HOUSE BILL 1150

By: Delegate Queen Introduced and read first time: February 10, 2023 Assigned to: Economic Matters Committee Report: Favorable House action: Adopted Read second time: March 10, 2023 CHAPTER AN ACT concerning Commercial Law and Financial Institutions – Credit Regulation – Shared **Appreciation Agreements** FOR the purpose of making certain shared appreciation agreements subject to the Maryland Mortgage Lender Law and other provisions of law that regulate certain loans of single extensions of closed end credit and revolving credit plans; authorizing the Commissioner of Financial Regulation to adopt certain regulations regarding the enforcement of and compliance with provisions of law that regulate shared appreciation agreements; and generally relating to credit regulation and shared appreciation agreements. BY repealing and reenacting, without amendments, Article – Commercial Law Section 12–901(a) and 12–1001(a) Annotated Code of Maryland (2013 Replacement Volume and 2022 Supplement) BY repealing and reenacting, with amendments, Article – Commercial Law Section 12-901(g) and (g-1) through (l), 12-913.1, 12-922, 12-1001(j) and (k-1)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

(2013 Replacement Volume and 2022 Supplement)

[Brackets] indicate matter deleted from existing law.

through (m), and 12–1013

<u>Underlining</u> indicates amendments to bill.

Annotated Code of Maryland

I2, I1

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BY adding to

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



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[(i)] (J)

(1)

1 2 3 4	Article – Commercial Law Section 12–901(n), 12–926, 12–1001(o), and 12–1030 Annotated Code of Maryland (2013 Replacement Volume and 2022 Supplement)			
5 6 7 8 9	BY repealing and reenacting, without amendments, Article – Financial Institutions Section 11–501(a) Annotated Code of Maryland (2020 Replacement Volume and 2022 Supplement)			
10 11 12 13 14	BY repealing and reenacting, with amendments, Article – Financial Institutions Section 11–501(h–1) through (q) Annotated Code of Maryland (2020 Replacement Volume and 2022 Supplement)			
15 16 17 18 19	BY adding to Article – Financial Institutions Section 11–501(r) Annotated Code of Maryland (2020 Replacement Volume and 2022 Supplement)			
20 21	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND That the Laws of Maryland read as follows:			
22	Article - Commercial Law			
23	12–901.			
24	(a) In this subtitle the following words have the meanings indicated.			
25 26	(g) (1) "Loan" means a cash advance to be paid to or for the account of the borrower.			
27 28				
29 30	[(g-1)] (H) "Mobile home" has the meaning stated in § 11-501 of the Financial Institutions Article.			
31 32	[(h)] (I) "Nonconsumer borrower" means any borrower other than a consumer borrower.			

"Outstanding unpaid indebtedness" means on any day the total

amount of purchases and loans charged to the borrower's account under the plan which is

outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account that day and deducting the aggregate amount of any payments and credits applied to the account that day.

- (2) If the agreement governing the plan permits, "outstanding unpaid indebtedness" may include the amount of any interest, finance charges, and additional charges, including late or delinquency charges, that have accrued in the account and are unpaid at the end of the day.
- 8 **[(j)] (K)** "Purchase" means an extension of credit for a purchase of real or personal, tangible or intangible property, or an extension of credit for services, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value, including a charitable contribution.
- [(k)] (L) "Residential real property" means owner—occupied real property having a dwelling on it designated principally as a residence with accommodations for not more than four families.
- [(l)] (M) "Revolving credit plan" or "plan" means a plan that contemplates the extension of credit under an account governed by an agreement between a credit grantor and a borrower under which:
- 18 (1) The credit grantor permits the borrower and, if the agreement 19 governing the plan permits, persons acting on behalf of or with authorization from the 20 borrower to make purchases or obtain loans from time to time;
- 21 (2) The amounts of purchases and loans are charged to the borrower's 22 account;
- 23 (3) The borrower is required to pay the credit grantor the amounts of all purchases and loans charged to the borrower's account under the plan but has the privilege of paying amounts due from time to time as agreed; and
- 26 (4) Interest or finance charges may be charged and collected by the credit grantor from time to time on the amounts due under the plan.
- 28 (N) "SHARED APPRECIATION AGREEMENT" HAS THE MEANING STATED IN § 29 11–501 OF THE FINANCIAL INSTITUTIONS ARTICLE.
- 30 12-913.1.

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31 (a) (1) On or after October 1, 1993, a credit grantor may at its option elect to 32 offer a plan to any borrower either pursuant to this subtitle or as otherwise permitted by 33 applicable law.

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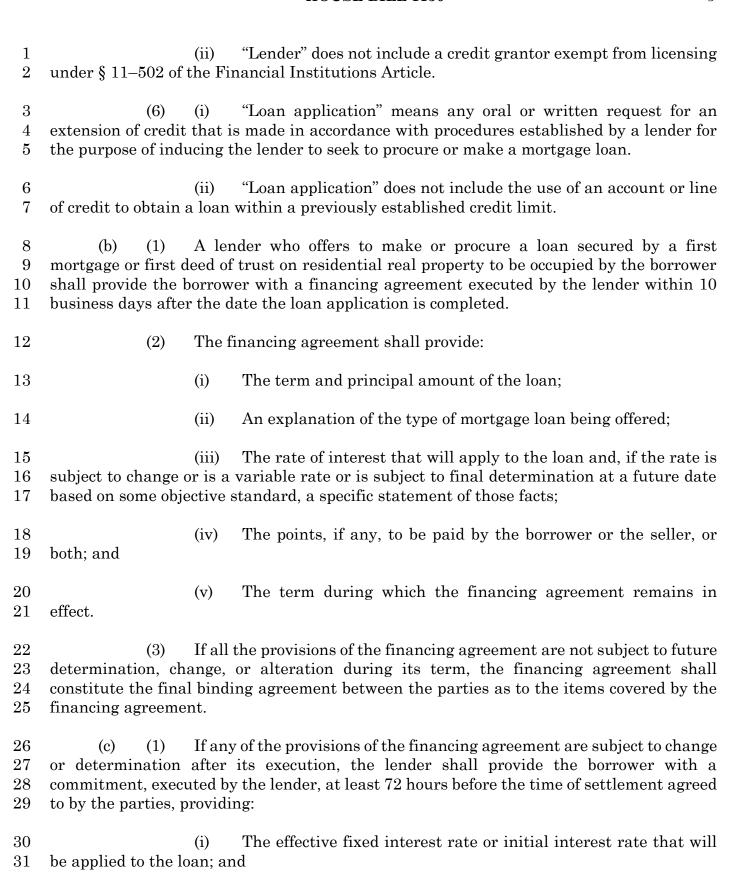
- 4 1 In order for a plan to be established under and governed by this subtitle, (2) 2 a credit grantor shall make a written election to that effect in the agreement governing the 3 plan. (b) 4 (1) If a credit grantor elects in accordance with this section to establish a 5 plan under this subtitle, the provisions of Subtitle 1, 3, 4, 5, 6, or 10 of this title do not apply 6 to the plan. 7 If a person fails to elect in accordance with this section to establish a 8 plan under this subtitle, the provisions of this subtitle do not apply. 9 (C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A LOAN SHALL BE SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, WHETHER OR NOT 10 **ELECTED, IF THE LOAN:** 11 12 **(1)** IS A SHARED APPRECIATION AGREEMENT; AND 13 **(2)** ALLOWS THE BORROWER TO REPAY ADVANCES AND HAVE ANY 14 REPAID AMOUNTS SUBSEQUENTLY READVANCED TO THE BORROWER. 15 12 - 922.16 In this section the following words have the meanings indicated. (a) (1) "Borrower" means a consumer borrower who makes an application for 17 a loan secured by a first mortgage or first deed of trust on residential real property to be 18 19 occupied by the borrower as the borrower's primary residence. 20 "Commitment" means a written, specific, binding agreement between a (3)21borrower and a lender which sets forth the terms of a loan being extended to the borrower. 22"Financing agreement" means a written agreement between a borrower **(4)** and a lender [which sets] THAT: 2324**SETS** forth the terms of a purchase money loan or a refinancing of an existing loan that: 25 26 (i)] 1. Results in or is secured by a first mortgage or a first deed
- 29 (II)IS A SHARED APPRECIATION AGREEMENT.

[(ii)] **2.**

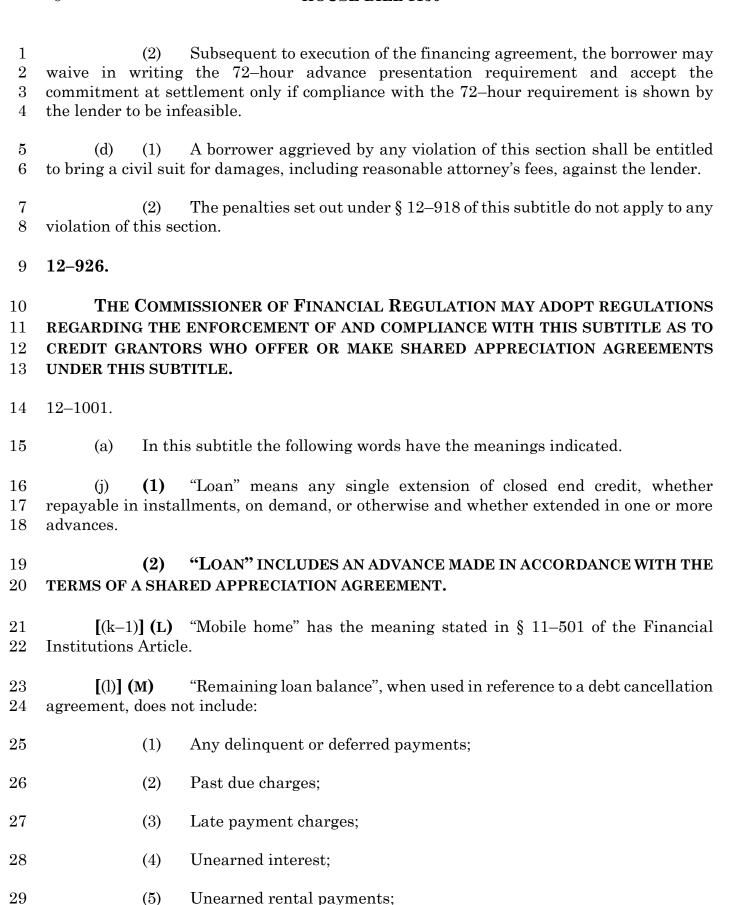
of trust on residential real property to be occupied by the borrower; and

"Lender" means a credit grantor subject to the licensing 30 (5)(i) requirements of Title 11, Subtitle 5 of the Financial Institutions Article. 31

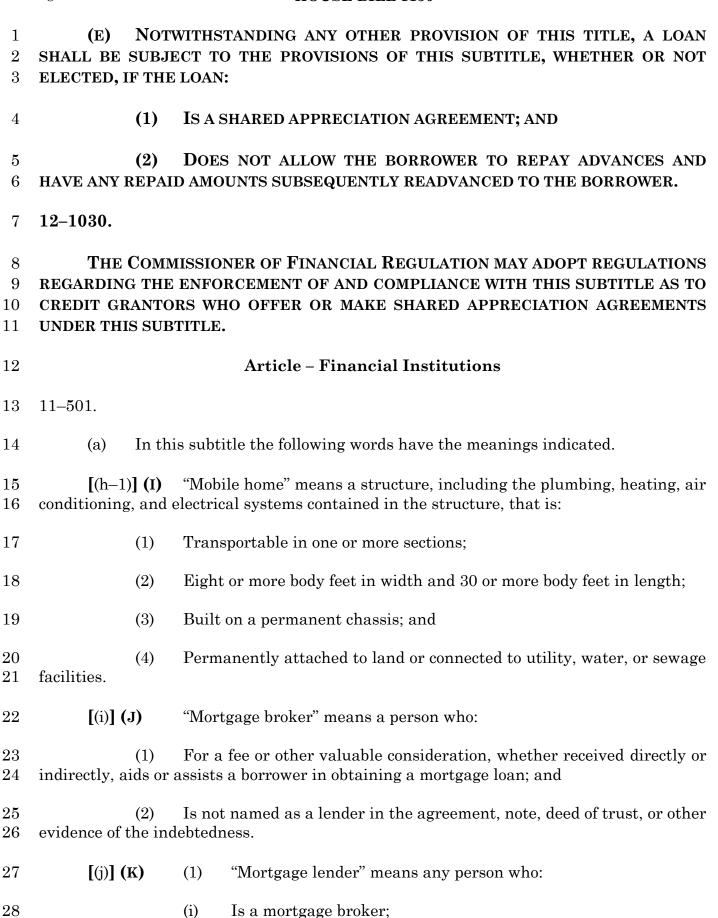
Is offered or extended to the borrower; OR



32 (ii) A restatement of all the remaining unchanged provisions of the 33 financing agreement.



- 1 (6) The portion of any financed taxes or charges, including charges for credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and mechanical repair contracts, actually refunded to the borrower or credited as a reduction to the loan balance; or
- 5 (7) By agreement of the parties, the amount of any primary insurance 6 deductible.
- 7 **[(m)] (N)** "Residential real property" means owner—occupied real property having 8 a dwelling on it designated principally as a residence with accommodations for not more 9 than four families.
- 10 (O) "SHARED APPRECIATION AGREEMENT" HAS THE MEANING STATED IN § 11—501 OF THE FINANCIAL INSTITUTIONS ARTICLE.
- 12 12-1013.
- 13 (a) Unless otherwise provided under the express terms of the agreement, note, or 14 other evidence of the extension of closed end credit, the provisions of Subtitle 1, 3, 4, 5, 6, 15 or 9 of this title do not apply to an extension of closed end credit if:
- 16 (1) The agreement, note, or other evidence of the extension of credit is made 17 before October 1, 1993; and
- 18 (2) The extension of credit is made under this subtitle before October 1, 19 1993.
- 20 (b) For the purposes of subsection (a) of this section, an extension of credit is made 21 under this subtitle if:
- 22 (1) The credit grantor has made a written election to do so in the 23 agreement, note, or other evidence of the extension of credit; or
- 24 (2) The agreement, note, or other evidence of the extension of credit is made 25 pursuant to the provisions of this subtitle.
- 26 (c) For the purposes of subsection (a) of this section, if there is no written election 27 to extend credit under this subtitle, the burden of proof is on the credit grantor to show the 28 agreement, note, or other evidence of the extension of credit was made pursuant to this 29 subtitle.
- 30 (d) Any agreement, note, or other evidence of an extension of credit made before 31 October 1, 1993 is not subject to § 12–1013.2 of this subtitle.



1	(ii)	Makes a mortgage loan to any person; or
2	(iii)	Is a mortgage servicer.
3	(2) "Mor	gage lender" does not include:
4 5		A financial institution that accepts deposits and is regulated le 5, or Title 6 of this article;
6	(ii)	The Federal Home Loan Mortgage Corporation;
7	(iii)	The Federal National Mortgage Association;
8	(iv)	The Government National Mortgage Association;
9 10 11	portion of a mortgage lo	Any person engaged exclusively in the acquisition of all or any oan under any federal, State, or local governmental program of ; or
12 13	` '	An affiliated insurance producer-mortgage loan originator 1 of this title.
14 15 16	definition of "mortgage	"Mortgage lending business" means the activities set forth in the ender" in subsection [(j)] (K) of this section which require that ler this subtitle.
17 18		gage lending business" includes the making or procuring of by a dwelling or residential real estate located outside Maryland.
19 20 21 22	or household use that consensual security inter	"Mortgage loan" means any loan primarily for personal, family, is secured by a mortgage, deed of trust, or other equivalent rest on a dwelling or residential real estate on which a dwelling is to be constructed.
23 24		RTGAGE LOAN" INCLUDES A LOAN IN WHICH FUNDS ARE A SHARED APPRECIATION AGREEMENT.
25 26	= : ; = : ;	tgage loan originator" has the meaning stated in § 11-601 of this
27	[(n)] (O) "Morr	gage servicer" means a person who:
28 29	` ,	ges in whole or in part in the business of servicing mortgage loans

$\frac{1}{2}$	(2) from borrowers fo	Collects or otherwise receives payments on mortgage loans directly r distribution to any other person.		
3 4	[(o)] (P) "Person" means a natural person, corporation, limited liability company, partnership, business trust, statutory trust, or association.			
5 6	[(p)] (Q) "Residential real estate" means any owner-occupied real property located in Maryland on which a dwelling is constructed or intended to be constructed.			
7 8 9 10 11 12	(R) "SHARED APPRECIATION AGREEMENT" MEANS A WRITING EVIDENCING A TRANSACTION OR ANY OPTION, FUTURE, OR ANY OTHER DERIVATIVE BETWEEN A PERSON AND A CONSUMER WHERE THE CONSUMER RECEIVES MONEY OR ANY OTHER ITEM OF VALUE IN EXCHANGE FOR AN INTEREST OR FUTURE INTEREST IN A DWELLING OR RESIDENTIAL REAL ESTATE, OR A FUTURE OBLIGATION TO REPAY A SUM ON THE OCCURRENCE OF AN EVENT SUCH AS:			
13	(1)	THE TRANSFER OF OWNERSHIP;		
14	(2)	A REPAYMENT MATURITY DATE;		
15	(3)	THE DEATH OF THE CONSUMER; OR		
16	(4)	ANY OTHER EVENT CONTEMPLATED BY THE WRITING.		
17	[(q)] (S)	"State" means the State of Maryland.		
18 19	SECTION 2 1, 2023.	2. AND BE IT FURTHER ENACTED, That this Act shall take effect July		
	Approved:			
		Governor.		
		Speaker of the House of Delegates.		
		President of the Senate.		