HB 232

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 232 (Delegate McConkey, *et al.*)
Economic Matters

Credit Regulation - Mortgage Lending - Borrower's Ability to Repay Loan

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This bill clarifies statutory provisions that prohibit a lender from making a mortgage loan without considering the borrower's ability to repay the loan. The bill clarifies that the "ability to repay" mortgage loan requirements only apply to owner-occupied property and do not include rental, investment, or income-generating commercial or industrial real property.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under Chapters 7 and 8 of 2008, a lender may not make a mortgage loan or a second mortgage loan without giving due regard to the borrower's ability to repay the terms of the loan, including the fully indexed rate of the loan, and if applicable, property taxes and homeowner's insurance. "Due regard to a borrower's ability to repay a mortgage loan" includes consideration of the borrower's debt to income ratio, gross monthly income, and personal assets based on reliable third-party documentation.

For the purpose of applying the "ability to repay" provisions solely to owner-occupied property, the bill defines several terms including "mortgage loan," "residential real property," "independent evidence of commercial purpose," and an "interest in real property."

Under the bill, a "mortgage loan" is defined as any loan or extension of credit that is secured, in whole or in part, by an interest in residential real property in the State for (1) personal, household, or family purposes; or (2) commercial purposes if the value of the loan does not exceed $75,000. A mortgage loan for purposes of the "ability to repay" provisions does not include (1) a commercial loan that is secured by an interest in residential real property, exceeds $75,000, and is supported by independent evidence of the loan's commercial purpose; or (2) a reverse mortgage loan.

The bill further defines "residential real property" as an owner-occupied property that has a dwelling on the premises designated a principal residence. "Residential real property" does not include any real property held primarily for rental, investment, or the generation of income through any commercial or industrial enterprise.

Under current law, a lender may not make a secondary mortgage loan without giving due regard to the borrower's ability to repay the secondary loan. However, the bill exempts secondary mortgages on real property held primarily for rental, investment, or income-generating commercial or industrial purposes.

Background: Chapters 7 and 8 of 2008 made a number of substantive changes to the law governing mortgage lending. The Acts prohibit lenders from charging prepayment penalties for mortgages; require lenders to verify a borrower's ability to repay a loan; authorize the Commissioner of Financial Regulation to set mortgage lender licensing fees and examination requirements; and expand the licensing requirements for mortgage lenders and mortgage originators.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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mlm/ljm

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