

HOUSE BILL 291

N1

3lr1540
CF 3lr1104

By: **Delegate Feldman**

Introduced and read first time: January 23, 2013

Assigned to: Environmental Matters and Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Stopping Fraud in Mortgage Assistance Relief Services Act**
3 **of 2013**

4 FOR the purpose of requiring certain mortgage assistance relief service providers to
5 comply with certain provisions of federal law; authorizing the Attorney General
6 or the Commissioner of Financial Regulation to seek an injunction to prohibit a
7 violation of certain provisions of this Act; authorizing the Attorney General and
8 the State’s Attorney to conduct the criminal investigation and prosecution of
9 mortgage assistance relief services violations under certain provisions of this
10 Act; authorizing a private right of action for a violation of certain provisions of
11 this Act under certain circumstances; establishing the venue for certain actions;
12 imposing certain penalties for a violation of certain provisions of this Act under
13 certain circumstances; establishing that a certain exception applies only to
14 certain individuals; defining certain terms; establishing that this Act
15 supersedes certain provisions of law under certain circumstances; and generally
16 relating to mortgage assistance relief services.

17 BY adding to

18 Article – Real Property

19 Section 7–501 through 7–510 to be under the new subtitle “Subtitle 5. Mortgage
20 Assistance Relief Services”

21 Annotated Code of Maryland

22 (2010 Replacement Volume and 2012 Supplement)

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

25 **Article – Real Property**

26 **SUBTITLE 5. MORTGAGE ASSISTANCE RELIEF SERVICES.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **7-501.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF FINANCIAL
5 REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

6 (C) "DWELLING" HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND
7 ANY SUBSEQUENT REVISION OF THAT REGULATION.

8 (D) "MORTGAGE ASSISTANCE RELIEF SERVICE" HAS THE MEANING
9 STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION OF THAT
10 REGULATION.

11 (E) "MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER" HAS THE
12 MEANING STATED IN 12 C.F.R. § 1015.2 AND ANY SUBSEQUENT REVISION OF
13 THAT REGULATION.

14 (F) "PERSON" HAS THE MEANING STATED IN 12 C.F.R. § 1015.2 AND
15 ANY SUBSEQUENT REVISION OF THAT REGULATION.

16 **7-502.**

17 (A) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO OFFERS
18 MORTGAGE ASSISTANCE RELIEF SERVICE IN CONNECTION WITH A DWELLING IN
19 THE STATE SHALL COMPLY WITH 12 C.F.R. §§ 1015.1 THROUGH 1015.11 AND
20 ANY SUBSEQUENT REVISION OF THOSE REGULATIONS.

21 (B) A MORTGAGE ASSISTANCE RELIEF SERVICE PROVIDER WHO DOES
22 NOT COMPLY WITH SUBSECTION (A) OF THIS SECTION IS IN VIOLATION OF THIS
23 SUBTITLE.

24 **7-503.**

25 THE ATTORNEY EXEMPTIONS IN 12 C.F.R. § 1015.7 APPLY ONLY TO AN
26 INDIVIDUAL ADMITTED TO PRACTICE LAW IN THE STATE WHO PROVIDES
27 MORTGAGE ASSISTANCE RELIEF SERVICE AS PART OF THE INDIVIDUAL'S
28 REGULAR PRACTICE OF LAW.

29 **7-504.**

1 **FOR THE PURPOSE OF VENUE UNDER THIS SUBTITLE, A VIOLATION OF**
2 **THIS SUBTITLE SHALL BE CONSIDERED TO HAVE BEEN COMMITTED:**

3 **(1) IN THE COUNTY IN WHICH THE DWELLING IS LOCATED FOR**
4 **WHICH MORTGAGE ASSISTANCE RELIEF SERVICE IS BEING PROVIDED;**

5 **(2) IN THE COUNTY IN WHICH AN ACT WAS PERFORMED IN**
6 **FURTHERANCE OF THE VIOLATION; AND**

7 **(3) IN THE COUNTY IN WHICH A PERSON ALLEGED TO HAVE**
8 **VIOLATED THIS SUBTITLE HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF**
9 **THE VIOLATION.**

10 **7-505.**

11 **(A) THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT**
12 **A PERSON WHO HAS ENGAGED OR IS ENGAGING IN A VIOLATION OF THIS**
13 **SUBTITLE FROM ENGAGING OR CONTINUING TO ENGAGE IN THE VIOLATION.**

14 **(B) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY TO:**

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

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

20 **(3) APPOINT A RECEIVER IN CASE OF WILLFUL VIOLATION OF**
21 **THIS SUBTITLE.**

22 **(C) IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER THIS**
23 **SECTION, THE ATTORNEY GENERAL IS ENTITLED TO RECOVER THE COSTS OF**
24 **THE ACTION FOR THE USE OF THE STATE.**

25 **7-506.**

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

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

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

6 **(I) PREVENT THE USE BY A PERSON OF ANY PROHIBITED**
7 **PRACTICE;**

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

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

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

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

20 **(D) THE COMMISSIONER MAY:**

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

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

25 **(E) THE COMMISSIONER MAY COOPERATE IN THE INVESTIGATION AND**
26 **PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH THE OFFICE OF THE**
27 **ATTORNEY GENERAL, A STATE'S ATTORNEY, OR ANY OTHER UNIT OF LAW**
28 **ENFORCEMENT, OR WITH THE FEDERAL TRADE COMMISSION, THE CONSUMER**
29 **FINANCIAL PROTECTION BUREAU, OR THE U.S. DEPARTMENT OF HOUSING**
30 **AND URBAN DEVELOPMENT.**

31 **7-507.**

1 **(A) (1) IN ADDITION TO ANY ACTION AUTHORIZED UNDER THIS**
2 **SUBTITLE AND ANY OTHER ACTION OTHERWISE AUTHORIZED BY LAW, A PERSON**
3 **MAY BRING AN ACTION FOR DAMAGES INCURRED AS THE RESULT OF A**
4 **VIOLATION OF THIS SUBTITLE.**

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

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

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

11 **(B) A PERSON WHO BRINGS AN ACTION UNDER THIS SECTION AND WHO**
12 **IS AWARDED DAMAGES ALSO MAY SEEK, AND THE COURT MAY AWARD,**
13 **REASONABLE ATTORNEY'S FEES.**

14 **(C) IF THE COURT FINDS THAT THE DEFENDANT VIOLATED THIS**
15 **SUBTITLE, THE COURT MAY AWARD DAMAGES EQUAL TO THREE TIMES THE**
16 **AMOUNT OF ACTUAL DAMAGES.**

17 **7-508.**

18 **(A) THE ATTORNEY GENERAL AND THE STATE'S ATTORNEY ARE**
19 **AUTHORIZED TO CONDUCT THE CRIMINAL INVESTIGATION AND PROSECUTION**
20 **OF ALL CASES ALLEGING A VIOLATION OF THIS SUBTITLE.**

21 **(B) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY, AS**
22 **APPROPRIATE, SHALL REPORT PROMPTLY A CONVICTION UNDER THIS**
23 **SUBTITLE TO THE UNIT OF STATE GOVERNMENT THAT HAS REGULATORY**
24 **JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE PERSON CONVICTED.**

25 **7-509.**

26 **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**
27 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
28 **IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$10,000**
29 **OR BOTH.**

30 **(B) (1) A PERSON CONVICTED OF VIOLATING THIS SUBTITLE SHALL**
31 **PAY RESTITUTION TO ANY PERSON DAMAGED BY THE VIOLATION.**

1 **(2) RESTITUTION SHALL BE ORDERED IN ADDITION TO A FINE OR**
2 **IMPRISONMENT OR BOTH.**

3 **(C) EACH VIOLATION OF THIS SUBTITLE CONSTITUTES A SEPARATE**
4 **OFFENSE AND SHALL NOT MERGE WITH ANY OTHER CRIMES SET FORTH IN THE**
5 **CRIMINAL LAW ARTICLE.**

6 **(D) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO § 5-106(B)**
7 **OF THE COURTS ARTICLE.**

8 **7-510.**

9 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND MORTGAGE**
10 **ASSISTANCE RELIEF ACT.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That the authority of the
12 Commissioner of Financial Regulation to regulate mortgage assistance relief services
13 under Title 14, Subtitle 19 of the Commercial Law Article for any violation committed
14 after the effective date of this Act is superseded by this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 July 1, 2013.