

CHAPTER 115

(House Bill 1535)

AN ACT concerning

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

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

BY repealing and reenacting, without amendments,

Article – Commercial Law

Section 12–127(b), 12–311(d), 12–409.1(b), 12–925(b), and 12–1029(b)

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 12–127(c), 12–311(e), 12–409.1(c), 12–925(c), and 12–1029(c)

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

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

Article – Commercial Law

12–127.

(b) 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.

(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, THE Veterans Administration, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, or THE 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, THE Veterans Administration, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, or THE 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, THE Veterans Administration, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, or THE 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.

12-925.

(b) A credit grantor 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.

(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 credit grantor 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, THE Veterans Administration, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, or THE 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.

12-1029.

(b) A credit grantor 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.

(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 credit grantor 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, THE Veterans Administration, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, or THE 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act 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 14, 2009.