



Bankers Advisory

COMPLIANCE MONITOR

May 23, 2013

Maryland Enacts Mortgage Assistance Relief Services Act

By Paul McSheffrey, Esq.

The Maryland General Assembly has recently enacted the Maryland Mortgage Assistance Relief Services Act with the passage of House Bill 291. The Bill repeals and adds to various Maryland Commercial and Real Property laws. The intent of the Maryland General Assembly was to provide within State law, the consumer protections available under the federal regulations governing mortgage assistance relief service providers. The Act becomes effective on July 1, 2013.

The Maryland Mortgage Assistance Relief Services Act is found at Title 7, Subtitle 5 of the Real Property Article in Sections 7-501 through 7-511. The Act uses the definition of "mortgage assistance relief service" found in the federal regulation 12 C.F.R. § 1015.2. Under the federal regulation a mortgage assistance relief service provider is a person that for compensation provides any mortgage assistance relief service. Some examples of the broad definition of mortgage assistance relief service include:

- service to prevent foreclosure on a home,
- negotiating changes to terms in a dwelling loan,
- obtaining a forbearance on a dwelling loan,
- negotiating extensions of time to cure defaults on a dwelling loan; and
- negotiating a short sale of a dwelling or other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

The federal regulations govern activity of these service providers in several ways including misrepresentations about their services in § 1015.3, required disclosures in § 1015.4, the prohibition on collection of advance payments in § 1015.5, and recordkeeping requirements in § 1015.9. A mortgage assistance relief service provider that provides such services within the State of Maryland is in violation of the Act if they do not comply with those federal regulations. Section 7-504 provides that a violation of the Act is considered to have been committed in the county where the dwelling related to the violation is located, the county where an act was performed related to the violation, and in the county where a person alleged to have violated the Act had control of proceeds from the violation.

Actions Brought by the Maryland Attorney General, State's Attorney, and The Commissioner of Financial Regulation

Sections 7-505 and 7-506 provide that the Maryland Attorney General and Commissioner of Financial Regulation "Commissioner" may seek an injunction to prohibit a person from engaging in violations of this Act. The Court may enter any order to prevent violations, restore to a person any lost money or property resulting from violations, or appoint a receiver in cases of willful violation. Both sections allow for recovery of the costs of bringing the action.

Under 7-508, The State Attorney General is authorized to bring criminal investigations and prosecutions related to violations of the Act. A person who violates the Act is guilty of a misdemeanor and subject to up to three years in prison and \$10,000 in fines. Additionally, the Commissioner may use any of its powers found under § 2-113 through 2-116 of The Financial Institutions Article. The Commissioner may enforce these laws by requiring a violator to pay restitution to a person harmed by the violation.

Private Right of Action for People Injured by Violations

The Act provides for a private right of action for people injured by mortgage assistance relief providers that are not in compliance with the new law. Section 7-507 provides that a person may seek damages incurred through such violation. Under this section, the person may seek reasonable attorney's fees resulting from bringing the action. Additionally, the Court may award damages equal to three times the actual damages.

Other Amendments to Maryland Law

House Bill 291 also amends Section 14-1901 of the Maryland Commercial law by excluding "Mortgage Assistance Relief Service Provider" from the definition of "Credit services business". Additionally, the new Act classifies violations as an "unfair or deceptive trade practice" as defined in the Maryland Consumer Protection Act found in Title 13 of The Commercial Law Article.

Conclusion

The Maryland Mortgage Assistance Relief Services Act aligns the consumer protections available in Maryland with those available under federal law. Effective July 1, 2013, private persons harmed, the Commissioner, and the Attorney General may bring actions against those who are not in compliance with the federal regulations governing mortgage assistance relief service providers. For more detailed information regarding the federal requirements, the regulations can be read by following the link below.

<http://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol8/CFR-2012-title12-vol8-sec1015-2/content-detail.html>



Paul McSheffrey, Esq. is Associate Counsel and Regulatory Compliance Specialist at Bankers Advisory, Inc. He is a graduate of Northeastern University and earned his Juris Doctor at the New England School of Law. Paul is admitted to the Bar in Massachusetts and New York. Paul can be reached at paul@bankersadvisory.com