

# SENATE BILL 1036

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EMERGENCY BILL

9lr3387

CF 9lr3396

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By: **Senator Middleton**

Introduced and read first time: March 9, 2009

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Mortgage Loans – Proof of Ability to Repay – Exception**

3 FOR the purpose of establishing an exception for certain mortgage loans that  
4 refinance an existing mortgage loan to the requirement that the due regard  
5 certain lenders and credit grantors must give to a borrower's ability to repay  
6 certain mortgage loans include consideration of the borrower's debt to income  
7 ratio and verification in a certain manner of certain income and assets of the  
8 borrower; making this Act an emergency measure; and generally relating to  
9 mortgage loans.

10 BY repealing and reenacting, without amendments,  
11 Article – Commercial Law  
12 Section 12–127(b), 12–311(d), 12–409.1(b), 12–925(b), and 12–1029(b)  
13 Annotated Code of Maryland  
14 (2005 Replacement Volume and 2008 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Commercial Law  
17 Section 12–127(c), 12–311(e), 12–409.1(c), 12–925(c), and 12–1029(c)  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2008 Supplement)

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

22 **Article – Commercial Law**

23 12–127.

24 (b) A lender may not make a mortgage loan without giving due regard to the  
25 borrower's ability to repay the mortgage loan in accordance with its terms, including

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



the fully indexed rate of the mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

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

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

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

(2) Acceptable third-party written documentation includes:

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

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

(iii) Payroll receipts;

(iv) The records of a financial institution; or

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

(3) This subsection does not apply to a mortgage loan [approved]:

(I) **APPROVED** for government guaranty by the Federal Housing Administration, Veterans Administration, or Community Development Administration; **OR**

(II) **THAT REFINANCES AN EXISTING MORTGAGE LOAN IF THE REFINANCE MORTGAGE LOAN IS:**

**1. OFFERED UNDER THE FEDERAL HOMEOWNER AFFORDABILITY AND STABILITY PLAN; AND**

**2. MADE AVAILABLE BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

12-311.

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

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

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

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

(2) Acceptable third-party written documentation includes:

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

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

(iii) Payroll receipts;

(iv) The records of a financial institution; or

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

(3) This subsection does not apply to a mortgage loan [approved]:

(I) **APPROVED** for government guaranty by the Federal Housing Administration, Veterans Administration, or Community Development Administration; **OR**

(II) **THAT REFINANCES AN EXISTING MORTGAGE LOAN IF THE REFINANCE MORTGAGE LOAN IS:**

**1. OFFERED UNDER THE FEDERAL HOMEOWNER AFFORDABILITY AND STABILITY PLAN; AND**

**2. MADE AVAILABLE BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

12-409.1.

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

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

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

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

(2) Acceptable third-party written documentation includes:

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

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

(iii) Payroll receipts;

(iv) The records of a financial institution; or

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

(3) This subsection does not apply to a secondary mortgage loan [approved]:

(I) **APPROVED** for government guaranty by the Federal Housing Administration, Veterans Administration, or Community Development Administration; **OR**

(II) **THAT REFINANCES AN EXISTING MORTGAGE LOAN IF THE REFINANCE MORTGAGE LOAN IS:**

**1. OFFERED UNDER THE FEDERAL HOMEOWNER AFFORDABILITY AND STABILITY PLAN; AND**

**2. MADE AVAILABLE BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

1 12-925.

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

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

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

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

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

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

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

17 (iii) Payroll receipts;

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

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

21 (3) This subsection does not apply to a mortgage loan [approved]:

22 (I) **APPROVED** for government guaranty by the Federal  
23 Housing Administration, Veterans Administration, or Community Development  
24 Administration; **OR**

25 (II) **THAT REFINANCES AN EXISTING MORTGAGE LOAN IF**  
26 **THE REFINANCE MORTGAGE LOAN IS:**

27 **1. OFFERED UNDER THE FEDERAL HOMEOWNER**  
28 **AFFORDABILITY AND STABILITY PLAN; AND**

29 **2. MADE AVAILABLE BY THE FEDERAL HOME LOAN**  
30 **MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE**  
31 **ASSOCIATION.**

1 12-1029.

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

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

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

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

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

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

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

17 (iii) Payroll receipts;

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

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

21 (3) This subsection does not apply to a mortgage loan [approved]:

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23 Housing Administration, Veterans Administration, or Community Development  
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25 (II) **THAT REFINANCES AN EXISTING MORTGAGE LOAN IF**  
26 **THE REFINANCE MORTGAGE LOAN IS:**

27 **1. OFFERED UNDER THE FEDERAL HOMEOWNER**  
28 **AFFORDABILITY AND STABILITY PLAN; AND**

29 **2. MADE AVAILABLE BY THE FEDERAL HOME LOAN**  
30 **MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE**  
31 **ASSOCIATION.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
2 measure, is necessary for the immediate preservation of the public health or safety,  
3 has been passed by a yea and nay vote supported by three-fifths of all the members  
4 elected to each of the two Houses of the General Assembly, and shall take effect from  
5 the date it is enacted.