

HOUSE BILL 509

N1

EMERGENCY BILL

11r1352

By: **Delegate Niemann**

Introduced and read first time: February 7, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Mortgages – Enforcement**

3 FOR the purpose of clarifying the authority of the Commissioner of Financial
4 Regulation to enforce the provisions of certain laws relating to mortgages by
5 exercising certain investigative and enforcement powers; authorizing the
6 Commissioner to require a violator of certain laws to take certain affirmative
7 actions to correct the violation; authorizing the Commissioner to investigate
8 violations of certain laws and aid any other unit of State government that has
9 regulatory jurisdiction over the business activities of a violator under certain
10 circumstances; authorizing the Commissioner to cooperate with certain units of
11 law enforcement in the investigation and prosecution of violations of certain
12 laws; defining a certain term; making stylistic changes; making this Act an
13 emergency measure; and generally relating to the enforcement of laws relating
14 to mortgages.

15 BY repealing and reenacting, without amendments,
16 Article – Financial Institutions
17 Section 2–113 through 2–116
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2010 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 7–319 and 7–404
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2010 Supplement)

25 BY adding to
26 Article – Real Property
27 Section 7–319.1, 7–401(a–1), and 7–404.1
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2010 Replacement Volume and 2010 Supplement)

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 2–113.

6 (a) In this section, “affiliate” has the meaning stated in § 5–401(b) of this
7 article.

8 (b) Except as provided in subsection (d) of this section, the investigative and
9 enforcement powers of the Commissioner authorized under this subtitle are in
10 addition to any investigative or enforcement powers of the Commissioner authorized
11 under any other provision of law.

12 (c) Beginning in fiscal year 2001, the Governor shall appropriate in the State
13 budget in each fiscal year to the Division of Financial Regulation funding for the
14 positions necessary to implement the investigative and enforcement powers authorized
15 under this subtitle.

16 (d) Except as provided in § 2–117 of this subtitle, the provisions of §§ 2–114
17 through 2–117, inclusive, of this subtitle do not apply to:

18 (1) Any bank, trust company, savings bank, savings and loan
19 association, or credit union incorporated or chartered under the laws of this State or
20 the United States that maintains its principal office in this State;

21 (2) Any out-of-state bank, as defined in § 5–1001 of this article,
22 having a branch that accepts deposits in this State;

23 (3) Any institution incorporated under federal law as a savings
24 association or savings bank that does not maintain its principal office in this State but
25 has a branch that accepts deposits in this State; or

26 (4) An affiliate of an institution described in item (1), (2), or (3) of this
27 subsection.

28 2–114.

29 (a) The Commissioner may:

30 (1) Make public or private investigations as the Commissioner
31 considers necessary to:

32 (i) Determine whether a person has violated a provision of law,
33 regulation, rule, or order over which the Commissioner has jurisdiction; or

1 (ii) Aid in the enforcement of a law or in the prescribing of
2 regulations, rules, and orders over which the Commissioner has jurisdiction;

3 (2) Require or permit a person to file a statement in writing, under
4 oath or otherwise as the Commissioner determines, as to all the facts and
5 circumstances concerning the matter to be investigated; and

6 (3) Subject to the provisions of Title 10, Subtitle 6 of the State
7 Government Article, publish information concerning a violation of a law, regulation,
8 rule, or order over which the Commissioner has jurisdiction.

9 (b) For the purpose of an investigation or proceeding, the Commissioner or
10 an officer designated by the Commissioner may administer oaths and affirmations,
11 subpoena witnesses, compel their attendance, take evidence, and require the
12 production of books, papers, correspondence, memoranda, agreements, or other
13 documents or records which the Commissioner considers relevant or material to the
14 inquiry.

15 (c) (1) In case of contumacy by or refusal to obey a subpoena issued to a
16 person, the circuit court of the county in which the person resides or transacts
17 business, on application by the Commissioner, may issue to the person an order
18 requiring the person to appear before the Commissioner or the officer designated by
19 the Commissioner to produce documentary evidence if so ordered or to give evidence
20 touching the matter under investigation or in question.

21 (2) Failure to obey the order of the court may be punished by the court
22 as a contempt of court.

23 2-115.

24 (a) When the Commissioner determines that a person has engaged in an act
25 or practice constituting a violation of a law, regulation, rule or order over which the
26 Commissioner has jurisdiction, and that immediate action against the person is in the
27 public interest, the Commissioner may in the Commissioner's discretion issue, without
28 a prior hearing, a summary order directing the person to cease and desist from
29 engaging in the activity, provided that the summary cease and desist order gives the
30 person:

31 (1) Notice of the opportunity for a hearing before the Commissioner to
32 determine whether the summary cease and desist order should be vacated, modified,
33 or entered as final; and

34 (2) Notice that the summary cease and desist order will be entered as
35 final if the person does not request a hearing within 15 days of receipt of the summary
36 cease and desist order.

1 (b) When the Commissioner determines after notice and a hearing, unless
2 the right to notice and a hearing is waived, that a person has engaged in an act or
3 practice constituting a violation of a law, regulation, rule or order over which the
4 Commissioner has jurisdiction, the Commissioner may in the Commissioner's
5 discretion and in addition to taking any other action authorized by law:

6 (1) Issue a final cease and desist order against the person;

7 (2) Suspend or revoke the license of the person;

8 (3) Issue a penalty order against the person imposing a civil penalty
9 up to the maximum amount of \$1,000 for a first violation and a maximum amount of
10 \$5,000 for each subsequent violation; or

11 (4) Take any combination of the actions specified in this subsection.

12 (c) In determining the amount of financial penalty to be imposed under
13 subsection (b) of this section, the Commissioner shall consider the following factors:

14 (1) The seriousness of the violation;

15 (2) The good faith of the violator;

16 (3) The violator's history of previous violations;

17 (4) The deleterious effect of the violation on the public and the
18 industry involved;

19 (5) The assets of the violator; and

20 (6) Any other factors relevant to the determination of the financial
21 penalty.

22 (d) Notice of any hearing under this section shall be given and the hearing
23 shall be held in accordance with the Administrative Procedure Act.

24 2-116.

25 (a) When it appears to the Commissioner that a person is about to engage in
26 an act or practice constituting a violation of a law, regulation, rule, or order over which
27 the Commissioner has jurisdiction, the Commissioner may bring an action in the
28 circuit court of the county in which the person resides or transacts business to obtain
29 one or more of the following remedies:

30 (1) A temporary restraining order; or

31 (2) A temporary or permanent injunction.

1 (b) When it appears to the Commissioner that a person has engaged in an
2 act or practice constituting a violation of a law, regulation, rule, or order over which
3 the Commissioner has jurisdiction, the Commissioner may bring an action in the
4 circuit court of the county in which the person resides or transacts business to obtain
5 one or more of the following remedies:

6 (1) A temporary restraining order;

7 (2) A temporary or permanent injunction;

8 (3) A civil penalty up to a maximum amount of \$1,000 for a first
9 violation and a maximum amount of \$5,000 for each subsequent violation;

10 (4) A declaratory judgment;

11 (5) An order preventing access to the violator's assets;

12 (6) Rescission;

13 (7) Restitution; and

14 (8) Any other relief as the court deems just.

15 (c) The Commissioner may not be required to post a bond in an action under
16 this section.

17 Article – Real Property

18 7–319.

19 (a) The Attorney General [or the Commissioner] may seek an injunction to
20 prohibit a person who has engaged or is engaging in a violation of this subtitle from
21 engaging or continuing to engage in the violation.

22 (b) The court may enter any order or judgment necessary to:

23 (1) Prevent the use by a person of any prohibited practice;

24 (2) Restore to a person any money or real or personal property
25 acquired from the person by means of any prohibited practice; or

26 (3) Appoint a receiver in case of willful violation of this [title]
27 **SUBTITLE.**

28 (c) In any action brought by the Attorney General [or the Commissioner]
29 under this section, the Attorney General [or the Commissioner] is entitled to recover
30 the costs of the action for the use of the State.

1 (d) A violation of this subtitle is an unfair or deceptive trade practice within
2 the meaning of Title 13 of the Commercial Law Article and is subject to the
3 enforcement and penalty provisions contained in Title 13 of the Commercial Law
4 Article.

5 **7-319.1.**

6 (A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
7 SUBTITLE BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§ 2-113
8 THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE.

9 (B) THE COMMISSIONER MAY SEEK AN INJUNCTION TO PROHIBIT A
10 PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS SUBTITLE
11 FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.

12 (C) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:

13 (1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED
14 PRACTICE;

15 (2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL
16 PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED
17 PRACTICE; OR

18 (3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF
19 THIS SUBTITLE.

20 (D) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
21 SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO
22 CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR
23 PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

24 (E) THE COMMISSIONER MAY:

25 (1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

26 (2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS
27 REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE
28 VIOLATOR.

29 (F) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION AND
30 PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH THE OFFICE OF THE

1 **ATTORNEY GENERAL, THE STATE’S ATTORNEY, OR ANY OTHER UNIT OF LAW**
2 **ENFORCEMENT.**

3 **(G) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER THIS**
4 **SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE**
5 **ACTION FOR THE USE OF THE STATE.**

6 7–401.

7 **(A–1) “COMMISSIONER” MEANS THE COMMISSIONER OF FINANCIAL**
8 **REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

9 7–404.

10 (a) The Attorney General [or the Commissioner of Financial Regulation]
11 may seek an injunction to prohibit a person who has engaged or is engaging in a
12 violation of this subtitle from engaging or continuing to engage in the violation.

13 (b) The court may enter any order or judgment necessary to:

14 (1) Prevent the use by a person of any prohibited practice;

15 (2) Restore to a person any money or real or personal property
16 acquired from the person by means of any prohibited practice; or

17 (3) Appoint a receiver in the case of a willful violation of this subtitle.

18 (c) In any action brought by the Attorney General [or Commissioner] under
19 this section, the Attorney General [or Commissioner] is entitled to recover the costs of
20 the action for the use of the State.

21 **7–404.1.**

22 **(A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**
23 **SUBTITLE:**

24 **(1) BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§**
25 **2–113 THROUGH 2–116 OF THE FINANCIAL INSTITUTIONS ARTICLE; OR**

26 **(2) BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO**
27 **CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR**
28 **PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.**

1 **(B) THE COMMISSIONER MAY SEEK AN INJUNCTION TO PROHIBIT A**
2 **PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS SUBTITLE**
3 **FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.**

4 **(C) THE COMMISSIONER MAY:**

5 **(1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND**

6 **(2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS**
7 **REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE**
8 **VIOLATOR.**

9 **(D) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION AND**
10 **PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH THE OFFICE OF THE**
11 **ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR ANY OTHER UNIT OF LAW**
12 **ENFORCEMENT.**

13 **(E) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER THIS**
14 **SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE**
15 **ACTION FOR THE USE OF THE STATE.**

16 **(F) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:**

17 **(1) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**
18 **PRACTICE;**

19 **(2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL**
20 **PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED**
21 **PRACTICE; OR**

22 **(3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF**
23 **THIS SUBTITLE.**

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