

HOUSE BILL 1150

I2, I1

3lr1371

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 _____

1 AN ACT concerning

2 **Commercial Law and Financial Institutions – Credit Regulation – Shared**
3 **Appreciation Agreements**

4 FOR the purpose of making certain shared appreciation agreements subject to the
5 Maryland Mortgage Lender Law and other provisions of law that regulate certain
6 loans of single extensions of closed end credit and revolving credit plans; authorizing
7 the Commissioner of Financial Regulation to adopt certain regulations regarding the
8 enforcement of and compliance with provisions of law that regulate shared
9 appreciation agreements; and generally relating to credit regulation and shared
10 appreciation agreements.

11 BY repealing and reenacting, without amendments,
12 Article – Commercial Law
13 Section 12–901(a) and 12–1001(a)
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2022 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Commercial Law
18 Section 12–901(g) and (g–1) through (l), 12–913.1, 12–922, 12–1001(j) and (k–1)
19 through (m), and 12–1013
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2022 Supplement)

22 BY adding to

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.



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)

BY repealing and reenacting, without amendments,

Article – Financial Institutions

Section 11–501(a)

Annotated Code of Maryland

(2020 Replacement Volume and 2022 Supplement)

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)

BY adding to

Article – Financial Institutions

Section 11–501(r)

Annotated Code of Maryland

(2020 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Commercial Law

12–901.

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

(g) **(1)** “Loan” means a cash advance to be paid to or for the account of the borrower.

(2) “LOAN” INCLUDES AN ADVANCE MADE IN ACCORDANCE WITH THE TERMS OF A SHARED APPRECIATION AGREEMENT.

[(g–1)] (H) “Mobile home” has the meaning stated in § 11–501 of the Financial Institutions Article.

[(h)] (I) “Nonconsumer borrower” means any borrower other than a consumer borrower.

[(i)] (J) **(1)** “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

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

4 (2) If the agreement governing the plan permits, “outstanding unpaid
5 indebtedness” may include the amount of any interest, finance charges, and additional
6 charges, including late or delinquency charges, that have accrued in the account and are
7 unpaid at the end of the day.

8 **[(j)] (K)** “Purchase” means an extension of credit for a purchase of real or
9 personal, tangible or intangible property, or an extension of credit for services, licenses,
10 taxes, official fees, fines, private or governmental obligations, or any other thing of value,
11 including a charitable contribution.

12 **[(k)] (L)** “Residential real property” means owner-occupied real property having
13 a dwelling on it designated principally as a residence with accommodations for not more
14 than four families.

15 **[(l)] (M)** “Revolving credit plan” or “plan” means a plan that contemplates the
16 extension of credit under an account governed by an agreement between a credit grantor
17 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
24 purchases and loans charged to the borrower’s account under the plan but has the privilege
25 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
27 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.

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.

(2) In order for a plan to be established under and governed by this subtitle, a credit grantor shall make a written election to that effect in the agreement governing the plan.

(b) (1) If a credit grantor elects in accordance with this section to establish a plan under this subtitle, the provisions of Subtitle 1, 3, 4, 5, 6, or 10 of this title do not apply to the plan.

(2) If a person fails to elect in accordance with this section to establish a plan under this subtitle, the provisions of this subtitle do not apply.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A LOAN SHALL BE SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, WHETHER OR NOT ELECTED, IF THE LOAN:

(1) IS A SHARED APPRECIATION AGREEMENT; AND

(2) ALLOWS THE BORROWER TO REPAY ADVANCES AND HAVE ANY REPAID AMOUNTS SUBSEQUENTLY READVANCED TO THE BORROWER.

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] **THAT:**

(I) SETS forth the terms of a purchase money loan or a refinancing of an existing loan that:

[(i)] 1. 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)] 2. Is offered or extended to the borrower; **OR**

(II) IS A SHARED APPRECIATION AGREEMENT.

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

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

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

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

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

12 (2) The financing agreement shall provide:

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

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

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

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

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

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

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

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

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

(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.

12-926.

THE COMMISSIONER OF FINANCIAL REGULATION MAY ADOPT REGULATIONS REGARDING THE ENFORCEMENT OF AND COMPLIANCE WITH THIS SUBTITLE AS TO CREDIT GRANTORS WHO OFFER OR MAKE SHARED APPRECIATION AGREEMENTS UNDER THIS SUBTITLE.

12-1001.

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

(j) (1) "Loan" means any single extension of closed end credit, whether repayable in installments, on demand, or otherwise and whether extended in one or more advances.

(2) "LOAN" INCLUDES AN ADVANCE MADE IN ACCORDANCE WITH THE TERMS OF A SHARED APPRECIATION AGREEMENT.

[(k-1)] (L) "Mobile home" has the meaning stated in § 11-501 of the Financial Institutions Article.

[(l)] (M) "Remaining loan balance", when used in reference to a debt cancellation agreement, does not include:

(1) Any delinquent or deferred payments;

(2) Past due charges;

(3) Late payment charges;

(4) Unearned interest;

(5) Unearned rental payments;

(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

(7) By agreement of the parties, the amount of any primary insurance deductible.

~~[(m)]~~ (N) “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.

(O) “SHARED APPRECIATION AGREEMENT” HAS THE MEANING STATED IN § 11–501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

12–1013.

(a) Unless otherwise provided under the express terms of the agreement, note, or other evidence of the extension of closed end credit, the provisions of Subtitle 1, 3, 4, 5, 6, or 9 of this title do not apply to an extension of closed end credit if:

(1) The agreement, note, or other evidence of the extension of credit is made before October 1, 1993; and

(2) The extension of credit is made under this subtitle before October 1, 1993.

(b) For the purposes of subsection (a) of this section, an extension of credit is made under this subtitle if:

(1) The credit grantor has made a written election to do so in the agreement, note, or other evidence of the extension of credit; or

(2) The agreement, note, or other evidence of the extension of credit is made pursuant to the provisions of this subtitle.

(c) For the purposes of subsection (a) of this section, if there is no written election to extend credit under this subtitle, the burden of proof is on the credit grantor to show the agreement, note, or other evidence of the extension of credit was made pursuant to this subtitle.

(d) Any agreement, note, or other evidence of an extension of credit made before October 1, 1993 is not subject to § 12–1013.2 of this subtitle.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A LOAN SHALL BE SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, WHETHER OR NOT ELECTED, IF THE LOAN:

(1) IS A SHARED APPRECIATION AGREEMENT; AND

(2) DOES NOT ALLOW THE BORROWER TO REPAY ADVANCES AND HAVE ANY REPAID AMOUNTS SUBSEQUENTLY READVANCED TO THE BORROWER.

12-1030.

THE COMMISSIONER OF FINANCIAL REGULATION MAY ADOPT REGULATIONS REGARDING THE ENFORCEMENT OF AND COMPLIANCE WITH THIS SUBTITLE AS TO CREDIT GRANTORS WHO OFFER OR MAKE SHARED APPRECIATION AGREEMENTS UNDER THIS SUBTITLE.

Article – Financial Institutions

11-501.

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

[(h-1)] (I) “Mobile home” means a structure, including the plumbing, heating, air conditioning, and electrical systems contained in the structure, that is:

(1) Transportable in one or more sections;

(2) Eight or more body feet in width and 30 or more body feet in length;

(3) Built on a permanent chassis; and

(4) Permanently attached to land or connected to utility, water, or sewage facilities.

[(i)] (J) “Mortgage broker” means a person who:

(1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and

(2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of the indebtedness.

[(j)] (K) (1) “Mortgage lender” means any person who:

(i) Is a mortgage broker;

1 (ii) Makes a mortgage loan to any person; or

2 (iii) Is a mortgage servicer.

3 (2) “Mortgage lender” does not include:

4 (i) A financial institution that accepts deposits and is regulated
5 under Title 3, Title 4, Title 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 (v) Any person engaged exclusively in the acquisition of all or any
10 portion of a mortgage loan under any federal, State, or local governmental program of
11 mortgage loan purchases; or

12 (vi) An affiliated insurance producer–mortgage loan originator
13 licensed under § 11–603.1 of this title.

14 **[(k)] (L)** (1) “Mortgage lending business” means the activities set forth in the
15 definition of “mortgage lender” in subsection **[(j)] (K)** of this section which require that
16 person to be licensed under this subtitle.

17 (2) “Mortgage lending business” includes the making or procuring of
18 mortgage loans secured by a dwelling or residential real estate located outside Maryland.

19 **[(l)] (M)** **(1)** “Mortgage loan” means any loan primarily for personal, family,
20 or household use that is secured by a mortgage, deed of trust, or other equivalent
21 consensual security interest on a dwelling or residential real estate on which a dwelling is
22 constructed or intended to be constructed.

23 **(2) “MORTGAGE LOAN” INCLUDES A LOAN IN WHICH FUNDS ARE**
24 **ADVANCED THROUGH A SHARED APPRECIATION AGREEMENT.**

25 **[(m)] (N)** “Mortgage loan originator” has the meaning stated in § 11–601 of this
26 title.

27 **[(n)] (O)** “Mortgage servicer” means a person who:

28 (1) Engages in whole or in part in the business of servicing mortgage loans
29 for others; or

(2) Collects or otherwise receives payments on mortgage loans directly from borrowers for distribution to any other person.

[(o)] (P) "Person" means a natural person, corporation, limited liability company, partnership, business trust, statutory trust, or association.

[(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.

(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:

(1) THE TRANSFER OF OWNERSHIP;

(2) A REPAYMENT MATURITY DATE;

(3) THE DEATH OF THE CONSUMER; OR

(4) ANY OTHER EVENT CONTEMPLATED BY THE WRITING.

[(q)] (S) "State" means the State of Maryland.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.