

# HOUSE BILL 1399

I2, I1, I3

0lr2559

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By: **Delegate Lafferty**

Introduced and read first time: February 18, 2010

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Residential Mortgage Loans – Required Notice of Housing Counseling**  
3 **Programs and Services**

4 FOR the purpose of repealing certain provisions of Maryland lending laws that require  
5 a lender or credit grantor to provide a borrower with certain information  
6 regarding home buyer education or housing counseling in connection with  
7 certain high interest or high fee mortgage loans; requiring a lender to provide to  
8 a borrower a certain written notice regarding home buyer education or housing  
9 counseling in connection with a certain mortgage loan; requiring the  
10 Department of Housing and Community Development to provide and maintain  
11 certain information; prohibiting a lender from closing on a certain mortgage  
12 loan unless the lender has provided to the borrower the notice required under  
13 this Act; requiring the Department, in consultation with the Commissioner of  
14 Financial Regulation, to adopt regulations, on or before a certain date,  
15 specifying the form and time of delivery of the notice required under this Act;  
16 requiring the Department, in adopting the regulations, to consult with the  
17 mortgage lending industry to determine the most effective time for delivery of  
18 the notice; defining certain terms; repealing certain definitions; providing for a  
19 delayed effective date for certain provisions of this Act; and generally relating to  
20 mortgage loans.

21 BY repealing and reenacting, with amendments,  
22 Article – Commercial Law  
23 Section 12–124.1, 12–311, and 12–1029  
24 Annotated Code of Maryland  
25 (2005 Replacement Volume and 2009 Supplement)

26 BY adding to  
27 Article – Commercial Law  
28 Section 12–1201 through 12–1204 to be under the new subtitle “Subtitle 12.  
29 Mortgage Loans – Notice of Housing Counseling Programs and Services”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2009 Supplement)

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

5 **Article – Commercial Law**

6 12–124.1.

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

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

14 (3) “Credit health insurance” has the meaning stated in § 13–101 of  
15 the Insurance Article.

16 (4) “Credit involuntary unemployment benefit insurance” has the  
17 meaning stated in § 13–101 of the Insurance Article.

18 (5) (i) “Credit life insurance” means insurance on the life of a  
19 borrower that provides indemnity for repayment of a specific loan or credit transaction  
20 on the death of the borrower.

21 (ii) “Credit life insurance” does not include life insurance  
22 payable to a beneficiary designated by the borrower other than the obligee of a specific  
23 loan or credit transaction.

24 [(6) “Home buyer education or housing counseling” means instruction  
25 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
26 closing, and life as a homeowner.]

27 [(7) (6) “Mortgage loan” has the meaning stated in § 11–501 of the  
28 Financial Institutions Article.

29 [(8) (7) “Premium” has the meaning stated in § 1–101 of the  
30 Insurance Article.

31 [(9) (8) “Single premium coverage” means insurance for which the  
32 total premium is payable in one lump sum at or before the time coverage commences.

1 (b) (1) Except as provided in this subsection, a lender making a covered  
2 loan may not finance as a part of the covered loan transaction single premium  
3 coverage for:

4 (i) Credit health insurance;

5 (ii) Credit involuntary unemployment benefit insurance; or

6 (iii) Credit life insurance.

7 (2) Nothing in this subsection shall prohibit the financing of any  
8 insurance coverage in connection with a mobile home or its premises, as those terms  
9 are defined in § 8A-101 of the Real Property Article.

10 [(c) (1) In this subsection, “loan application” has the meaning stated in §  
11 12-125 of this subtitle.

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

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

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

19 12-311.

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

21 (2) “Covered loan” means a mortgage loan made under this subtitle  
22 that meets the criteria for a loan subject to the federal Home Ownership Equity  
23 Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by  
24 Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the  
25 mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §  
26 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

27 (3) “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 lender, plus the margin that will apply after the expiration of an introductory interest  
30 rate.

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

1                    **[(5)] (4)**    (i)    “Mortgage loan” has the meaning stated in § 11–501  
2 of the Financial Institutions Article.

3                    (ii)    “Mortgage loan” does not include a reverse mortgage loan.

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

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

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

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

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

10                    (i)    The principal amount of the loan;

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

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

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

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

15 or

16                    (ii)    Personal property for any loan under \$700 in value or  
17 amount.

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

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

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

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

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

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

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

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

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

7 (iii) Payroll receipts;

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

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

11 (3) This subsection does not apply to a mortgage loan:

12 (i) Approved for government guaranty by the Federal Housing  
13 Administration, the Veterans Administration, the United States Department of  
14 Agriculture, the Maryland Department of Housing and Community Development, or  
15 the Community Development Administration; or

16 (ii) That refinances an existing mortgage loan if the refinance  
17 mortgage loan is:

18 1. Offered under the federal Homeowner Affordability  
19 and Stability Plan; and

20 2. Made available by the Federal Home Loan Mortgage  
21 Corporation or the Federal National Mortgage Association.

22 [(f) (1) In this subsection, "loan application" has the meaning stated in §  
23 12-125 of this title.

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

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

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

1 12–1029.

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

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

9 (3) “Fully indexed rate” means the index rate, as defined in the  
10 mortgage loan documents, prevailing at the time the mortgage loan is approved by the  
11 credit grantor, plus the margin that will apply after the expiration of an introductory  
12 interest rate.

13 [(4) “Home buyer education or housing counseling” means instruction  
14 on preparing for home ownership, shopping for a home, obtaining a mortgage, loan  
15 closing, and life as a homeowner.]

16 [(5)] (4) (i) “Mortgage loan” has the meaning stated in § 11–501  
17 of the Financial Institutions Article.

18 (ii) “Mortgage loan” does not include a reverse mortgage loan.

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

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

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

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

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

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

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

- 1 (iii) Payroll receipts;
- 2 (iv) The records of a financial institution; or
- 3 (v) Other third-party documents that provide reasonably  
4 reliable evidence of the borrower's income or assets.

5 (3) This subsection does not apply to a mortgage loan:

- 6 (i) Approved for government guaranty by the Federal Housing  
7 Administration, the Veterans Administration, the United States Department of  
8 Agriculture, the Maryland Department of Housing and Community Development, or  
9 the Community Development Administration; or
- 10 (ii) That refinances an existing mortgage loan if the refinance  
11 mortgage loan is:
- 12 1. Offered under the federal Homeowner Affordability  
13 and Stability Plan; and
- 14 2. Made available by the Federal Home Loan Mortgage  
15 Corporation or the Federal National Mortgage Association.

16 [(d) (1) In this subsection, "loan application" has the meaning stated in §  
17 12-1022 of this subtitle.

18 (2) At the time a borrower completes a loan application for a covered  
19 loan, the credit grantor 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 **SUBTITLE 12. MORTGAGE LOANS – NOTICE OF HOUSING COUNSELING**  
26 **PROGRAMS AND SERVICES.**

27 **12-1201.**

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

30 **(B) "BORROWER" HAS THE MEANING STATED IN § 11-501 OF THE**  
31 **FINANCIAL INSTITUTIONS ARTICLE.**

1           **(C) “HOME BUYER EDUCATION OR HOUSING COUNSELING” MEANS**  
2 **INSTRUCTION ON PREPARING FOR HOME OWNERSHIP, SHOPPING FOR A HOME,**  
3 **OBTAINING A MORTGAGE, LOAN CLOSING, AND LIFE AS A HOMEOWNER.**

4           **(D) “LENDER” MEANS A PERSON THAT MAKES A MORTGAGE LOAN.**

5           **(E) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11-501 OF THE**  
6 **FINANCIAL INSTITUTIONS ARTICLE.**

7           **(F) “SECONDARY MORTGAGE LOAN” MEANS A MORTGAGE LOAN**  
8 **SECURED BY RESIDENTIAL REAL PROPERTY THAT IS SUBJECT TO THE LIEN OF**  
9 **ONE OR MORE PRIOR MORTGAGE LOANS.**

10 **12-1202.**

11           **(A) THIS SUBTITLE APPLIES TO ANY LENDER THAT MAKES A MORTGAGE**  
12 **LOAN SECURED BY OWNER-OCCUPIED RESIDENTIAL REAL PROPERTY LOCATED**  
13 **IN THE STATE.**

14           **(B) THIS SUBTITLE DOES NOT APPLY TO:**

15                   **(1) A SECONDARY MORTGAGE LOAN; OR**

16                   **(2) AN OPEN-END OR REVOLVING HOME EQUITY LINE OF CREDIT.**

17 **12-1203.**

18           **(A) A LENDER SHALL PROVIDE TO A BORROWER A WRITTEN NOTICE, IN**  
19 **THE FORM SPECIFIED IN REGULATIONS ADOPTED BY THE DEPARTMENT OF**  
20 **HOUSING AND COMMUNITY DEVELOPMENT, IN CONSULTATION WITH THE**  
21 **COMMISSIONER OF FINANCIAL REGULATION, THAT INCLUDES:**

22                   **(1) A STATEMENT RECOMMENDING THAT THE BORROWER**  
23 **COMPLETE HOME BUYER EDUCATION OR HOUSING COUNSELING; AND**

24                   **(2) INFORMATION ABOUT NONPROFIT HOME BUYER EDUCATION**  
25 **AND HOUSING COUNSELING PROGRAMS AND SERVICES AVAILABLE TO**  
26 **RESIDENTS OF THE STATE.**

27           **(B) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
28 **SHALL PROVIDE AND MAINTAIN THE INFORMATION REQUIRED UNDER**  
29 **SUBSECTION (A)(2) OF THIS SECTION.**



1 **12-1204.**

2 **A LENDER MAY NOT CLOSE ON A MORTGAGE LOAN UNLESS THE LENDER**  
3 **HAS PROVIDED TO THE BORROWER THE NOTICE REQUIRED UNDER § 12-1203**  
4 **OF THIS SUBTITLE.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That:

6 (a) On or before October 1, 2010, the Department of Housing and  
7 Community Development, in consultation with the Commissioner of Financial  
8 Regulation, shall adopt regulations that specify:

9 (1) the form of the notice required under § 12-1203 of the Commercial  
10 Law Article, as enacted by Section 1 of this Act; and

11 (2) the time for delivery of the notice to a borrower.

12 (b) In adopting the regulations required under subsection (a) of this section,  
13 the Department shall consult with the mortgage lending industry to determine the  
14 most effective time for delivery of the notice to a borrower.

15 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act  
16 shall take effect January 1, 2011.

17 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
18 Section 3 of this Act, this Act shall take effect June 1, 2010.