

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 102

(Delegates Stifler and Conaway)

Economic Matters

Finance

Financial Institutions - Mortgage Loan Originators - Prohibited Acts

This bill establishes protections for real estate appraisers and other individuals from undue influence or coercion in connection with a mortgage loan or loan application.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as the bill's prohibitions are likely covered under existing penalty provisions.

Local Effect: The bill is not expected to materially affect local finances or operations, as the bill's prohibitions are likely covered under existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill prohibits a mortgage loan originator from making a payment, threat, or promise to another person to influence the person to violate any federal or State law, or a specified standard of professional practice.

In addition, the bill prohibits a mortgage loan originator from making a payment, threat, or promise to a real estate appraiser to influence the appraiser's independent judgment with respect to the residential real estate valuation, or engage in any other act that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.

Prohibited acts include:

- withholding or threatening to withhold payment for a real estate appraisal with the intent to coerce the appraiser to agree to a value, range of values, or minimum value for the residential real estate;
- conditioning the payment of an appraisal fee on the opinion, conclusion, or valuation to be reached by the appraiser; or
- requesting the appraiser to report a predetermined opinion, conclusion, or valuation.

However, the bill does not prohibit a mortgage loan originator from requesting another person to consider additional appropriate information; provide additional details, substantiation, or explanation of a conclusion made by the other person; or correct errors in an appraisal report or other mortgage document. Likewise, the bill does not prohibit withholding payment for an appraisal pending resolution of an action before a federal or State court licensing board relating to the appraisal.

Current Law: A mortgage loan originator has a duty of good faith and fair dealing in communications and transactions with a borrower, including, but not limited to (1) the duty to recommend to a borrower or induce a borrower to enter into a mortgage refinancing loan that has a net tangible benefit to the borrower, considering all of the circumstances, including the terms and cost of the loan; and (2) the duty to provide to a borrower who is offered a higher-priced mortgage loan information about lower-priced options for which the borrower may qualify.

The Commissioner of Financial Regulation may suspend or revoke the license of any licensee if the licensee:

- makes any material misstatement in an application for a license;
- is convicted of a felony or a misdemeanor that directly relates to the fitness and qualification of the individual to act as a mortgage loan originator;
- in connection with any mortgage loan or loan application, commits fraud, engages in any illegal or dishonest activities, or misrepresents or fails to disclose any material facts to a specified person;
- violates specified provisions of law regulating mortgage lending or mortgage origination; or
- demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly.

The commissioner may issue a cease and desist order and impose a civil penalty of up to \$5,000 for each violation. The commissioner is required to revoke the license of a licensee if the commissioner determines that a licensee, while licensed, has been convicted of a felony or had a mortgage loan originator's license revoked in any governmental jurisdiction. A person who willfully violates State mortgage loan originator laws is guilty of a felony and, upon conviction, is subject to a fine of up to \$25,000 and/or imprisonment for up to five years.

Background: Forty-four states and the District of Columbia have enacted similar real estate appraiser independence laws for the purpose of shielding appraisers and other persons from undue influence or coercion in connection with a real estate appraisal or residential mortgage loan. In October of 2010 the Federal Reserve Board announced an interim rule designed to protect the integrity of the appraisal process relating to secured mortgages. The final interim rule:

- prohibits coercion intended to intimidate appraisers in order to alter the appraised value of a property;
- prohibits appraisers hired by lenders from having an interest in the properties or the credit transactions;
- requires creditors to determine the reasonableness of an appraised property value before the extension of credit if the creditors have knowledge of appraiser coercion or conflict of interest;
- requires that creditors and settlement service providers with knowledge of appraiser misconduct file a report with the appropriate state licensing authorities; and
- requires that creditors reasonably compensate appraisers who are not employees of the creditor or the appraisal management company hired by the creditor.

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the enactment of the rule. Compliance will be mandatory on April 1, 2011.

Additional Information

Prior Introductions: HB 1407 of 2010 passed the House and received a favorable report from the Senate Finance Committee, but no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Federal Reserve Board; Department of Legislative Services

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