

3/14/2019

SB485



**MARYLAND
MORTGAGE**
BANKERS AND BROKERS
ASSOCIATION



**Testimony offered on behalf of:
MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.**

**Maryland Mortgage Bankers and Brokers Association (MMBBA)
Maryland Bankers Association
Maryland REALTORS®**

National Mortgage Bankers Association (MBA)

POSITION OF OPPOSE ON SENATE BILL 485

Maryland Collection Agency Licensing Act – Definitions and Legislative Intent

March 12, 2019

Honorable Delores G. Kelley
Chair
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

Re: SB-485, Maryland Collection Agency Licensing Act - Definitions and Legislative Intent

Dear Delegate Davis;

The groups listed below are writing to express our opposition to SB-485, Maryland Collection Agency Licensing Act - Definitions and Legislative Intent, which would revise the implementation of the Maryland Collection Agency Licensing Act ("MCALA"). This bill would require statutory trusts to become licensed debt collection agencies and thus reverse the well-reasoned decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018). If enacted SB-485 would damage the state's economy and harm Maryland consumers.

Rather than helping borrowers who have defaulted on their mortgages stay in their homes or provide expanded access to affordable mortgage credit to middle class families and first time home buyers, this bill would negatively affect the ability to originate, sell, hold, and enforce mortgages. It would also adversely affect the ability to pass title to real property in the state by originators, servicers, realtors, title insurers, and secondary market purchasers of Maryland mortgages.

Let us briefly describe the prevailing system in this country of financing home purchases and refinances. Liquidity in the market to originate loans and sell mortgages is the lynchpin of our housing

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finance system. Once a consumer signs a mortgage loan to purchase or refinance that person's home, a lender may sell that loan to a secondary market investor and use the proceeds from that sale to make credit available to another family. The predominant method of purchasing and financing residential mortgage loans in the secondary markets is through the use of a special purpose vehicle ("SPV") trust structure. An investor will then use a properly licensed or exempt servicer to perform all consumer-facing actions in strict compliance with all applicable state and federal consumer protection laws and regulations. These entities also operate under the strict programmatic requirements established by the federal government's housing programs and the government sponsored enterprises Fannie Mae and Freddie Mac. These heavily regulated servicer activities should be contrasted with the role of the SPV trusts that have *no contact* with consumers. Given the trusts' complete lack of interaction with consumers, the proposed bill does not enhance consumer protection.

However, the offered legislation would require that each of these statutory trusts be licensed as a debt "collection agency" under MCALA prior to the initiation of a foreclosure action. This requirement would make Maryland the only state in the country that requires trusts to obtain a license to foreclose on a loan that the trust itself owns.

Moreover, Maryland would be requiring investors to obtain a license for legal entities (trusts) that in many cases do not have any individual associated with the trust. This creates confusion for investors on how to properly comply with licensing rules that require designating an account administrator who is employed by the legal entity prior to obtaining a license through the National Multistate Licensing System ("NMLS"), which is operated by state regulators and the Conference of State Bank Supervisors.

The concern of our organizations is that by adding an unnecessary licensure requirement that does not benefit consumers, Maryland-originated loans will be rendered less attractive to investors in the secondary market and may lead to investors choosing not to purchase mortgage-backed securities that include Maryland mortgage loans or excluding mortgages originated in Maryland from inclusion in the mortgage backed securities market altogether. That would reduce the availability of credit and increase prices for Maryland homeowners and prospective homeowners. Both Maryland and federal law already provide unique and significant protections for mortgage loan borrowers in default. Disturbing this existing regime as contemplated by this legislation creates no substantive legal protections for borrowers but increases significantly the uncertainty and complexity of mortgage lending in Maryland which will take the form of increased costs to borrowers.

This issue is particularly challenging with respect to loans in Maryland that are insured by the Federal Housing Administration ("FHA") and securitized by the Government National Mortgage Association ("Ginnie Mae"). FHA is the largest mortgage insurer in the world, and its loan program is a key tool for the real estate finance industry to assist low-to-moderate income families achieve homeownership. FHA foreclosures already require lenders to often incur high unreimbursed costs and risk of liability. Adding further liability and cumbersome procedures will make originating these loans less attractive.

Finally, there are serious concerns that this legislation as drafted may have retroactive effect. If this is the case, it has the potential to upset ratified foreclosures, potentially clouding the title of properties purchased by Maryland homeowners, including homeowners whose sellers (or their sellers)

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purchased properties at foreclosure. The potential for unanticipated liability may also increase borrowing costs as lenders struggle to understand their risk exposure. This confusion is particularly acute given that the *Sharma* decision ratified the notion that Maryland's law is consistent with the national consensus that licensing the servicers who interact with borrowers, and not the trusts that are the mere passive holders of the debt, is the appropriate means of ensuring compliance with state debt collection laws.

Given the potential adverse impact on Maryland borrowers and communities, we respectfully **oppose** the enactment of SB-485.

Thank you for your consideration,



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