

# HOUSE BILL 509

N1

EMERGENCY BILL

1lr1352

---

By: **Delegate Niemann**

Introduced and read first time: February 7, 2011

Assigned to: Environmental Matters

---

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2011

---

## CHAPTER \_\_\_\_\_

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 seek an injunction to prohibit a person who has engaged or is  
7 engaging in a violation of certain laws from engaging or continuing to engage in  
8 the violation; authorizing a court to enter certain orders or judgments;  
9 authorizing the Commissioner to recover certain cost in certain actions;  
10 authorizing the Commissioner to require a violator of certain laws to take  
11 certain affirmative actions to correct the violation; authorizing the  
12 Commissioner to investigate violations of certain laws and aid any other unit of  
13 State government that has regulatory jurisdiction over the business activities of  
14 a violator under certain circumstances; authorizing the Commissioner to  
15 cooperate with certain units of law enforcement in the investigation and  
16 prosecution of violations of certain laws; clarifying that a homeowner or other  
17 person may bring an action for damages under certain laws without having to  
18 exhaust administrative remedies under certain laws and regardless of the  
19 status of an administrative action or a criminal prosecution under certain laws;  
20 defining a certain term; making stylistic changes; making this Act an  
21 emergency measure; and generally relating to the enforcement of laws relating  
22 to mortgages.

23 BY repealing and reenacting, without amendments,  
24 Article – Financial Institutions

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 2–113 through 2–116  
2 Annotated Code of Maryland  
3 (2003 Replacement Volume and 2010 Supplement)

4 BY repealing and reenacting, with amendments,  
5 Article – Real Property  
6 Section ~~7–319 and 7–404~~, 7–320, 7–404, and 7–406  
7 Annotated Code of Maryland  
8 (2010 Replacement Volume and 2010 Supplement)

9 BY adding to  
10 Article – Real Property  
11 Section 7–319.1, 7–401(a–1), and 7–404.1  
12 Annotated Code of Maryland  
13 (2010 Replacement Volume and 2010 Supplement)

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

16 **Article – Financial Institutions**

17 2–113.

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

20 (b) Except as provided in subsection (d) of this section, the investigative and  
21 enforcement powers of the Commissioner authorized under this subtitle are in  
22 addition to any investigative or enforcement powers of the Commissioner authorized  
23 under any other provision of law.

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

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

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

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

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

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

6 2-114.

7           (a) The Commissioner may:

8           (1) Make public or private investigations as the Commissioner  
9 considers necessary to:

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

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

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

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

20           (b) For the purpose of an investigation or proceeding, the Commissioner or  
21 an officer designated by the Commissioner may administer oaths and affirmations,  
22 subpoena witnesses, compel their attendance, take evidence, and require the  
23 production of books, papers, correspondence, memoranda, agreements, or other  
24 documents or records which the Commissioner considers relevant or material to the  
25 inquiry.

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

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

34 2-115.

1           (a)     When the Commissioner determines that a person has engaged in an act  
2 or practice constituting a violation of a law, regulation, rule or order over which the  
3 Commissioner has jurisdiction, and that immediate action against the person is in the  
4 public interest, the Commissioner may in the Commissioner's discretion issue, without  
5 a prior hearing, a summary order directing the person to cease and desist from  
6 engaging in the activity, provided that the summary cease and desist order gives the  
7 person:

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

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

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

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

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

21           (3)     Issue a penalty order against the person imposing a civil penalty  
22 up to the maximum amount of \$1,000 for a first violation and a maximum amount of  
23 \$5,000 for each subsequent violation; or

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

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

27           (1)     The seriousness of the violation;

28           (2)     The good faith of the violator;

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

30           (4)     The deleterious effect of the violation on the public and the  
31 industry involved;

32           (5)     The assets of the violator; and

1 (6) Any other factors relevant to the determination of the financial  
2 penalty.

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

5 2-116.

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

11 (1) A temporary restraining order; or

12 (2) A temporary or permanent injunction.

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

18 (1) A temporary restraining order;

19 (2) A temporary or permanent injunction;

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

22 (4) A declaratory judgment;

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

24 (6) Rescission;

25 (7) Restitution; and

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

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

**Article – Real Property**

29  
30 7-319.

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

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

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

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

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

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

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

17 **7-319.1.**

18 **(A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**  
 19 **SUBTITLE BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§ 2-113**  
 20 **THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

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

24 ~~(C)~~ **(2) THE COURT MAY ENTER ANY ORDER OR JUDGMENT**  
 25 **NECESSARY TO:**

26 ~~(1)~~ **(I) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**  
 27 **PRACTICE;**

28 ~~(2)~~ **(II) RESTORE TO A PERSON ANY MONEY OR REAL OR**  
 29 **PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY**  
 30 **PROHIBITED PRACTICE; OR**

31 ~~(3)~~ **(III) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION**  
 32 **OF THIS SUBTITLE.**

1           **(3) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER**  
2 **THIS SUBSECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS**  
3 **OF THE ACTION FOR THE USE OF THE STATE.**

4           ~~(D)~~ **(C)**       **THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**  
5 **SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO**  
6 **CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR**  
7 **PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.**

8           ~~(E)~~ **(D)**       **THE COMMISSIONER MAY:**

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

10           **(2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS**  
11 **REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE**  
12 **VIOLATOR.**

13           ~~(F)~~ **(E)**       **THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION**  
14 **AND PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH THE OFFICE OF**  
15 **THE ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR ANY OTHER UNIT OF**  
16 **LAW ENFORCEMENT.**

17           ~~(G)~~ **IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER THIS**  
18 **SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE**  
19 **ACTION FOR THE USE OF THE STATE.**

20       7-320.

21           **(a) (1) In addition to any action by the Attorney General or the**  
22 **Commissioner authorized under this subtitle and any other action otherwise**  
23 **authorized by law, a homeowner may bring an action for damages incurred as the**  
24 **result of a practice prohibited by this subtitle.**

25           **(2) A HOMEOWNER MAY BRING AN ACTION FOR DAMAGES UNDER**  
26 **THIS SECTION:**

27           **(i) WITHOUT HAVING TO EXHAUST ADMINISTRATIVE**  
28 **REMEDIES UNDER THIS SUBTITLE; AND**

29           **(ii) REGARDLESS OF THE STATUS OF AN ADMINISTRATIVE**  
30 **ACTION OR A CRIMINAL PROSECUTION, IF ANY, UNDER THIS SUBTITLE.**

31           **(b) A homeowner who brings an action under this section and who is**  
32 **awarded damages may also seek, and the court may award, reasonable attorney's fees.**

1           (c) If the court finds that the defendant willfully or knowingly violated this  
 2 subtitle, the court may award damages equal to three times the amount of actual  
 3 damages.

4 7-401.

5           **(A-1) "COMMISSIONER" MEANS THE COMMISSIONER OF FINANCIAL**  
 6 **REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

7 7-404.

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

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

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

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

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

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

19 **7-404.1.**

20           **(A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**  
 21 **SUBTITLE:**

22                   **~~(1) BY EXERCISING ANY OF THE POWERS PROVIDED UNDER §§~~**  
 23 **~~2-113 THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE; OR~~**

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

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



1                   **(2) THE COURT MAY ENTER ANY ORDER OR JUDGMENT**  
2 **NECESSARY TO:**

3                   **(I) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**  
4 **PRACTICE;**

5                   **(II) RESTORE TO A PERSON ANY MONEY OR REAL OR**  
6 **PERSONAL PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY**  
7 **PROHIBITED PRACTICE; OR**

8                   **(III) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION**  
9 **OF THIS SUBTITLE.**

10                   **(3) IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER**  
11 **THIS SUBSECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS**  
12 **OF THE ACTION FOR THE USE OF THE STATE.**

13                   **(C) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS**  
14 **SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO**  
15 **CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR**  
16 **PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.**

17                   ~~(C)~~ **(D) THE COMMISSIONER MAY:**

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

19                   **(2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS**  
20 **REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE**  
21 **VIOLATOR.**

22                   ~~(D)~~ **(E) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION**  
23 **AND PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH THE OFFICE OF**  
24 **THE ATTORNEY GENERAL, THE STATE’S ATTORNEY, OR ANY OTHER UNIT OF**  
25 **LAW ENFORCEMENT.**

26                   ~~(E)~~ **~~IN ANY ACTION BROUGHT BY THE COMMISSIONER UNDER THIS~~**  
27 **~~SECTION, THE COMMISSIONER IS ENTITLED TO RECOVER THE COSTS OF THE~~**  
28 **~~ACTION FOR THE USE OF THE STATE.~~**

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

30                   ~~(1)~~ **~~PREVENT THE USE BY A PERSON OF ANY PROHIBITED~~**  
31 **~~PRACTICE;~~**

1 ~~(2) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL~~  
 2 ~~PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF ANY PROHIBITED~~  
 3 ~~PRACTICE; OR~~

4 ~~(3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF~~  
 5 ~~THIS SUBTITLE.~~

6 7-406.

7 (a) (1) In addition to any action authorized under this subtitle and any  
 8 other action otherwise authorized by law, a person may bring an action for damages  
 9 incurred as the result of a violation of this subtitle.

10 (2) A PERSON MAY BRING AN ACTION FOR DAMAGES UNDER THIS  
 11 SECTION:

12 (I) WITHOUT HAVING TO EXHAUST ADMINISTRATIVE  
 13 REMEDIES UNDER THIS SUBTITLE; AND

14 (II) REGARDLESS OF THE STATUS OF AN ADMINISTRATIVE  
 15 ACTION OR A CRIMINAL PROSECUTION, IF ANY, UNDER THIS SUBTITLE.

16 (b) A person who brings an action under this section and who is awarded  
 17 damages may also seek, and the court may award, reasonable attorney's fees.

18 (c) If the court finds that the defendant violated this subtitle, the court may  
 19 award damages equal to three times the amount of actual damages.

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

Approved:

---

Governor.

---

Speaker of the House of Delegates.

---

President of the Senate.