

7r0815

By: Senators Bromwell, Dorman, Astle, Derr, Della, and Hafer

Introduced and read first time: January 29, 1997

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Credit - Mortgage Lenders - Regulatory Reform and Anti-Fraud 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; allowing secondary mortgage loan applications to be
7 received at any location; imposing additional requirements for licensing; adding fees
8 for failing to obtain licenses or to notify the Commissioner of changes in operating
9 locations under certain circumstances; altering and increasing bonding
10 requirements for mortgage lender licensees; defining certain terms; clarifying that
11 under certain circumstances a mortgage broker is not an agent or fiduciary of the
12 borrower; applying penalties for perjury to knowing false statements on a licensing
13 application; requiring certain disclosures to consumer borrowers explaining a
14 mortgage broker's responsibilities; clarifying that mortgage brokers may not enter
15 into exclusive dealing contracts with borrowers; altering the credit laws to authorize
16 prepaid finance charges in connection with an extension of credit secured by a
17 second mortgage in this State; permitting Maryland-based financial institutions and
18 nondepository lenders in the business of making mortgage loans to offer extensions
19 of credit secured by a second mortgage on the same terms as are now available to
20 out-of-state financial institutions offering credit to Maryland homeowners;
21 expressing a public policy concerning this State's law applicability to certain home
22 equity lines of credit secured by secondary liens on residential real property;
23 incorporating criminal penalties for conviction of fraudulent misappropriation of
24 moneys belonging to a borrower; encouraging the retention and creation of jobs in
25 the financial services industry in this State; encouraging investment in second
26 mortgages secured by property located in this State; revising the payment schedule
27 of certain licensing fees and altering the term of certain licenses; making certain
28 technical corrections; and generally relating to the licensing and regulation of the
29 mortgage lenders and brokers and the regulation of residential mortgage lending in
30 this State.

31 BY repealing and reenacting, with amendments,

32 Article - Financial Institutions

33 Section 11-501, 11-502, 11-505(e), 11-506, 11-507, 11-508, 11-511, 11-512, and
34 11-523

35 Annotated Code of Maryland

2

1 (1992 Replacement Volume and 1996 Supplement)

2 BY adding to

3 Article - Financial Institutions

4 Section 11-506.1 and 11-521.1

5 Annotated Code of Maryland

6 (1992 Replacement Volume and 1996 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Commercial Law

9 Section 12-903(a), 12-913.1, and 12-1005(a)

10 Annotated Code of Maryland

11 (1990 Replacement Volume and 1996 Supplement)

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

14 **Article - Financial Institutions**

15 11-501.

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

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

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

22 (1) The Federal Home Loan Mortgage Corporation;

23 (2) The Federal National Mortgage Association; [or]

24 (3) The Government National Mortgage Association;

25 (4) THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
26 DEVELOPMENT; OR

27 (5) THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS.

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

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

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

3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 2. A. Engages in the business of servicing mortgage loans for
36 others; or

5

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

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

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

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

11 11-502.

12 (a) The provisions of this subtitle do not apply to:

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

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

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

21 (i) The Federal Home Loan Mortgage Corporation;

22 (ii) The Federal National Mortgage Association; and

23 (iii) The Government National Mortgage Association;

24 (4) Any person who:

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

27 (II) BROKERS NO MORE THAN ONE MORTGAGE LOAN PER
 28 CALENDAR YEAR;

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

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

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

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

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

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

4 (9) A real estate broker who:

5 (i) Is licensed in the State; and

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

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

13 (11) (I) A SUBSIDIARY OR AFFILIATE OF AN INSTITUTION DESCRIBED
14 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, WHICH SUBSIDIARY OR AFFILIATE:

15 1. IS SUBJECT TO AUDIT OR EXAMINATION BY A
16 REGULATORY BODY OR AGENCY OF THIS STATE, THE UNITED STATES, OR THE
17 STATE WHERE THE SUBSIDIARY OR AFFILIATE MAINTAINS ITS PRINCIPAL OFFICE;
18 AND

19 2. FILES WITH THE COMMISSIONER, PRIOR TO MAKING
20 MORTGAGE LOANS, INFORMATION SUFFICIENT TO IDENTIFY:

21 A. THE CORRECT CORPORATE NAME OF THE SUBSIDIARY
22 OR AFFILIATE;

23 B. AN ADDRESS AND TELEPHONE NUMBER OF A CONTACT
24 PERSON FOR THE SUBSIDIARY OR AFFILIATE;

25 C. A RESIDENT AGENT; AND

26 D. ANY ADDITIONAL INFORMATION CONSIDERED
27 NECESSARY BY THE COMMISSIONER FOR PROTECTION OF THE PUBLIC;

28 (II) THE EXEMPTION IN SUBPARAGRAPH (I) OF THIS PARAGRAPH
29 APPLIES TO SUBSIDIARIES AND AFFILIATES OF:

30 1. ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS
31 AND LOAN ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED
32 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS
33 PRINCIPAL OFFICE IN THIS STATE; OR

34 2. ANY OUT-OF-STATE BANK, AS THAT TERM IS DEFINED IN
35 § 5-1001 OF THIS ARTICLE, HAVING A BRANCH IN THIS STATE;

36 (12) ANY EMPLOYEE BENEFIT PLAN QUALIFIED UNDER INTERNAL
37 REVENUE CODE § 401 OR PERSONS ACTING AS FIDUCIARIES WITH RESPECT TO SUCH
38 A PLAN, MAKING MORTGAGE LOANS SOLELY TO PLAN PARTICIPANTS FROM PLAN
39 ASSETS; OR

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1 (13) EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT
2 WITH:

3 (I) A LICENSED MORTGAGE LENDER; OR

4 (II) A PERSON WHO IS EXEMPT FROM LICENSURE UNDER THIS
5 SUBTITLE.

6 (b) The exemptions provided in subsection (a) of this section do not apply to any
7 person who has been denied a license to engage in business as a mortgage lender or real
8 estate broker or whose license to engage in such activities has been suspended or revoked
9 within the 3 immediately preceding calendar years.

10 11-505.

11 (e) (1) A licensee may not [receive any application for a loan secured by a
12 secondary mortgage or deed of trust, or] allow any note, [or] LOAN contract [for a
13 loan], mortgage, or evidence of indebtedness secured by a secondary mortgage or deed of
14 trust to be signed or executed at any place for which the person does not have a license,
15 except at the office of:

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

17 (ii) A title insurance company, a title company, or an attorney for a
18 title insurance company or a title company.

19 (2) [Notwithstanding paragraph (1) of this subsection, a licensee may
20 accept a loan application from a borrower by mail or telephone or in person at the
21 borrower's residence or place of employment to accommodate the borrower at the
22 borrower's request.

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

26 11-506.

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

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

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

33 (3) Command the confidence of the public.

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

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

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

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

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

10 11-506.1.

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

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

20 (C) ANY APPLICANT OR LICENSEE REQUIRED BY THIS SECTION TO PROVIDE
21 FINGERPRINTS, SHALL PAY ANY PROCESSING OR OTHER FEE REQUIRED BY THE
22 FEDERAL BUREAU OF INVESTIGATION OR THE CRIMINAL JUSTICE INFORMATION
23 SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
24 CORRECTIONAL SERVICES.

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

29 11-507.

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

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

36 (3) The application shall include:

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

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

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

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

7 3. Member, if the applicant is another noncorporate business
8 association;

9 (iii) If the applicant is a corporation:

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

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

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

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

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

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

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

22 (2) A license fee of either:

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

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

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

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

33 (1) Submit a separate application;

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

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

10

1 [(3)] (4) File a separate surety bond or other financial guaranty under §
2 11-508 of this subtitle.

3 (D) IN ADDITION TO ANY SANCTIONS THAT MAY BE IMPOSED UNDER THIS
4 SUBTITLE BY THE COMMISSIONER, A NONREFUNDABLE SURCHARGE OF \$500 SHALL
5 BE PAID WITH AN APPLICATION IF THE APPLICANT HAS BEGUN ACTING AS A
6 MORTGAGE LENDER WITHOUT A LICENSE AT THE LOCATION FOR WHICH AN
7 APPLICATION IS FILED.

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

12 11-508.

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

15 (b) The surety bond shall:

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

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

20 (3) Be conditioned that the applicant shall comply with all Maryland laws
21 regulating the activities of mortgage lenders and mortgage loan lending; and

22 (4) Be approved by the Commissioner.

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

29 (d) (1) If an applicant has conducted a mortgage [lender's] LENDING business
30 [in Maryland in any of the 3 calendar years preceding the year in which] ANY TIME
31 DURING THE 36 MONTHS PRIOR TO THE FILING OF an original or renewal application
32 [is filed], the applicant shall provide a sworn statement setting forth the [total dollar]
33 AGGREGATE PRINCIPAL amount of mortgage loans SECURED OR TO BE SECURED BY
34 PROPERTY LOCATED IN MARYLAND AND applied for and accepted or mortgage loans
35 SECURED OR TO BE SECURED BY PROPERTY LOCATED IN MARYLAND AND applied
36 for, procured, and accepted by the mortgage lender during the [latest calendar year such
37 business was conducted and the bond required shall be determined as follows] 12
38 MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE APPLICATION IS
39 FILED.

40 (2) IF AN APPLICANT HAS CONDUCTED A MORTGAGE LENDING
41 BUSINESS ANY TIME DURING THE 36 MONTHS PRIOR TO THE FILING OF AN

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1 ORIGINAL APPLICATION, BUT DURING THAT TIME HAS NOT ACTED AS A MORTGAGE
2 LENDER IN MARYLAND, THE APPLICANT SHALL PROVIDE WITH THE ORIGINAL
3 APPLICATION A SWORN STATEMENT SETTING FORTH THE AGGREGATE PRINCIPAL
4 AMOUNT OF LOANS SECURED OR TO BE SECURED BY RESIDENTIAL REAL PROPERTY
5 LOCATED IN STATES OTHER THAN MARYLAND AND APPLIED FOR, PROCURED, AND
6 ACCEPTED BY THE MORTGAGE LENDER DURING THE 12 MONTHS PRECEDING THE
7 MONTH IN WHICH THE APPLICATION IS FILED.

8 (3) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS
9 SECTION, THE APPLICANT SHALL FILE WITH THE ORIGINAL OR RENEWAL
10 APPLICATION:

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

14 [(2)] (II) Where the [total dollar] AGGREGATE PRINCIPAL amount of
15 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$1,000,000]
16 \$3,000,000 but not more than [\$2,000,000] \$10,000,000, [the] A SURETY bond [shall be]
17 in the amount of [\$17,500] \$50,000; AND

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

20 [(4)] (III) Where the [total dollar] AGGREGATE PRINCIPAL amount of
21 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$3,000,000]
22 \$10,000,000, [the] A SURETY bond [shall be] in the amount of [\$50,000] \$75,000.

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

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

33 11-511.

34 (a) A license expires on [the] December 31 IN EACH ODD-NUMBERED YEAR
35 after [its effective date] DECEMBER 31, 1997 unless the license is renewed for a [1-year]
36 2-YEAR term as provided in this section.

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

40 (1) Otherwise is entitled to be licensed;

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

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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 11-512.

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

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

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

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

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

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

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

25 11-521.1.

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

30 "THIS AGREEMENT SETS FORTH THE SERVICES TO BE PROVIDED BY
31 (LICENSEE NAME) TO YOU AS ITS CUSTOMER. (LICENSEE
32 NAME) CAN OFFER YOU ACCESS TO ONE OR MORE MORTGAGE
33 PROGRAMS AVAILABLE TO (LICENSEE NAME) FROM THIRD PARTY
34 LENDING SOURCES. (LICENSEE NAME) CAN ASSIST YOU IN
35 CHOOSING FROM THESE OPTIONS A LOAN PRODUCT SUITABLE FOR YOUR
36 INDIVIDUAL REQUIREMENTS. (LICENSEE NAME) IS NOT
37 CONSIDERED YOUR AGENT UNDER MARYLAND LAW. FEDERAL AND STATE
38 LAWS AND REGULATIONS GOVERN THE CONDUCT OF MORTGAGE BROKERS.
39 NO LAW, HOWEVER, STIPULATES THAT A MORTGAGE BROKER MAKE
40 AVAILABLE THE BEST POSSIBLE RATES OR PRICES IN THE MARKETPLACE FOR

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1 ITS CUSTOMERS. AS IN ANY OTHER PURCHASE, CONSUMERS ARE ADVISED TO
2 COMPARE SERVICES AND COSTS BEFORE MAKING A SELECTION."

3 (B) THE DISCLOSURE STATEMENT REQUIRED UNDER THIS SECTION SHALL
4 BE AT LEAST AS CONSPICUOUS AS OTHER PROVISIONS IN THE BROKER AGREEMENT.

5 (C) A LICENSEE WHO MAKES THE DISCLOSURE STATEMENT REQUIRED
6 UNDER THIS SECTION MAY NOT, FOR PURPOSES OF THE LOAN TRANSACTION, OR
7 ANY ACTION ARISING FROM THE LOAN TRANSACTION, BE CONSIDERED THE AGENT
8 OR A FIDUCIARY OF THE BORROWER.

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

12 11-523.

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

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

22 (C) ANY MORTGAGE LENDER WHO WILLFULLY MISAPPROPRIATES OR
23 OTHERWISE INTENTIONALLY AND FRAUDULENTLY CONVERTS TO THE MORTGAGE
24 LENDER'S OWN USE MONEYS IN EXCESS OF \$300 RIGHTFULLY BELONGING TO A
25 BORROWER IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE
26 NOT TO EXCEED \$100,000 OR IMPRISONMENT NOT EXCEEDING 15 YEARS OR BOTH.

27 **Article - Commercial Law**

28 12-903.

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

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

40 (3) IF THE PLAN IS SECURED BY A LIEN ON RESIDENTIAL REAL
41 PROPERTY, THE CREDIT GRANTOR MAY, IN ADDITION TO THE PERIODIC

14

1 PERCENTAGE RATE CHARGE AUTHORIZED UNDER SUBSECTION (A)(1) OF THIS
2 SECTION, CHARGE AND COLLECT AT THE TIME THE PLAN IS ENTERED INTO BY THE
3 BORROWER POINTS, LOAN ORIGINATION FEES, LOAN DISCOUNT FEES, AND SIMILAR
4 FEES, PROVIDED THAT:

5 (I) THE DOCUMENTS EVIDENCING THE PLAN SPECIFICALLY
6 ENUMERATE ANY SUCH FEES;

7 (II) THE BORROWER AGREES IN WRITING TO PAY THOSE FEES;
8 AND

9 (III) THE FEES ARE DISCLOSED TO THE BORROWER IN
10 ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING ACT.

11 12-913.1.

12 (a) (1) On or after October 1, 1993, a credit grantor may at its option elect to
13 offer a plan to any borrower either pursuant to this subtitle or as otherwise permitted by
14 applicable law.

15 (2) In order for a plan to be established under and governed by this subtitle,
16 a credit grantor shall make a written election to that effect in the agreement governing
17 the plan.

18 (b) (1) If a credit grantor elects in accordance with this section to establish a
19 plan under this subtitle, the provisions of Subtitle 1, 3, 4, 5, 6, or 10 of this title do not
20 apply to the plan.

21 (2) [If] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF A
22 person fails to elect in accordance with this section to establish a plan under this subtitle,
23 the provisions of this subtitle do not apply.

24 (C) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TITLE, IF A
25 PLAN SECURED BY A SECONDARY LIEN ON RESIDENTIAL REAL PROPERTY
26 CONTAINS AN EXPRESS ELECTION TO BE GOVERNED BY THE LAW OF A STATE
27 OTHER THAN MARYLAND, BUT AFTER ESTABLISHMENT OF THE PLAN IT IS
28 DETERMINED BY A COURT TO BE GOVERNED BY TITLE 12 OF THIS ARTICLE, THEN:

29 (1) THE PLAN IS SUBJECT TO THIS SUBTITLE;

30 (2) THE PLAN IS NOT SUBJECT TO SUBTITLE 1, SUBTITLE 3, SUBTITLE 4,
31 SUBTITLE 5, SUBTITLE 6, OR SUBTITLE 10 OF THIS TITLE; AND

32 (3) THE LENDER MAY CURE ANY VIOLATION OF THE REQUIREMENT
33 UNDER THIS SUBTITLE FOR A LICENSE UNDER TITLE 11, SUBTITLE 3 OF THE
34 FINANCIAL INSTITUTIONS ARTICLE BY OBTAINING THAT LICENSE FROM THE
35 COMMISSIONER WITHIN 60 DAYS AFTER THE JUDGMENT OR DECREE ESTABLISHING
36 THE APPLICABILITY OF TITLE 12 OF THIS ARTICLE BECOMES FINAL, AND ALL RIGHTS
37 OF APPEAL HAVE EXPIRED OR BEEN EXHAUSTED.

38 12-1005.

39 In addition to interest at a periodic percentage rate or rates permitted by §§
40 12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:

15

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

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

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

8 (II) THE loan is secured by a lien on residential real property[;
9 however, all such charges may not exceed 2 percent of the original extension of credit or
10 4 percent of the original extension of credit for a commercial loan not exceeding
11 \$75,000]; AND

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

14 (3) The limitations imposed by [paragraphs (1) and] PARAGRAPH (2) of
15 this subsection do not apply to a credit extension[;

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

17 (ii) Made] MADE for a bona fide commercial purpose [in excess of
18 \$75,000].

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1997.