

Chapter 127

(House Bill 509)

AN ACT concerning

Real Property – Mortgages – Enforcement

FOR the purpose of clarifying the authority of the Commissioner of Financial Regulation to enforce the provisions of certain laws relating to mortgages by exercising certain investigative and enforcement powers; authorizing the Commissioner to seek an injunction to prohibit a person who has engaged or is engaging in a violation of certain laws from engaging or continuing to engage in the violation; authorizing a court to enter certain orders or judgments; authorizing the Commissioner to recover certain cost in certain actions; authorizing the Commissioner to require a violator of certain laws to take certain affirmative actions to correct the violation; authorizing the Commissioner to investigate violations of certain laws and aid any other unit of State government that has regulatory jurisdiction over the business activities of a violator under certain circumstances; authorizing the Commissioner to cooperate with certain units of law enforcement in the investigation and prosecution of violations of certain laws; clarifying that a homeowner or other person may bring an action for damages under certain laws without having to exhaust administrative remedies under certain laws and regardless of the status of an administrative action or a criminal prosecution under certain laws; defining a certain term; making stylistic changes; making this Act an emergency measure; and generally relating to the enforcement of laws relating to mortgages.

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

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

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

(2010 Replacement Volume and 2010 Supplement)

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

Article – Financial Institutions

2–113.

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

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

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

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

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

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

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

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

2–114.

(a) The Commissioner may:

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

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

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

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

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

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

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

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

2-115.

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

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

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

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

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

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

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

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

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

(1) The seriousness of the violation;

(2) The good faith of the violator;

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

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

(5) The assets of the violator; and

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

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

2-116.

(a) When it appears to the Commissioner that a person is about to engage in an act or practice constituting a violation of a law, regulation, rule, or order over which the Commissioner has jurisdiction, the Commissioner may bring an action in the

circuit court of the county in which the person resides or transacts business to obtain one or more of the following remedies:

- (1) A temporary restraining order; or
- (2) A temporary or permanent injunction.

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

- (1) A temporary restraining order;
- (2) A temporary or permanent injunction;
- (3) A civil penalty up to a maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation;
- (4) A declaratory judgment;
- (5) An order preventing access to the violator's assets;
- (6) Rescission;
- (7) Restitution; and
- (8) Any other relief as the court deems just.

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

Article – Real Property

7-319.

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

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

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

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

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

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

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

7-319.1.

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

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

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

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

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

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

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

~~(D)~~ **(C) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE ACTION TO**

CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

~~(F)~~ **(D)** THE COMMISSIONER MAY:

(1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

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

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

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

7-320.

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

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

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

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

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

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

7-401.

(A-1) “COMMISSIONER” MEANS THE COMMISSIONER OF FINANCIAL REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

7-404.

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

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

- (1) Prevent the use by a person of any prohibited practice;
- (2) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or
- (3) Appoint a receiver in the case of a willful violation of this subtitle.

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

7-404.1.

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

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

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

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

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

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

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

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

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

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

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

(1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

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

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

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

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

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

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

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

7-406.

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

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

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

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

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

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

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 ye 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 12, 2011.