

# HOUSE BILL 232

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By: **Delegates McConkey, Bartlett, Bates, Boteler, Cane, Dwyer, Eckardt, Elliott, Elmore, Frank, Holmes, Kramer, McComas, Minnick, Norman, Shewell, Sophocleus, Stocksdale, Stull, and Weir**

Introduced and read first time: January 28, 2009

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Mortgage Lending – Borrower’s Ability to Repay Loan**

3 FOR the purpose of clarifying the application of certain provisions of law that prohibit  
4 a lender from making a mortgage loan without giving due regard to the  
5 borrower’s ability to repay the loan; providing that certain provisions of law  
6 that prohibit a lender from making a secondary mortgage loan without giving  
7 due regard to the borrower’s ability to repay the secondary mortgage loan do not  
8 apply to a secondary mortgage loan for real property located in Maryland that is  
9 held primarily for rental, investment, or the generation of income through any  
10 commercial or industrial purpose; stating the purpose of certain provisions of  
11 this Act; and generally relating to mortgage loans.

12 BY repealing and reenacting, without amendments,  
13 Article – Financial Institutions  
14 Section 11–501(c), (d), (k), and (m)  
15 Annotated Code of Maryland  
16 (2003 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Commercial Law  
19 Section 12–127, 12–925, and 12–1029  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article – Commercial Law  
24 Section 12–311 and 12–409.1  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (As enacted by Chapters 7 and 8 of the Acts of the General Assembly of 2008)

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

4 **Article – Financial Institutions**

5 11–501.

6 (c) (1) “Independent evidence of commercial purpose” means, where a  
7 mortgage loan is made for a commercial purpose to an individual, any and all  
8 documentation by which the mortgage lender, prior to the making or procurement of  
9 the loan, establishes that the borrower is seeking funds for a legitimate commercial  
10 enterprise.

11 (2) “Independent evidence of commercial purpose” does not include an  
12 affidavit of the borrower without supporting evidence, except where:

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

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

19 (d) “Interest in real property” includes:

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

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

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

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

29 (k) (1) “Mortgage loan” means any loan or other extension of credit that  
30 is:

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

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

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

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

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

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

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

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

## 16 Article - Commercial Law

17 12-127.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) "Fully indexed rate" means the index rate, as defined in the  
20 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
21 lender, plus the margin that will apply after the expiration of an introductory interest  
22 rate.

23 (3) (I) **"INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE"**  
24 **MEANS, WHERE A MORTGAGE LOAN IS MADE FOR A COMMERCIAL PURPOSE TO**  
25 **AN INDIVIDUAL, ANY AND ALL DOCUMENTATION BY WHICH THE MORTGAGE**  
26 **LENDER, PRIOR TO THE MAKING OR PROCUREMENT OF THE LOAN, ESTABLISHES**  
27 **THAT THE BORROWER IS SEEKING FUNDS FOR A LEGITIMATE COMMERCIAL**  
28 **ENTERPRISE.**

29 (II) **"INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE"**  
30 **DOES NOT INCLUDE AN AFFIDAVIT OF THE BORROWER WITHOUT SUPPORTING**  
31 **EVIDENCE, EXCEPT WHERE:**

1                   **1. THE BORROWER IS SEEKING FUNDS TO START A**  
 2 **BUSINESS AND HAS NOT YET INCORPORATED OR PREPARED DOCUMENTATION**  
 3 **OR PROOF OF OWNERSHIP OF A COMMERCIAL ENTERPRISE; AND**

4                   **2. THE AFFIDAVIT STATES THE PURPOSE FOR WHICH**  
 5 **THE PROCEEDS OF THE MORTGAGE LOAN ARE TO BE USED AND THE NATURE OF**  
 6 **THE BUSINESS CONDUCTED OR TO BE CONDUCTED BY THE BORROWER.**

7                   **(4) “INTEREST IN RESIDENTIAL REAL PROPERTY” INCLUDES:**

8                   **(I) A CONFESSED JUDGMENT NOTE OR CONSENT**  
 9 **JUDGMENT REQUIRED OR OBTAINED BY ANY PERSON ACTING AS A MORTGAGE**  
 10 **LENDER FOR THE PURPOSE OF ACQUIRING A LIEN ON RESIDENTIAL REAL**  
 11 **PROPERTY;**

12                   **(II) A SALE AND LEASEBACK REQUIRED OR OBTAINED BY**  
 13 **ANY PERSON ACTING AS A MORTGAGE LENDER FOR THE PURPOSE OF CREATING**  
 14 **A LIEN ON RESIDENTIAL REAL PROPERTY;**

15                   **(III) A MORTGAGE, DEED OF TRUST OR LIEN OTHER THAN A**  
 16 **JUDGMENT LIEN, ON RESIDENTIAL REAL PROPERTY; AND**

17                   **(IV) ANY OTHER SECURITY INTEREST THAT HAS THE EFFECT**  
 18 **OF CREATING A LIEN ON RESIDENTIAL REAL PROPERTY IN MARYLAND.**

19                   **[(3)] (5) (i) “Mortgage loan” [has the meaning stated in § 11-501**  
 20 **of the Financial Institutions Article.**

21                   **(ii) “Mortgage loan” does not include a] MEANS ANY LOAN OR**  
 22 **OTHER EXTENSION OF CREDIT THAT IS:**

23                   **1. SECURED, IN WHOLE OR IN PART, BY ANY**  
 24 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND; AND**

25                   **2. A. IF FOR PERSONAL, HOUSEHOLD, OR FAMILY**  
 26 **PURPOSES, IN ANY AMOUNT; OR**

27                   **B. IF FOR COMMERCIAL PURPOSES, NOT IN EXCESS**  
 28 **OF \$75,000.**

29                   **(II) “MORTGAGE LOAN” DOES NOT INCLUDE:**

30                   **1. ANY LOAN FOR COMMERCIAL PURPOSES THAT IS:**

1                   **A. SECURED, IN WHOLE OR IN PART, BY ANY**  
2 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND;**

3                   **B. IN EXCESS OF \$75,000; AND**

4                   **C. SUPPORTED BY INDEPENDENT EVIDENCE OF THE**  
5 **COMMERCIAL PURPOSE; OR**

6                   **2. A reverse mortgage loan.**

7                   **(6) “RESIDENTIAL REAL PROPERTY” MEANS ANY**  
8 **OWNER–OCCUPIED REAL PROPERTY LOCATED IN MARYLAND, WHICH PROPERTY**  
9 **HAS A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE WITH**  
10 **ACCOMMODATIONS FOR NOT MORE THAN 4 FAMILIES, BUT DOES NOT INCLUDE**  
11 **ANY REAL PROPERTY HELD PRIMARILY FOR RENTAL, INVESTMENT, OR THE**  
12 **GENERATION OF INCOME THROUGH ANY COMMERCIAL OR INDUSTRIAL**  
13 **ENTERPRISE.**

14           (b) A lender may not make a mortgage loan without giving due regard to the  
15 borrower’s ability to repay the mortgage loan in accordance with its terms, including  
16 the fully indexed rate of the mortgage loan, if applicable, and property taxes and  
17 homeowner’s insurance whether or not an escrow account is established for the  
18 collection and payment of these expenses.

19           (c) (1) Due regard to a borrower’s ability to repay a mortgage loan must  
20 include:

21                   (i) Consideration of the borrower’s debt to income ratio,  
22 including existing debts and other obligations; and

23                   (ii) Verification of the borrower’s gross monthly income and  
24 assets by review of third–party written documentation reasonably believed by the  
25 lender to be accurate and complete.

26           (2) Acceptable third–party written documentation includes:

27                   (i) The borrower’s Internal Revenue Service form W–2;

28                   (ii) A copy of the borrower’s income tax return;

29                   (iii) Payroll receipts;

30                   (iv) The records of a financial institution; or

31                   (v) Other third–party documents that provide reasonably  
32 reliable evidence of the borrower’s income or assets.

1 (3) This subsection does not apply to a mortgage loan approved for  
2 government guaranty by the Federal Housing Administration, Veterans  
3 Administration, or Community Development Administration.

4 12-311.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) "Covered loan" means a mortgage loan made under this subtitle  
7 that meets the criteria for a loan subject to the federal Home Ownership Equity  
8 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
9 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
10 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
11 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

12 (3) "Fully indexed rate" means the index rate, as defined in the  
13 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
14 lender, plus the margin that will apply after the expiration of an introductory interest  
15 rate.

16 (4) "Home buyer education or housing counseling" means instruction  
17 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
18 closing, and life as a homeowner.

19 (5) (I) **"INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE"**  
20 **MEANS, WHERE A MORTGAGE LOAN IS MADE FOR A COMMERCIAL PURPOSE TO**  
21 **AN INDIVIDUAL, ANY AND ALL DOCUMENTATION BY WHICH THE MORTGAGE**  
22 **LENDER, PRIOR TO THE MAKING OR PROCUREMENT OF THE LOAN, ESTABLISHES**  
23 **THAT THE BORROWER IS SEEKING FUNDS FOR A LEGITIMATE COMMERCIAL**  
24 **ENTERPRISE.**

25 (II) **"INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE"**  
26 **DOES NOT INCLUDE AN AFFIDAVIT OF THE BORROWER WITHOUT SUPPORTING**  
27 **EVIDENCE, EXCEPT WHERE:**

28 **1. THE BORROWER IS SEEKING FUNDS TO START A**  
29 **BUSINESS AND HAS NOT YET INCORPORATED OR PREPARED DOCUMENTATION**  
30 **OR PROOF OF OWNERSHIP OF A COMMERCIAL ENTERPRISE; AND**

31 **2. THE AFFIDAVIT STATES THE PURPOSE FOR WHICH**  
32 **THE PROCEEDS OF THE MORTGAGE LOAN ARE TO BE USED AND THE NATURE OF**  
33 **THE BUSINESS CONDUCTED OR TO BE CONDUCTED BY THE BORROWER.**

34 (6) **"INTEREST IN RESIDENTIAL REAL PROPERTY" INCLUDES:**



1           **(8) “RESIDENTIAL REAL PROPERTY” MEANS ANY**  
2 **OWNER–OCCUPIED REAL PROPERTY LOCATED IN MARYLAND, WHICH PROPERTY**  
3 **HAS A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE WITH**  
4 **ACCOMMODATIONS FOR NOT MORE THAN 4 FAMILIES, BUT DOES NOT INCLUDE**  
5 **ANY REAL PROPERTY HELD PRIMARILY FOR RENTAL, INVESTMENT, OR THE**  
6 **GENERATION OF INCOME THROUGH ANY COMMERCIAL OR INDUSTRIAL**  
7 **ENTERPRISE.**

8           (b) A lender may not take as security for a loan any:

9                   (1) Confession of judgment or power of attorney to him or to a third  
10 person to confess judgment or appear for the borrower in a judicial proceeding;

11                   (2) Assignment or order for payment of wages;

12                   (3) Instrument in which blanks are left to be filled after execution; or

13                   (4) Note, promise to pay, or security instrument which does not state:

14                           (i) The principal amount of the loan;

15                           (ii) A schedule of payments or a description of the schedule; and

16                           (iii) The agreed amount and rate of interest, charges, and fees.

17           (c) (1) A lender may not take any security interest in:

18                           (i) Real property for any loan under \$2,000 in value or amount;

19 or

20                           (ii) Personal property for any loan under \$700 in value or

21 amount.

22                   (2) Any lien taken in violation of this subsection is void.

23                   (3) This subsection does not apply to or affect a lien on an interest in  
24 real property which results from a judgment obtained by the lender based on a loan  
25 otherwise secured or unsecured.

26           (d) A lender may not make a mortgage loan without giving due regard to the  
27 borrower’s ability to repay the mortgage loan in accordance with its terms, including  
28 the fully indexed rate of the mortgage loan, if applicable, and property taxes and  
29 homeowner’s insurance whether or not an escrow account is established for the  
30 collection and payment of these expenses.

31           (e) (1) Due regard to a borrower’s ability to repay a mortgage loan must  
32 include:



1 (i) Consideration of the borrower's debt to income ratio,  
2 including existing debts and other obligations; and

3 (ii) Verification of the borrower's gross monthly income and  
4 assets by review of third-party written documentation reasonably believed by the  
5 lender to be accurate and complete.

6 (2) Acceptable third-party written documentation includes:

7 (i) The borrower's Internal Revenue Service form W-2;

8 (ii) A copy of the borrower's income tax return;

9 (iii) Payroll receipts;

10 (iv) The records of a financial institution; or

11 (v) Other third-party documents that provide reasonably  
12 reliable evidence of the borrower's income or assets.

13 (3) This subsection does not apply to a mortgage loan approved for  
14 government guaranty by the Federal Housing Administration, Veterans  
15 Administration, or Community Development Administration.

16 (f) (1) In this subsection, "loan application" has the meaning stated in §  
17 12-125 of this title.

18 (2) At the time a borrower completes a loan application for a covered  
19 loan, the lender shall provide the borrower with:

20 (i) A written recommendation that the borrower seek home  
21 buyer education or housing counseling; and

22 (ii) A list of agencies and organizations approved by the county  
23 in which the residential real property securing the covered loan is located to provide  
24 home buyer education or housing counseling.

25 12-925.

26 (a) (1) In this section the following words have the meanings indicated.

27 (2) "Fully indexed rate" means the index rate, as defined in the  
28 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
29 credit grantor, plus the margin that will apply after the expiration of an introductory  
30 interest rate.

1           **(3) (I) “INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE”**  
2 **MEANS, WHERE A MORTGAGE LOAN IS MADE FOR A COMMERCIAL PURPOSE TO**  
3 **AN INDIVIDUAL, ANY AND ALL DOCUMENTATION BY WHICH THE MORTGAGE**  
4 **LENDER, PRIOR TO THE MAKING OR PROCUREMENT OF THE LOAN, ESTABLISHES**  
5 **THAT THE BORROWER IS SEEKING FUNDS FOR A LEGITIMATE COMMERCIAL**  
6 **ENTERPRISE.**

7           **(II) “INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE”**  
8 **DOES NOT INCLUDE AN AFFIDAVIT OF THE BORROWER WITHOUT SUPPORTING**  
9 **EVIDENCE, EXCEPT WHERE:**

10                   **1. THE BORROWER IS SEEKING FUNDS TO START A**  
11 **BUSINESS AND HAS NOT YET INCORPORATED OR PREPARED DOCUMENTATION**  
12 **OR PROOF OF OWNERSHIP OF A COMMERCIAL ENTERPRISE; AND**

13                   **2. THE AFFIDAVIT STATES THE PURPOSE FOR WHICH**  
14 **THE PROCEEDS OF THE MORTGAGE LOAN ARE TO BE USED AND THE NATURE OF**  
15 **THE BUSINESS CONDUCTED OR TO BE CONDUCTED BY THE BORROWER.**

16           **(4) “INTEREST IN RESIDENTIAL REAL PROPERTY” INCLUDES:**

17                   **(I) A CONFESSED JUDGMENT NOTE OR CONSENT**  
18 **JUDGMENT REQUIRED OR OBTAINED BY ANY PERSON ACTING AS A MORTGAGE**  
19 **LENDER FOR THE PURPOSE OF ACQUIRING A LIEN ON RESIDENTIAL REAL**  
20 **PROPERTY;**

21                   **(II) A SALE AND LEASEBACK REQUIRED OR OBTAINED BY**  
22 **ANY PERSON ACTING AS A MORTGAGE LENDER FOR THE PURPOSE OF CREATING**  
23 **A LIEN ON RESIDENTIAL REAL PROPERTY;**

24                   **(III) A MORTGAGE, DEED OF TRUST OR LIEN OTHER THAN A**  
25 **JUDGMENT LIEN, ON RESIDENTIAL REAL PROPERTY; AND**

26                   **(IV) ANY OTHER SECURITY INTEREST THAT HAS THE EFFECT**  
27 **OF CREATING A LIEN ON RESIDENTIAL REAL PROPERTY IN MARYLAND.**

28                   **[(3)] (5) (i) “Mortgage loan” [has the meaning stated in § 11-501**  
29 **of the Financial Institutions Article.**

30                   **(ii) “Mortgage loan” does not include a] MEANS ANY LOAN OR**  
31 **OTHER EXTENSION OF CREDIT THAT IS:**

32                   **1. SECURED, IN WHOLE OR IN PART, BY ANY**  
33 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND; AND**

1                                   **2. A. IF FOR PERSONAL, HOUSEHOLD, OR FAMILY**  
2 **PURPOSES, IN ANY AMOUNT; OR**

3                                   **B. IF FOR COMMERCIAL PURPOSES, NOT IN EXCESS**  
4 **OF \$75,000.**

5                                   **(II) "MORTGAGE LOAN" DOES NOT INCLUDE:**

6                                   **1. ANY LOAN FOR COMMERCIAL PURPOSES THAT IS:**

7                                   **A. SECURED, IN WHOLE OR IN PART, BY ANY**  
8 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND;**

9                                   **B. IN EXCESS OF \$75,000; AND**

10                                   **C. SUPPORTED BY INDEPENDENT EVIDENCE OF THE**  
11 **COMMERCIAL PURPOSE; OR**

12                                   **2. A reverse mortgage loan.**

13                                   **(6) "RESIDENTIAL REAL PROPERTY" MEANS ANY**  
14 **OWNER-OCCUPIED REAL PROPERTY LOCATED IN MARYLAND, WHICH PROPERTY**  
15 **HAS A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE WITH**  
16 **ACCOMMODATIONS FOR NOT MORE THAN 4 FAMILIES, BUT DOES NOT INCLUDE**  
17 **ANY REAL PROPERTY HELD PRIMARILY FOR RENTAL, INVESTMENT, OR THE**  
18 **GENERATION OF INCOME THROUGH ANY COMMERCIAL OR INDUSTRIAL**  
19 **ENTERPRISE.**

20                   (b) A credit grantor may not make a mortgage loan without giving due  
21 regard to the borrower's ability to repay the mortgage loan in accordance with its  
22 terms, including the fully indexed rate of the mortgage loan, if applicable, and  
23 property taxes and homeowner's insurance whether or not an escrow account is  
24 established for the collection and payment of these expenses.

25                   (c) (1) Due regard to a borrower's ability to repay a mortgage loan must  
26 include:

27                                   (i) Consideration of the borrower's debt to income ratio,  
28 including existing debts and other obligations; and

29                                   (ii) Verification of the borrower's gross monthly income and  
30 assets by review of third-party written documentation reasonably believed by the  
31 credit grantor to be accurate and complete.

- 1 (2) Acceptable third-party written documentation includes:
- 2 (i) The borrower's Internal Revenue Service form W-2;
- 3 (ii) A copy of the borrower's income tax return;
- 4 (iii) Payroll receipts;
- 5 (iv) The records of a financial institution; or
- 6 (v) Other third-party documents that provide reasonably  
7 reliable evidence of the borrower's income or assets.

8 (3) This subsection does not apply to a mortgage loan approved for  
9 government guaranty by the Federal Housing Administration, Veterans  
10 Administration, or Community Development Administration.

11 12-1029.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) "Covered loan" means a mortgage loan made under this subtitle  
14 that meets the criteria for a loan subject to the federal Home Ownership and Equity  
15 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
16 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
17 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
18 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

19 (3) "Fully indexed rate" means the index rate, as defined in the  
20 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
21 credit grantor, plus the margin that will apply after the expiration of an introductory  
22 interest rate.

23 (4) "Home buyer education or housing counseling" means instruction  
24 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
25 closing, and life as a homeowner.

26 (5) (I) **"INDEPENDENT EVIDENCE OF COMMERCIAL PURPOSE"**  
27 **MEANS, WHERE A MORTGAGE LOAN IS MADE FOR A COMMERCIAL PURPOSE TO**  
28 **AN INDIVIDUAL, ANY AND ALL DOCUMENTATION BY WHICH THE MORTGAGE**  
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6 **THE BUSINESS CONDUCTED OR TO BE CONDUCTED BY THE BORROWER.**

7                   **(6) "INTEREST IN RESIDENTIAL REAL PROPERTY" INCLUDES:**

8                   **(I) A CONFESSED JUDGMENT NOTE OR CONSENT**  
9 **JUDGMENT REQUIRED OR OBTAINED BY ANY PERSON ACTING AS A MORTGAGE**  
10 **LENDER FOR THE PURPOSE OF ACQUIRING A LIEN ON RESIDENTIAL REAL**  
11 **PROPERTY;**

12                   **(II) A SALE AND LEASEBACK REQUIRED OR OBTAINED BY**  
13 **ANY PERSON ACTING AS A MORTGAGE LENDER FOR THE PURPOSE OF CREATING**  
14 **A LIEN ON RESIDENTIAL REAL PROPERTY;**

15                   **(III) A MORTGAGE, DEED OF TRUST OR LIEN OTHER THAN A**  
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17                   **(IV) ANY OTHER SECURITY INTEREST THAT HAS THE EFFECT**  
18 **OF CREATING A LIEN ON RESIDENTIAL REAL PROPERTY IN MARYLAND.**

19                   **[(5)] (7) (i) "Mortgage loan" [has the meaning stated in § 11-501**  
20 **of the Financial Institutions Article.**

21                   **(ii) "Mortgage loan" does not include a] MEANS ANY LOAN OR**  
22 **OTHER EXTENSION OF CREDIT THAT IS:**

23                   **1. SECURED, IN WHOLE OR IN PART, BY ANY**  
24 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND; AND**

25                   **2. A. IF FOR PERSONAL, HOUSEHOLD, OR FAMILY**  
26 **PURPOSES, IN ANY AMOUNT; OR**

27                   **B. IF FOR COMMERCIAL PURPOSES, NOT IN EXCESS**  
28 **OF \$75,000.**

29                   **(II) "MORTGAGE LOAN" DOES NOT INCLUDE:**

30                   **1. ANY LOAN FOR COMMERCIAL PURPOSES THAT IS:**

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2 **INTEREST IN RESIDENTIAL REAL PROPERTY IN MARYLAND;**

3                   **B. IN EXCESS OF \$75,000; AND**

4                   **C. SUPPORTED BY INDEPENDENT EVIDENCE OF THE**  
5 **COMMERCIAL PURPOSE; OR**

6                   **2. A reverse mortgage loan.**

7                   **(8) “RESIDENTIAL REAL PROPERTY” MEANS ANY**  
8 **OWNER–OCCUPIED REAL PROPERTY LOCATED IN MARYLAND, WHICH PROPERTY**  
9 **HAS A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE WITH**  
10 **ACCOMMODATIONS FOR NOT MORE THAN 4 FAMILIES, BUT DOES NOT INCLUDE**  
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12 **GENERATION OF INCOME THROUGH ANY COMMERCIAL OR INDUSTRIAL**  
13 **ENTERPRISE.**

14           (b) A credit grantor may not make a mortgage loan without giving due  
15 regard to the borrower’s ability to repay the mortgage loan in accordance with its  
16 terms, including the fully indexed rate of the mortgage loan, if applicable, and  
17 property taxes and homeowner’s insurance whether or not an escrow account is  
18 established for the collection and payment of these expenses.

19           (c) (1) Due regard to a borrower’s ability to repay a mortgage loan must  
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22 including existing debts and other obligations; and

23                   (ii) Verification of the borrower’s gross monthly income and  
24 assets by review of third–party written documentation reasonably believed by the  
25 credit grantor to be accurate and complete.

26           (2) Acceptable third–party written documentation includes:

27                   (i) The borrower’s Internal Revenue Service form W–2;

28                   (ii) A copy of the borrower’s income tax return;

29                   (iii) Payroll receipts;

30                   (iv) The records of a financial institution; or

1 (v) Other third-party documents that provide reasonably  
2 reliable evidence of the borrower's income or assets.

3 (3) This subsection does not apply to a mortgage loan approved for  
4 government guaranty by the Federal Housing Administration, Veterans  
5 Administration, or Community Development Administration.

6 (d) (1) In this subsection, "loan application" has the meaning stated in §  
7 12-1022 of this subtitle.

8 (2) At the time a borrower completes a loan application for a covered  
9 loan, the credit grantor shall provide the borrower with:

10 (i) A written recommendation that the borrower seek home  
11 buyer education or housing counseling; and

12 (ii) A list of agencies and organizations approved by the county  
13 in which the residential real property securing the covered loan is located to provide  
14 home buyer education or housing counseling.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
16 read as follows:

17 **Article – Commercial Law**

18 12-409.1.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) "Covered loan" means a mortgage loan made under this subtitle  
21 that meets the criteria for a loan subject to the federal Home Ownership Equity  
22 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
23 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
24 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
25 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

26 (3) "Fully indexed rate" means the index rate, as defined in the  
27 secondary mortgage loan documents, prevailing at the time the secondary mortgage  
28 loan is approved by the lender, plus the margin that will apply after the expiration of  
29 an introductory interest rate.

30 (4) "Home buyer education or housing counseling" means instruction  
31 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
32 closing, and life as a homeowner.

33 **(B) THIS SECTION DOES NOT APPLY TO A SECONDARY MORTGAGE LOAN**  
34 **FOR REAL PROPERTY LOCATED IN MARYLAND THAT IS HELD PRIMARILY FOR**

1 **RENTAL, INVESTMENT, OR THE GENERATION OF INCOME THROUGH ANY**  
2 **COMMERCIAL OR INDUSTRIAL PURPOSE.**

3 [(b)] (C) A lender may not make a secondary mortgage loan without giving  
4 due regard to the borrower's ability to repay the secondary mortgage loan in  
5 accordance with its terms, including the fully indexed rate of the secondary mortgage  
6 loan, if applicable, and property taxes and homeowner's insurance whether or not an  
7 escrow account is established for the collection and payment of these expenses.

8 [(c)] (D) (1) Due regard to a borrower's ability to repay a secondary  
9 mortgage loan must include:

10 (i) Consideration of the borrower's debt to income ratio,  
11 including existing debts and other obligations; and

12 (ii) Verification of the borrower's gross monthly income and  
13 assets by review of third-party written documentation reasonably believed by the  
14 lender to be accurate and complete.

15 (2) Acceptable third-party written documentation includes:

16 (i) The borrower's Internal Revenue Service form W-2;

17 (ii) A copy of the borrower's income tax return;

18 (iii) Payroll receipts;

19 (iv) The records of a financial institution; or

20 (v) Other third-party documents that provide reasonably  
21 reliable evidence of the borrower's income or assets.

22 (3) This subsection does not apply to a secondary mortgage loan  
23 approved for government guaranty by the Federal Housing Administration, Veterans  
24 Administration, or Community Development Administration.

25 [(d)] (E) (1) In this subsection, "loan application" has the meaning stated  
26 in § 12-125 of this title.

27 (2) At the time a borrower completes a loan application for a covered  
28 loan, the lender shall provide the borrower with:

29 (i) A written recommendation that the borrower seek home  
30 buyer education or housing counseling; and



1                   (ii) A list of agencies and organizations approved by the county  
2 in which the residential real property securing the covered loan is located to provide  
3 home buyer education or housing counseling.

4           SECTION 3. AND BE IT FURTHER ENACTED, That the purpose of Section 1  
5 of this Act is to clarify the application of Sections 12-127, 12-311, 12-925, and  
6 12-1029 of the Commercial Law Article without making any substantive changes to  
7 those sections.

8           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2009.