

SENATE BILL 392

12

7lr1819

By: ~~Senator Hershey~~ Senators Hershey, Astle, Benson, Feldman, Jennings, Klausmeier, Mathias, Middleton, Oaks, Reilly, and Rosapepe

Introduced and read first time: January 26, 2017

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 28, 2017

CHAPTER _____

1 AN ACT concerning

2 **Credit Regulation – ~~Revolving and~~ Closed End Credit Loans – Elimination of**
3 **Duplicative Disclosures**

4 FOR the purpose of providing that a certain disclosure provided by a lender to a borrower
5 in compliance with a certain federal law shall satisfy certain disclosure requirements
6 under certain provisions of law governing certain ~~revolving credit and~~ closed end
7 credit loans secured by a first mortgage or first deed of trust on residential real
8 property; requiring the Commissioner of Financial Regulation to monitor certain
9 federal requirements and notify the Governor and the General Assembly if the
10 Commissioner makes a certain determination; and generally relating to mortgage
11 lending disclosure requirements for ~~revolving credit and~~ closed end credit loans.

12 BY repealing and reenacting, with amendments,
13 Article – Commercial Law
14 Section 12-125, ~~12-922~~, and 12-1022
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2016 Supplement)

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

19 **Article – Commercial Law**

20 12-125.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(a) (1) In this section the following words have the meanings indicated.

(2) “Borrower” means a person who makes an application for a loan secured by a first mortgage or first deed of trust on a 1– to 4–family home to be occupied by the borrower as the borrower’s primary residence.

(3) “Commitment” means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.

(4) “Financing agreement” means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(i) Results in or is secured by a first mortgage or a first deed of trust on a 1– to 4–family home to be occupied by the borrower; and

(ii) Is offered or extended to the borrower.

(5) (i) “Lender” means a person subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

(ii) “Lender” does not include a person exempt from licensure under § 11–502 of the Financial Institutions Article.

(6) (i) “Loan application” means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.

(ii) “Loan application” does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on a 1– to 4–family home to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

(2) The financing agreement shall provide:

(i) The term and principal amount of the loan;

(ii) An explanation of the type of mortgage loan being offered;

(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(iv) The points, if any, to be paid by the borrower or the seller, or both; and

(v) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.

(4) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.37 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.

(c) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:

(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(ii) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(3) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.38 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.

(d) If a lender fails to comply with the requirements of this section, the lender shall be subject to the penalties set forth in § 11-523 of the Financial Institutions Article.

(e) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(f) This section may not be construed to exempt a lender from the provisions of §§ 12-119 through 12-122 of this subtitle.

~~12-922~~

~~(a) (1) In this section the following words have the meanings indicated:~~

~~(2) "Borrower" means a consumer borrower who makes an application for a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower as the borrower's primary residence.~~

~~(3) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.~~

~~(4) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:~~

~~(i) Results in or is secured by a first mortgage or a first deed of trust on residential real property to be occupied by the borrower; and~~

~~(ii) Is offered or extended to the borrower.~~

~~(5) (i) "Lender" means a credit grantor subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.~~

~~(ii) "Lender" does not include a credit grantor exempt from licensing under § 11-502 of the Financial Institutions Article.~~

~~(6) (i) "Loan application" means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.~~

~~(ii) "Loan application" does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.~~

~~(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.~~

~~(2) The financing agreement shall provide:~~

~~(i) The term and principal amount of the loan;~~

~~(ii) An explanation of the type of mortgage loan being offered;~~

~~(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;~~

~~(iv) The points, if any, to be paid by the borrower or the seller, or both; and~~

~~(v) The term during which the financing agreement remains in effect.~~

~~(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.~~

~~(4) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.37 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.~~

~~(e) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:~~

~~(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and~~

~~(ii) A restatement of all the remaining unchanged provisions of the financing agreement.~~

~~(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.~~

~~(3) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.38 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.~~

~~(d) (1) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.~~

~~(2) The penalties set out under § 12-918 of this subtitle do not apply to any violation of this section.~~

~~12-1022.~~

(a) (1) In this section the following words have the meanings indicated.

(2) “Borrower” means a consumer borrower who makes an application for a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower as the borrower’s primary residence.

(3) “Commitment” means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.

(4) “Financing agreement” means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(i) Results in or is secured by a first mortgage or a first deed of trust on residential real property to be occupied by the borrower; and

(ii) Is offered or extended to the borrower.

(5) (i) “Lender” means a credit grantor subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

(ii) “Lender” does not include a credit grantor exempt from licensing under § 11–502 of the Financial Institutions Article.

(6) (i) “Loan application” means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.

(ii) “Loan application” does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

(2) The financing agreement shall provide:

(i) The term and principal amount of the loan;

(ii) An explanation of the type of mortgage loan being offered;

(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(iv) The points, if any, to be paid by the borrower or the seller, or both; and

(v) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.

(4) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.37 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.

(c) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:

(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(ii) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(3) A DISCLOSURE PROVIDED BY A LENDER TO A BORROWER IN COMPLIANCE WITH 12 C.F.R. § 1026.38 SHALL SATISFY THE REQUIREMENTS OF THIS SUBSECTION.

(d) If a lender fails to comply with the requirements of this section, the lender shall be subject to the penalties set forth in § 11-523 of the Financial Institutions Article.

(e) (1) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(2) The penalties set out under § 12-1018 of this subtitle do not apply to any violation of this section.

(f) This section may not be construed to exempt a lender from the provisions of §§ 12-1027 and 12-1028 of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That the Commissioner of Financial Regulation shall:

1 (1) monitor the requirements implemented by the federal Consumer
2 Financial Protection Bureau relating to disclosures provided to borrowers of mortgage loans
3 under the “Know Before You Owe” mortgage disclosure rule, including:

4 (i) the Loan Estimate Disclosure under 12 C.F.R. § 1026.37, which
5 includes information on closing and loan costs and the terms of a loan and must be provided
6 to a borrower within 3 days after application for a mortgage loan; and

7 (ii) the Closing Disclosure under 12 C.F.R. § 1026.38, which includes
8 information that binds a lender to the loan terms and must be provided to a borrower at
9 least 3 days before the closing of a mortgage loan; and

10 (2) notify the Governor and, in accordance with § 2–1246 of the State
11 Government Article, the General Assembly if the Commissioner determines that the
12 federal disclosure requirements described in item (1) of this section are proposed to be
13 modified or have been modified to be less stringent or less consumer friendly.

14 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.