

New Laws

Emergency Legislation – Has already taken effect

Recordation of Instruments Securing Mortgage Loans and Foreclosure of Mortgages and Deeds of Trust on Residential Property (SB216)

-When recorded, a mortgage deed of trust, or any other instrument securing a mortgage loan on residential property shall contain:

- The name and Maryland loan originator license number of the person who originated the loan or an affidavit by the originator that they are exempt from licensing.
- The name and Maryland lender license number of the lender that made the loan or an affidavit by the lender that they are exempt from licensing.

-Notices of intent to foreclose shall include:

- The name and license number of the Maryland mortgage lender and mortgage originator, if applicable.

-An order to docket or a complaint to foreclose shall include:

- If applicable, the license number of the mortgage originator and the mortgage lender.

-This only applies to mortgages and foreclosure acts going forward, and only after regulations are adopted to include this information.

Protection of Homeowners in Foreclosure – Prohibition on Foreclosure Rescue Transactions – Enforcement (SB218)

This law alters the disclosures and duties of a foreclosure consultant. It also applies those disclosures and duties to a home that is 60 days in default on their mortgage, not necessarily in foreclosure. It also prohibits foreclosure consultants from engaging in, offering, promoting, promising, soliciting, participating in, assisting with, or carrying out a foreclosure rescue transaction.

This does not apply to a person licensed as a mortgage lender under Title 11, Subtitle 5 of the Financial Institutions Article while:

- Acting under the authority of that license in regard to a residence in default; AND
- Arranging for a refinancing of a mortgage loan for the residence in default

Maryland Mortgage Fraud Protection Act (SB217)

A person may not commit mortgage fraud. Mortgage fraud means any action made with the intent to defraud that involves:

1. Knowingly making, using or facilitating any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.
2. Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1)
3. Conspiring to violate any of the above provisions
4. Filing or causing to be filed in the land records any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation or omission.

The “Mortgage Lending Process” includes:

1. The solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan AND
2. The notarizing of any document in connection with a mortgage loan

“Documents” include:

1. Applications, appraisal reports, HUD-1 Settlement Statements, W-2 Forms, Verifications of Income or Employment, Bank Statements, Tax Returns, Payroll Stubs, and any required disclosure

The attorney general and state’s attorney may investigate and prosecute cases of mortgage fraud. If convicted, they must report it to the Commissioner of Financial Regulation. Individuals may also sue for damages incurred by mortgage fraud. This is a felony crime that is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 10 years, or both. If a violation involves a victim who is a “vulnerable adult” then fines may not exceed \$15,000 or imprisonment not exceeding 15 years, or both. If a violation involves two or more incidents of mortgage fraud, that involve two or more properties and have similar distinguishing characteristics, fines may not exceed \$100,000 or imprisonment not exceeding 20 years or both.

Non-Emergency Legislation Goes into effect on June 1, 2008

Credit Regulation – Mortgage Lending and Other Extensions of Credit

1. Prepayment penalties are banned for everyone except federally chartered banks.
2. All lenders must give due regard to a borrower's ability to repay the fully indexed rate of the loan, the taxes, and homeowners insurance before making a loan.
 - a. Fully indexed rate means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the lender, plus the margin that will apply after the expiration of an introductory interest rate.
 - b. Due regard to a borrower's ability to repay must include: Consideration of the borrower's debt to income ratio, including existing debts and other obligations AND verification of the borrower's gross monthly income and assets by review of third-party written documentation reasonably believed by the lender to be accurate and complete.
 - c. Acceptable third-party written documentation includes: The borrower's internal revenue service form W-2; a copy of the borrower's income tax return; payroll receipts; the records of a financial institution; or other third-party documents that provide reasonably reliable evidence of the borrower's income or assets.
3. The above requirements do not apply to loans through the FHA, VA, or Community Development Administration. (Note, that Fannie Mae and Freddie Mac are not included in this exemption)
4. Finder's fee disclosures now must contain a representation that the mortgage broker is acting as a broker and not a lender in the transaction.
5. None of the above applies to reverse mortgages.
6. The Commissioner of Financial Regulation may participate in the new multistate automated licensing system and adopt regulations to implement that system.
7. The Commissioner will be able to set all fees by regulation including license fees, renewal fees, and investigation fees. Fees shall be published and must be reasonable and produce sufficient funds to cover actual direct and indirect costs of regulating licensees.
8. The Commissioner shall deny an application for a license filed by:
 - a. An individual who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery.
 - b. An entity that has a director, officer, partner, member or owner of 10 percent or more of the entity who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery.
9. The surety bond required for applicants has increased to the following:
 - a. Where the aggregate principal amount of loans set forth the previous year was \$3,000,000 or less, the bond must be \$50,000
 - b. Where the aggregate principal amount of loans set forth the previous year was more than \$3,000,000 but not more than \$10,000,000 the bond must be \$100,000

- c. Where the aggregate principal amount of loans set forth the previous year was more than \$10,000,000 the bond must be \$150,000.
 - d. If an applicant files five or more original or renewal applications at the same time there must be a blanket surety bond for all licensed offices in the amount of \$750,000.
10. All applicants must maintain a minimum net worth through cash, a line of credit, other assets, or a combination of the three. If cash is used, the licensee shall submit to the Commissioner a bank letter verifying the account balance, the type of account in which the funds are held, and that the funds are not encumbered or hypothecated in any way. If a line of credit is used, the licensee shall submit to the Commissioner a copy of the line of credit agreement and promissory note. A line of credit may not be used toward satisfying more than 75% of the minimum net worth requirement. The net worth portion of the law does not take effect until January 1, 2009.
- a. In the case of an applicant that does not lend money secured by residential real property, the net worth requirement is \$25,000. (this one can't use a line of credit)
 - b. If an applicant lends not more than \$1,000,000 in the 12 months prior, the net worth requirement is \$25,000.
 - c. If an applicant lends more than \$1,000,000 but not more than \$5,000,000, in the 12 months prior, the net worth requirement is \$50,000.
 - d. If an applicant lends more than \$5,000,000 but not more than \$10,000,000 in the 12 months prior, the net worth requirement is \$100,000.
 - e. If an applicant lends more than \$10,000,000 in the 12 months prior, the net worth requirement is \$250,000.
11. A license expires on the second anniversary of its date of issue and may be renewed at least 30 days before its expiration. Each license will include the name of the licensee and the name of the licensee's employer. Unless the licensee notifies the Commissioner in writing in advance of a change in the licensee's name or employer and pays an amendment fee, and individual may not act as a mortgage originator under a name or for an employer that is different from that listed on their license.