

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 291 (Delegate Feldman)

Environmental Matters and Economic
Matters

Judicial Proceedings

Real Property - Maryland Mortgage Assistance Relief Services Act

This bill requires a mortgage assistance relief service provider providing mortgage assistance relief services in connection with a dwelling in the State to comply with specified federal regulations issued by the Consumer Financial Protection Bureau. The bill gives the Commissioner of Financial Regulation, the Attorney General, and State's Attorneys specified investigatory and enforcement authority over violations of the bill. The bill creates a private right of action for damages incurred as the result of a violation of the bill.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. The bill expresses legislative intent to implement in State law the consumer protections available under federal regulations governing mortgage assistance relief service providers. The bill does not have any effect on the authority of the Commissioner of Financial Regulation to regulate or take any enforcement action against mortgage assistance relief service providers.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: The bill's investigative, enforcement, and penalty provisions are not anticipated to have a material impact on State finances or operations. The creation of a private right of action for damages does not have a significant fiscal or operational impact on the District Court.

Local Effect: The bill's investigative, enforcement, and penalty provisions are not anticipated to have a material impact on local finances or operations. The creation of a private right of action for damages does not have a significant fiscal or operational impact on the circuit courts.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, “dwelling,” “mortgage assistance relief service” and “person” have the meaning stated in specified federal regulations. “Mortgage assistance relief service provider” has the meaning stated in specified federal regulations and also incorporates the meanings of other terms stated in the specified federal regulations to the extent that those terms are used to establish the meaning of “mortgage assistance relief service provider.” Additionally, the attorney exemptions in the specified federal regulations apply only to an individual admitted to practice law in the State who provides mortgage assistance relief services as part of the individual's regular practice of law.

The bill exempts, as of July 1, 2013, a mortgage assistance relief service provider regulated under the bill's provisions from the Maryland Credit Services Businesses Act.

The bill authorizes both the Commissioner of Financial Regulation and the Attorney General to seek an injunction to prohibit a person who has engaged or is engaging in a violation of the bill from engaging or continuing to engage in the violation. A 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 unlawfully acquired money or property, real or personal; or (3) appoint a receiver in case of willful violation of the bill's provisions. In any action brought by the commissioner or Attorney General, the commissioner or Attorney General is entitled to recover the costs of the action for the use of the State.

The Attorney General and the State's Attorney are authorized to conduct the criminal investigation and prosecution of all cases involving a violation of the bill. Either the Attorney General or the State's Attorney, as appropriate, must promptly report a conviction to the unit of State government with regulatory jurisdiction over the business activities of the person convicted.

The bill authorizes the Commissioner of Financial Regulation to:

- enforce the bill by exercising any of the investigative and enforcement powers granted under Title 2 of the Financial Institutions Article;

- enforce the bill by requiring a violator to take affirmative action to correct the violation, including the restitution of money or property to a person aggrieved by the violation;
- investigate violations of the bill and aid any other unit of State government that has regulatory jurisdiction over the violator's business activities; and
- cooperate in the investigation and prosecution of any violation with the Office of the Attorney General, a State's Attorney, or any other unit of law enforcement or with the Federal Trade Commission, the Consumer Financial Protection Bureau, or the U.S. Department of Housing and Urban Development.

Each violation of the bill is a misdemeanor and is punishable by up to three years imprisonment and/or a fine of up to \$10,000. A person who violates the bill's provisions must also pay restitution to any person damaged by the violation.

As noted, a person may bring an action for damages incurred as a result of a violation of the bill. The person may do so without having first exhausted the bill's administrative remedies and regardless of the status of an administrative action or a criminal prosecution, if any. The bill authorizes a person who is awarded damages in an action to also seek reasonable attorney's fees. If the court finds a violation, the court may award damages equal to three times the amount of actual damages.

The bill establishes that, for the purpose of venue, a violation of the bill is considered to have been committed in the county where the dwelling that received the mortgage assistance relief services is located, where an act was performed in furtherance of the violation, or where the alleged violator had control or possession of any unlawful proceeds.

Any violation of the bill is not subject to the general one-year statute of limitations for prosecution of a misdemeanor. As a result, the State may initiate a prosecution for this offense at any time.

Current Law:

Prohibited Representations: Under the federal regulations relating to mortgage assistance relief services, a mortgage assistance relief service provider may not represent in any advertising, marketing, or other offer that a consumer cannot or should not contact or communicate with his or her lender or servicer. The provider must also not (1) misrepresent any material aspect of any mortgage assistance relief service or (2) make a representation about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time of the representation, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

Disclosures: Federal regulations enumerate specific disclosures that must be placed in all general commercial communications, all consumer-specific commercial communications for any mortgage assistance relief service, or both. The disclosures must be made in a clear and prominent manner. If the communications are written, the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE” in bold-face type that is two-point type larger than the font size of the required disclosures. If the communications are oral or through other audible means, a specified statement must precede the disclosures.

Collection of Advance Payments: A mortgage assistance relief service provider may not (1) request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief; (2) fail to disclose a specified statement regarding the consumer’s ability to reject or accept the offer; or (3) fail to provide specified information from the consumer’s dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer’s current mortgage loan and the terms, conditions, and limitations associated with the loan if he or she accepts the dwelling loan holder’s or services’ offer.

Assisting and Facilitating: A person may not provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the person is engaged in a violation of the federal regulations.

Exemptions: An attorney is generally exempt from the regulations, except for the prohibition of collection of advance payments and related disclosures, if the attorney (1) provides mortgage assistance relief services as part of the practice of law; (2) is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer’s dwelling is located; and (3) complies with applicable state laws and regulations.

The attorney may also be exempt from the prohibition on collection of advance payments and related disclosures if the attorney (1) deposits any funds received from the consumer in a client trust account prior to performing legal services and (2) complies with all applicable state laws.

Miscellaneous Provisions in Federal Regulations: A person may not obtain, or attempt to obtain, a waiver from a consumer of any of the above requirements. A provider must keep specified records for a period of 24 months from the date the record is created. Any attorney general or other officer of a state authorized by the state to bring an action under the regulations may do so.

Applicable State Laws: Maryland’s Protecting Homeowners in Foreclosure Act (PHIFA) was enacted to address the growing problem of foreclosure “rescue” scams. It requires that “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period. PHIFA grants consumers a private right of action and the Attorney General and the commissioner enforcement authority.

The Maryland Credit Services Businesses Act regulates credit services businesses. A credit services business is any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that the person will sell, provide, or perform, any of the following services for money or other valuable consideration: (1) improving a consumer’s credit record, history, or rating or establishing a new credit file or record; (2) obtaining an extension of credit for the consumer; or (3) advising or assisting a consumer in the aforementioned acts.

Unfair and Deceptive Trade Practice: An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: SB 383 (Senator Raskin, *et al.*) - Judicial Proceedings and Finance.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; State's Attorneys' Association; Consumer Financial Protection Bureau; Department of Legislative Services

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