



State Hot Topics (East): Maryland

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Regulation





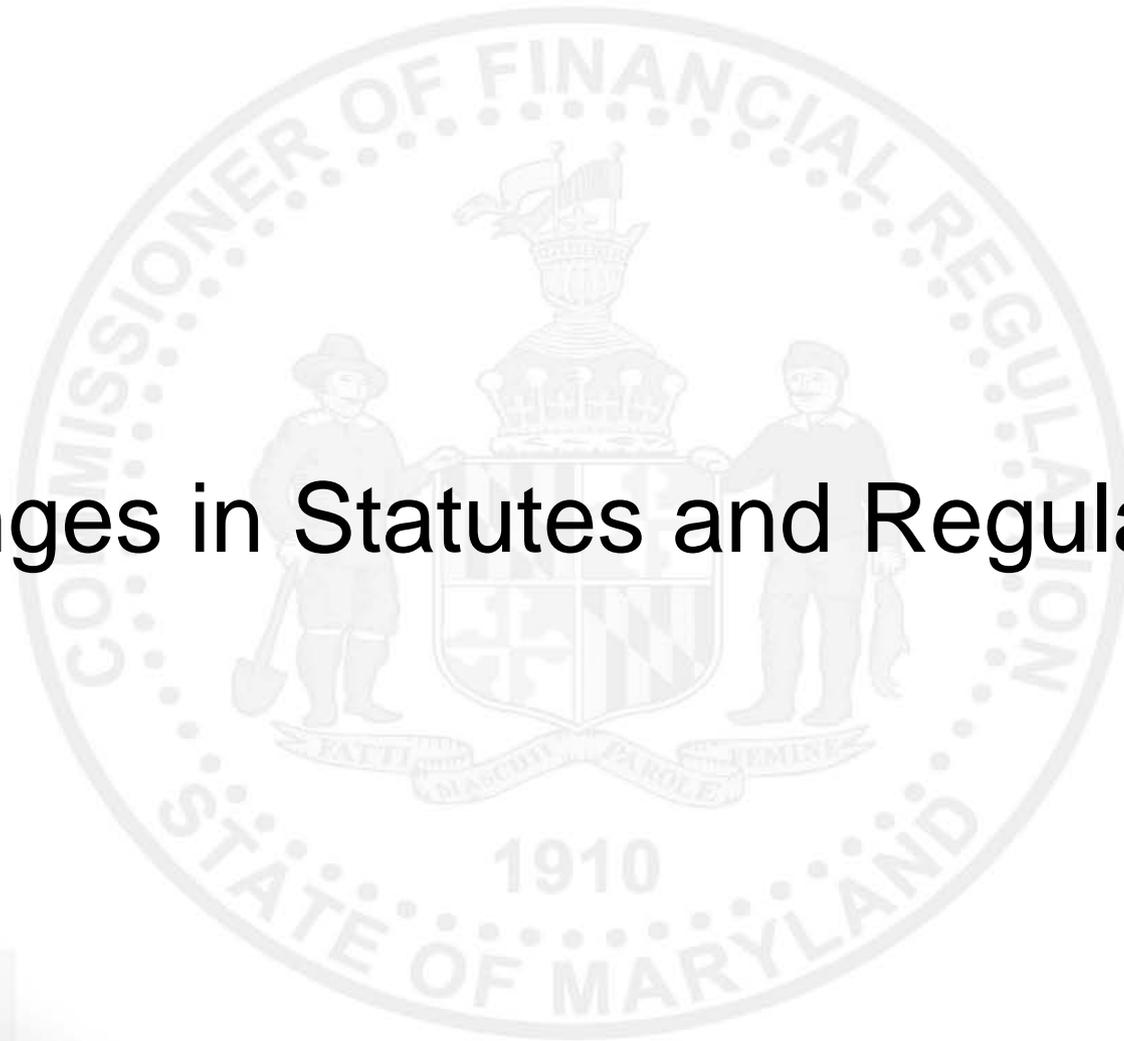
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Hot Topics (East): Maryland

Changes in Statutes and Regulations





New Statutes: Financing Agreement and Commitment

Know Before You Owe (“KBYO”) disclosures now provide all information, and all protection, provided by the Maryland Financing Agreement and Commitment, making the Maryland disclosures duplicative.

SB 392

Effective July 1, 2017, the Loan Estimate satisfies the requirement for a Financing Agreement and the Closing Disclosure satisfies the requirement for a Commitment.

Separate Financing Agreements and Commitments are still required for first lien mortgage loans not subject to KBYO requirements.



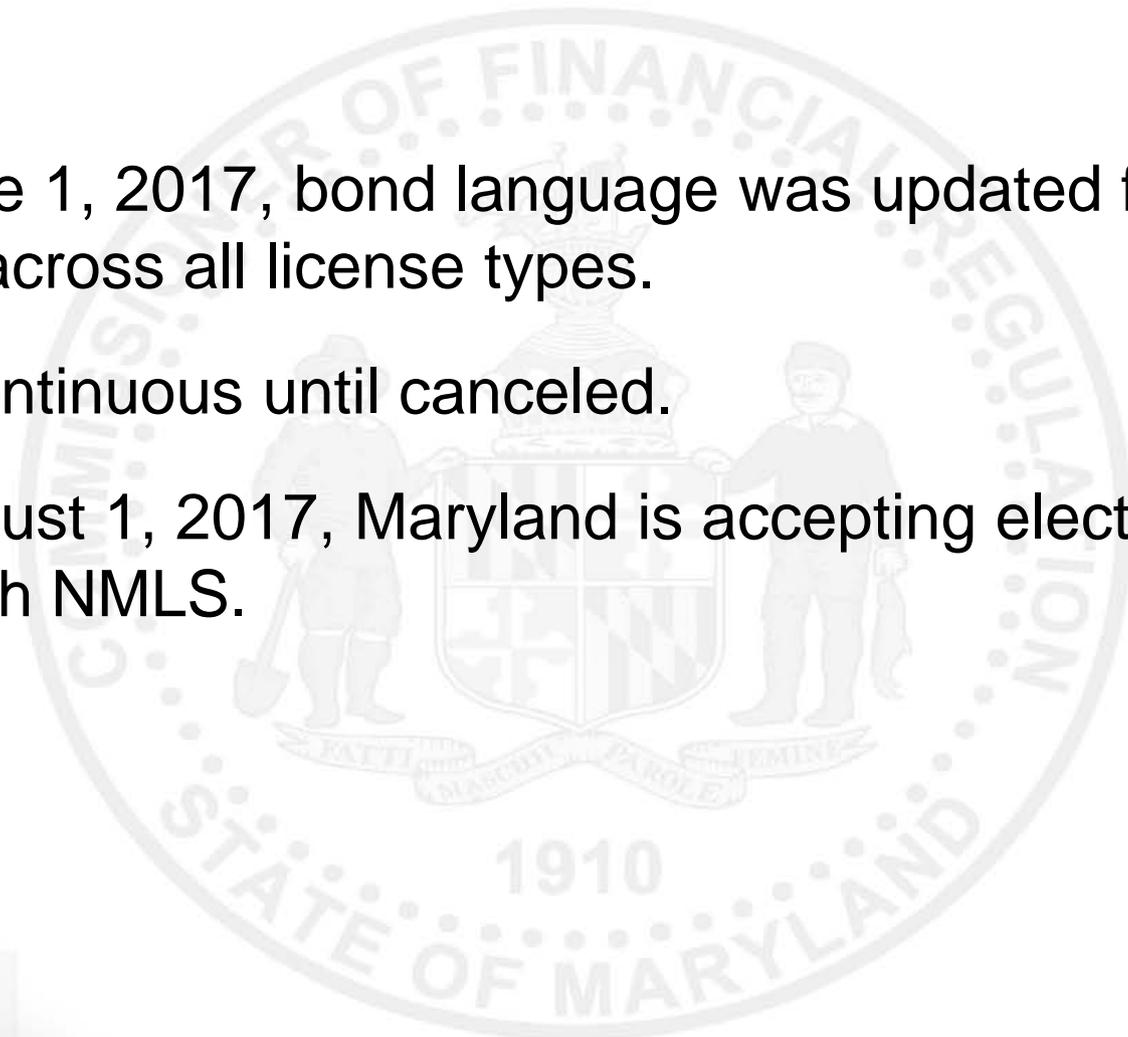
New Statutes: Surety Bonds

SB 924

Effective June 1, 2017, bond language was updated for consistency across all license types.

Bonds are continuous until canceled.

Effective August 1, 2017, Maryland is accepting electronic surety bonds through NMLS.





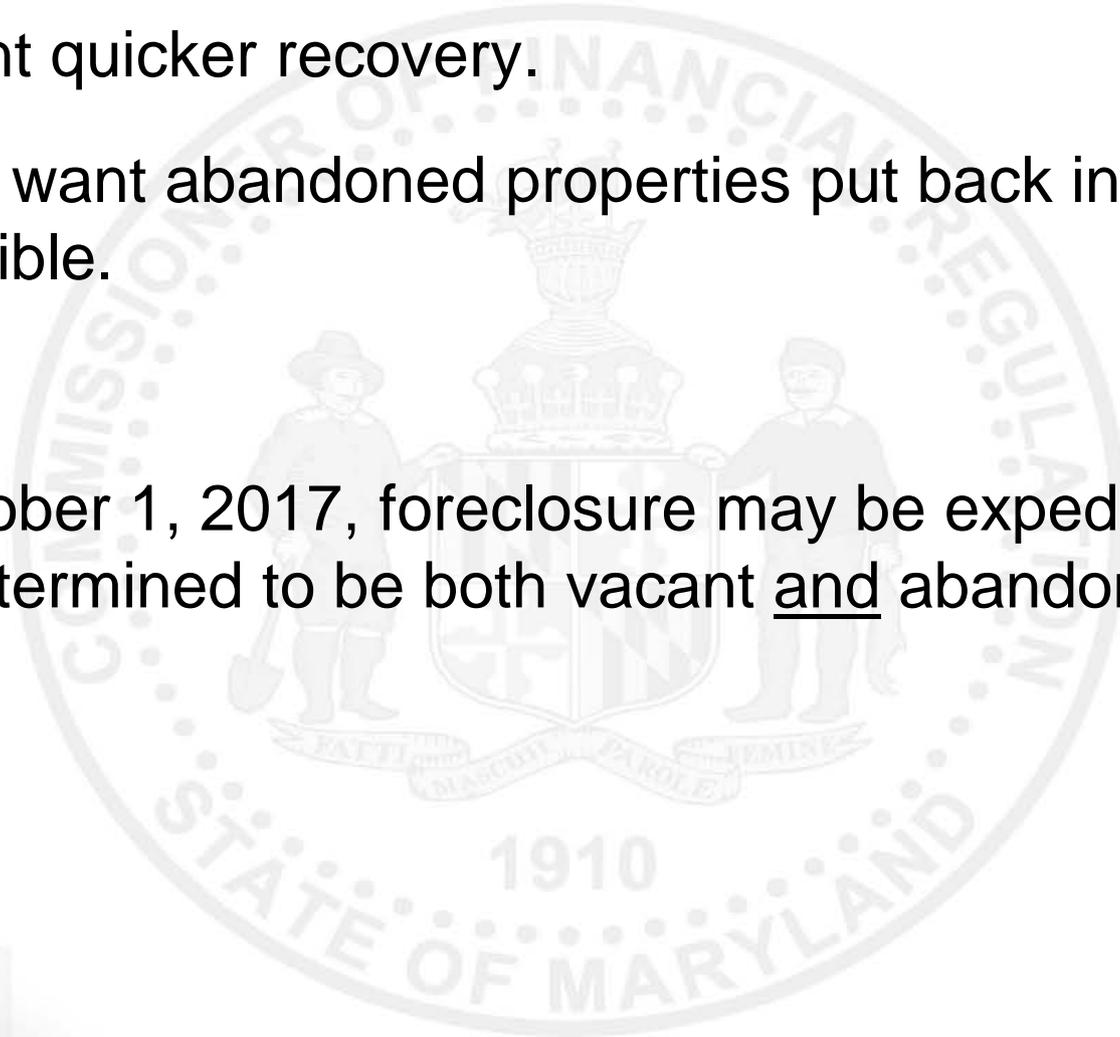
New Statutes: Expedited Foreclosure on Vacant and Abandoned Properties

Investors want quicker recovery.

Communities want abandoned properties put back into use as soon as possible.

SB 1033

Effective October 1, 2017, foreclosure may be expedited on properties determined to be both vacant and abandoned.





New Statutes: Expedited Foreclosure on Vacant and Abandoned Properties

Secured party may petition Circuit Court for leave to immediately commence foreclosure if the mortgage loan is at least 120 days delinquent, and the secured party provides the court with specific evidence to indicate that a property is vacant and has been abandoned. Statute provides a list of conditions that qualify as evidence; at least three of the specified conditions must be present.

If the Circuit Court finds that the property is vacant and abandoned, the secured party will not be required to provide a Notice of Intent to Foreclose, to file Loss Mitigation Affidavits, or to offer the borrower mediation.

Note that expedited foreclosure is permitted only after a determination that a property is both vacant and abandoned. **Vacancy alone is not sufficient grounds for expedited foreclosure.**



New Statutes: Consumer Protection

HB 974

Effective January 1, 2018

Expands the Maryland Personal Information Protection Act (“MPIPA”) to impose additional duties on a business to protect an individual’s personal information, including requiring a business to take reasonable steps to protect the information of employees or former employees when a business is destroying records that contain personal information.

The bill alters or expands definitions of “encrypted,” “health information,” and “personal information.” The bill requires a business to take specified actions in the event that an individual’s personal information is compromised and the compromise permits access by another to the individual’s email account. A violation of the bill’s provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (“MCPA”).



New Statutes: Consumer Protection

HB 1134/SB 884 (Ch. 18)

Maryland Financial Consumer Protection Commission

Commission created to assess any changes in Federal statutes and regulations relating to consumer protection in financial services, and provide recommendations for ensuring that protections are maintained for Maryland consumers.

The Commissioner of Financial Regulation is a member of the Commission.

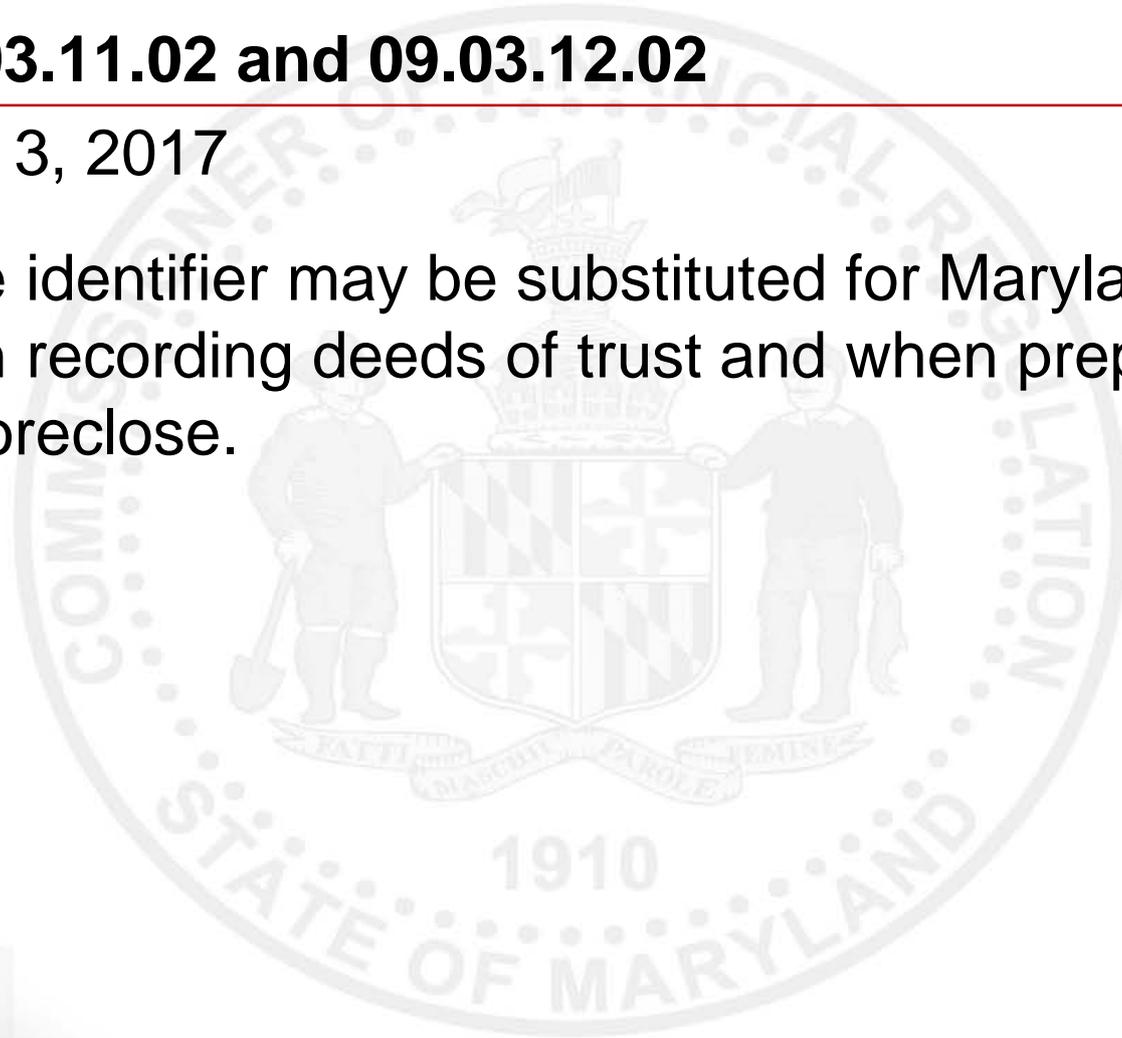


New Regulations: Deed of Trust Recordation and NOI's

COMAR 09.03.11.02 and 09.03.12.02

Effective July 3, 2017

NMLS unique identifier may be substituted for Maryland license number when recording deeds of trust and when preparing Notices of Intent to Foreclose.





New Regulations: Mortgage Loan Originators

COMAR 09.03.09.07

Effective July 31, 2017

Maryland Mortgage Lender Law prohibits the conduct of “mortgage loan business” at any location different from the address on the lender’s license.

New regulation specifies that a loan originator may receive a loan application or offer or negotiate loan terms at a location other than the employer’s licensed location under certain circumstances.



New Regulations: Mortgage Loan Originators

MLO may take an application or negotiate terms and conditions at a location other than the employer's licensed location if the MLO and/or the lender DO NOT:

- Own or lease the location for the purpose of conducting mortgage lending business;
- Suggest through signage that applications are taken at the location;
- Advertise that applications are taken at the location;
- Maintain dedicated work space, telephone, or internet service for the purpose of conducting mortgage lending business at the location;
- Receive mail relating to mortgage lending business at the location; or
- Store books or records relating to the mortgage lending business at the location.



New Regulations: Mortgage Loan Originators

MLO could meet with a client at an outside location if the client requests.

MLO could work from home if simply making calls or working remotely through employer's system. BUT if the employer pays for a phone line or for internet service, or the employee sets up a dedicated "home office" specifically for conducting mortgage business, or recommends that clients come to his/her home, or puts up a sign, or receives mail from clients at his/her home, the location must be licensed.

Note the "record storage" provision:

If the MLO is saving any "records" to his/her own computer, or keeping any paper records at home, records are being stored at that location, and the location must be licensed.



New Regulations: Mortgage Loan Originators

COMAR 09.03.09.08

Effective July 31, 2017

Governs advertising by LO's:

May not make false, misleading, or deceptive statements; may not misrepresent terms, availability, rates, or charges for mortgage loans.

May advertise under any name by which the LO is commonly known and which is shown in the LO's NMLS record.

Must disclose the employer's name and the LO's NMLS ID. If advertising via social media, this information need not be included in every post, provided it is shown prominently on the LO's home page within that social media platform.



New Regulations: Mortgage Lenders (pending)

Earlier this year, the Commissioner proposed significant changes to the Maryland Mortgage Lender regulations. The Commissioner has been working with stakeholders' representatives to address concerns expressed in comments received regarding the proposal. The amended regulations are under reconsideration and if re-proposed, further comments will be welcomed. The following changes are under discussion. Any final regulations may vary. No effective date has been determined.

Note that under Maryland licensing law, "mortgage lender" refers to brokers, lenders, and servicers.



New Regulations: Mortgage Lenders (pending)

Definitions and Standards within Regulations

Attempting to align State definitions and standards with Federal when appropriate.
Example: "Initial Application"

Current definition:

"Initial application" means when:

- (i) An applicant requests that a mortgage loan be made or obtained on the applicant's behalf; and
- (ii) The person to whom the request was made agrees to begin processing the loan application.

Revised definition:

Initial application means the submission of a borrower's financial information in anticipation of a credit decision relating to a mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.



New Regulations: Mortgage Lenders (pending)

Definitions within Regulations

Example: “Average Prime Offer Rate”

Current definition:

“Average prime offer rate” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board of Governors of the Federal Reserve publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

Revised definition:

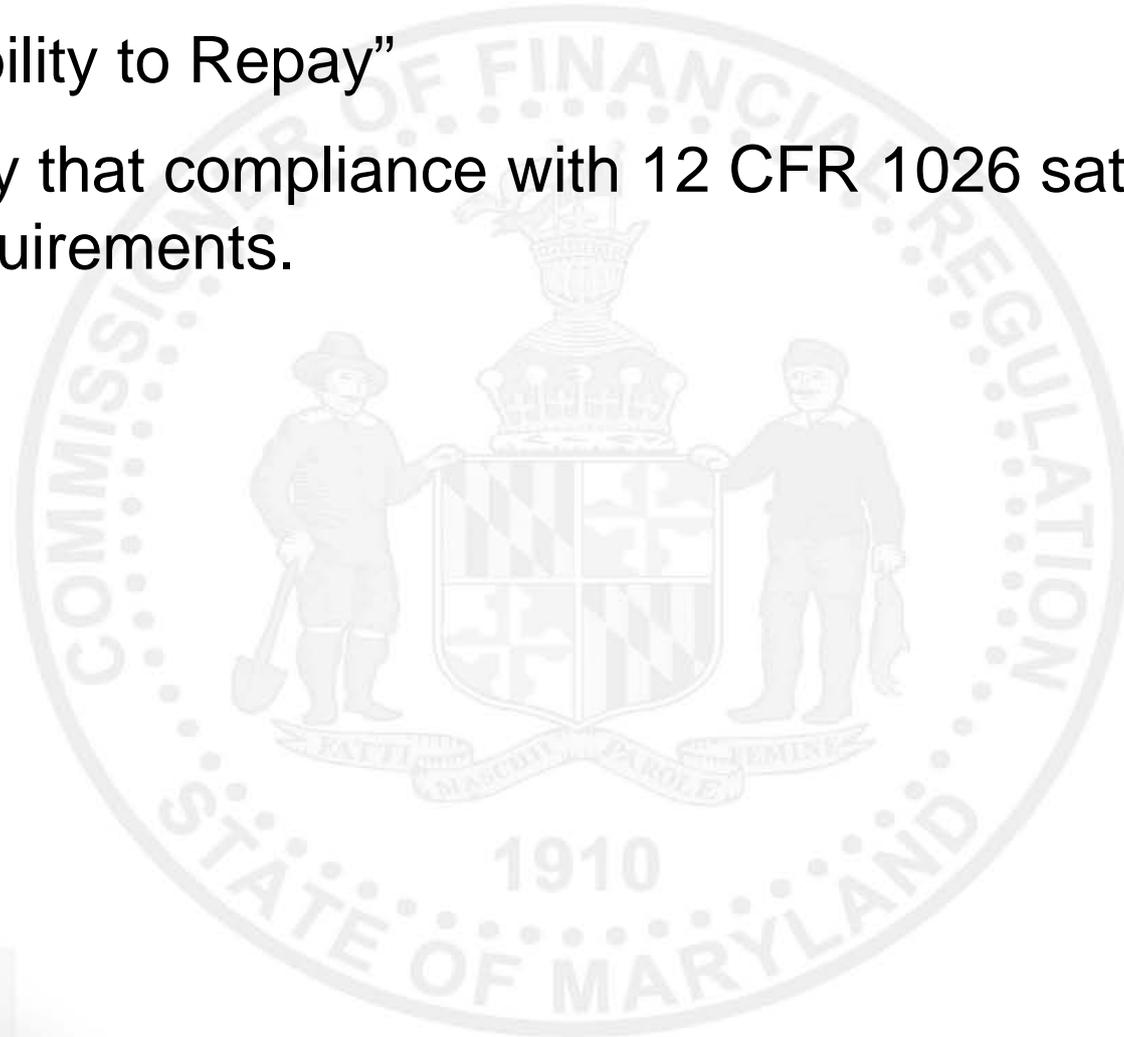
“Average Prime Offer Rate” has the meaning stated in 12 CFR Part 1026, as may be amended from time to time.



New Regulations: Mortgage Lenders (pending)

Example: “Ability to Repay”

Would specify that compliance with 12 CFR 1026 satisfies Maryland requirements.





New Regulations: Mortgage Lenders (pending)

Attempting to make “common sense” updates to existing regulations.

Example: “Posting of Maryland License”

Current regulation requires a licensee to post the Maryland license for each location in a conspicuous location on the premises, in a manner accessible to the public.

Revised regulation would exempt a licensee from the posting requirement if the licensee does not grant access to the location to members of the public.



New Regulations: Mortgage Lenders (pending)

Licensing

Current regulation allows the Commissioner to cease processing an incomplete application and “return it to the applicant” if it remains incomplete for 60 days.

Revised regulation would require the Commissioner to approve or deny an application within 60 days of receiving a complete application, and would require the Commissioner to provide 15 days’ notice, including an itemization of the steps needed to complete the application, before deeming an application withdrawn.

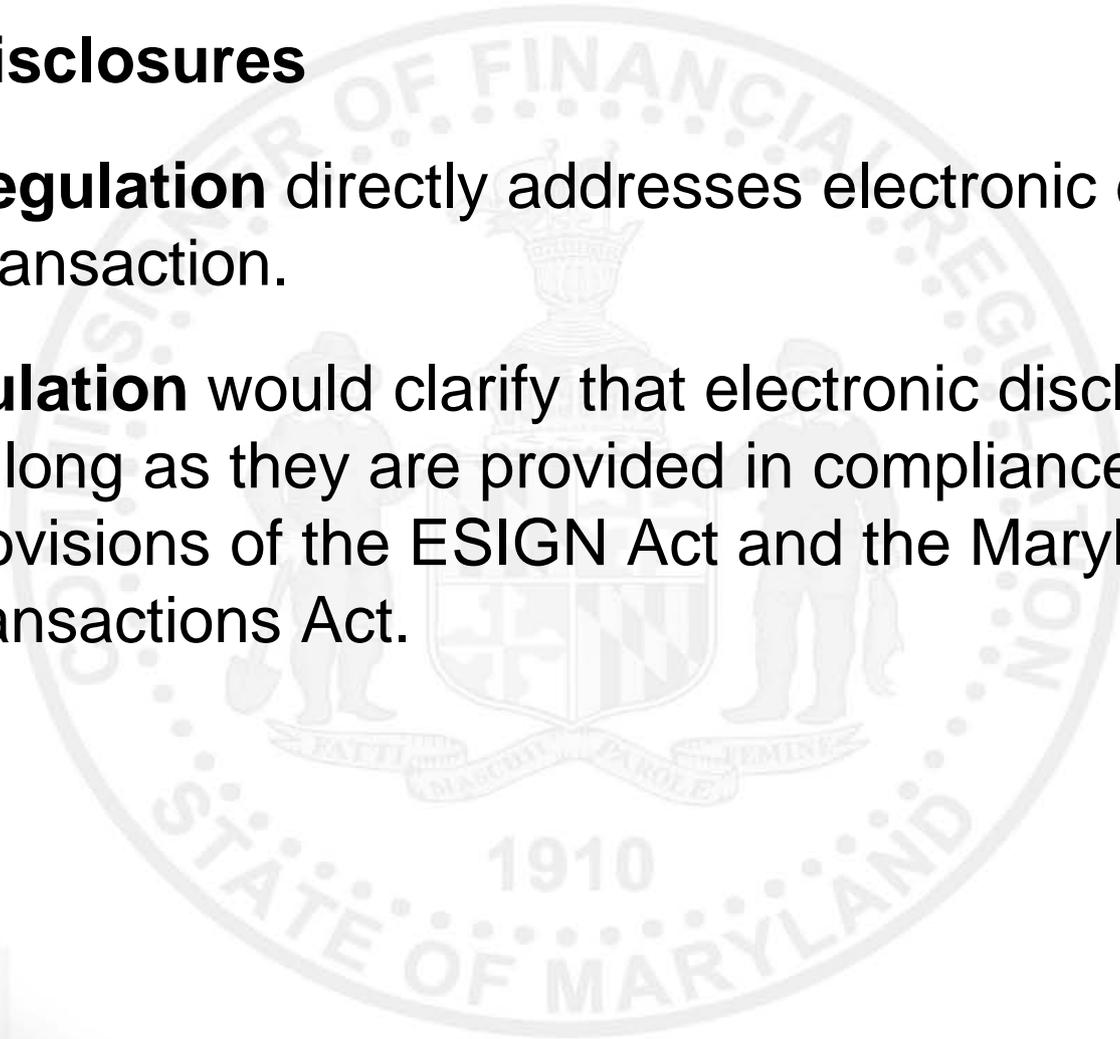


New Regulations: Mortgage Lenders (pending)

Electronic Disclosures

No current regulation directly addresses electronic disclosures in a mortgage transaction.

Revised regulation would clarify that electronic disclosures are permitted, as long as they are provided in compliance with applicable provisions of the ESIGN Act and the Maryland Uniform Electronic Transactions Act.





New Regulations: Mortgage Lenders (pending)

Electronic and Off-site Storage of Records

Current statutes and regulations require the approval of the Commissioner. Licensees have been required to write to the Commissioner and request approval.

Revised regulation would set standards for electronic and off-site record storage. Storage would be considered approved if the licensee uploads to NMLS an attestation that the storage meets the standards set forth in the regulation.



New Regulations: Mortgage Lenders (pending)

Would add to the definition of “record”:

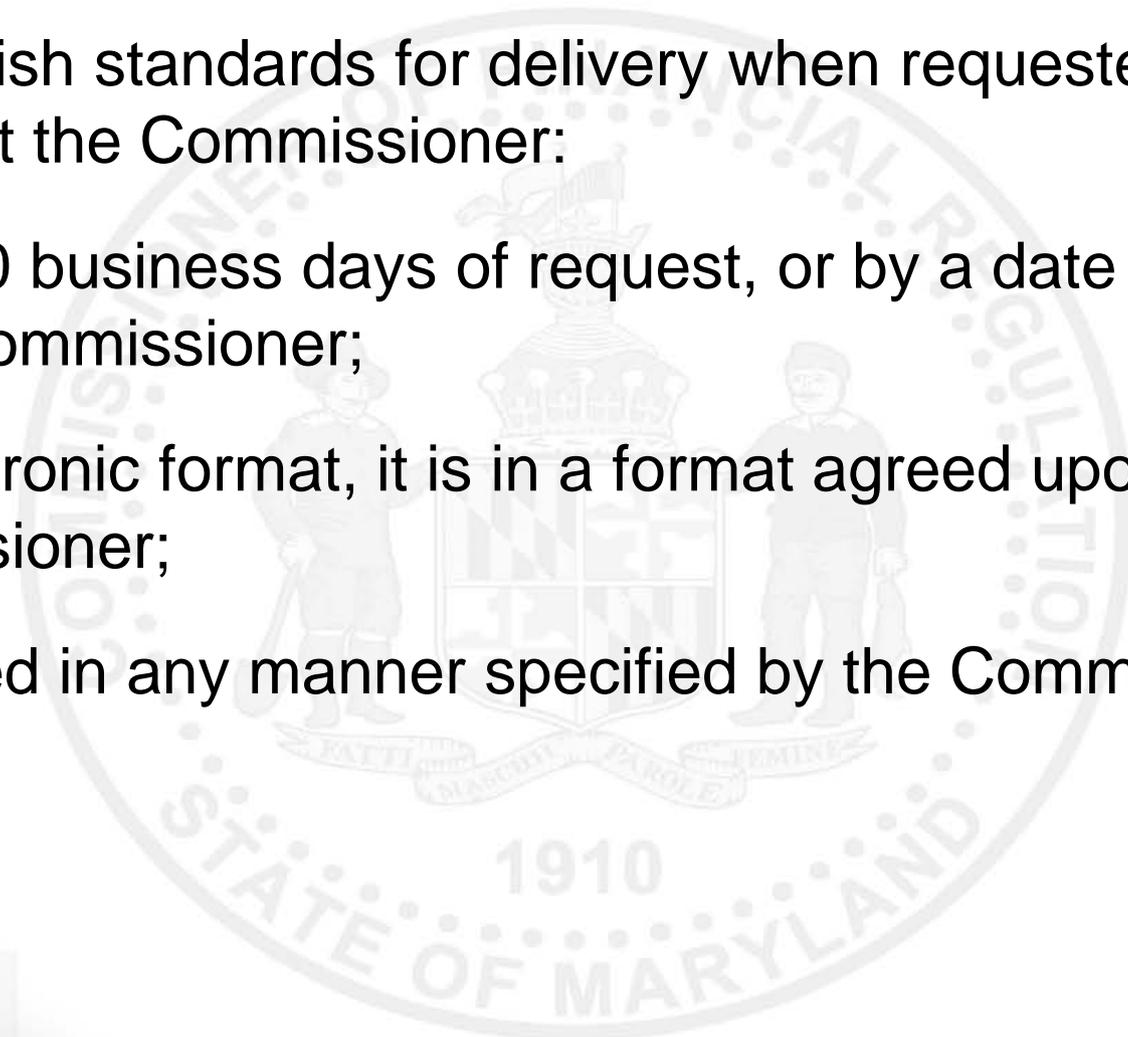
- Documents necessary to prove compliance with state or federal statutes and regulations
- For mortgage servicers:
 - Copies of written correspondence with borrowers;
 - Any written records of verbal communication with borrowers (account comments/notes);
 - Copies of any audio recordings of communication with borrowers.



New Regulations: Mortgage Lenders (pending)

Would establish standards for delivery when requested records are to be sent the Commissioner:

- Within 10 business days of request, or by a date agreed upon by the Commissioner;
- If in electronic format, it is in a format agreed upon by the Commissioner;
- Organized in any manner specified by the Commissioner.





New Regulations: Mortgage Lenders (pending)

Advertising

Would specify that e-mail addresses and web site URLs are not considered names under licensing law, and do not have to correspond to the licensed name.

Would specify that licensees are responsible for advertisement by their employees—e.g., MLO's advertising on social media—if the advertisement relates to the activities of the licensee or the activities of the employees within the scope of their employment.

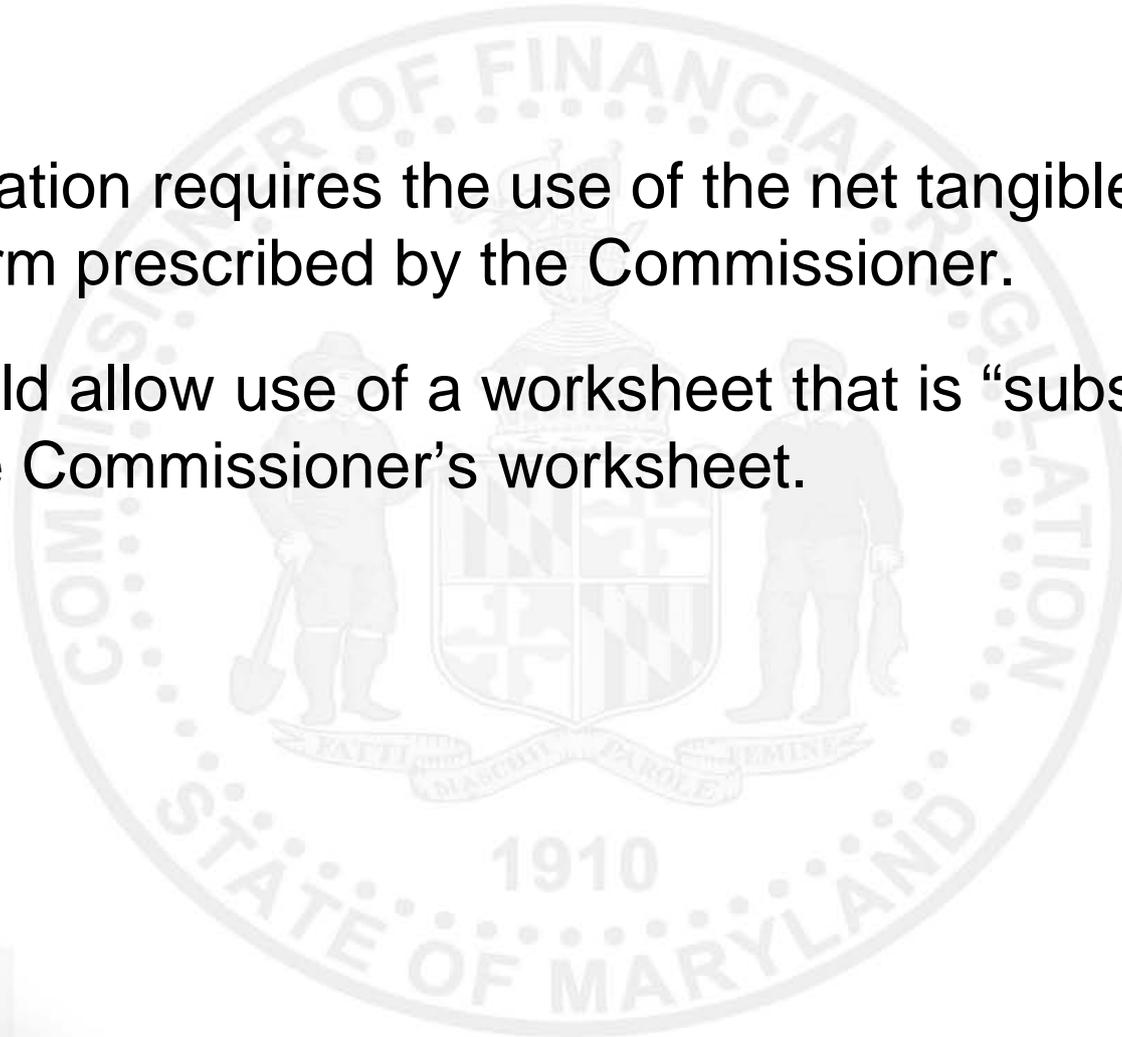


New Regulations: Mortgage Lenders (pending)

Duty of Care

Current regulation requires the use of the net tangible benefit worksheet form prescribed by the Commissioner.

Revision would allow use of a worksheet that is “substantially similar” to the Commissioner’s worksheet.



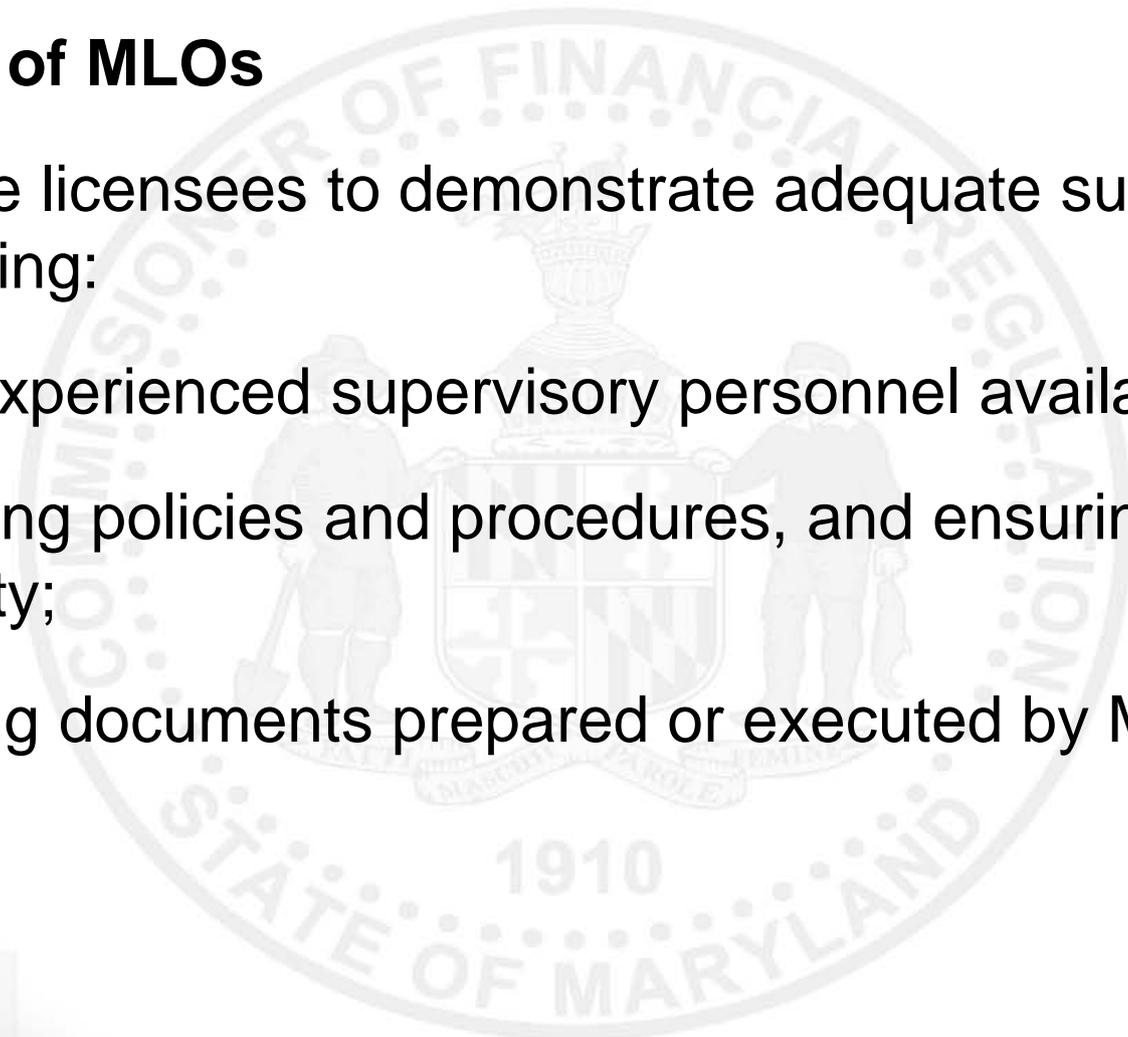


New Regulations: Mortgage Lenders (pending)

Supervision of MLOs

Would require licensees to demonstrate adequate supervision of MLOs, including:

- Having experienced supervisory personnel available;
- Maintaining policies and procedures, and ensuring their availability;
- Reviewing documents prepared or executed by MLOs.



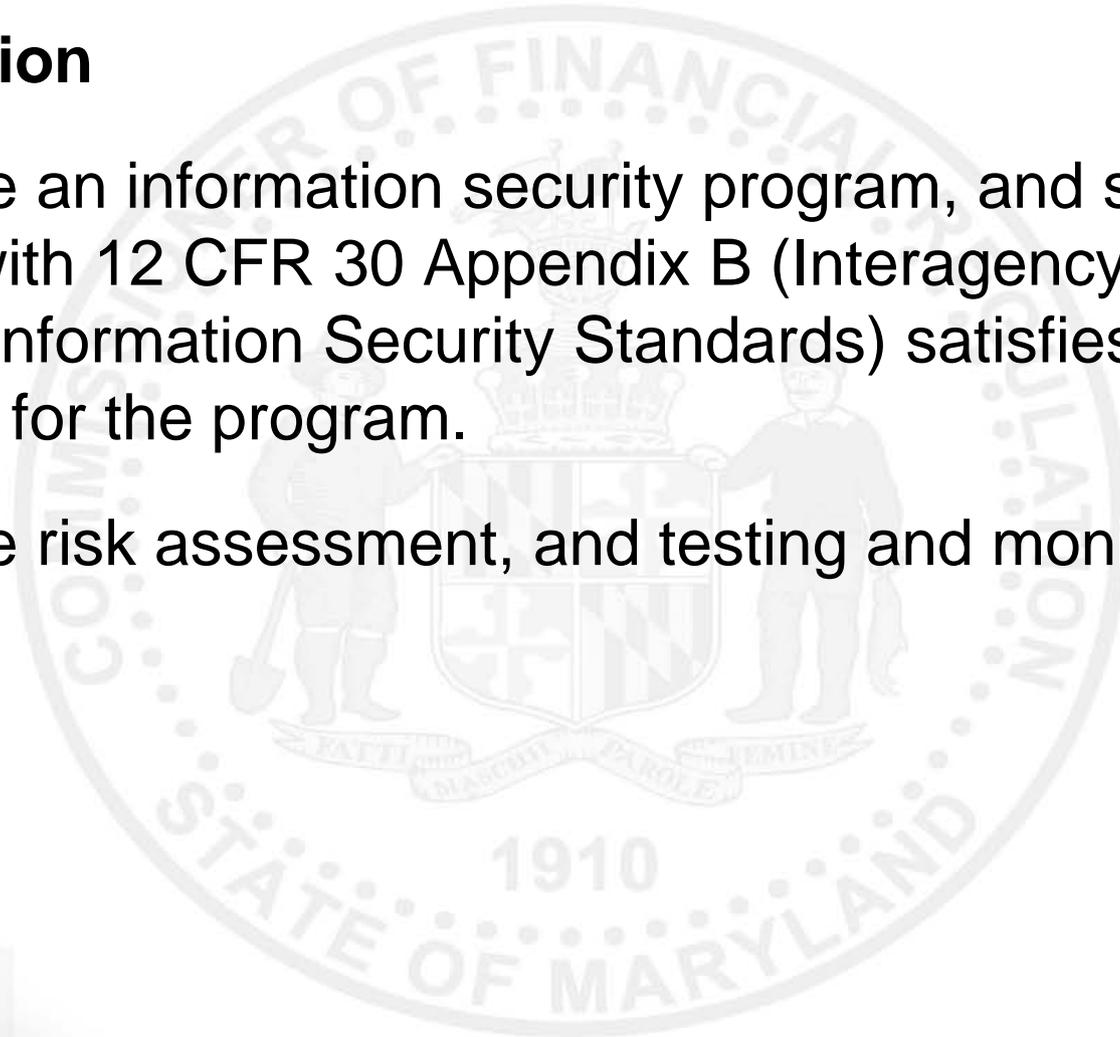


New Regulations: Mortgage Lenders (pending)

Data Protection

Would require an information security program, and specifies that compliance with 12 CFR 30 Appendix B (Interagency Guidelines Establishing Information Security Standards) satisfies Maryland requirements for the program.

Would require risk assessment, and testing and monitoring of the program.





New Regulations: Mortgage Lenders (pending)

Significant Event Reporting

Would require a licensee to notify the Commissioner in the event of:

- Insolvency or bankruptcy;
- Initiation, settlement, or resolution of administrative, civil, or criminal action against the licensee;
- Expiration, termination, or default of credit line or warehouse line;
- Suspension of approval from FNMA, GNMA, FHLMC, FHA;
- Change to net worth resulting in a failure to meet Maryland minimum requirement;
- Bond cancellation;
- Discovery of systemic violation of Maryland mortgage law.

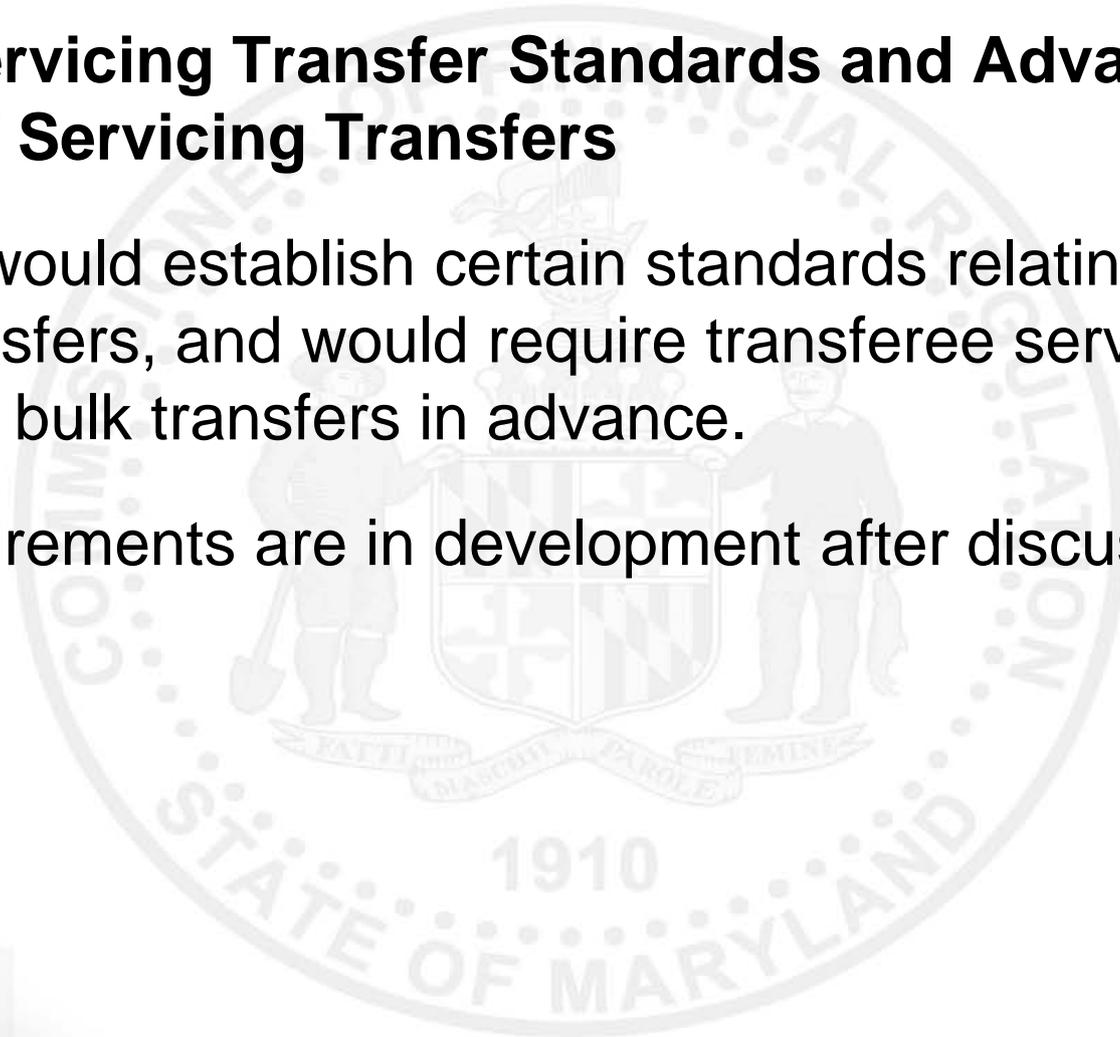


New Regulations: Mortgage Lenders (pending)

Mortgage Servicing Transfer Standards and Advance Reporting of Servicing Transfers

Regulations would establish certain standards relating to mortgage servicing transfers, and would require transferee servicers to report certain bulk transfers in advance.

Specific requirements are in development after discussion with stakeholders.



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Department of Banking



AARMR

East Region Hot Topics

August 2, 2017

Stacey Valerio, Esq.
Consumer Credit Division



MORTGAGE FRAUD



Alteration of documents

- Cut and paste of signatures
- Whited out deductions for alimony/child support or other deductions (e.g., 401(k) loans) from paystubs
- Whited out deposits from bank statements to avoid the need for a gift letter
- Transparency signatures
- License application process—altered bank statements for TNW
- Supervision??



MORTGAGE FRAUD



Possible Agency Remedies

- Summary Suspension
- Revocation of license(s)/Bar
- Removal of Responsible Individuals/Bar
- Civil Penalties
- If license(s) is retained, expect extensive Agency-approved policies/training, compliance programs, compliance officers, internal and external audit programs, freeze on management, long-term reporting obligations



LEGISLATIVE UPDATE



- ELECTRONIC COMPLIANCE LETTERS AND NOTICES
- MORTGAGE LEAD GENERATORS
- FAILURE TO SUPERVISE
- ELECTRONIC BONDS
- PE EXPIRATION
- AMENDED SERVICING APPLICATION/REPORTING REQUIREMENTS



ELECTRONIC COMPLIANCE LETTERS AND NOTICES



- Public Act 17-233
- Effective October 1, 2017, able to e-mail licensees compliance letters and most administrative notices.
- For company licensees, e-mail will be sent to the addresses of the natural persons designated as primary contacts in the contact employee fields on the system.
- For individual licensees, e-mail will be sent to the address identified by the individual on the system.
- The Department's email will be deemed received on the earlier of actual receipt by any natural person to whom it was sent, or seven days after sending.
- Companies: Review your primary contacts (and note the existing instruction thereon).
- Everyone: Keep your email address current.



MORTGAGE LEAD GENERATORS



- Public Act No. 17-38
- Requires a separate license for mortgage lead generators (unless exempt) beginning January 1, 2018.
- Distinguishes these entities from mortgage brokers and creates a schematic more in line with the business of lead generation.
- “Lead generator” means a person who, for or with the expectation of compensation or gain:
(A) Sells, assigns or otherwise transfers one or more leads for a residential mortgage loan;
(B) generates or augments one or more leads for another person; or (C) directs a consumer to another person for a residential mortgage loan by performing marketing services, including, but not limited to, online marketing, direct response advertising or telemarketing.
- “Lead” means any information identifying a potential consumer of a residential mortgage loan.
- A licensed lead generator will exceed its permissible scope of activity if it obtains compensation or gain contingent upon the consummation of a residential mortgage loan or the receipt of an application or if it utilizes financial criteria particular to the consumer or the residential mortgage loan transaction to selectively place a lead or to steer a consumer to a specific person for a residential mortgage loan.



MORTGAGE LEAD GENERATORS



- Employees of licensed or exempt lead generators will not require individual licensure if engaged in lead generation activity on behalf of the licensee or exempt entity.
- License fee \$500; license will be on NMLS (application and checklist should be available in advance of January 1, 2018).
- Statutory requirements for licensure are not as stringent as for broker licensure, but Commissioner can set additional requirements. No bond or tangible net worth requirements.
- Two year record retention requirement. Includes: (1) solicitation materials regardless of medium (business cards, telephone scripts, mailers, e-mail, radio, internet advertisements, etc.); (2) detailed records of contact/attempted contact with consumers; (3) various information about persons receiving, requesting, contracting for leads and compensation information.
- Prohibition against advance fees and using/selling/releasing information received from a consumer for any purpose other than as necessary to facilitate a residential mortgage loan transaction. Other prohibited acts set forth in Section 16 of the public act.



FAILURE TO SUPERVISE



- Public Acts 17-233 and 17-236 – Effective July 1, 2018
- Prohibition on all mortgage company license types from failing to establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with a list of prohibited acts.
- Similar prohibitions on QIs and BMs of all licensed mortgage entities.
- Prohibition on individuals licensed as MLOs who supervise LPUWs from failing to enforce such policies and procedures.
- No violation will be found unless the failure to establish, enforce, and maintain policies and procedures resulted in conduct in violation of law.



ELECTRONIC BONDS



- Public Act 17-233
- Amends Section 36a-24b, effective October 1, 2017, to authorize the Commissioner to establish requirements by order as necessary to enable participation in the System's electronic bond platform.



PE EXPIRATION



- Public Act 17-233
- Deferred effective date – January 1, 2019 (to allow for System/2.0 implementation)
- Will amend Section 36a-489a to implement the PE Expiration Policy adopted by the NMLS Policy Committee.

For MLOs and LPUWs, a first time applicant or an individual who has let their license lapse:

- The 20 hours of “federal” PE will expire on the date that is three years from the date of completion of the 20 hours unless the individual has obtained an MLO license in any state (or an active federal registration).
- The 1 hour of “CT” PE will expire on the date that is three years from the date of completion of the 1 hour unless the individual has obtained a CT MLO or LPUW license.
- If expired, must retake the PE prior to licensure.



SERVICING – APPLICATION/REPORTING



- Public Act 17-233 – Effective October 1, 2017
- Amends Section 36a-719(f):
- File borrower servicing costs and fee schedule with initial application and thereafter as it changes (versus annually).
- Annual report of servicing activity will no longer require the details on workout arrangements undertaken in connection with loss mitigation activities, but such records must be maintained.
(See Section 36a-719d(a)(8), as amended)



MORTGAGE CORRESPONDENT LENDER VS MORTGAGE LENDER



“Mortgage correspondent lender” means a person engaged in the business of making residential mortgage loans in such person’s own name where the loans are not held by such person for more than 90 days and are funded by another person through a warehouse agreement, table funding agreement or similar agreement.

“Mortgage lender” means a person engaged in the business of making residential mortgage loans in such person’s own name utilizing such person’s own funds or by funding loans through a warehouse agreement, table funding agreement or similar agreement.