

SB0217/478273/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 217
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 5, 7, 8, 9, and 10, in each instance, before “this” insert “certain provisions of”; in line 10, after “circumstances;” insert “establishing procedures for the forfeiture of certain property;”; in line 11, after “terms;” insert “making this Act an emergency measure;”; after line 11, insert:

“BY adding to

Article – Criminal Procedure

Section 13-401 through 13-408 to be under the new subtitle “Subtitle 4. Violations of the Maryland Mortgage Fraud Protection Act”

Annotated Code of Maryland

(2001 Volume and 2007 Supplement)”;

and in line 14, strike “and (m)”.

On page 2, strike in their entirety lines 16 through 20, inclusive.

AMENDMENT NO. 2

On page 3, in line 24, after “DOCUMENT” insert “**RELATING TO A MORTGAGE LOAN THAT**”.

On page 4, strike beginning with “HAS” in line 12 down through “ARTICLE” in line 13 and substitute “**MEANS REAL PROPERTY IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS**”.

AMENDMENT NO. 3

On page 7, after line 7, insert:

(Over)

“(C) THE FORFEITURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE SUBJECT TO TITLE 13, SUBTITLE 4 OF THE CRIMINAL PROCEDURE ARTICLE.”.

On page 1, after line 24, insert:

“Article – Criminal Procedure

SUBTITLE 4. VIOLATIONS OF THE MARYLAND MORTGAGE FRAUD PROTECTION ACT.

13-401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “MORTGAGE FRAUD LAW” MEANS THE MARYLAND MORTGAGE FRAUD PROTECTION ACT, TITLE 7, SUBTITLE 4 OF THE REAL PROPERTY ARTICLE.

(C) “FORFEITING AUTHORITY” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.

(D) “GOVERNING BODY” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.

(E) “LIENHOLDER” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.

(F) “OWNER” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.

(G) “PROCEEDS” INCLUDES PROPERTY DERIVED DIRECTLY OR INDIRECTLY IN CONNECTION WITH OR AS A RESULT OF A VIOLATION OF THE MORTGAGE FRAUD LAW.

(H) (1) “PROPERTY” INCLUDES:

(I) REAL PROPERTY AND ANYTHING GROWING ON OR ATTACHED TO REAL PROPERTY;

(II) PERSONAL PROPERTY; AND

(III) MONEY.

(2) “PROPERTY” DOES NOT INCLUDE A LESSOR’S INTEREST IN PROPERTY SUBJECT TO A BONA FIDE LEASE, UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT:

(I) THE LESSOR PARTICIPATED IN A VIOLATION OF THE MORTGAGE FRAUD LAW; OR

(II) THE PROPERTY WAS THE PROCEEDS OF A VIOLATION OF THE MORTGAGE FRAUD LAW.

(I) “SEIZING AUTHORITY” HAS THE MEANING STATED IN § 12-101 OF THIS ARTICLE.

13-402.

THE FOLLOWING PROPERTY IS SUBJECT TO FORFEITURE:

(Over)

(1) PROPERTY USED OR INTENDED FOR USE IN THE COURSE OF A VIOLATION OF THE MORTGAGE FRAUD LAW;

(2) PROPERTY DERIVED FROM OR REALIZED THROUGH A VIOLATION OF THE MORTGAGE FRAUD LAW; AND

(3) PROCEEDS OF PROPERTY DESCRIBED IN ITEM (1) OR (2) OF THIS SECTION.

13-403.

(A) PROPERTY OR AN INTEREST IN PROPERTY MAY NOT BE FORFEITED IF THE OWNER ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE VIOLATION OF THE MORTGAGE FRAUD LAW WAS COMMITTED WITHOUT THE OWNER'S ACTUAL KNOWLEDGE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY NOT BE FORFEITED UNDER THIS SUBTITLE UNLESS ONE OF THE OWNERS OF THE PROPERTY WAS CONVICTED OF A VIOLATION OF THE MORTGAGE FRAUD LAW.

(2) WITHOUT A CONVICTION, A COURT MAY ORDER A FORFEITURE OF PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE IF THE OWNER OF THE FAMILY RESIDENCE:

(I) FAILS TO APPEAR FOR A REQUIRED COURT APPEARANCE; AND

(II) FAILS TO SURRENDER TO THE JURISDICTION OF THE COURT WITHIN 180 DAYS AFTER THE REQUIRED COURT APPEARANCE.

(C) PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE BY A HUSBAND AND WIFE AND HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE ENTIRETY MAY NOT BE FORFEITED UNLESS:

(1) THE PROPERTY WAS USED IN CONNECTION WITH:

(I) A VIOLATION OF THE MORTGAGE FRAUD LAW; OR

(II) AN ATTEMPT OR CONSPIRACY TO VIOLATE THE MORTGAGE FRAUD LAW; AND

(2) BOTH THE HUSBAND AND WIFE ARE CONVICTED OF:

(I) A VIOLATION OF THE MORTGAGE FRAUD LAW; OR

(II) AN ATTEMPT OR CONSPIRACY TO VIOLATE THE MORTGAGE FRAUD LAW.

13-404.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, PROPERTY SUBJECT TO FORFEITURE UNDER THIS SUBTITLE MAY BE SEIZED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN §§ 12-202, 12-203, AND 12-208 THROUGH 12-211 OF THIS ARTICLE.

(Over)

(B) THE PROBABLE CAUSE REQUIRED UNDER § 12-202(A)(2)(V) OF THIS ARTICLE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY HAS BEEN USED OR IS INTENDED TO BE USED IN VIOLATION OF THE MORTGAGE FRAUD LAW.

13-405.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, FORFEITURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN §§ 12-301 THROUGH 12-308 OF THIS ARTICLE.

(B) THE ALLEGATION REQUIRED UNDER § 12-305(A)(7) OF THIS ARTICLE REFERS TO THE MORTGAGE FRAUD LAW RATHER THAN THE CONTROLLED DANGEROUS SUBSTANCES LAW.

13-406.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (E) AND (F) OF THIS SECTION AND § 12-403(C) OF THIS SUBTITLE, AN OWNER'S INTEREST IN REAL PROPERTY MAY BE FORFEITED IF THE REAL PROPERTY WAS USED IN CONNECTION WITH A VIOLATION OF THE MORTGAGE FRAUD LAW.

(B) FORFEITURE PROCEEDINGS FOR REAL PROPERTY MAY BE BROUGHT IN THE JURISDICTION WHERE:

- (1) THE CRIMINAL CHARGES ARE PENDING;**
- (2) THE OWNER RESIDES; OR**
- (3) THE REAL PROPERTY IS LOCATED.**

(C) (1) IF FORFEITURE PROCEEDINGS FOR REAL PROPERTY ARE BROUGHT IN A JURISDICTION OTHER THAN WHERE THE REAL PROPERTY IS LOCATED, A NOTICE OF PENDING LITIGATION SHALL BE FILED IN THE JURISDICTION WHERE THE REAL PROPERTY IS LOCATED.

(2) A NOTICE OF PENDING LITIGATION REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE AT LEAST:

(I) THE NAME AND ADDRESS OF THE OWNER OF THE REAL PROPERTY;

(II) A DESCRIPTION OF THE REAL PROPERTY; AND

(III) A DESCRIPTION OF THE REASONS FOR THE FILING OF THE FORFEITURE PROCEEDINGS AND NOTICE OF PENDING LITIGATION.

(D) IF AN OWNER OF REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE IS CONVICTED UNDER THE MORTGAGE FRAUD LAW AND THE OWNER FILES AN APPEAL OF THE CONVICTION, THE COURT SHALL STAY FORFEITURE PROCEEDINGS UNDER § 12-403(C) OF THIS ARTICLE OR SUBSECTION (F) OF THIS SECTION AGAINST THE REAL PROPERTY DURING THE PENDENCY OF THE APPEAL.

(E) (1) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT PROPERTY OR PART OF A PROPERTY IN WHICH A PERSON HAS AN OWNERSHIP INTEREST IS SUBJECT TO FORFEITURE AS PROCEEDS, IF THE STATE ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT:

(I) THE PERSON HAS VIOLATED THE MORTGAGE FRAUD LAW;

(II) THE PROPERTY WAS ACQUIRED BY THE PERSON DURING THE VIOLATION OR WITHIN A REASONABLE TIME AFTER THE VIOLATION; AND

(III) THERE WAS NO OTHER LIKELY SOURCE FOR THE PROPERTY.

(2) A CLAIMANT OF THE PROPERTY HAS THE BURDEN OF PROOF TO REBUT THE PRESUMPTION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(F) REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY NOT BE FORFEITED UNDER SUBSECTION (E) OF THIS SECTION UNLESS:

(1) AN OWNER OF THE REAL PROPERTY WAS CONVICTED UNDER SUBSECTION (E)(1) OF THIS SECTION; OR

(2) THE REAL PROPERTY IS COVERED BY § 13-403(B)(2) OF THIS SUBTITLE.

13-407.

(A) EXCEPT AS PROVIDED IN THIS SECTION, DISPOSITION OF PROPERTY AFTER FORFEITURE UNDER THIS SUBTITLE SHALL BE SUBJECT TO §§ 12-401, 12-402, AND 12-404 OF THIS ARTICLE.

(B) THE COURT DETERMINATION UNDER § 12-402(C) OF THIS ARTICLE SHALL INCLUDE THAT THE PROPERTY WAS BEING USED OR WAS TO BE USED IN

VIOLATION OF THE MORTGAGE FRAUD LAW RATHER THAN THE CONTROLLED DANGEROUS SUBSTANCES LAW.

(C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "IDENTIFIABLE LOSSES" INCLUDE:

1. EXPENSES NECESSARY TO:

A. DISCOVER THE EXTENT OF A VIOLATION OF THE MORTGAGE FRAUD LAW;

B. REPAIR DAMAGES RESULTING FROM A VIOLATION OF THE MORTGAGE FRAUD LAW, INCLUDING REPAIRING CREDIT RATINGS AND CORRECTING ERRORS IN CONSUMER REPORTS; AND

C. PREVENT FURTHER DAMAGES RESULTING FROM A VIOLATION OF THE MORTGAGE FRAUD LAW; AND

2. LOST WAGES RESULTING FROM TIME AWAY FROM WORK IN ORDER TO RECTIFY ANY FRAUD CAUSED BY A VIOLATION OF THE MORTGAGE FRAUD LAW.

(II) "VICTIM" INCLUDES A BUSINESS THAT LOSES ANY THING OF VALUE AS A RESULT OF A VIOLATION OF THE MORTGAGE FRAUD LAW.

(2) DISPOSITION OF FORFEITED PROPERTY UNDER THIS SUBTITLE SHALL FOLLOW THE PROCEDURES IN THIS SUBSECTION.

(Over)

(3) WHENEVER PROPERTY IS FORFEITED UNDER THIS SUBTITLE, THE GOVERNING BODY WHERE THE PROPERTY WAS SEIZED SHALL SELL THE PROPERTY AT PUBLIC AUCTION.

(4) THE PROCEEDS OF A SALE UNDER THIS SUBSECTION SHALL BE DISTRIBUTED AS FOLLOWS:

(I) FIRST, TO PAY ALL PROPER EXPENSES OF THE PROCEEDINGS FOR FORFEITURE AND SALE, INCLUDING EXPENSES OF SEIZURE, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS;

(II) SECOND, FOR RESTITUTION AS ORDERED BY THE COURT TO VICTIMS TO PAY FOR IDENTIFIABLE LOSSES RESULTING FROM THE VIOLATION OF THE MORTGAGE FRAUD LAW; AND

(III) FINALLY, TO THE GENERAL FUND OF THE STATE.

13-408.

LIENHOLDERS OF PROPERTY SEIZED UNDER THIS SUBTITLE SHALL HAVE THE RIGHTS AND OBLIGATIONS SET FORTH IN TITLE 12, SUBTITLE 5 OF THIS ARTICLE.”.

AMENDMENT NO. 4

On page 1, at the top of the page, insert “**EMERGENCY BILL**”.

On page 7, strike beginning with “shall” in line 11 down through “2008” in line 12 and substitute “**is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted**”.