

CHAPTER 3

(Senate Bill 217)

AN ACT concerning

Real Property – Maryland Mortgage Fraud Protection Act

FOR the purpose of prohibiting a person from committing mortgage fraud; authorizing the Attorney General or the Commissioner of Financial Regulation to seek an injunction to prohibit a violation of certain provisions of this Act; authorizing the Attorney General and the State’s Attorney to conduct the criminal investigation and prosecution of mortgage fraud under certain provisions of this Act; authorizing a private right of action for a violation of certain provisions of this Act under certain circumstances; imposing certain penalties for a violation of certain provisions of this Act under certain circumstances; providing for the forfeiture of property used in a violation of certain provisions of this Act under certain circumstances; establishing procedures for the forfeiture of certain property; defining certain terms; making this Act an emergency measure; and generally relating to mortgage fraud.

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)

BY repealing and reenacting, without amendments,

Article – Financial Institutions

Section 11–501(k) ~~and (m)~~

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Real Property

Section 7–401 through 7–409 to be under the new subtitle “Subtitle 4. Maryland Mortgage Fraud Protection Act”

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

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

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:

(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.

(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.

(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.

Article – Financial Institutions

11-501.

(k) (1) "Mortgage loan" means any loan or other extension of credit that is:

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

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

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

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

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

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

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

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

Article - Real Property

SUBTITLE 4. MARYLAND MORTGAGE FRAUD PROTECTION ACT.

7-401.

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

(B) "DOCUMENT" INCLUDES APPLICATIONS, APPRAISAL REPORTS, HUD-1 SETTLEMENT STATEMENTS, W-2 FORMS, VERIFICATIONS OF INCOME OR EMPLOYMENT, BANK STATEMENTS, TAX RETURNS, PAYROLL STUBS, AND ANY REQUIRED DISCLOSURE.

(C) "HOMEOWNER" MEANS:

(1) A RECORD OWNER OF RESIDENTIAL REAL PROPERTY; OR

(2) AN INDIVIDUAL OCCUPYING THE RESIDENTIAL REAL PROPERTY UNDER A USE AND POSSESSION ORDER ISSUED UNDER TITLE 8, SUBTITLE 2 OF THE FAMILY LAW ARTICLE.

(D) “MORTGAGE FRAUD” MEANS ANY ACTION BY A PERSON MADE WITH THE INTENT TO DEFRAUD THAT INVOLVES:

(1) KNOWINGLY MAKING ANY DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION DURING THE MORTGAGE LENDING PROCESS WITH THE INTENT THAT THE MISSTATEMENT, MISREPRESENTATION, OR OMISSION BE RELIED ON BY A MORTGAGE LENDER, BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE LENDING PROCESS;

(2) KNOWINGLY USING OR FACILITATING THE USE OF ANY DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION DURING THE MORTGAGE LENDING PROCESS WITH THE INTENT THAT THE MISSTATEMENT, MISREPRESENTATION, OR OMISSION BE RELIED ON BY A MORTGAGE LENDER, BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE LENDING PROCESS;

(3) RECEIVING ANY PROCEEDS OR ANY OTHER FUNDS IN CONNECTION WITH A MORTGAGE CLOSING THAT THE PERSON KNOWS RESULTED FROM A VIOLATION OF ITEM (1) OR (2) OF THIS SECTION;

(4) CONSPIRING TO VIOLATE ANY OF THE PROVISIONS OF ITEM (1), (2), OR (3) OF THIS SECTION; OR

(5) FILING OR CAUSING TO BE FILED IN THE LAND RECORDS IN THE COUNTY WHERE A RESIDENTIAL REAL PROPERTY IS LOCATED, ANY DOCUMENT RELATING TO A MORTGAGE LOAN THAT THE PERSON KNOWS TO CONTAIN A DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

(E) (1) “MORTGAGE LENDING PROCESS” MEANS THE PROCESS BY WHICH A PERSON SEEKS OR OBTAINS A MORTGAGE LOAN.

(2) “MORTGAGE LENDING PROCESS” INCLUDES:

(I) THE SOLICITATION, APPLICATION, ORIGINATION, NEGOTIATION, SERVICING, UNDERWRITING, SIGNING, CLOSING, AND FUNDING OF A MORTGAGE LOAN; AND

(II) THE NOTARIZING OF ANY DOCUMENT IN CONNECTION WITH A MORTGAGE LOAN.

(F) "MORTGAGE LOAN" HAS THE MEANING STATED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(G) "PATTERN OF MORTGAGE FRAUD" MEANS TWO OR MORE INCIDENTS OF MORTGAGE FRAUD THAT:

**(1) INVOLVE TWO OR MORE RESIDENTIAL REAL PROPERTIES;
AND**

(2) HAVE SIMILAR INTENTS, RESULTS, ACCOMPLICES, VICTIMS, OR METHODS OF COMMISSION OR OTHERWISE ARE INTERRELATED BY DISTINGUISHING CHARACTERISTICS.

(H) "RESIDENTIAL REAL PROPERTY" ~~HAS THE MEANING STATED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE~~ MEANS REAL PROPERTY IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS.

7-402.

A PERSON MAY NOT COMMIT MORTGAGE FRAUD.

7-403.

FOR THE PURPOSE OF VENUE UNDER THIS SUBTITLE, A VIOLATION OF THIS SUBTITLE SHALL BE CONSIDERED TO HAVE BEEN COMMITTED:

(1) IN THE COUNTY IN WHICH THE RESIDENTIAL REAL PROPERTY IS LOCATED FOR WHICH A MORTGAGE LOAN IS BEING SOUGHT;

(2) IN THE COUNTY IN WHICH AN ACT WAS PERFORMED IN FURTHERANCE OF THE VIOLATION;

(3) IN THE COUNTY IN WHICH A PERSON ALLEGED TO HAVE VIOLATED THIS SUBTITLE HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF THE VIOLATION;

(4) IF A CLOSING OCCURRED, IN THE COUNTY IN WHICH THE CLOSING OCCURRED; AND

(5) IN THE COUNTY IN WHICH A DOCUMENT CONTAINING A DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION IS FILED IN THE LAND RECORDS.

7-404.

(A) THE ATTORNEY GENERAL OR THE COMMISSIONER OF FINANCIAL REGULATION MAY SEEK AN INJUNCTION TO PROHIBIT A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.

(B) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:

(1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED PRACTICE;

(2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED PRACTICE; OR

(3) APPOINT A RECEIVER IN THE CASE OF A WILLFUL VIOLATION OF THIS SUBTITLE.

(C) IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL OR COMMISSIONER UNDER THIS SECTION, THE ATTORNEY GENERAL OR COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE ACTION FOR THE USE OF THE STATE.

7-405.

(A) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE AUTHORIZED TO CONDUCT THE CRIMINAL INVESTIGATION AND PROSECUTION OF ALL CASES OF MORTGAGE FRAUD UNDER THIS SUBTITLE.

(B) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY, AS APPROPRIATE, SHALL PROMPTLY REPORT A CONVICTION UNDER THIS SUBTITLE TO THE UNIT OF STATE GOVERNMENT THAT HAS REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE PERSON CONVICTED.

7-406.

(A) IN ADDITION TO ANY ACTION AUTHORIZED UNDER THIS SUBTITLE AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A PERSON MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A VIOLATION OF THIS SUBTITLE.

(B) A PERSON WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO IS AWARDED DAMAGES MAY ALSO SEEK, AND THE COURT MAY AWARD, REASONABLE ATTORNEY'S FEES.

(C) IF THE COURT FINDS THAT THE DEFENDANT VIOLATED THIS SUBTITLE, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE AMOUNT OF ACTUAL DAMAGES.

7-407.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 10 YEARS OR BOTH.

(B) IF A VIOLATION INVOLVES A VICTIM WHO IS A VULNERABLE ADULT AS DEFINED UNDER § 3-604(A) OF THE CRIMINAL LAW ARTICLE, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$15,000 OR IMPRISONMENT NOT EXCEEDING 15 YEARS OR BOTH.

(C) IF A VIOLATION INVOLVES ENGAGING OR PARTICIPATING IN A PATTERN OF MORTGAGE FRAUD OR A CONSPIRACY OR ENDEAVOR TO ENGAGE OR PARTICIPATE IN A PATTERN OF MORTGAGE FRAUD, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100,000 OR IMPRISONMENT NOT EXCEEDING 20 YEARS OR BOTH.

(D) (1) A PERSON CONVICTED OF VIOLATING THIS SUBTITLE SHALL PAY RESTITUTION TO ANY PERSON DAMAGED BY THE VIOLATION.

(2) RESTITUTION SHALL BE ORDERED IN ADDITION TO A FINE OR IMPRISONMENT OR BOTH.

(E) EACH RESIDENTIAL REAL PROPERTY TRANSACTION SUBJECT TO A VIOLATION OF THIS SUBTITLE CONSTITUTES A SEPARATE OFFENSE, AND SHALL NOT MERGE WITH ANY OTHER CRIMES SET FORTH IN THE CRIMINAL LAW ARTICLE.

(F) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

7-408.

(A) ALL REAL AND PERSONAL PROPERTY USED OR INTENDED FOR USE IN THE COURSE OF, DERIVED FROM, OR REALIZED THROUGH A VIOLATION OF THIS SUBTITLE SHALL BE SUBJECT TO FORFEITURE TO THE STATE.

(B) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE AUTHORIZED TO COMMENCE FORFEITURE PROCEEDINGS UNDER THIS SUBTITLE.

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

7-409.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND MORTGAGE FRAUD PROTECTION ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect June 1, 2008~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea 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.

Approved by the Governor, April 3, 2008.