

SENATE BILL 465

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3lr2733
CF HB 522

By: **Senator Klausmeier**

Introduced and read first time: January 30, 2013

Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Refinancing of First Mortgage Loans – Subordination**

3 FOR the purpose of providing that a secondary mortgage loan shall retain the same
4 subordinate position with respect to a mortgage or deed of trust securing a
5 refinanced loan without requiring the agreement of the lender of the secondary
6 mortgage loan to the refinancing under certain circumstances; providing that a
7 secondary lien shall retain the same subordinate position with respect to a
8 mortgage or deed of trust securing a refinanced loan without requiring the
9 agreement of the credit grantor of the loan secured by the secondary lien to the
10 refinancing under certain circumstances; providing for the application of this
11 Act; defining certain terms; and generally relating to subordination in the
12 refinancing of first mortgage loans.

13 BY repealing and reenacting, without amendments,
14 Article – Commercial Law
15 Section 12–401(a), (b), (c), (e), (h), and (i) and 12–1001(g), (j), and (m)
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2012 Supplement)

18 BY adding to
19 Article – Commercial Law
20 Section 12–408.1 and 12–1010.1
21 Annotated Code of Maryland
22 (2005 Replacement Volume and 2012 Supplement)

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

25 **Article – Commercial Law**

26 12–401.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (b) “Lender” means:

3 (1) A licensee; or

4 (2) A person who makes a secondary mortgage loan but is exempt
5 expressly from the licensing requirements of the Maryland Mortgage Lender Law.

6 (c) “Licensee” means a person who is licensed under the Maryland Mortgage
7 Lender Law.

8 (e) “Loan” means a secondary mortgage loan.

9 (h) “Person” includes an individual, corporation, business trust, statutory
10 trust, estate, trust, partnership, association, two or more persons having a joint or
11 common interest, or any other legal or commercial entity.

12 (i) (1) “Secondary mortgage loan” means a loan or deferred purchase
13 price secured in whole or in part by a mortgage, deed of trust, security agreement, or
14 other lien on real property located in the State, which property:

15 (i) Is subject to the lien of one or more prior encumbrances,
16 except a ground rent or other leasehold interest; and

17 (ii) Has a dwelling on it designed principally as a residence with
18 accommodations for not more than four families.

19 (2) “Secondary mortgage loan” does not include:

20 (i) A loan to any corporation unless the lender required the
21 borrower to incorporate as a condition for obtaining the loan; or

22 (ii) A commercial loan of more than \$75,000, as defined in §
23 12–101(c) of this title.

24 (3) If a commercial loan of \$75,000 or less is made in the name of an
25 individual, secured by owner-occupied residential real property and not to a business
26 or commercial organization, the mortgage lender, as defined by the provisions of §
27 11–501 of the Financial Institutions Article, shall document independent evidence that
28 the borrower is seeking funds for a legitimate commercial enterprise before the lender
29 grants any loan for that purpose. An affidavit is not by itself evidence of a commercial
30 loan. However, if the borrower is seeking funds to start a business and has not yet
31 incorporated or prepared documentation of proof of ownership of a commercial
32 enterprise, an affidavit by itself is sufficient if it states the purpose for which the
33 proceeds are to be used and the nature of the business conducted by the borrower.

1 12-408.1.

2 (A) IN THIS SECTION, "FIRST MORTGAGE LOAN" MEANS A DEBT
3 SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INSTRUMENT
4 ON REAL PROPERTY LOCATED IN THE STATE CONTAINING A DWELLING
5 DESIGNED PRINCIPALLY AS A RESIDENCE WITH ACCOMMODATIONS FOR NOT
6 MORE THAN FOUR FAMILIES THAT HAS FIRST PRIORITY OVER ONE OR MORE
7 OTHER MORTGAGES, DEEDS OF TRUST, LIENS, OR ENCUMBRANCES ON THE
8 REAL PROPERTY.

9 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A FIRST
10 MORTGAGE LOAN IS REFINANCED, A SECONDARY MORTGAGE LOAN SECURED BY
11 THE SAME REAL PROPERTY SHALL RETAIN THE SAME SUBORDINATE POSITION
12 WITH RESPECT TO THE MORTGAGE OR DEED OF TRUST SECURING THE
13 REFINANCED LOAN AS THE SECONDARY MORTGAGE LOAN HAD WITH RESPECT
14 TO THE MORTGAGE OR DEED OF TRUST SECURING THE FIRST MORTGAGE LOAN
15 BEFORE THE REFINANCING, WITHOUT REQUIRING THE AGREEMENT OF THE
16 LENDER OF THE SECONDARY MORTGAGE LOAN TO THE REFINANCING, IF:

17 (1) THE SECONDARY MORTGAGE LOAN SECURES A PRINCIPAL
18 AMOUNT NOT EXCEEDING \$150,000;

19 (2) THE PRINCIPAL AMOUNT OF THE REFINANCED LOAN DOES
20 NOT EXCEED THE UNPAID OUTSTANDING PRINCIPAL BALANCE SECURED BY THE
21 FIRST MORTGAGE LOAN BEFORE THE REFINANCING PLUS AN AMOUNT TO PAY
22 LOAN CLOSING COSTS NOT EXCEEDING \$5,000;

23 (3) THE INTEREST RATE OF THE REFINANCED LOAN AT THE TIME
24 THE REFINANCED MORTGAGE OR DEED OF TRUST IS RECORDED DOES NOT
25 EXCEED THE INTEREST RATE OF THE FIRST MORTGAGE LOAN IMMEDIATELY
26 BEFORE THE REFINANCING; AND

27 (4) THE REFINANCED MORTGAGE OR DEED OF TRUST INCLUDES,
28 ON THE FIRST PAGE IN BOLD OR CAPITALIZED LETTERS IN AT LEAST 12 POINT
29 FONT, A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

30 "THIS IS A REFINANCE OF A (MORTGAGE, DEED OF TRUST, OR OTHER
31 SECURITY INSTRUMENT) RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT
32 COURT FOR (NAME OF JURISDICTION) IN DEED BOOK (NUMBER), PAGE
33 (NUMBER), IN THE ORIGINAL PRINCIPAL AMOUNT OF (DOLLAR AMOUNT) AND
34 WITH THE UNPAID OUTSTANDING PRINCIPAL AMOUNT BALANCE OF (DOLLAR
35 AMOUNT).".

1 12-1001.

2 (g) (1) "Credit grantor" means any individual, corporation, business trust,
3 statutory trust, estate, trust, partnership, association, two or more persons having a
4 joint or common interest, or any other legal or commercial entity making a loan or
5 other extension of credit under this subtitle which is incorporated, chartered, or
6 licensed pursuant to State or federal law, the lending operations of which are subject
7 to supervision, examination, and regulation by a State or federal agency or which is
8 licensed under Title 12, Subtitle 4 of the Financial Institutions Article or is a retailer.

9 (2) "Credit grantor" includes:

10 (i) Any bank, trust company, depository institution, or savings
11 bank having a branch in this State;

12 (ii) A person not required to be licensed under this subtitle, who
13 is exempt from the licensing provisions of Title 11, Subtitle 5 of the Financial
14 Institutions Article, who makes a loan or extension of credit under this subtitle
15 secured by a secondary mortgage on residential real property; and

16 (iii) Any person who acquires or obtains the assignment of an
17 agreement for an extension of credit made under this subtitle.

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

21 (m) "Residential real property" means owner-occupied real property having a
22 dwelling on it designated principally as a residence with accommodations for not more
23 than four families.

24 **12-1010.1.**

25 **(A) IN THIS SECTION, "FIRST MORTGAGE LOAN" MEANS A LOAN**
26 **SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INSTRUMENT**
27 **ON RESIDENTIAL REAL PROPERTY THAT HAS FIRST PRIORITY OVER ONE OR**
28 **MORE OTHER MORTGAGES, DEEDS OF TRUST, LIENS, OR ENCUMBRANCES ON**
29 **THE REAL PROPERTY.**

30 **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A FIRST**
31 **MORTGAGE LOAN IS REFINANCED, A SECONDARY LIEN ON THE SAME**
32 **RESIDENTIAL REAL PROPERTY SHALL RETAIN THE SAME SUBORDINATE**
33 **POSITION WITH RESPECT TO THE MORTGAGE OR DEED OF TRUST SECURING THE**
34 **REFINANCED LOAN AS THE SECONDARY LIEN HAD WITH RESPECT TO THE**
35 **MORTGAGE OR DEED OF TRUST SECURING THE FIRST MORTGAGE LOAN BEFORE**

1 THE REFINANCING, WITHOUT REQUIRING THE AGREEMENT OF THE CREDIT
2 GRANTOR OF THE LOAN SECURED BY THE SECONDARY LIEN TO THE
3 REFINANCING, IF:

4 (1) THE PRINCIPAL AMOUNT SECURED BY THE SECONDARY LIEN
5 DOES NOT EXCEED \$150,000;

6 (2) THE PRINCIPAL AMOUNT OF THE REFINANCED LOAN DOES
7 NOT EXCEED THE UNPAID OUTSTANDING PRINCIPAL BALANCE SECURED BY THE
8 FIRST MORTGAGE LOAN BEFORE THE REFINANCING PLUS AN AMOUNT TO PAY
9 LOAN CLOSING COSTS NOT EXCEEDING \$5,000;

10 (3) THE INTEREST RATE OF THE REFINANCED LOAN AT THE TIME
11 THE REFINANCED MORTGAGE OR DEED OF TRUST IS RECORDED DOES NOT
12 EXCEED THE INTEREST RATE OF THE FIRST MORTGAGE LOAN IMMEDIATELY
13 BEFORE THE REFINANCING; AND

14 (4) THE REFINANCED MORTGAGE OR DEED OF TRUST INCLUDES,
15 ON THE FIRST PAGE IN BOLD OR CAPITALIZED LETTERS IN AT LEAST 12 POINT
16 FONT, A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

17 “THIS IS A REFINANCE OF A (MORTGAGE, DEED OF TRUST, OR OTHER
18 SECURITY INSTRUMENT) RECORDED IN THE CLERK’S OFFICE OF THE CIRCUIT
19 COURT FOR (NAME OF JURISDICTION) IN DEED BOOK (NUMBER), PAGE
20 (NUMBER), IN THE ORIGINAL PRINCIPAL AMOUNT OF (DOLLAR AMOUNT) AND
21 WITH THE UNPAID OUTSTANDING PRINCIPAL AMOUNT BALANCE OF (DOLLAR
22 AMOUNT).”.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
24 construed to apply only prospectively and may not be applied or interpreted to have
25 any effect on or application to any refinancing of a first mortgage loan that is recorded
26 before the effective date of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2013.