

CF 7r0815

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

Introduced and read first time: January 29, 1997

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 1997

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## CHAPTER \_\_\_\_

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

2  
1 fraudulent misappropriation of moneys belonging to a borrower; ~~encouraging the~~  
2 ~~retention and creation of jobs in the financial services industry in this State;~~  
3 ~~encouraging investment in second mortgages secured by property located in this~~  
4 ~~State; revising the payment schedule of certain licensing fees and altering the term~~  
5 ~~of certain licenses;~~ making certain technical corrections; and generally relating to  
6 the licensing and regulation of the mortgage lenders and brokers and the regulation  
7 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), ~~12-913.1~~ 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 in whole or in part in the business of  
21 servicing mortgage loans [secured by residential real property located in this State] for  
22 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 THIS SECTION, "AFFILIATE" MEANS ANY COMPANY THAT CONTROLS, IS  
31 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH AN INSTITUTION  
32 DESCRIBED IN SUBSECTION (C) OF THIS SECTION.

33 (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];

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

6

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

3 (i) The Federal Home Loan Mortgage Corporation;

4 (ii) The Federal National Mortgage Association; and

5 (iii) The Government National Mortgage Association;

6 (4) Any person who:

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

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

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

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

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

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

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

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

22 (9) A real estate broker who:

23 (i) Is licensed in the State; and

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

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

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

34 ~~+~~ (I) IS SUBJECT TO AUDIT OR EXAMINATION BY A  
35 REGULATORY BODY OR AGENCY OF THIS STATE, THE UNITED STATES, OR THE

7  
1 STATE WHERE THE SUBSIDIARY OR AFFILIATE MAINTAINS ITS PRINCIPAL OFFICE;  
2 AND

3                                    ~~2-~~ (II) FILES WITH THE COMMISSIONER, PRIOR TO MAKING  
4 MORTGAGE LOANS, INFORMATION SUFFICIENT TO IDENTIFY:

5                                    ~~A-~~ 1. THE CORRECT CORPORATE NAME OF THE  
6 SUBSIDIARY OR AFFILIATE;

7                                    ~~B-~~ 2. AN ADDRESS AND TELEPHONE NUMBER OF A  
8 CONTACT PERSON FOR THE SUBSIDIARY OR AFFILIATE;

9                                    ~~C-~~ 3. A RESIDENT AGENT; AND

10                                   ~~D-~~ 4. ANY ADDITIONAL INFORMATION CONSIDERED  
11 NECESSARY BY THE COMMISSIONER FOR PROTECTION OF THE PUBLIC;

12                                   ~~(II) THE EXEMPTION IN SUBPARAGRAPH (I) OF THIS PARAGRAPH~~  
13 ~~APPLIES TO SUBSIDIARIES AND AFFILIATES OF:~~

14                                    ~~1. ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS~~  
15 ~~AND LOAN ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED~~  
16 ~~UNDER THE LAWS OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS~~  
17 ~~PRINCIPAL OFFICE IN THIS STATE; OR~~

18                                    ~~2. ANY OUT OF STATE BANK, AS THAT TERM IS DEFINED IN~~  
19 ~~§ 5-1001 OF THIS ARTICLE, HAVING A BRANCH IN THIS STATE;~~

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

24                                    (13) EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT  
25 WITH:

26                                    (I) A LICENSED MORTGAGE LENDER; OR

27                                    (II) A PERSON WHO IS EXEMPT FROM LICENSURE UNDER THIS  
28 SUBTITLE.

29                                    (C) THE EXEMPTION IN SUBSECTION (B)(11) OF THIS SECTION APPLIES TO  
30 SUBSIDIARIES AND AFFILIATES OF:

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

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

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

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

8 11-505.

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

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

15                               (ii) A title insurance company, a title company, or an attorney for a  
16 title insurance company or a title company.

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

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

24 11-506.

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

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

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

31                               (3) Command the confidence of the public.

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

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

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

9

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

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

7 11-506.1.

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

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

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

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

26 11-507.

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

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

33 (3) The application shall include:

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

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

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



11

1 MORTGAGE LENDER WITHOUT A LICENSE AT THE LOCATION FOR WHICH AN  
2 APPLICATION IS FILED.

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

7 11-508.

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

10 (b) The surety bond shall:

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

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

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

17 (4) Be approved by the Commissioner.

18 (c) If an applicant has not 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 application for A license  
21 [is filed], the APPLICANT SHALL PROVIDE A SWORN STATEMENT SETTING FORTH  
22 THAT FACT, AND SHALL FILE WITH THE ORIGINAL APPLICATION A surety bond  
23 [required under this subtitle shall be] in the amount of [\$12,500] \$15,000.

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

35 (2) IF AN APPLICANT HAS CONDUCTED A MORTGAGE LENDING  
36 BUSINESS ANY TIME DURING THE 36 MONTHS PRIOR TO THE FILING OF AN  
37 ORIGINAL APPLICATION, BUT DURING THAT TIME HAS NOT ACTED AS A MORTGAGE  
38 LENDER IN MARYLAND, THE APPLICANT SHALL PROVIDE WITH THE ORIGINAL  
39 APPLICATION A SWORN STATEMENT SETTING FORTH THE AGGREGATE PRINCIPAL  
40 AMOUNT OF LOANS SECURED OR TO BE SECURED BY RESIDENTIAL REAL PROPERTY  
41 LOCATED IN STATES OTHER THAN MARYLAND AND APPLIED FOR, PROCURED, AND

12

1 ACCEPTED BY THE MORTGAGE LENDER DURING THE 12 MONTHS PRECEDING THE  
2 MONTH IN WHICH THE APPLICATION IS FILED.

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

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

9 [(2)] (II) Where the [total dollar] AGGREGATE PRINCIPAL amount of  
10 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$1,000,000]  
11 \$3,000,000 but not more than [\$2,000,000] \$10,000,000, [the] A SURETY bond [shall be]  
12 in the amount of [\$17,500] \$50,000; AND

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

15 [(4)] (III) Where the [total dollar] AGGREGATE PRINCIPAL amount of  
16 [stated] loans SET FORTH IN THE SWORN STATEMENT was more than [\$3,000,000]  
17 \$10,000,000, [the] A SURETY bond [shall be] in the amount of [\$50,000] \$75,000.

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

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

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

33 11-511.

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

37 (2) A license issued on or after October 1, 1997 expires on [the] December  
38 31 IN EACH ODD-NUMBERED YEAR after [its effective date] DECEMBER 31, 1997 unless  
39 the license is renewed for a [1-year] 2-YEAR term as provided in this section.

13

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

- 4 (1) Otherwise is entitled to be licensed;
- 5 (2) Pays to the Commissioner a renewal fee of [\$500] \$1,000;
- 6 (3) Submits to the Commissioner a renewal application on the form that the  
7 Commissioner requires; and
- 8 (4) Files a bond or bond continuation certificate for the amount required  
9 under § 11-508 of this subtitle.

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

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

15 11-512.

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

- 18 (1) Notifies the Commissioner in writing of the proposed change; and
- 19 (2) Receives the written consent of the Commissioner.

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

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

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

29 (2) FILE WITH THE COMMISSIONER AN APPLICATION FOR A NEW  
30 LICENSE, TOGETHER WITH ALL APPLICABLE APPLICATION AND INVESTIGATION  
31 FEES.

32 ~~11-521.1.~~

33 ~~(A) A PERSON ACTING AS A MORTGAGE BROKER SHALL INCLUDE A~~  
34 ~~DISCLOSURE STATEMENT, SUBSTANTIALLY SIMILAR TO THE FOLLOWING, IN THE~~  
35 ~~WRITTEN BROKER AGREEMENT REQUIRED BY § 12-805 OF THE COMMERCIAL LAW~~  
36 ~~ARTICLE:~~

37 ~~"THIS AGREEMENT SETS FORTH THE SERVICES TO BE PROVIDED BY~~  
38 ~~(LICENSEE NAME) TO YOU AS ITS CUSTOMER. (LICENSEE~~

1 NAME) ~~CAN OFFER YOU ACCESS TO ONE OR MORE MORTGAGE~~  
 2 ~~PROGRAMS AVAILABLE TO (LICENSEE NAME) FROM THIRD PARTY~~  
 3 ~~LENDING SOURCES. (LICENSEE NAME) CAN ASSIST YOU IN~~  
 4 ~~CHOOSING FROM THESE OPTIONS A LOAN PRODUCT SUITABLE FOR YOUR~~  
 5 ~~INDIVIDUAL REQUIREMENTS. (LICENSEE NAME) IS NOT~~  
 6 ~~CONSIDERED YOUR AGENT UNDER MARYLAND LAW. FEDERAL AND STATE~~  
 7 ~~LAWS AND REGULATIONS GOVERN THE CONDUCT OF MORTGAGE BROKERS.~~  
 8 ~~NO LAW, HOWEVER, STIPULATES THAT A MORTGAGE BROKER MAKE~~  
 9 ~~AVAILABLE THE BEST POSSIBLE RATES OR PRICES IN THE MARKETPLACE FOR~~  
 10 ~~ITS CUSTOMERS. AS IN ANY OTHER PURCHASE, CONSUMERS ARE ADVISED TO~~  
 11 ~~COMPARE SERVICES AND COSTS BEFORE MAKING A SELECTION."~~

12 ~~————(B) THE DISCLOSURE STATEMENT REQUIRED UNDER THIS SECTION SHALL~~  
 13 ~~BE AT LEAST AS CONSPICUOUS AS OTHER PROVISIONS IN THE BROKER AGREEMENT.~~

14 ~~————(C) A LICENSEE WHO MAKES THE DISCLOSURE STATEMENT REQUIRED~~  
 15 ~~UNDER THIS SECTION MAY NOT, FOR PURPOSES OF THE LOAN TRANSACTION, OR~~  
 16 ~~ANY ACTION ARISING FROM THE LOAN TRANSACTION, BE CONSIDERED THE AGENT~~  
 17 ~~OR A FIDUCIARY OF THE BORROWER.~~

18 ~~————(D) A PROVISION IN ANY AGREEMENT BETWEEN A MORTGAGE BROKER AND~~  
 19 ~~A BORROWER THAT PURPORTS TO RESTRICT THE BORROWER FROM APPLYING FOR~~  
 20 ~~A LOAN WITH ANOTHER LENDER OR MORTGAGE BROKER IS VOID.~~

21 ~~41-523.~~

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

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

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

36 ~~———— **Article – Commercial Law**~~

37 ~~42-903.~~

38 ~~————(a) (1) A credit grantor may charge and collect interest or finance charges~~  
 39 ~~under the plan on the outstanding unpaid indebtedness in the borrower's account under~~  
 40 ~~the plan at any daily, weekly, monthly, annual, or other periodic percentage rate as the~~  
 41 ~~agreement governing the plan provides, if the effective rate of simple interest does not~~

15

1 exceed 24 percent per year. The rate of interest chargeable on a plan must be expressed  
2 in the agreement as a simple interest rate or rates.

3 ~~————— (2) The repayment terms for a plan extended to a consumer borrower may~~  
4 ~~not include a provision under which the consumer borrower may be required to pay a~~  
5 ~~balloon payment at maturity. However, the adjustment of payment amounts, due to~~  
6 ~~fluctuations in unpaid balance or rate of interest, may not be deemed to result in a~~  
7 ~~balloon payment.~~

8 ~~————— (3) IF THE PLAN IS SECURED BY A LIEN ON RESIDENTIAL REAL~~  
9 ~~PROPERTY, THE CREDIT GRANTOR MAY, IN ADDITION TO THE PERIODIC~~  
10 ~~PERCENTAGE RATE CHARGE AUTHORIZED UNDER SUBSECTION (A)(1) OF THIS~~  
11 ~~SECTION, CHARGE AND COLLECT AT THE TIME THE PLAN IS ENTERED INTO BY THE~~  
12 ~~BORROWER POINTS, LOAN ORIGATION FEES, LOAN DISCOUNT FEES, AND SIMILAR~~  
13 ~~FEES, PROVIDED THAT:~~

14 ~~————— (I) ALL SUCH FEES MAY NOT EXCEED 2 PERCENT OF THE~~  
15 ~~MAXIMUM AMOUNT OF CREDIT MADE AVAILABLE TO THE BORROWER UNDER THE~~  
16 ~~PLAN;~~

17 ~~————— (II) THE DOCUMENTS EVIDENCING THE PLAN SPECIFICALLY~~  
18 ~~ENUMERATE ANY SUCH FEES;~~

19 ~~————— (II) (III) THE BORROWER AGREES IN WRITING TO PAY THOSE~~  
20 ~~FEES; AND~~

21 ~~————— (III) (IV) THE FEES ARE DISCLOSED TO THE BORROWER IN~~  
22 ~~ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING ACT.~~

23 ~~12-905.~~

24 ~~———— (c) For purposes of this section, the additional charges listed in subsections (a),~~  
25 ~~(b), [(f), and (g)] AND (F) of this section are not interest or finance charges with respect~~  
26 ~~to a plan.~~

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

30 ~~12-913.1.~~

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

34 ~~———— (2) In order for a plan to be established under and governed by this subtitle,~~  
35 ~~a credit grantor shall make a written election to that effect in the agreement governing~~  
36 ~~the plan.~~

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

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

4 ~~————(C) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TITLE, IF A~~  
 5 ~~PLAN SECURED BY A SECONDARY LIEN ON RESIDENTIAL REAL PROPERTY~~  
 6 ~~CONTAINS AN EXPRESS ELECTION TO BE GOVERNED BY THE LAW OF A STATE~~  
 7 ~~OTHER THAN MARYLAND, BUT AFTER ESTABLISHMENT OF THE PLAN IT IS~~  
 8 ~~DETERMINED BY A COURT TO BE GOVERNED BY TITLE 12 OF THIS ARTICLE, THEN:~~

9 ~~————(1) THE PLAN IS SUBJECT TO THIS SUBTITLE;~~

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

12 ~~————(3) THE LENDER MAY CURE ANY VIOLATION OF THE REQUIREMENT~~  
 13 ~~UNDER THIS SUBTITLE FOR A LICENSE UNDER TITLE 11, SUBTITLE 3 OF THE~~  
 14 ~~FINANCIAL INSTITUTIONS ARTICLE BY OBTAINING THAT LICENSE FROM THE~~  
 15 ~~COMMISSIONER WITHIN 60 DAYS AFTER THE JUDGMENT OR DECREE ESTABLISHING~~  
 16 ~~THE APPLICABILITY OF TITLE 12 OF THIS ARTICLE BECOMES FINAL, AND ALL RIGHTS~~  
 17 ~~OF APPEAL HAVE EXPIRED OR BEEN EXHAUSTED.~~

18 ~~12-1005.~~

19 ~~————In addition to interest at a periodic percentage rate or rates permitted by §§~~  
 20 ~~12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:~~

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

24 ~~————(2) In the case of a loan to a consumer borrower, no loan fees, points,~~  
 25 ~~finder's fees, or other charges {may be charged and collected} unless [the]:~~

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

28 ~~————(II) THE loan is secured by a lien on residential real property};~~  
 29 ~~however, all such charges may not exceed 2 percent of the original extension of credit or~~  
 30 ~~4 percent of the original extension of credit for a commercial loan not exceeding~~  
 31 ~~\$75,000}; AND~~

32 ~~————(III) THE CHARGES ARE DISCLOSED TO THE BORROWER IN~~  
 33 ~~ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING ACT; and~~

34 ~~————(3) The limitations imposed by [paragraphs (1) and] PARAGRAPH (2) of~~  
 35 ~~this subsection do not apply to a credit extension};~~

36 ~~————(i) Secured by a first lien on residential real property; or~~

37 ~~————(ii) Made} MADE for a bona fide commercial purpose {in excess of~~  
 38 ~~\$75,000}.~~

39 ~~————SECTION 2. AND BE IT FURTHER ENACTED, That:~~

1 ~~\_\_\_\_\_ (a) There is a Task Force to Examine the Mortgage Lending Business.~~

2 ~~\_\_\_\_\_ (b) The Task Force consists of the following 17 members:~~

3 ~~\_\_\_\_\_ (1) Two members of the Senate of Maryland, appointed by the President of~~  
4 ~~the Senate;~~

5 ~~\_\_\_\_\_ (2) Two members of the House of Delegates, appointed by the Speaker of~~  
6 ~~the House;~~

7 ~~\_\_\_\_\_ (3) The Commissioner of Financial Regulation in the Department of Labor,~~  
8 ~~Licensing, and Regulation, or the Commissioner's designee;~~

9 ~~\_\_\_\_\_ (4) One representative of the Attorney General's Office, designated by the~~  
10 ~~Attorney General; and~~

11 ~~\_\_\_\_\_ (5) Eleven members appointed jointly by the President of the Senate and~~  
12 ~~the Speaker of the House of Delegates as follows:~~

13 ~~\_\_\_\_\_ (i) Two representatives of the mortgage loan industry who are actively~~  
14 ~~engaged in the business of making mortgage loans, who may be selected from a list of~~  
15 ~~names submitted by the Maryland Mortgage Bankers Association;~~

16 ~~\_\_\_\_\_ (ii) Two representatives of the mortgage loan industry who are actively~~  
17 ~~engaged in the business of mortgage brokering, who may be selected from a list of names~~  
18 ~~submitted by the Maryland Association of Mortgage Brokers;~~

19 ~~\_\_\_\_\_ (iii) One representative of the banking industry who is actively engaged~~  
20 ~~in the banking, savings banking, or savings association business, who may be selected from~~  
21 ~~a list of names submitted by the Maryland Bankers Association;~~

22 ~~\_\_\_\_\_ (iv) Two representatives of financial services companies who are~~  
23 ~~actively engaged in the business of mortgage secured consumer loans, who may be~~  
24 ~~selected from a list of names submitted by the Maryland Financial Services Association;~~  
25 ~~and~~

26 ~~\_\_\_\_\_ (v) Four members who are affiliated with recognized consumer~~  
27 ~~protection groups or agencies.~~

28 ~~\_\_\_\_\_ (c) The President of the Senate and the Speaker of the House of Delegates shall~~  
29 ~~each appoint a co-chairman of the Task Force.~~

30 ~~\_\_\_\_\_ (d) Staff support for the Task Force shall be provided by the Department of Fiscal~~  
31 ~~Services and the Department of Legislative Reference.~~

32 ~~\_\_\_\_\_ (e) The purposes and responsibilities of the Task Force are to:~~

33 ~~\_\_\_\_\_ (1) Examine the incidence and scope of fraudulent practices by originators~~  
34 ~~of loans which involve falsification of loan underwriting information and documents;~~

35 ~~\_\_\_\_\_ (2) Examine the effectiveness and enforcement of the laws of Maryland, in~~  
36 ~~light of applicable federal laws and programs, to combat fraudulent practices in the~~  
37 ~~mortgage origination industry, including practices undertaken solely for the benefit of the~~  
38 ~~originator;~~

1 ~~\_\_\_\_\_ (3) Examine possible efforts to combat fraudulent practices, including the~~  
2 ~~licensing of individual loan officers and additional disclosure requirements;~~

3 ~~\_\_\_\_\_ (4) Examine the legal relationship between mortgage lenders, mortgage~~  
4 ~~brokers, and borrowers;~~

5 ~~\_\_\_\_\_ (5) Examine the maximum amount of fees, including points, loan origination~~  
6 ~~fees, loan discount fees, and similar fees, that can be charged and collected at the time a~~  
7 ~~secondary mortgage loan, including a revolving credit plan and a closed-end credit plan,~~  
8 ~~is entered into by a borrower; and~~

9 ~~\_\_\_\_\_ (6) Examine any other issue pertaining to the business of mortgage lending~~  
10 ~~or brokering that the Task Force identifies as warranting examination.~~

11 ~~\_\_\_\_\_ (f) The Task Force shall develop recommendations and propose legislative,~~  
12 ~~regulatory, and other changes required to implement the recommendations.~~

13 ~~\_\_\_\_\_ (g) On or before December 1, 1997, the Task Force shall submit a report on its~~  
14 ~~findings and recommendations to:~~

15 ~~\_\_\_\_\_ (1) The Senate Finance Committee and the House Commerce and~~  
16 ~~Government Matters Committee; and~~

17 ~~\_\_\_\_\_ (2) The Governor and, subject to the provisions of § 2-1312 of the State~~  
18 ~~Government Article, the General Assembly.~~

19 ~~\_\_\_\_\_ (h) The members of the Task Force may not receive compensation but are~~  
20 ~~entitled to reimbursement for expenses under the Standard State Travel Regulations, as~~  
21 ~~provided in the State budget.~~

22 ~~\_\_\_\_\_ (i) The Task Force shall terminate on January 31, 1998.~~

23 ~~\_\_\_\_\_ SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall~~  
24 ~~take effect July 1, 1997.~~

25 ~~\_\_\_\_\_ SECTION 2. 4. AND BE IT FURTHER ENACTED, That, except as provided in~~  
26 ~~Section 3 of this Act, this Act shall take effect October 1, 1997.~~