

MONTGOMERY COUNTY
COUNCIL BILL 36-04
Commission on Human Rights – Discrimination in Housing – Amendments

Council Bill 36-04 amends Montgomery County’s statutes dealing with discrimination in real estate. The stated purpose of the Bill is to “prevent predatory lending practices” which are directed at households because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, source of income, sexual orientation, or age. The Bill identifies specific practices as predatory. The Bill also removes the \$5,000 cap on damages which may be awarded by the Montgomery County Commission on Human Rights and amends the existing provisions dealing with discrimination by lending institutions by making them applicable to not just a lending institution, but any person, thus including brokers.

The specific lending practices which would violate the Bill are:

1. Steering, which means restricting or attempting to restrict a person’s choices because of factors other than a person’s income and credit level in connection with seeking, negotiating, buying, or renting a dwelling, including seeking a mortgage loan for a dwelling. Steering includes: (1) discouraging a person from a particular mortgage loan with more favorable terms; (2) directing a person to or away from a housing or mortgage loan product, program, or service with more favorable terms; (3) offering more limited mortgage loan opportunities or less favorable mortgage loan terms; or (4) delaying a mortgage loan application or approval;
2. Originating a predatory mortgage loan, as determined by evaluating one or more of the following factors: if the loan product is suitable for the borrower based on income and credit levels; if the loan product includes the financing of single premium credit insurance, excessive points, fees, prepayment penalties or a mandatory arbitration clause; or if the mortgage does not provide a tangible net benefit to the borrower; or
3. Engaging in any practice described above by adopting, applying, or using a policy or practice that operates to discriminate without a compelling business justification and without establishing that there is no less discriminatory way to advance the business justification with a less discriminatory effect.

Under this legislation, every aspect of the mortgage loan process will be subject to attack before the Human Rights Commission. The prohibition against “steering” would subject each and every mortgage to an after-the-fact judgment as to whether a borrower’s choices were somehow restricted by the lender, whether the borrower was discouraged in some way from seeking a particular loan, whether there were more favorable loans available, or whether there was some delay. Would lenders have no choice but to have a borrower apply for every type of

loan the lender offers in order to avoid being accused of steering? Would lenders, in order to avoid liability, refuse to give any advice or any direction to a potential borrower as to what loan product might be best suited to the borrower or what rate and fee package might the borrower qualify for? Will lenders be deemed to have discriminated because there was a delay in the application or approval process? How would a lender judge what terms are deemed more or less favorable for a particular borrower?

Equally troubling is the determination of what constitutes a predatory mortgage loan. Will the Human Rights Commission now be in a position of judging whether particular loan products are “suitable” for borrowers? State law already prohibits the financing of single premium credit insurance for what it defines as “high cost loans.” Under this Bill, no borrower in Montgomery County, regardless of desire, sophistication or financial wherewithal will be permitted to finance single premium credit insurance. Who will determine what constitutes “excessive points.” What fees will be permissible? Who will judge, and under what standards, whether a mortgage loan provides a “tangible net benefit to the borrower.” What process would a lender have to go through in order to be assured it has not violated Section 27-12(c)(3)?

Section 27-12 already prohibits, in the broadest possible terms, a lending institution from engaging in discrimination. Because discrimination in lending is already prohibited, what then will be the impact of this Bill? The impact will be that legitimate mortgage lenders will have no choice but to either cease or dramatically curtail their activities in Montgomery County. On the other hand, if there are lenders who are presently discriminating in the making of mortgage loans, they will continue to do so. Those lenders ignore the prohibitions in current law, and there is no reason to believe they will not ignore the prohibitions in the new statute.

Why would a legitimate lender choose to loan in Montgomery County and risk running afoul of this Bill when it can make loans in Howard County, Prince George’s County, or any other part of the State and not be subject to the vague standards in this law. Imagine a lender with money available to make mortgage loans. One property is in Clarksville in Howard County and the other property is in Silver Spring in Montgomery County. The borrower’s income is the same, the property appraises for the same value and each borrower’s credit history is the same. With the risk that this Bill imposes, which borrower is likely to get the loan?

Lenders make loans at rates and with charges that are commensurate with the risk taken. If they are not able to do so, they cannot and simply will not make the loans. If because of legislation like Montgomery County Council Bill 36-04, in addition to the economic risks of making a loan, lenders will risk unlimited fines, unlimited attorneys’ fees, etc., based on vague standards that they cannot understand or control, they simply will not make the loans. National and Statewide lenders will avoid making loans in Montgomery County because they will have to comply with a law in Montgomery County that is different from the law in the rest of the State.

Background information supporting the Bill includes a study entitled *Overview of Home Lending Patterns in Montgomery County – 1999 – 2000* prepared by Calvin Bradford in February 2004. The study is based on Home Mortgage Disclosure Act (HMDA) data that is four to six years old and that does not reflect current mortgage lending patterns in Montgomery County which indicate that FHA loans have dramatically declined even as total loans have significantly

increased. The study asserts that FHA loans are inherently bad and inaccurately classifies them in the same category as sub-prime loans. FHA loans are offered through HUD at very competitive interest rates and with little or no down payment requirements which makes them particularly helpful for first-time home buyers. Additionally, HMDA only tracks income data for loan applicants and none of the other factors that lenders consider when extending credit to a potential borrower, e.g. ability to repay, debt to income ratio, credit history, etc. The lending industry takes exception to conclusions that widespread predatory lending exists based on this study.

The State of Maryland has already enacted legislation to curtail abuses associated with high cost loans. For these high cost loans, financing of single premium credit insurance is prohibited, the loans cannot be made without a reasonable expectation of repayment and loan applicants must be informed of the availability of homebuyer/mortgage lending counseling. This law became effective on October 1, 2002.

The banking industry supports strict enforcement of existing laws and increased opportunities for the education of consumers to help them spot predatory practices. The Maryland General Assembly continues to enact new laws on mortgage lending practices and has given the State Commissioner of Financial Regulation vastly broader powers to deal with lenders that violate the law. All federal agencies involved in mortgage lending are taking significant actions to curtail predatory practices. We need to give those laws and programs a chance to work. Montgomery County needs to be part of a Statewide and federal solution to this problem. Establishing Montgomery County as an island where legitimate lenders are at unreasonable risk will only result in credit not being available to Montgomery County citizens.