

HOUSE BILL 202

Unofficial Copy
II

1998 Regular Session
(8lr1153)

ENROLLED BILL

-- Commerce and Government Matters/Finance --

Introduced by **Delegates Opara and Faulkner (Task Force to Examine the Mortgage Lending Business)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Consumer Credit - Mortgage Lending Business Reforms**

3 FOR the purpose of altering the manner in which certain points, loan origination fees,
4 commissions, finder's fees, or similar charges may be allocated between a
5 mortgage broker and a lender or credit grantor in certain loan transactions and
6 establishing an aggregate percentage cap on the amount of such charges;
7 altering the manner and permissible location in which applications for certain
8 loan transactions secured by secondary mortgages or deeds of trust may be
9 ~~conducted~~ accepted, subject to certain conditions; allowing certain loan closings
10 to be conducted at certain locations under certain circumstances; repealing
11 certain licensing requirements relating to certain credit grantors; specifying
12 certain continuing education requirements for a mortgage broker and a
13 mortgage lender and its loan officers, subject to certain regulations adopted by
14 the Commissioner of Financial Regulation; ~~requiring certain persons to obtain~~
15 ~~fidelity bonds for certain purposes; requiring the Commissioner of Financial~~
16 ~~Regulation to examine the use of the Maryland Consumer Protection Act for~~

1 ~~certain purposes; clarifying provisions regarding for whose benefit certain~~
2 ~~surety bond requirements are established;~~ altering the scope of certain activities
3 in the mortgage lending business that may constitute criminal behavior;
4 altering the manner in which certain loan funds may be disbursed at settlement;
5 ~~defining certain terms; requiring the Commissioner of Financial Regulation to~~
6 ~~report to certain committees on certain regulations prior to their adoption and~~
7 ~~implementation;~~ and generally relating to certain practices and requirements
8 related to the conduct of the mortgage lending business in the State.

9 BY repealing and reenacting, with amendments,
10 Article - Commercial Law
11 ~~Section 12-405, 12-804(a), 12-903(a), 12-915, and 12-1015~~
12 ~~Section 12-405, 12-903(a), and 12-1005~~
13 Annotated Code of Maryland
14 (1990 Replacement Volume and 1997 Supplement)

15 ~~BY repealing and reenacting, without amendments,~~
16 ~~Article - Financial Institutions~~
17 ~~Section 11-507(d) and (e)~~
18 ~~Annotated Code of Maryland~~
19 ~~(1998 Replacement Volume)~~

20 BY repealing and reenacting, with amendments,
21 Article - Financial Institutions
22 ~~Section 11-204, 11-505, 11-506, 11-507(e), 11-508, 11-511(b), 11-517, and~~
23 ~~11-523~~
24 ~~Section 11-204, 11-301(b), 11-505, 11-508, 11-511(b), and 11-523~~
25 Annotated Code of Maryland
26 (1998 Replacement Volume)

27 BY adding to
28 Article - Financial Institutions
29 Section 11-511.1
30 Annotated Code of Maryland
31 (1998 Replacement Volume)

32 BY repealing and reenacting, with amendments,
33 Article - Real Property
34 Section 7-109
35 Annotated Code of Maryland
36 (1996 Replacement Volume and 1997 Supplement)

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

1

Article - Commercial Law

2 12-405.

3 (a) (1) A lender may collect a loan origination fee [not exceeding the greater
4 of \$500 or 4 percent of the net proceeds of a commercial loan of \$75,000 or less made
5 under this subtitle or not exceeding \$250 or 2 percent of the net proceeds of any other
6 loan under this subtitle] FOR MAKING A LOAN UNDER THIS SUBTITLE ONLY AS
7 PROVIDED IN THIS SECTION.

8 (2) THE AGGREGATE AMOUNT OF THE LOAN ORIGINATION FEE IMPOSED
9 BY A LENDER UNDER THIS SECTION ~~AND~~ WHEN COMBINED WITH ANY FINDER'S FEE
10 IMPOSED BY A MORTGAGE BROKER UNDER § 12-804 OF THIS ARTICLE MAY NOT
11 EXCEED THE GREATER OF:

12 (I) \$500 OR 10 PERCENT OF THE NET PROCEEDS OF A COMMERCIAL
13 LOAN OF \$75,000 OR LESS MADE UNDER THIS SUBTITLE; OR

14 (II) \$250 OR 10 PERCENT OF THE NET PROCEEDS OF ANY OTHER
15 LOAN MADE UNDER THIS SUBTITLE.

16 (3) [However, the] A lender may not collect from the borrower any other
17 commission, finder's fee, or point for obtaining, procuring, or placing a loan UNDER
18 THIS SUBTITLE.

19 [(2)] (4) A lender who utilizes the provisions of § 12-404.1 of this title,
20 relating to federal second mortgage purchase programs, is not entitled to the
21 origination fee provided for in subsection [(a)(1)] (A)(2) of this section in addition to
22 the fees, discounts, points, or charges allowed under § 12-404.1(2). All other second
23 mortgage programs in this State are limited to the charges and fees provided in
24 subsection [(a)(1)] (A)(2) of this section.

25 (b) A lender may collect the fees paid to a public official or governmental
26 agency for recording or satisfying the instrument securing the loan.

27 (c) (1) A lender may collect from the borrower a delinquent or late charge of
28 the greater of \$2 or 5 percent of the amount of any delinquent or late periodic
29 installment, if:

30 (i) The delinquency has continued for at least 10 days; and

31 (ii) A delinquent or late charge has not already been charged for the
32 same delinquency.

33 (2) The lender shall deduct the charge from the next payment made by
34 the borrower.

1 ~~12-804.~~

2 (a) ~~A mortgage broker may charge a finder's fee THAT, IN COMBINATION WITH~~
 3 ~~ALL COMMISSIONS, FINDERS' FEES, AND POINTS FOR PROCURING A LOAN OR~~
 4 ~~ADVANCE THAT ARE CHARGED BY A LENDER OR CREDIT GRANTOR, IS not in excess of~~
 5 ~~[8] 10 percent of the amount of the loan or advance.~~

6 12-903.

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

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

18 (3) If the plan is secured by a lien on residential real property, the credit
 19 grantor may, in addition to the periodic percentage rate charge authorized under
 20 subsection (a)(1) of this section, charge and collect at the time the plan is entered into
 21 by the borrower points, loan origination fees, loan discount fees, and similar fees,
 22 provided that:

23 (i) ~~[All] THE COMBINATION OF ALL such fees CHARGED BY THE~~
 24 ~~LENDER OR CREDIT GRANTOR AND THE MORTGAGE BROKER ALL SUCH FEES, WHEN~~
 25 ~~COMBINED WITH ANY FINDER'S FEE IMPOSED BY A MORTGAGE BROKER UNDER §~~
 26 ~~12-804 OF THIS TITLE,~~ may not exceed [2] 10 percent of the maximum amount of
 27 credit made available to the borrower under the plan;

28 (ii) The documents evidencing the plan specifically enumerate any
 29 such fees;

30 (iii) The borrower agrees in writing to pay those fees; and

31 (iv) The fees are disclosed to the borrower in accordance with the
 32 federal Truth in Lending Act.

33 ~~12-915.~~

34 ~~(a) A credit grantor making a loan or extension of credit under this subtitle is~~
 35 ~~subject to the licensing, investigatory, enforcement and penalty provisions of Title 11,~~
 36 ~~Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or~~
 37 ~~extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions~~
 38 ~~Article.~~

1 (b) ~~[In addition to any license which may be required by] NOTWITHSTANDING~~
2 ~~subsection (a) of this section, a credit grantor making [a loan or extension of credit]~~
3 ~~ONLY LOANS OR EXTENSIONS OF CREDIT under this subtitle secured by any lien on~~
4 ~~residential real property is subject to the licensing, investigatory, enforcement and~~
5 ~~penalty provisions of Title 11, Subtitle 5 of the Financial Institutions Article unless~~
6 ~~the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle~~
7 ~~5 of the Financial Institutions Article.~~

8 (c) ~~If a license is required by this section, it shall be issued by the~~
9 ~~Commissioner of Financial Regulation.~~

10 (d) (1) ~~An extension of credit made under this subtitle prior to October 1,~~
11 ~~1994 by a home improvement contractor may not be deemed unenforceable or~~
12 ~~violative of this section because the contractor was not licensed under Title 11,~~
13 ~~Subtitle 3 of the Financial Institutions Article.~~

14 (2) ~~Paragraph (1) of this subsection does not apply to any person engaged~~
15 ~~in the business of making loans at the time the credit was extended.~~

16 12-1005.

17 In addition to interest at a periodic percentage rate or rates permitted by §§
18 12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:

19 (a) (1) Subject to the limitations in this section, loan fees, points, finder's
20 fees, and other charges; however, all such charges, WHEN COMBINED WITH ANY
21 FINDER'S FEE IMPOSED BY A MORTGAGE BROKER UNDER § 12-804 OF THIS TITLE,
22 may not exceed [2] 10 percent of the original extension of credit;

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

25 (i) The agreement, note, or other evidence of the loan so provides
26 and the borrower agrees in writing to pay those charges;

27 (ii) The loan is secured by a lien on residential real property;
28 however, all such charges, WHEN COMBINED WITH ANY FINDER'S FEE IMPOSED BY A
29 MORTGAGE BROKER UNDER § 12-804 OF THIS TITLE, may not exceed [2]10 percent of
30 the original extension of credit [or 4 percent of the original extension of credit for a
31 commercial loan not exceeding \$75,000]; and

32 (iii) The charges are disclosed to the borrower in accordance with
33 the federal Truth in Lending Act; and

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

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

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

1 (b) Reasonable fees for services rendered or for reimbursement of expenses
2 incurred in good faith by the credit grantor or its agents in connection with the loan,
3 including:

4 (1) Commitment fees;

5 (2) Official fees and taxes;

6 (3) Premiums or other charges for any guarantee or insurance protecting
7 the credit grantor against the borrower's default or other credit loss;

8 (4) Costs incurred by reason of examination of title, inspection,
9 recording, and other formal acts necessary or appropriate to the security of the loan;

10 (5) Filing fees;

11 (6) Attorney's fees; and

12 (7) Travel expenses.

13 (c) (1) The cost to the borrower of an optional debt cancellation agreement,
14 provided that the cost of the debt cancellation agreement is separately itemized in the
15 financing agreement.

16 (2) This cost is in addition to the charges permitted under subsections
17 (a), (b), and (d) of this section.

18 (d) In the case of a loan to a consumer borrower, a fee permitted under
19 subsection (b) of this section may not be charged and collected unless:

20 (1) The agreement, note, or other evidence of the loan permits;

21 (2) The fee is an actual and verifiable expense of the credit grantor not
22 retained by him; and

23 (3) Limited to charges for:

24 (i) Attorney's fees for services rendered in connection with the
25 preparation, closing, or disbursement of the loan;

26 (ii) Any expense, tax, or charge paid to a governmental agency;

27 (iii) Examination of title, appraisal, or other costs necessary or
28 appropriate to the security of the loan; and

29 (iv) Premiums for any insurance coverage permitted under this
30 subtitle.

31 (e) For purposes of this subtitle, fees and charges permitted under this section
32 are not interest with respect to a loan.

1 ~~12-1015.—~~

2 ~~— (a) — A credit grantor making a loan or an extension of credit under this subtitle~~
 3 ~~is subject to the licensing, investigatory, enforcement and penalty provisions of Title~~
 4 ~~11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan~~
 5 ~~or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions~~
 6 ~~Article.~~

7 ~~— (b) — [In addition to any license which may be required by] NOTWITHSTANDING~~
 8 ~~subsection (a) of this section, a credit grantor making [a loan or extension of credit]~~
 9 ~~ONLY LOANS OR EXTENSIONS OF CREDIT under this subtitle secured by any lien on~~
 10 ~~residential real property is subject to the licensing, investigatory, enforcement and~~
 11 ~~penalty provisions of Title 11, Subtitle 5 of the Financial Institutions Article unless~~
 12 ~~the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle~~
 13 ~~5 of the Financial Institutions Article.~~

14 ~~— (c) — If a license is required by this section, it shall be issued by the~~
 15 ~~Commissioner of Financial Regulation.~~

16 ~~— (d) — (1) — An extension of credit made under this subtitle prior to October 1,~~
 17 ~~1994 by a home improvement contractor may not be deemed unenforceable or~~
 18 ~~violative of this section because the contractor was not licensed under Title 11,~~
 19 ~~Subtitle 3 of the Financial Institutions Article.~~

20 ~~— (2) — Paragraph (1) of this subsection does not apply to any person engaged~~
 21 ~~in the business of making loans at the time the credit was extended.~~

22

Article - Financial Institutions

23 11-204.

24 (a) Unless a person is licensed by the Commissioner, the person may not:

25 (1) Make a loan; or

26 (2) In any way use any advantage provided by the Maryland Consumer
 27 Loan Law.

28 (b) (1) A separate license is required for each place of business where a
 29 person makes a loan or transacts any business under the Maryland Consumer Loan
 30 Law.

31 (2) A person may not:

32 (i) Receive any application for a loan or allow any note or contract
 33 for a loan to be signed at any place of business for which the person does not have a
 34 license;

35 (ii) Conduct any business under the Maryland Consumer Loan Law
 36 under a name different from the name that appears on the person's license; or

1 (iii) Evade the application of this section by any device, subterfuge,
2 or pretense of any kind.

3 (3) This subsection does not prohibit a licensee from accommodating a
4 borrower, at the borrower's ~~PRIOR WRITTEN~~ request, by:

5 ~~(H) [making] MAKING~~ a loan by mail because of the borrower's
6 sickness or hours of employment or for similar reasons; ~~OR~~.

7 ~~(H) CONDUCTING ALL OR PART OF THE BUSINESS OF MAKING REAL~~
8 ~~ESTATE SECURED LOANS:~~

9 1. ~~BY MAIL, TELEPHONE, OR OTHER MEANS OF ELECTRONIC~~
10 ~~COMMUNICATION; OR~~

11 2. ~~AT A LOCATION REQUESTED BY THE BORROWER THAT IS~~
12 ~~DIFFERENT THAN THE LICENSEE'S PLACE OF BUSINESS.~~

13 (4) NOTWITHSTANDING PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,
14 FOR A LOAN THAT IS TO BE SECURED BY RESIDENTIAL REAL PROPERTY:

15 (I) A LICENSEE MAY SOLICIT AND ACCEPT AN APPLICATION FOR A
16 LOAN:

17 1. BY MAIL;

18 2. BY TELEPHONE OR OTHER ELECTRONIC MEANS; OR

19 3. AT ANY LOCATION REQUESTED BY THE PROSPECTIVE
20 BORROWER; AND

21 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
22 PARAGRAPH, THE LOAN CLOSING SHALL BE CONDUCTED AT:

23 1. THE LENDER'S LICENSED LOCATION;

24 2. THE OFFICE OF AN ATTORNEY REPRESENTING THE
25 LICENSEE, THE BORROWER, THE TITLE COMPANY, OR TITLE INSURER IN
26 CONNECTION WITH THE LOAN; OR

27 3. THE OFFICE OF THE TITLE INSURER OR TITLE AGENCY
28 PERFORMING CLOSING SERVICES IN CONNECTION WITH THE LOAN; AND

29 (III) A LICENSEE MAY CONDUCT THE LOAN CLOSING AT ANOTHER
30 LOCATION AT THE WRITTEN REQUEST OF THE BORROWER OR THE BORROWER'S
31 DESIGNEE TO ACCOMMODATE THE BORROWER BECAUSE OF THE BORROWER'S
32 SICKNESS.

1 11-301.

2 (b) The licensing provisions of this subtitle do not apply to any of the following
3 persons, if organized under the laws of this State or otherwise qualified to do business
4 in this State:

5 (1) A banking institution;

6 (2) A national banking association;

7 (3) A federal or State savings and loan association;

8 (4) A federal or State credit union;

9 (5) A licensee under Title 11, Subtitle 2 of this article;

10 (6) A seller of goods or services or both not engaged in:

11 (i) Making loans; or

12 (ii) Acting as a credit services business as defined under Title 14,
13 Subtitle 19 of the Commercial Law Article; [or]

14 (7) [An other-state bank having a branch in this State] A LICENSEE
15 UNDER SUBTITLE 5 OF THIS TITLE ENGAGED SOLELY IN A MORTGAGE LENDING
16 BUSINESS AS DEFINED IN THAT SUBTITLE; OR

17 (8) AN ENTITY EXEMPT FROM LICENSING AS A MORTGAGE LENDER
18 UNDER § 11-502(B)(11) OF THIS TITLE.

19 11-505.

20 (a) A license issued under this subtitle authorizes the licensee to act as a
21 mortgage lender under the license at the licensed place of business.

22 (b) Only 1 place of business may be maintained under any 1 license.

23 (c) A mortgage lender may maintain more than 1 license under this subtitle
24 provided that a separate application for each license is made pursuant to § 11-507 of
25 this subtitle and the Commissioner approves such application.

26 (d) (1) The Commissioner shall include on each license:

27 (i) The name of the licensee; and

28 (ii) The address at which the business is to be conducted.

29 (2) A person may not conduct any mortgage loan business at any location
30 or under any name different from the address and name that appears on the person's
31 license.

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

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

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

9 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, A
 10 LICENSEE MAY CONDUCT THE LOAN CLOSING AT ANOTHER LOCATION AT THE
 11 WRITTEN REQUEST OF THE BORROWER OR THE BORROWER'S DESIGNEE TO
 12 ACCOMMODATE THE BORROWER BECAUSE OF THE BORROWER'S SICKNESS.

13 ~~Notwithstanding paragraph (1) of this subsection, IN ORDER TO ACCOMMODATE THE~~
 14 ~~BORROWER AT THE BORROWER'S PRIOR WRITTEN REQUEST, a licensee may [accept a~~
 15 ~~loan application from a borrower by mail or telephone or in person at the borrower's~~
 16 ~~residence or place of employment to accommodate the borrower at the borrower's~~
 17 ~~request] CONDUCT ALL OR PART OF THE BUSINESS OF MAKING LOANS:~~

18 ~~(I) BY MAIL, TELEPHONE, OR OTHER MEANS OF ELECTRONIC~~
 19 ~~COMMUNICATION; OR~~

20 ~~(II) AT A LOCATION REQUESTED BY THE BORROWER THAT IS~~
 21 ~~DIFFERENT THAN THE LICENSEE'S PLACE OF BUSINESS.~~

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

25 (f) A license may be issued under this subtitle to a business entity whose
 26 principal office is located outside this State provided that the business entity
 27 maintains a resident agent within the State at all times during the term of the
 28 license, regardless of whether:

29 (1) The business entity maintains any office within the State; or

30 (2) The activities of the business entity constitute doing business or
 31 having a tax situs in this State under the applicable provisions of the Corporations
 32 and Associations Article.

33 ~~11-506.~~

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

37 ~~(1) Engage in business as a mortgage lender;~~

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

3 (3) Command the confidence of the public.

4 (b) (1) To qualify for a license, the applicant shall satisfy the Commissioner
5 that the applicant has:

6 (1) ~~[at] AT least 3 years of experience in the mortgage lending~~
7 ~~business; AND~~

8 (II) ~~SATISFIED ANY REQUIREMENTS FOR CONTINUING EDUCATION~~
9 ~~IMPOSED BY REGULATION ADOPTED BY THE COMMISSIONER OF FINANCIAL~~
10 ~~REGULATION UPON A MORTGAGE BROKER OR A MORTGAGE LENDER AND THEIR~~
11 ~~EMPLOYEES.~~

12 (2) If the applicant is a sole proprietor, the applicant shall have the
13 required experience.

14 (3) If the applicant is a joint venture, or general or limited partnership,
15 at least one of the coventurers or general partners shall have the required experience.

16 (4) If the applicant is a business entity of any other kind, type, or
17 classification, at least one of the principal officers or members shall have the required
18 experience.

19 (e) The Commissioner may deny an application for a license to any person who
20 has been officially reprimanded or has committed any act that would be a ground for
21 suspension or revocation of a license under this subtitle.

22 ~~11-507.~~

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

24 (1) Submit a separate application;

25 (2) Pay a separate license fee;

26 (3) If applicable, pay the surcharge; and

27 (4) File a separate surety bond or other financial guaranty AND
28 ~~FIDELITY BOND under § 11-508 of this subtitle.~~

29 (d) In addition to any sanctions that may be imposed under this subtitle by the
30 Commissioner, a nonrefundable surcharge of \$500 shall be paid with an application if
31 the applicant has begun acting as a mortgage lender without a license at the location
32 for which an application is filed.

33 (e) A person who knowingly makes a false statement under oath on an
34 application filed with the Commissioner under this section is guilty of perjury and,
35 upon conviction, is subject to the penalties set forth in Article 27, § 439 of the Code.

1 11-508.

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

5 ~~(1) A SURETY BOND; AND~~

6 ~~(2) A BLANKET FIDELITY BOND IN THE AMOUNT OF \$ _____ COVERING~~
7 ~~ALL EMPLOYEES OF THE MORTGAGE LENDING BUSINESS.~~

8 (b) ~~(1)~~ The surety bond shall:

9 (1) Run to the Commissioner} ~~AND BE~~ for the benefit of any ~~person~~
10 MORTGAGE LOAN BORROWER who has been damaged by a violation committed by a
11 licensee of any law or regulation governing the activities of mortgage lenders};

12 ~~(2) THE FIDELITY BOND SHALL BE FOR THE BENEFIT OF THE~~
13 ~~EMPLOYER LICENSEE WHO SUFFERS A LOSS AS DESCRIBED IN PARAGRAPH (1) OF~~
14 ~~THIS SUBSECTION.~~

15 ~~(3) EACH BOND SUBJECT TO THIS SUBSECTION SHALL:~~

16 ~~(2)}~~ ~~(1)~~ Be issued by a surety company authorized to do business in the
17 State;

18 ~~(3)}~~ ~~(1)~~ Be conditioned that the applicant shall comply with all
19 Maryland laws regulating the activities of mortgage lenders and mortgage loan
20 lending; and

21 ~~(4)}~~ ~~(1)~~ Be approved by the Commissioner.

22 (c) If an applicant has not conducted a mortgage lending business any time
23 during the 36 months prior to the filing of an original application for a license, the
24 applicant shall provide a sworn statement setting forth that fact, and shall file with
25 the original application a surety bond in the amount of \$15,000.

26 (d) (1) If an applicant has conducted a mortgage lending business any time
27 during the 36 months prior to the filing of an original or renewal application, the
28 applicant shall provide a sworn statement setting forth the aggregate principal
29 amount of mortgage loans secured or to be secured by property located in Maryland
30 and applied for and accepted or mortgage loans secured or to be secured by property
31 located in Maryland and applied for, procured, and accepted by the mortgage lender
32 during the 12 months immediately preceding the month in which the application is
33 filed.

34 (2) If an applicant has conducted a mortgage lending business any time
35 during the 36 months prior to the filing of an original application, but during that
36 time has not acted as a mortgage lender in Maryland, the applicant shall provide with
37 the original application a sworn statement setting forth the aggregate principal

1 amount of loans secured or to be secured by residential real property located in states
 2 other than Maryland and applied for, procured, and accepted by the mortgage lender
 3 during the 12 months preceding the month in which the application is filed.

4 (3) Except as provided in subsections (c) and (e) of this section, the
 5 applicant shall file with the original or renewal application:

6 (i) Where the aggregate principal amount of loans set forth in the
 7 sworn statement was \$3,000,000 or less, a surety bond in the amount of \$25,000;

8 (ii) Where the aggregate principal amount of loans set forth in the
 9 sworn statement was more than \$3,000,000 but not more than \$10,000,000, a surety
 10 bond in the amount of \$50,000; and

11 (iii) Where the aggregate principal amount of loans set forth in the
 12 sworn statement was more than \$10,000,000, a surety bond in the amount of \$75,000.

13 (e) Notwithstanding any other provisions of this section, and subject to
 14 approval by the Commissioner, if an applicant files five or more original or renewal
 15 applications at the same time, the applicant may provide a blanket surety bond for all
 16 licensed offices in the amount of \$375,000.

17 (f) Subject to approval by the Commissioner, an applicant for license who files
 18 an application for a new license or for the renewal of a license may satisfy the
 19 ~~{bonding} SURETY BOND~~ requirement under this section by establishing a trust
 20 account with or obtaining an irrevocable letter of credit from a financial institution
 21 insured by the Federal Deposit Insurance Corporation in an amount equal to the bond
 22 required under this section.

23 (g) The Commissioner may adopt regulations reasonably necessary to assure
 24 that the proper surety bond amount established by this section is maintained by each
 25 licensee throughout each licensing term. The regulations may provide for periodic
 26 reporting, recalculation, and enforcement of required bond amounts.

27 11-511.

28 (b) On or before December 1 of the year of expiration, a license may be
 29 renewed for an additional 2-year term, if the licensee:

30 (1) Otherwise is entitled to be licensed;

31 (2) Pays to the Commissioner a renewal fee of \$1,000;

32 (3) ~~Submits to the Commissioner a renewal application on the form that~~
 33 ~~the Commissioner requires; and~~

34 (4) Files a ~~SURETY BOND AND FIDELITY~~ bond or bond continuation
 35 ~~{certificate} CERTIFICATES~~ for the ~~{amount} AMOUNTS~~ required under § 11-508 of
 36 this subtitle; AND

1 (4) SUBMITS TO THE COMMISSIONER:

2 (I) A RENEWAL APPLICATION ON THE FORM THAT THE
3 COMMISSIONER REQUIRES; AND

4 (II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH ANY
5 CONTINUING EDUCATION REQUIREMENTS SET BY REGULATIONS ADOPTED BY THE
6 COMMISSIONER.

7 11-511.1.

8 (A) BY JULY 1, 2000, THE COMMISSIONER SHALL ADOPT REGULATIONS THAT
9 SET CONTINUING EDUCATION REQUIREMENTS AS A CONDITION TO THE RENEWAL
10 OF LICENSES UNDER THIS SUBTITLE.

11 (B) ANY CONTINUING EDUCATION REQUIREMENTS ESTABLISHED BY THE
12 COMMISSIONER UNDER THIS SECTION MAY NOT APPLY TO THE FIRST RENEWAL OF A
13 LICENSE.

14 ~~11-517.~~

15 (a) ~~Subject to the hearing provisions of § 11-518 of this subtitle, the~~
16 ~~Commissioner may suspend or revoke the license of any licensee if the licensee or any~~
17 ~~owner, director, officer, member, partner, stockholder, employee, or agent of the~~
18 ~~licensee:~~

19 (1) ~~Makes any material misstatement in an application for a license;~~

20 (2) ~~Has been convicted of any crime of moral turpitude;~~

21 (3) ~~In connection with any mortgage loan or loan application transaction:~~

22 (i) ~~Commits any fraud;~~

23 (ii) ~~Engages in any illegal or dishonest activities; or~~

24 (iii) ~~Misrepresents or fails to disclose any material facts to anyone~~
25 ~~entitled to that information;~~

26 (4) ~~Violates any provision of this subtitle or any rule or regulation~~
27 ~~adopted under it or any other law regulating mortgage loan lending in the State; or~~

28 (5) ~~Otherwise demonstrates unworthiness, bad faith, dishonesty, or any~~
29 ~~other quality that indicates that the business of the licensee has not been or will not~~
30 ~~be conducted honestly, fairly, equitably, and efficiently.~~

31 (b) (1) ~~The Commissioner may enforce the provisions of this subtitle,~~
32 ~~regulations adopted under § 11-503, and the applicable provisions of Title 12 of the~~
33 ~~Maryland Commercial Law Article by issuing an order:~~

1 (i) To cease and desist from the violation and any further similar
2 violations; and

3 (ii) Requiring the violator to take affirmative action to correct the
4 violation including the restitution of money or property to any person aggrieved by
5 the violation.

6 (2) If a violator fails to comply with an order issued under paragraph (1)
7 of this subsection, the Commissioner may impose a civil penalty of up to \$1,000 for
8 each violation from which the violator failed to cease and desist or for which the
9 violator failed to take affirmative action to correct.

10 (e) The Commissioner may file a petition in the circuit court for any county
11 seeking enforcement of an order issued under this section.

12 (d) In determining the amount of financial penalty to be imposed under
13 subsection (b) of this section, the Commissioner shall consider the following:

14 (1) The seriousness of the violation;

15 (2) The good faith of the violator;

16 (3) The violator's history of previous violations;

17 (4) The deleterious effect of the violation on the public and mortgage
18 industry;

19 (5) The assets of the violator; and

20 (6) Any other factors relevant to the determination of the financial
21 penalty.

22 ~~(E) IN CONSULTATION WITH THE DIVISION OF CONSUMER PROTECTION OF~~
23 ~~THE OFFICE OF THE ATTORNEY GENERAL, THE COMMISSIONER SHALL EXAMINE~~
24 ~~AND ENCOURAGE AFFECTED PARTIES TO UTILIZE THE MARYLAND CONSUMER~~
25 ~~PROTECTION ACT, TITLE 13 OF THE COMMERCIAL LAW ARTICLE OF THE CODE, TO~~
26 ~~ADDRESS AND COMBAT ANY PRACTICE OF THE MORTGAGE LENDING BUSINESS~~
27 ~~THAT, THOUGH NOT FRAUDULENT, IS UNSCRUPULOUS.~~

28 11-523.

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

32 (b) Any unlicensed person who is not exempt from licensing under this
33 subtitle who makes or assists a borrower in obtaining a mortgage loan in violation of
34 this subtitle may collect only the principal amount of the loan and may not collect any
35 interest, costs, finder's fees, broker fees, or other charges with respect to the loan.

1 (c) Any mortgage lender OR EMPLOYEE OR AGENT OF A MORTGAGE LENDER
 2 who willfully misappropriates ~~for otherwise~~ intentionally and fraudulently converts
 3 to the mortgage lender's OR TO THE MORTGAGE LENDER'S EMPLOYEE'S OR AGENT'S
 4 own use moneys in excess of \$300 rightfully belonging to a borrower, OR WHO
 5 OTHERWISE COMMITS ANY FRAUDULENT ACT IN THE COURSE OF ENGAGING IN THE
 6 MORTGAGE LENDING BUSINESS is guilty of a felony and on conviction is subject to a
 7 fine not to exceed \$100,000 or imprisonment not exceeding 15 years or both.

8 **Article - Real Property**

9 7-109.

10 (a) [This section applies only to a transaction involving a purchase money
 11 loan secured by first deeds of trust or mortgages on real property that contains no
 12 more than 4 dwelling units.]

13 (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 14 INDICATED.

15 (2) "AFFILIATE" MEANS ANY ASSOCIATION, CORPORATION, BUSINESS
 16 TRUST, OR OTHER SIMILAR ORGANIZATION THAT CONTROLS, IS CONTROLLED BY, OR
 17 IS UNDER COMMON CONTROL WITH, A FINANCIAL INSTITUTION, AS DEFINED IN §
 18 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

19 (3) "SETTLEMENT" MEANS THE PROCESS OF EXECUTING AND
 20 DELIVERING TO THE LENDER OR THE AGENT RESPONSIBLE FOR SETTLEMENT,
 21 LEGALLY BINDING DOCUMENTS EVIDENCING OR SECURING A LOAN SECURED BY A
 22 DEED OF TRUST OR MORTGAGE ENCUMBERING REAL PROPERTY IN THIS STATE.

23 (b) } (1) In any CONSUMER LOAN transaction [for the sale of real
 24 property] IN WHICH THE LOAN IS SECURED BY A PURCHASE MONEY MORTGAGE OR
 25 DEED OF TRUST ON REAL PROPERTY LOCATED IN THIS STATE, on or before the day of
 26 closing SETTLEMENT, [a] THE lender shall disburse the loan PROCEEDS IN
 27 ACCORDANCE WITH THE LOAN DOCUMENTS to the agent responsible for settlement
 28 as provided in ~~subsection~~ SUBSECTIONS [(c)] ~~(B)~~ (C) AND (D) of this section.

29 (2) IN ANY CONSUMER LOAN TRANSACTION IN WHICH THE LOAN IS
 30 SECURED BY A SECONDARY DEED OF TRUST OR MORTGAGE ON REAL PROPERTY
 31 LOCATED IN THIS STATE, ON OR BEFORE THE DAY OF CLOSING FUNDING THE AGENT
 32 RESPONSIBLE FOR SETTLEMENT MAY REQUIRE THE LENDER TO DISBURSE THE
 33 LOAN PROCEEDS AS PROVIDED IN SUBSECTION ~~(B)~~ OF THIS SECTION PARAGRAPH (1)
 34 OF THIS SUBSECTION.

35 ~~{(c)}~~ ~~(B)~~ EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, [A] THE
 36 lender shall disburse the loan to the agent responsible for settlement PROCEEDS in
 37 the form of:

38 (1) Cash;

39 (2) Wired funds;

- 1 (3) A certified check;
- 2 (4) A check issued by a political subdivision OR ON BEHALF OF A
3 GOVERNMENTAL ENTITY;
- 4 (5) A teller's check issued by a depository institution and drawn on
5 another depository institution; OR
- 6 (6) A cashier's check[; or
- 7 (7) A check drawn on a financial institution that is insured by FDIC
8 (Federal Deposit Insurance Corporation), FSLIC (Federal Savings and Loan
9 Insurance Corporation), or MDIF (State of Maryland Deposit Insurance Fund
10 Corporation), and which is located in the 5th Federal Reserve District].

11 (D) IN ADDITION TO THE METHODS OF LOAN DISBURSEMENT PROVIDED IN
12 SUBSECTION (C) OF THIS SECTION, AN AFFILIATE OR SUBSIDIARY OF A FINANCIAL
13 INSTITUTION INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR
14 THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM MAY
15 DISBURSE THE LOAN PROCEEDS MAY BE DISBURSED IN THE FORM OF A CHECK
16 DRAWN ON A FINANCIAL INSTITUTION INSURED BY THE FEDERAL DEPOSIT
17 INSURANCE CORPORATION AND LOCATED IN THE 5TH FEDERAL RESERVE DISTRICT
18 IF THE LENDER IS:

19 (1) AN AFFILIATE OR SUBSIDIARY OF A FINANCIAL INSTITUTION
20 INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE NATIONAL
21 CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM; OR

22 (2) A MORTGAGE COMPANY APPROVED BY THE FEDERAL NATIONAL
23 MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE
24 CORPORATION.

25 [(d)] ~~(C)~~ (E) If ~~the loan~~ A LOAN SUBJECT TO THIS SECTION is not disbursed
26 as provided in subsection ~~{(c)}~~ ~~(B)~~ of this section, [a] THE lender may not charge
27 interest on a THE loan for the first 30 days following the date of closing.

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Commissioner of
29 Financial Regulation shall report to the Senate Finance Committee and the House
30 Commerce and Government Matters Committee on the continuing education
31 requirements established pursuant to § 11-511.1 of this Act prior to their adoption and
32 implementation.

33 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
34 effect October 1, 1998.

