 (3) The application shall include:

28 (i) If the applicant is an individual, the applicant's name, business
29 address and telephone number, and residence address and telephone number;

30 (ii) If the applicant is a partnership or other noncorporate business
31 association, the business name, business address and telephone number, and the
32 residence address and telephone number of each:

33 1. General partner, if the applicant is a limited partnership;

34 2. General partner who holds an interest in the partnership of
35 more than 10 percent, if the applicant is a general partnership; or

36 3. Member, if the applicant is another noncorporate business
37 association;

38 (iii) If the applicant is a corporation:

10

1 1. The name, address, and telephone number of the corporate
2 entity; and

3 2. The name, the business telephone number, and the residence
4 address and telephone number of the president, senior vice presidents, secretary, and
5 treasurer, each director, and each stockholder owning or controlling 10 percent or more
6 of any class of stock in the corporation;

7 (iv) The name under which the mortgage [lender] LENDING business
8 is to be conducted;

9 (v) The name and address of the applicant's resident agent, if any; and

10 (vi) Any other information that the Commissioner reasonably requires.

11 (b) With each application, the applicant shall pay to the Commissioner:

12 (1) A nonrefundable investigation fee of \$100; and

13 (2) A license fee of either:

14 (i) [\$500] \$1,000 if the applicant applies for a license to be issued on
15 or after January 1 and on or before [June 30] DECEMBER 31 OF AN EVEN-NUMBERED
16 YEAR; [or]

17 (ii) [\$250] EFFECTIVE JANUARY 1, 1999, \$500 if the applicant applies
18 for a license to be issued on or after [July 1] JANUARY 1 and on or before December 31
19 OF AN ODD-NUMBERED YEAR; OR

20 (III) NOTWITHSTANDING SUBPARAGRAPHS (I) OR (II) OF THIS
21 PARAGRAPH, \$1,000 IF THE APPLICANT APPLIES FOR A LICENSE TO BE ISSUED ON OR
22 AFTER OCTOBER 1, 1997 AND ON OR BEFORE DECEMBER 31, 1997.

23 (c) For each license for which an applicant applies, the applicant shall:

24 (1) Submit a separate application;

25 (2) Pay a separate license fee; [and]

26 (3) IF APPLICABLE, PAY THE SURCHARGE; AND

27 [[3]] (4) File a separate surety bond or other financial guaranty under §
28 11-508 of this subtitle.

29 (D) IN ADDITION TO ANY SANCTIONS THAT MAY BE IMPOSED UNDER THIS
30 SUBTITLE BY THE COMMISSIONER, A NONREFUNDABLE SURCHARGE OF \$500 SHALL
31 BE PAID WITH AN APPLICATION IF THE APPLICANT HAS BEGUN CONDUCTING A
32 MORTGAGE LENDING BUSINESS WITHOUT A LICENSE AT THE LOCATION FOR WHICH
33 AN APPLICATION IS FILED.

34 (E) A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT UNDER OATH
35 ON AN APPLICATION FILED WITH THE COMMISSIONER UNDER THIS SECTION IS
36 GUILTY OF PERJURY AND, UPON CONVICTION, IS SUBJECT TO THE PENALTIES SET
37 FORTH IN ARTICLE 27, § 439 OF THE CODE.

11

1 11-508.

2 (a) An applicant for a new license or for the renewal of a license shall file a surety
3 bond with each original application and any renewal application for the license.

4 (b) The surety bond shall:

5 (1) Run to the Commissioner for the benefit of any person who has been
6 damaged by a violation committed by a licensee of any law or regulation governing the
7 activities of mortgage lenders;

8 (2) Be issued by a surety company authorized to do business in the State;

9 (3) Be conditioned that the applicant shall comply with all Maryland laws
10 regulating the activities of mortgage lenders and mortgage [loan] lending; and

11 (4) Be approved by the Commissioner.

12 (c) If an applicant has not conducted a mortgage [lender's] LENDING business
13 [in Maryland in any of the 3 calendar years preceding the year in which] ANY TIME
14 DURING THE 36 MONTHS PRIOR TO THE FILING OF an original application for A license
15 [is filed], the APPLICANT SHALL PROVIDE A SWORN STATEMENT SETTING FORTH
16 THAT FACT, AND SHALL FILE WITH THE ORIGINAL APPLICATION A surety bond
17 [required under this subtitle shall be] in the amount of [\$12,500] \$15,000.

18 (d) (1) If an applicant has conducted a mortgage [lender's] LENDING business
19 [in Maryland in any of the 3 calendar years preceding the year in which] ANY TIME
20 DURING THE 36 MONTHS PRIOR TO THE FILING OF an original or renewal application
21 [is filed], the applicant shall provide a sworn statement setting forth the [total dollar]
22 AGGREGATE PRINCIPAL amount of mortgage loans SECURED OR TO BE SECURED BY
23 PROPERTY LOCATED IN MARYLAND applied for and accepted or mortgage loans
24 SECURED OR TO BE SECURED BY PROPERTY LOCATED IN MARYLAND applied for,
25 procured, and accepted by the mortgage lender during the [latest calendar year such
26 business was conducted and the bond required shall be determined as follows:] 12
27 MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE APPLICATION IS
28 FILED.

29 (2) IF AN APPLICANT HAS CONDUCTED A MORTGAGE LENDING
30 BUSINESS ANY TIME DURING THE 36 MONTHS PRIOR TO THE FILING OF AN
31 ORIGINAL APPLICATION BUT DURING THAT TIME HAS NOT ACTED AS A MORTGAGE
32 LENDER IN MARYLAND, THE APPLICANT SHALL PROVIDE WITH THE ORIGINAL
33 APPLICATION A SWORN STATEMENT SETTING FORTH THE AGGREGATE PRINCIPAL
34 AMOUNT OF LOANS SECURED OR TO BE SECURED BY RESIDENTIAL REAL PROPERTY
35 LOCATED IN STATES OTHER THAN THIS STATE, APPLIED FOR, PROCURED, AND
36 ACCEPTED BY THE MORTGAGE LENDER DURING THE 12 MONTHS PRECEDING THE
37 MONTH IN WHICH THE APPLICATION IS FILED.

38 (3) EXCEPT AS PROVIDED IN SUBSECTION (C) AND (E) OF THIS SECTION,
39 THE APPLICANT SHALL FILE WITH THE ORIGINAL OR RENEWAL APPLICATION:

12

1 [(1)] (I) Where the [total dollar] AGGREGATE PRINCIPAL amount of
 2 [stated] loans SET FORTH IN THE SWORN STATEMENT was [\$1,000,000] \$3,000,000 or
 3 less, [the] A SURETY bond [shall be] in the amount of [\$12,500] \$25,000;

4 [(2)] (II) Where the [total dollar] AGGREGATE PRINCIPAL amount of
 5 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$1,000,000]
 6 \$3,000,000 but not more than [\$2,000,000] \$10,000,000, [the] A SURETY bond [shall be]
 7 in the amount of [\$17,500] \$50,000; AND

8 [(3)] Where the total dollar amount of stated loans was more than \$2,000,000
 9 but not more than \$3,000,000, the bond shall be in the amount of \$25,000; and

10 [(4)] (III) Where the [total dollar] AGGREGATE PRINCIPAL amount of
 11 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$3,000,000]
 12 \$10,000,000, [the] A SURETY bond [shall be] in the amount of [\$50,000] \$75,000.

13 (e) [Subject] NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION,
 14 AND SUBJECT to approval by the Commissioner, if an applicant files [4] 5 or more
 15 original or renewal applications at the same time, the applicant may provide a blanket
 16 surety bond for all licensed offices in the amount of [\$200,000] \$375,000.

17 (f) Subject to approval by the Commissioner, an applicant for license who files an
 18 application for a new license or for the renewal of a license may satisfy the bonding
 19 requirement under this section by establishing a trust account with or obtaining an
 20 irrevocable letter of credit from a financial institution insured by the Federal Deposit
 21 Insurance Corporation [that complies with subsection (b) of] IN AN AMOUNT EQUAL
 22 TO THE BOND REQUIRED UNDER this section.

23 (G) THE COMMISSIONER MAY ADOPT REGULATIONS REASONABLY
 24 NECESSARY TO ASSURE THAT THE PROPER SURETY BOND AMOUNT ESTABLISHED
 25 BY THIS SECTION IS MAINTAINED BY EACH LICENSEE THROUGHOUT EACH
 26 LICENSING TERM. THE REGULATIONS MAY PROVIDE FOR PERIODIC REPORTING,
 27 RECALCULATION, AND ENFORCEMENT OF REQUIRED BOND AMOUNTS.

28 11-511.

29 (a) (1) A LICENSE ISSUED ON OR BEFORE SEPTEMBER 30, 1997 EXPIRES ON
 30 DECEMBER 31 OF THE YEAR IN WHICH IT WAS ISSUED, UNLESS THE LICENSE IS
 31 RENEWED FOR A 2-YEAR TERM AS PROVIDED IN THIS SECTION.

32 (2) A license ISSUED ON OR AFTER OCTOBER 1, 1997 expires on [the]
 33 December 31 IN EACH ODD-NUMBERED YEAR after [its effective date] DECEMBER 31,
 34 1997 unless the license is renewed for a [1-year] 2-YEAR term as provided in this section.

35 (b) [Before a license expires, the licensee periodically may renew the license] ON
 36 OR BEFORE DECEMBER 1 OF THE YEAR OF EXPIRATION, A LICENSE MAY BE
 37 RENEWED for AN additional [1-year terms] 2-YEAR TERM, if the licensee:

38 (1) Otherwise is entitled to be licensed;

39 (2) Pays to the Commissioner a renewal fee of [\$500] \$1,000;

13

1 (3) Submits to the Commissioner a renewal application on the form that the
2 Commissioner requires; and

3 (4) Files a bond or bond continuation certificate for the amount required
4 under § 11-508 of this subtitle.

5 (c) If a license is issued for less than [a full year] 2 FULL YEARS, AND is
6 surrendered voluntarily, or is suspended or revoked, the Commissioner may not refund
7 any part of the license fee regardless of the time remaining in the license [year] TERM.

8 (D) THE SECRETARY MAY DETERMINE THAT LICENSES ISSUED UNDER THIS
9 SUBTITLE SHALL EXPIRE ON A STAGGERED BASIS.

10 11-512.

11 (a) A licensee may not change the place of business for which a license is issued
12 unless the licensee:

13 (1) Notifies the Commissioner in writing of the proposed change; and

14 (2) Receives the written consent of the Commissioner.

15 (b) Notwithstanding subsection (a)(2) of this section, if the Commissioner does
16 not approve or disapprove of the proposed change of place of business within 30 days of
17 the mailing of the notice required under subsection (a)(1) of this section, the proposed
18 change of place of business shall be deemed approved.

19 (C) IN ADDITION TO ANY SANCTIONS WHICH MAY BE IMPOSED UNDER THIS
20 SUBTITLE BY THE COMMISSIONER, A LICENSEE WHO FAILS TO TIMELY PROVIDE THE
21 NOTICE REQUIRED UNDER SUBSECTION (A)(1) OF THIS SECTION SHALL:

22 (1) FOR EACH SUCH FAILURE, PAY TO THE COMMISSIONER A
23 SURCHARGE IN THE AMOUNT OF \$500; AND

24 (2) FILE WITH THE COMMISSIONER AN APPLICATION FOR A NEW
25 LICENSE, TOGETHER WITH ALL APPLICABLE APPLICATION AND INVESTIGATION
26 FEES.

27 11-521.1.

28 (A) A PERSON ACTING AS A MORTGAGE BROKER SHALL INCLUDE A
29 DISCLOSURE STATEMENT, SUBSTANTIALLY SIMILAR TO THE FOLLOWING: THE
30 FOLLOWING DISCLOSURE STATEMENT IN THE WRITTEN BROKER AGREEMENT
31 REQUIRED BY § 12-805 OF THE COMMERCIAL LAW ARTICLE:

32 THIS AGREEMENT SETS FORTH THE SERVICES TO BE PROVIDED BY
33 (LICENSEE NAME) TO YOU AS ITS CUSTOMER. (LICENSEE NAME)
34 CAN OFFER YOU ACCESS TO ONE OR MORE MORTGAGE PROGRAMS
35 AVAILABLE TO (LICENSEE NAME) FROM THIRD PARTY LENDING
36 SOURCES. (LICENSEE NAME) CAN ASSIST YOU IN CHOOSING FROM
37 THESE OPTIONS A LOAN PRODUCT SUITABLE FOR YOUR INDIVIDUAL
38 REQUIREMENTS. (LICENSEE NAME) IS NOT CONSIDERED YOUR AGENT
39 UNDER MARYLAND LAW. FEDERAL AND STATE LAWS AND REGULATIONS
40 GOVERN THE CONDUCT OF MORTGAGE BROKERS. (LICENSEE NAME)

14

1 WILL MAKE A DILIGENT EFFORT TO SECURE THE LOAN TERMS, INCLUDING,
2 BUT NOT LIMITED TO, INTEREST RATE, POINTS, AND OTHER FEES, THAT YOU
3 HAVE APPLIED FOR. HOWEVER, (LICENSEE NAME) CANNOT
4 GUARANTEE YOUR ACCEPTANCE INTO ANY PARTICULAR LOAN PROGRAM.
5 MORTGAGE BROKERS ARE REQUIRED BY LAW TO REFUND THE ENTIRE
6 BROKER OR FINDER'S FEE CHARGED IF FOR ANY REASON THE BORROWER
7 DOES NOT CLOSE THE LOAN OR IF THE BORROWER RESCINDS THE LOAN
8 TRANSACTION UNDER THE FEDERAL TRUTH-IN-LENDING ACT. IT IS LEGAL
9 FOR YOU TO CONSULT WITH MORE THAN ONE MORTGAGE BROKER. IF YOU
10 ARE NOT SATISFIED WITH THE TERMS OFFERED, YOU DO NOT HAVE TO
11 ACCEPT THE LOAN AND YOU WILL NOT OWE (LICENSEE NAME) ANY
12 BROKER OR FINDERS FEE WHATSOEVER. THE ANNUAL PERCENTAGE RATE
13 SET FORTH IN YOUR TRUTH-IN-LENDING ACT DISCLOSURE STATEMENT
14 INCLUDES THE BROKER OR FINDERS FEE. CONSUMERS ARE ADVISED TO
15 COMPARE SERVICES AND COSTS BEFORE MAKING A SELECTION.

16 (B) THE DISCLOSURE REQUIRED UNDER THIS SECTION SHALL BE AT LEAST
17 AS CONSPICUOUS AS OTHER PROVISIONS IN THE BROKER AGREEMENT, BUT NOT
18 LESS THAN 10-POINT TYPE.

19 (C) A LICENSEE WHO MAKES THE DISCLOSURE REQUIRED UNDER THIS
20 SECTION IS NOT DEEMED TO BE THE AGENT OR A FIDUCIARY OF THE BORROWER.

21 (D) A PROVISION IN ANY AGREEMENT BETWEEN A MORTGAGE BROKER AND
22 A BORROWER THAT PURPORTS TO RESTRICT THE BORROWER FROM APPLYING FOR
23 A LOAN WITH ANOTHER LENDER OR MORTGAGE BROKER IS VOID.

24 (E) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PREVENT AN
25 INDIVIDUAL FROM PURSUING AN ACTION AGAINST A MORTGAGE BROKER FOR:

26 (1) BREACH OF CONTRACT;

27 (2) VIOLATION OF ANY FEDERAL OR STATE LAW GOVERNING
28 MORTGAGE BROKERS; OR

29 (3) VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT.

30 11-523.

31 (a) Any person who willfully violates any provision of this subtitle or any rule or
32 regulation adopted under it is guilty of a misdemeanor and on conviction is subject to a
33 fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

34 (b) [Except for a bona fide error of computation, any] ANY unlicensed person
35 [claiming an exemption from licensing] who is not exempt from licensing under this
36 subtitle AND who MAKES OR ASSISTS A BORROWER IN OBTAINING A MORTGAGE
37 LOAN IN VIOLATION [violates any provision] of this subtitle may collect only the
38 principal amount of [any] THE loan and may not collect any interest, costs, FINDER'S
39 FEES, BROKER FEES, or other charges with respect to the loan.

40 (C) ANY MORTGAGE LENDER WHO WILLFULLY MISAPPROPRIATES OR
41 OTHERWISE INTENTIONALLY AND FRAUDULENTLY CONVERTS TO THE MORTGAGE

15

1 LENDER'S OWN USE MONEYS IN EXCESS OF \$300 RIGHTFULLY BELONGING TO A
2 BORROWER IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE
3 NOT TO EXCEED \$100,000 OR IMPRISONMENT NOT EXCEEDING 15 YEARS OR BOTH.

4

Article - Commercial Law

5 12-903.

6 (a) (1) A credit grantor may charge and collect interest or finance charges
7 under the plan on the outstanding unpaid indebtedness in the borrower's account under
8 the plan at any daily, weekly, monthly, annual, or other periodic percentage rate as the
9 agreement governing the plan provides, if the effective rate of simple interest does not
10 exceed 24 percent per year. The rate of interest chargeable on a plan must be expressed
11 in the agreement as a simple interest rate or rates.

12 (2) The repayment terms for a plan extended to a consumer borrower may
13 not include a provision under which the consumer borrower may be required to pay a
14 balloon payment at maturity. However, the adjustment of payment amounts, due to
15 fluctuations in unpaid balance or rate of interest, may not be deemed to result in a
16 balloon payment.

17 (3) IF THE PLAN IS SECURED BY A LIEN ON RESIDENTIAL REAL
18 PROPERTY, THE CREDIT GRANTOR MAY, IN ADDITION TO THE PERIODIC
19 PERCENTAGE RATE CHARGE AUTHORIZED UNDER SUBSECTION (A)(1) OF THIS
20 SECTION, CHARGE AND COLLECT, AT THE TIME THE PLAN IS ENTERED INTO BY THE
21 BORROWER, POINTS, LOAN ORIGATION FEES, LOAN DISCOUNT FEES, AND SIMILAR
22 FEES, PROVIDED THAT:

23 (I) ALL SUCH FEES MAY NOT EXCEED 5 PERCENT OF THE
24 MAXIMUM AMOUNT OF CREDIT MADE AVAILABLE TO THE BORROWER UNDER THE
25 PLAN;

26 (II) THE DOCUMENTS EVIDENCING THE PLAN SPECIFICALLY
27 ENUMERATE ANY SUCH FEES;

28 (III) THE BORROWER AGREES IN WRITING TO PAY THOSE FEES;
29 AND

30 (IV) THE FEES ARE DISCLOSED TO THE BORROWER IN
31 ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING ACT.

32 12-905.

33 (e) For purposes of this section, the additional charges listed in subsections (a),
34 (b), [(f), and (g)] AND (F) of this section are not interest or finance charges with respect
35 to a plan.

36 [(g) A credit grantor of an open end credit plan that is secured by real property
37 may charge an origination fee not to exceed 2% of the initial advance made under the
38 plan.]

16

1 12-1005.

2 In addition to interest at a periodic percentage rate or rates permitted by §§
3 12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:

4 (a) (1) [Loan] SUBJECT TO THE LIMITATIONS IN THIS SECTION, LOAN fees,
5 points, finder's fees, and other charges; however, all such charges may not exceed [2] 5
6 percent of the original extension of credit;

7 (2) In the case of a loan to a consumer borrower, no loan fees, points,
8 finder's fees, or other charges may be charged and collected unless [the]:

9 (I) THE agreement, note, or other evidence of the loan so provides
10 and the BORROWER AGREES IN WRITING TO PAY THOSE CHARGES;

11 (II) THE loan is secured by a lien on residential real property[;
12 however, all such charges may not exceed 2 percent of the original extension of credit or
13 4 percent of the original extension of credit for a commercial loan not exceeding
14 \$75,000]; AND

15 (III) THE CHARGES ARE DISCLOSED TO THE BORROWER IN
16 ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING ACT; and

17 (3) The limitations imposed by paragraphs (1) and (2) of this subsection do
18 not apply to a credit extension:

19 (i) Secured by a first lien on residential real property; or

20 (ii) Made for a bona fide commercial purpose in excess of \$75,000.

21 SECTION 2. AND BE IT FURTHER ENACTED, That:

22 (a) There is a Task Force to Examine the Mortgage Lending Business.

23 (b) The Task Force consists of the following ~~45~~ 17 members:

24 (1) Two members of the Senate of Maryland, appointed by the President of
25 the Senate;

26 (2) Two members of the House of Delegates, appointed by the Speaker of
27 the House;

28 (3) The Commissioner of Financial Regulation in the Department of Labor,
29 Licensing, and Regulation, or the Commissioner's designee;

30 (4) One representative of the Attorney General's Office, designated by the
31 Attorney General; and

32 (5) Nine members appointed jointly by the President of the Senate and the
33 Speaker of the House of Delegates as follows:

34 (i) Two representatives of the mortgage loan industry who are actively
35 engaged in the business of making mortgage loans, who may be selected from a list of
36 names submitted by the Maryland Mortgage Bankers Association;

17

1 (ii) Two representatives of the mortgage loan industry who are actively
2 engaged in the business of mortgage brokering, who may be selected from a list of names
3 submitted by the Maryland Association of Mortgage Brokers;

4 (iii) One representative of the banking industry who is actively engaged
5 in the banking, savings banking, or savings association business, who may be selected from
6 a list of names submitted by the Maryland Bankers Association;

7 (iv) Two representatives of financial services companies who are
8 actively engaged in the business of mortgage secured consumer loans, who may be
9 selected from a list of names submitted by the Maryland Financial Services Association;
10 and

11 ~~(v) Two members at large, including:~~

12 ~~_____ 1. One member who is affiliated with a recognized consumer~~
13 ~~protection group or agency; and~~

14 ~~_____ 2. One other consumer member.~~

15 (v) Four members who are affiliated with recognized consumer
16 protection groups or agencies.

17 (c) The President of the Senate and the Speaker of the House of Delegates shall
18 each appoint a co-chairman of the Task Force.

19 (d) Staff support for the Task Force shall be provided by the Department of Fiscal
20 Services and the Department of Legislative Reference.

21 (e) The purpose and responsibilities of the Task Force are to:

22 (1) Examine the incidence and scope of fraudulent practices by originators
23 of loans which involve falsification of loan underwriting information and documents;

24 (2) Examine the effectiveness and enforcement of the laws of Maryland, in
25 light of applicable federal laws and programs, to combat fraudulent practices in the
26 mortgage origination industry, including practices undertaken solely for the benefit of the
27 originator;

28 (3) Examine possible efforts to combat fraudulent practices, including the
29 licensing of individual loan officers and additional disclosure requirements; and

30 (4) Examine any other issue pertaining to the business of mortgage lending
31 or brokering that the Task Force identifies as warranting examination.

32 (f) The Task Force shall develop recommendations and propose legislative,
33 regulatory, and other changes required to implement the recommendations.

34 (g) On or before December 1, 1997, the Task Force shall submit a report on its
35 findings and recommendations to:

36 (1) The Senate Finance Committee and the House Commerce and
37 Government Matters Committee; and

1 (2) The Governor and, subject to the provisions of § 2-1312 of the State
2 Government Article, the General Assembly.

3 (h) The members of the Task Force may not receive compensation but are
4 entitled to reimbursement for expenses under the Standard State Travel Regulations, as
5 provided in the State budget.

6 (i) The Task Force shall terminate on January 31, 1998.

7 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
8 take effect July 1, 1997.

9 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, except as provided in
10 Section 2 of this Act, this Act shall take effect October 1, 1997.