

Chapter 11. Consumer Protection. [Note]

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Sec. 11-1. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Consumer: A purchaser, lessee, or recipient, or prospective purchaser, lessee or recipient of consumer goods or services, including a co-obligor or surety.

Consumer goods or services: Real estate, goods, services, credit, debts, or obligations that are primarily for personal, household, family or agricultural purposes.

Director or Executive Director: The Director of the Office of Consumer Protection, or the Director's

designee.

Merchant: Any person who offers or makes available to consumers, either directly or indirectly, consumer goods or services.

Office: The Office of Consumer Protection.

Person: An individual, proprietor, partnership, corporation, firm, cooperative, association, or any other group of individuals or legal entity, however organized.

Predatory or abusive lending practice: Any representation or marketing practice that is intended to misrepresent terms or mislead a consumer about the value of financing or buying real estate, consumer goods, or consumer services.*

***Editor's note**—The predatory or abusive lending practice definition was added by 2005 L.M.C., ch. 29, § 3 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

Real estate: Any leasehold or other tangible interest in residential real property, dwelling, building, or other structure located on residential real property, including a condominium unit. (1972 L.M.C., ch. 11, § 1; 1974 L.M.C., ch. 13, § 1; FY 1991 L.M.C., ch. 9, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2005 L.M.C., ch. 29](#), § 3; [2006 L.M.C., ch. 7](#), § 1.)

Editor's note—The above section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003). The above section is described in Syndicated Publications, Inc. v. Montgomery County, 921 F.Supp. 1442 (D.Md. 1996).

2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract, or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

Sec. 11-2. Office of Consumer Protection.

(a) *Established.* The Office of Consumer Protection is a department of County government.

(b) *Authority.* The Office may:

(1) receive and investigate complaints and initiate its own investigation of deceptive, unfair, or unconscionable trade practices against consumers, hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and require the production of any evidence relating to any

matter under investigation or in question by the Office;

(2) issue summonses and subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence in any matter to which this Chapter applies;

(3) issue cease and desist orders and bring enforcement actions regarding any trade practice that violates this Chapter;

(4) report to any appropriate government agency with jurisdiction over real estate transactions or consumer protection matters any information concerning violation of any consumer protection law;

(5) communicate the interests of consumers and merchants before administrative and regulatory agencies and legislative bodies to ensure that both are adequately represented;

(6) assist, advise, and cooperate with the Better Business Bureau and local, state, and federal agencies and officials to protect and promote the interests of County consumers;

(7) assist, develop, and conduct programs of consumer education and information through public hearings, meetings, publications, or other materials prepared for distribution to County consumers;

(8) encourage local business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods or services;

(9) protect and promote the welfare of County consumers and merchants;

(10) report annually on the number, nature, and disposition of complaints filed with the Office. The annual report must include any recommendations made by the Advisory Committee on Consumer Protection;

(11) adopt regulations under method (2) to implement this Chapter;

(12) operate a voluntary arbitration program;

(13) enforce laws pertaining to motor vehicle repair, electrical appliances, secondhand personal property, and any other law that the Office is assigned to enforce; and

(14) undertake activities and establish procedures to identify, and assist consumers with respect to, any discriminatory, predatory, or abusive lending practices.*

***Editor's note**—Paragraph (14), formerly paragraph (n), was added by 2005 L.M.C., ch. 29, § 3 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

(c) *Energy and environmental advocacy.*

(1) The Office, after consulting appropriate County departments, must advocate for the County's interest in obtaining the lowest possible rates consistent with environmental stewardship, including the County's climate change objectives, for gas, electricity, and other energy sources by participating in matters pending before appropriate federal and state agencies, including intervening and filing comments in those matters.

(2) The Office may employ consultants and technical advisors as necessary to implement this subsection in accordance with funds appropriated in the County budget.

(3) By September 1 of each year, the Office must report to the County Executive and County Council on the actions that the Office has taken in the preceding fiscal year to implement this subsection.

(1972 L.M.C., ch. 11, § 1; 1974 L.M.C., ch. 13, § 2; 1979 L.M.C., ch. 16, § 2; 1980 L.M.C., ch. 21, § 12; 1984 L.M.C., ch. 24, § 13; 1984 L.M.C., ch. 27, § 12; 1986 L.M.C., ch. 37, § 3; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2005 L.M.C., ch. 29](#), § 3; [2006 L.M.C., ch. 7](#), § 1; [2007 L.M.C., ch. 5](#), § 1; [2008 L.M.C., ch. 12](#), § 1.)

Editor's note—The above section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003). The above section is described in Syndicated Publications, Inc. v. Montgomery County, 921 F.Supp. 1442 (D.Md. 1996).

2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

(a) that employee retains all merit system rights; and

(b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract, or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

Cross reference-Office of consumer affairs established, § 1A-203(a).

Sec. 11-3. Advisory Committee on Consumer Protection.

(a) *Creation and composition; appointment of members; chair.* There is an Advisory Committee on Consumer Protection, which consists of 9 persons appointed by the County Executive, subject to confirmation by the County Council. The membership must reflect a cross-section of consumer and business interests. At least 2 members must be members of the Better Business Bureau or of another County-wide association of merchants. At least 1 member must be a member of the Community Action Board, and a second member must be recommended by the Community Action Board. If, after written notice to these groups, no application is received from a member of these groups, and no recommendation is received from one of these groups, the Executive may appoint a person from the public-at-large. Each member serves a 3 year term. A member appointed to fill a vacancy serves the rest of the unexpired term. Each member continues in office until a

successor is appointed and confirmed. The Committee must elect one member as chair and another member as vice chair, each to serve in that capacity at the pleasure of the Committee, and such other officers as it determines.

(b) *Compensation.* Members of the Committee receive no compensation for their services.

(c) *Meetings; services; reports.* The Committee must meet when required by the chair, but no less than once each month. The Committee must submit an annual report to the Executive and Council.

(d) *Powers and duties.* The Committee must advise the Office in carrying out its duties and functions under this Chapter, and may hold public hearings on any topic related to Consumer Protection.(1972 L.M.C., ch. 11, § 1; 1977 L.M.C., ch. 28, § 5; 1978 L.M.C., ch.19, § 1; FY 1991 L.M.C., ch. 9, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2006 L.M.C., ch. 7](#), § 1.)

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Cross reference-Boards and commissions generally, § 2-141 et seq.

Sec. 11-4. Deceptive trade practices.

A merchant must not engage in a deceptive, unfair, or unconscionable trade practice, whether or not any specific consumer has, in fact, been misled, deceived, or damaged thereby. Deceptive, unfair, or unconscionable trade practices include:

(a) a representation that consumer goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

(b) a representation that the merchant has a sponsorship, approval, corporation indication, status, affiliation, or connection that the merchant does not have;

(c) a representation that consumer goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, or secondhand;

(d) a representation that consumer goods or services are of a particular standard, quality, grade, style, or model, if they are of another;

- (e) a misrepresentation as to a material fact that has a tendency to mislead;
- (f) a failure to state a material fact if the failure deceives or tends to deceive;
- (g) disparaging the consumer goods or services, or business of another by false or misleading representations of material facts;
- (h) advertising or offering consumer goods or services without the intent or authority to sell them as advertised or offered;
- (i) advertising or offering consumer goods or services with intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a limit of quantity or other qualifying condition;
- (j) making false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions; or the price in comparison to the price of competitors or one's own price at a past or future time;
- (k) falsely stating that consumer goods or services, replacements, or repairs are needed;
- (l) falsely stating the reasons for offering or supplying consumer goods or services at sale or discount prices;
- (m) harassment of or threat to any person with regard to any act other than legal process;
- (n) any deception, fraud, false pretense, false premise, misrepresentation, or concealment, suppression, or omission of any material fact with the intent that consumers rely on the concealment, suppression, or omission, in connection with any consumer goods or services;
- (o) any false, falsely disparaging or misleading oral or written statement, visual description or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers and is made in connection with any consumer goods or services;
- (p) any representation that an agreement confers or limits rights, remedies, or obligations that it does not confer or limit, or that are prohibited by law;
- (q) failure of any merchant to comply with a warranty;
- (r) failure to provide a written estimate of repairs, alterations, modifications, or services when requested by a consumer and the later repair, alteration, modification, or servicing of any item without first tendering a written estimate;
- (s) performing repairs, alterations, modifications, or services exceeding by 25 percent or more the price quoted in a written estimate without prior approval of the consumer;
- (t) imposing or demanding a labor or service charge without notifying the consumer of the charge before dismantling, disassembling or otherwise altering a consumer good;
- (u) failing to supply a consumer with a copy of a contract, lease, promissory note, trust agreement, or evidence of indebtedness when the consumer executes the document;

(v) making or enforcing unconscionable contract terms. In applying this subsection, the following factors may be considered:

(1) knowledge by the merchant when a credit sale or loan is consummated that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) knowledge by the merchant at the time of the sale or lease of the consumer's inability to receive substantial benefits from the consumer good or service sold or leased;

(3) gross disparity between the price of consumer goods or services sold or leased and the value of the consumer goods or services measured by the price at which similar consumer goods or services are readily obtainable by like buyers or lessees;

(4) the fact that the merchant contracted for or received separate charges for insurance with respect to credit sales with the effect of making the sales, considered as a whole, unconscionable;

(5) the fact that the merchant has knowingly taken advantage of the inability of a consumer reasonably to protect his or her interests because of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors;

(w) replacing any part in an electrical or mechanical apparatus, appliance, chattel, or other consumer good when the part was not defective, unless expressly requested by the consumer;

(x) falsely stating or representing that any repair, alteration, or service was performed;

(y) taking payment for goods or services without delivering the goods or performing the services; or

(z) practicing, or in any way engaging in, any trade, occupation, or profession without a license, registration, certificate, or other evidence of training or experience required by law. (1972 L.M.C., ch. 11, § 1; 1976 L.M.C., ch. 21, § 1; [2006 L.M.C., ch. 7](#), § 1.)

Editor's note—The above section is cited in Nefedro v. Montgomery County, 414 Md. 585, 996 A.2d 850 (2010). The above section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003). The above section is quoted, interpreted and held valid in Syndicated Publications, Inc. v. Montgomery County, 921 F.Supp. 1442 (D.Md. 1996).

Editor's note—Former Section 11-4A, unfair trade practices - future service contracts, which was derived from 1993 L.M.C., ch. 25, § 1 and 1995 L.M.C., ch. 9, § 1, was repealed by 2006 L.M.C., ch. 7, § 1. That section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003).

Sec. 11-4A. Unfair trade practices - Internet Access Services.

(a) A merchant must not engage in any unfair trade practice in the provision of internet access service using any facility in its control that is located in a County right-of-way.

(b) An unfair trade practice includes the refusal or failure of a merchant to:

- (1) provide any internet access service for which a consumer has paid;
- (2) properly install any facility required to provide internet access service to a consumer; or
- (3) promptly and effectively respond to a consumer complaint concerning internet access service.

(c) *Internet access service* means the provision of internet access to a consumer over any facility controlled by a merchant that is located in a County right-of-way.

(d) The County Executive must issue regulations under Method (2) that establish minimum internet access service standards that a merchant must comply with.

(e) (1) The Department of Technology Services may receive an investigate complaints of violations of this Section. The Cable Compliance Commission may adjudicate violations of this Section, as provided in Section 8A-31.

(2) The Department may also refer any complaint received under this Section to the Office of Consumer Protection for investigation and enforcement. To enforce any complaint referred to it under this Section, the Office of Consumer Protection may pursue any remedy for violations of this Chapter. ([2006 L.M.C., ch. 36](#), § 1.)

Sec. 11-4B. Domestic Workers - Written Employment Contracts.

(a) *Legislative findings.*

(1) Domestic workers are entitled to legal protections under State employment laws including, but not limited to:

- (A) minimum wage;
- (B) payment for all hours worked;
- (C) payment of wages in United States dollars twice per month;
- (D) overtime pay of 1.5 times the regular wage rate for hours worked in excess of 40 hours per week; and
- (E) worker's compensation.

(2) The County Council Committee on Health and Human Services sponsored a study of domestic workers in the County which was released on May 10, 2006. The study found that:

- (A) domestic workers in the County have limited access to information concerning the legal protections available to them;
- (B) many domestic workers in the County are paid less than the minimum wage;
- (C) many domestic workers in the County do not receive overtime pay for work in excess of 40

hours per week;

(D) few domestic workers in the County have written employment contracts setting forth the terms and conditions of their employment;

(E) domestic workers in the County who live in their employer's residence are generally paid less and work longer hours than domestic workers who do not live at their employer's residence; and

(F) domestic workers in the County are often isolated and unable to experience the peer to peer networking that is necessary for organized labor movements.

(3) The Council finds that legislation is needed to ensure that domestic workers in the County receive the legal protections they are entitled to under State law, as well as the right to a written employment contract governing the terms and conditions of employment.

(b) *Definitions.* In this Section, the following words have the meaning indicated:

Au pair means an individual who performs childcare services pursuant to the program administered by the State Department of the United States in a private home of the person by whom she is employed.

Disclosure statement means a document confirming that:

(1) an employer presented a written employment contract signed by the employer to a domestic worker after offering to negotiate the terms and conditions of employment; and

(2) the worker voluntarily chose not to sign the contract.

Domestic service means, when primarily performed in a home of a recipient of the service located in the County:

(1) caring for a child;

(2) serving as a companion to a sick, convalescing, disabled, or elderly individual;

(3) housekeeping;

(4) cooking;

(5) cleaning; or

(6) laundry.

Domestic worker means an individual who performs domestic service for wages in the County.

Domestic worker does not include:

(1) a registered nurse, licensed practical nurse, or certified nursing assistant who is licensed or certified by the Maryland Board of Nursing;

(2) a child, parent, spouse, or other member of the immediate family of the employer;

(3) an au pair; or

(4) an individual who primarily serves as a companion to a disabled or elderly individual who is unable to care for himself or herself, and who is not employed by an agency.

Elderly means an individual who is 67 years old or older.

Employment contract means a written agreement signed by a domestic worker and an employer which governs the terms and conditions of employment.

Employer means a person who hires a domestic worker to perform at least 20 hours of work each week during any period that is 30 days or longer. An employer may include an agency that hires a domestic worker to perform domestic service in the home of the recipient of the service.

Hours of work means the time during any 7-day period that a domestic worker is on duty.

Paid time off means time for which a domestic worker receives wages without working, including any holiday, vacation, or sick leave.

Unpaid time off means time during the normal hours of work when the domestic worker may be absent without receiving wages.

Wages means any compensation which a domestic worker receives, including any bonus, commission, fringe benefit, or other payment.

(c) *Employment Contract*. In order to employ a domestic worker, the employer must obtain either a written employment contract signed by both the employer and the domestic worker or a disclosure statement signed by the domestic worker. Each employer must present a proposed written employment contract to a domestic worker and offer to negotiate the terms and conditions of employment. Once a final contract is agreed upon, the employer must sign and give the domestic worker a copy. If the domestic worker is employed by an agency, the employment contract must be between the agency and the employee. Each written employment contract must specify the following terms and conditions of employment:

- (1) days and hours of work;
- (2) wages;
- (3) paid time off;
- (4) unpaid time off;
- (5) frequency of payment of wages;
- (6) deductions from wages;
- (7) eligibility for and calculation of overtime wages;
- (8) duties;

(9) right of the employer, if any, to require the domestic worker to perform duties that are not specified in the contract;

(10) living accommodations provided by the employer, if any, including deductions for rent;

(11) meals provided by the employer, if any, including deductions for meals;

(12) time allowed for breaks and meals during work hours;

(13) required notice, if any, before the employer or domestic worker terminates the contract;

(14) severance wages, if any, if the employer terminates the contract before the end of the contract period;

(15) contract period;

(16) reimbursement for work-related expenses; and

(17) notice of employment rights under State law.

(d) *Living accommodation.* Any dwelling unit that includes living accommodations for a domestic worker must meet all minimum standards for a dwelling unit in Chapter 26 and the worker must have:

(1) a private room for sleeping with a door that can be locked;

(2) reasonable access to a kitchen;

(3) reasonable access to a bathroom;

(4) reasonable access to laundry facilities.

(e) *Model Contract.* The Director, after consulting with the Commission for Women, must draft and make available a model employment contract and a model disclosure statement which an employer may use to comply with this Section. The model contract and the model disclosure statement must be published in English, French, and Spanish.

(f) *Retaliation.* An employer must not retaliate against a domestic worker who:

(1) requests a written contract required under this Section;

(2) seeks to enforce the terms of a written employment contract; or

(3) files a complaint or testifies, assists, or participates in any manner in an investigation, proceeding, or hearing to enforce this Section.

(g) *Complaint.* If an employer does not comply with this Section, a domestic worker may file a complaint under Section 11-6. ([2008 L.M.C., ch. 27](#), § 1.)

Sec. 11-5. Exemptions from chapter.

This chapter does not apply to:

- (a) other than practicing or acting without a license, professional services rendered by any certified public accountants, architects, clergymen, professional engineers, lawyers, veterinarians, insurance agents and brokers licensed by the state, Christian Science practitioners, land surveyors and property line surveyors, optometrists, physical therapists, podiatrists, psychologists, and medical and dental practitioners, engaging in their respective professional activities;
- (b) any television or radio broadcasting station or any publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which violates this Chapter, except insofar as the station or publisher or printer engages in a deceptive or unconscionable practice in the sale or offering for sale of its own goods or services or knows that the advertising violates this Chapter;
- (c) public utility companies to the extent that the company's services and operations are regulated by the state Public Service Commission;
- (d) defective tenancies or other complaints concerning any condition in rental housing which arises out of a landlord-tenant relationship and constitutes a violation of Chapter 29; and
- (e) the sale of real estate, directly or indirectly, by any owner-occupant of the real estate, except as provided in Section 40-14. (1972 L.M.C., ch. 11, § 1; 1974 L.M.C., ch. 13, § 3; [2006 L.M.C., ch. 7](#), § 1; [2007 L.M.C., ch. 22](#), § 2.)

Editor's note—In Holiday Universal, Inc. v. Montgomery County, 377 Md. 305, 833 A.2d 518 (2003), the Court held that Montg. Co. Code § 11-4A did not meet the requirements for a local law and, therefore, was invalid. The above section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003).

Sec. 11-6. Filing complaints.

- (a) *Definition.* In this section “domestic worker” has the meaning stated in Section 11-4B.
- (b) *Complaint.* Any consumer or domestic worker may file a written complaint with the Director.
- (c) *Contents.* A complaint should state the name and address of the person alleged to have committed a violation of this Chapter, describe the violation, and provide any other information that the Office requires. However, the Director may act on a complaint that is not complete. The Director may investigate any violation of and enforce this Chapter without receiving a complaint.
- (d) *Referral to Department of Housing and Community Affairs.* The Director must refer a complaint from a domestic worker alleging living accommodations that do not comply with Section 11-4B(d) to the Department of Housing and Community Affairs for investigation and enforcement.
- (e) *Referral to the Office of Human Rights.* The Director must refer a complaint from a domestic worker alleging a discriminatory employment practice to the Office of Human Rights.

(f) *Referral to the Commission for Women.* The Director may refer a domestic worker to the Commission for Women Counseling and Career Center for additional assistance if the Director determines that the services offered there would benefit the worker. (1972 L.M.C., ch. 11, § 1; 1993 L.M.C., ch. 25, § 1; 1996 L.M.C., ch. 13, § 1; [2006 L.M.C., ch. 7](#), § 1; [2008 L.M.C., ch. 27](#), § 2.)

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Sec. 11-6A. Discriminatory, predatory, or abusive lending practices.*

A consumer who is concerned about a potentially discriminatory, predatory, or abusive lending practice in the County may file a written request for assistance with the Officer of Consumer Protection.

(a) Within 20 business days after receiving a written request with all supporting documentation, the Office must review the request.

(b) Upon reviewing the request, the Office must either:

(i) advise the consumer to file a complaint with the Office if a potential violation of Chapter 11 or Chapter 27 exists;

(ii) assist the consumer in filing a complaint with the appropriate government office or agency that has jurisdiction; or

(iii) provide the consumer with information, education, counseling, or a referral to an appropriate outside agency, group, or organization.

(c) The Office, in assisting a consumer with filing a complaint, may consult with any appropriate federal, state, county, or quasi-governmental office or agency. If the Office assists a consumer in filing a complaint with another agency, the Office must contact the appropriate agency within 45 business days after the referral to determine the status of the complaint, and must forward this information to the consumer.

(d) The Office, in conducting activities to identify and educate consumers about discriminatory, predatory, or abusive lending practices, may work with non-government organizations. ([2005 L.M.C., ch. 29](#), § 3.)

***Editor's note**—Section 11-6A was added by 2005 L.M.C., ch. 29, § 3 (Bill 36-04). However, in

American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36- 04 “null and void” by order dated 11/30/06.

Sec. 11-7. Procedures.

- (a) The Director must enforce this Chapter, and may:
- (1) investigate a violation or a complaint;
 - (2) refer a complaint or a violation to any federal, state, or local agency with jurisdiction over the complaint;
 - (3) refer a complaint or a violation to a hearing officer under Section 11-10;
 - (4) pursue an enforcement action under Section 11-11; or
 - (5) attempt to conciliate a matter with the parties.
- (b) The Director must attempt to conciliate a matter before taking enforcement action. However, when the Director finds that any violation is causing or will cause immediate, substantial, and irreparable injury, or it is otherwise in the public interest, the Director may take immediate enforcement action without first attempting conciliation, including issuing a cease and desist order.
- (c) This Section does not prevent any person from exercising any right or seeking any remedy to which that person is otherwise entitled, or from filing any complaint with any other agency or court.
- (d) This Section does not prevent the Director from following a different procedure or pursuing a different enforcement action during or after an investigation when the Director finds that doing so will serve the public interest.
- (e) The Director may seek the cooperation of any licensing authority and contracting department in County government. (1972 L.M.C., ch. 11, § 1; 1974 L.M.C., ch. 13, § 4; 1993 L.M.C., ch. 25, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 24](#), § 1; [2005 L.M.C., ch. 26](#), § 1; [2006 L.M.C., ch. 7](#), § 1.)

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Sec. 11-8. Conciliation Procedures.

(a) When conciliating a matter, the Director may use the services of any member of the Advisory Committee on Consumer Protection.

(b) The parties may incorporate the terms of a conciliation into a settlement agreement. A settlement agreement does not constitute an admission by any party that any law has been violated. The Director may sign a settlement agreement on behalf of the Office.

(c) Any settlement agreement may require a party to pay the costs of the Office's investigation and related activities and restitution to a consumer of money, property, or any other thing received in apparent violation of this Chapter. A settlement agreement must not preclude the Office from using any other remedy to correct a violation of this Chapter.

(d) Each signatory must adhere to any settlement agreement. Any failure by the Office or another party to pursue a violation of any settlement agreement does not waive any provision of the agreement or any right of the Office under the agreement or this Chapter.

(e) The Director may enforce a violation of a settlement agreement under Section 11-11 as if it is a violation of this Chapter. ([2006 L.M.C., ch. 7](#), § 1; [2006 L.M.C., ch. 33](#), § 1.)

Editor's note—Former Sec. 11-8, costs, which was derived from 1872 L.M.C., ch. 11, § 1; 1996 L.M.C., ch. 13, § 1 and 2005 L.M.C., ch. 26, § 1, was repealed by 2006 L.M.C., ch. 7, § 1. That section is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003).

Sec. 11-9. Enforcement of summonses and subpoenas.

(a) If any person does not comply with any summons or subpoena issued under this Chapter, the County may enforce the summons or subpoena by appropriate legal action.

(b) Any court with jurisdiction may grant injunctive or other appropriate relief to enforce a summons or subpoena.

(c) A person must comply with any summons or subpoena issued under this Chapter. (1976 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2006 L.M.C., ch. 7](#), § 1.)

Editor's note— The above section (formerly Sec. 11-7A) is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003).

2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract,

or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

Section 11-9, formerly Sec. 11-7A, was renumbered and amended by 2006 L.M.C., ch. 7, § 1.

Editor's note—Former Sec. 11-9A, relating to the applicability of this chapter within incorporated municipalities, derived from 1974 L.M.C., ch. 6, § 1, was repealed by 1985 L.M.C., ch. 31, § 9. See § 2-96.

Sec. 11-10. Administrative hearing.

(a) The Director may refer a complaint or a violation to a hearing officer designated by the Chief Administrative Officer for an administrative hearing.

(b) If the Director refers a complaint or violation to a hearing officer, the Director must prepare a statement of charges that summarizes:

(1) the nature of the alleged violation, and the approximate date the violation was committed;

(2) the provision of this Chapter alleged to be violated; and

(3) the right of the respondent to be represented by counsel and present witnesses and evidence pertinent to the charges.

(c) The Director must serve the statement of charges and a notice of the time and place of a hearing on the person who is alleged to have violated this Chapter and notify any complainant or other interested person of the time and place of the hearing.

(d) The Director may use any of the following methods to serve or notify a person under this Chapter:

(1) personal service;

(2) regular or certified mail, postage prepaid, addressed to the last-known residential or business address of the respondent; regular mail is presumed to be served 3 days after mailing;

(3) posting a notice in a conspicuous place at the respondent's residence or place of business; or

(4) publication in a newspaper of general circulation in the County once a week for 3 successive weeks if no address can be found for a party after a diligent search or if the hearing officer determines that the person is avoiding receiving notice.

(e) Unless otherwise provided in this Section, Article 1 of Chapter 2A governs any proceeding held under this Section.

(f) If a person notified of the hearing does not appear at the hearing, the hearing officer may proceed with the hearing and dismiss the charges, enter a default judgment, or issue another appropriate order, including an order directing the person who has not appeared to take or refrain from taking certain actions.

(g) In addition to the requirements of Section 2A-10, if the hearing officer finds by a preponderance of the

evidence that a person has violated this Chapter, the hearing officer may order the violator to:

- (1) stop committing the violation;
- (2) restore money or property;
- (3) pay any costs of investigation or related activities of the Department;
- (4) post a performance bond or other security;
- (5) pay a civil penalty authorized under Section 11-11; or
- (6) take any other action that would:
 - (A) assist the public in obtaining relief; or
 - (B) prevent future violations.

(h) When a violator is ordered to post a performance bond or other security, in setting the amount of security to be posted the hearing officer should consider:

- (1) the nature of the violation;
- (2) the amount of money, property, or any other thing received from a consumer in connection with the violation;
- (3) whether full restitution has been paid to each affected consumer; and
- (4) the risk of future harm to other consumers.

(i) If the hearing officer imposes a civil penalty, the hearing officer should consider:

- (1) the severity of the violation;
- (2) the severity of any harm to the consumer;
- (3) the motives of the violator;
- (4) any previous violations by the same person or entity;
- (5) whether the penalty will deter future misconduct; and
- (6) whether a stop order or restitution would sufficiently protect consumers.

(j) Every person must comply with each order or decision issued by a hearing officer under this Section.

(k) The Director may enforce an order or decision of a hearing officer by taking any appropriate legal action. In addition, the Director may enforce any violation of a decision or order under Section 11-11. ([2006 L.M.C., ch. 7](#), § 1; [2006 L.M.C., ch. 33](#), § 1.)

Sec. 11-11. Enforcement and penalties.

(a) A person who violates this Chapter is subject to a civil penalty under Section 11-10 of not more than \$1,000 for each violation or the penalty for a Class A violation. If the violation is enforced as a Class A civil violation, the maximum penalty is \$1,000 rather than the penalty set under Section 1-19.

(b) The Director may bring an action in any court with jurisdiction to recover a civil penalty, enjoin any violation of this Chapter, or enforce any order, decision, summons or subpoena issued under this Chapter.

(c) In any action the Director brings to enforce this Chapter, the Director may seek damages, restitution, the posting of a bond, or any other available legal or equitable relief. (1972 L.M.C., ch. 11, § 1; 1983 L.M.C., ch. 22, § 16; 1983 L.M.C., ch. 41, § 1; CY 1991 L.M.C., ch. 18, § 2; [2006 L.M.C., ch. 7](#), § 1.)

Editor's note— The above section (formerly Sec. 11-9) is discussed in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 829 A.2d 271 (2003).

Section 11-11, formerly Sec. 11-9, was renumbered, retitled, and amended by 2006 L.M.C., ch. 7, § 1.

Notes

[Note] ***Cross references**—Auction sales, ch. 6; condominiums, ch. 11A; cooperative housing, ch. 11C; homeowners' associations, ch. 24B; housing, moderately priced, ch. 25A; housing policy, ch. 25B; landlord-tenant relations, ch. 29; licensing and regulation of pawnbrokers, § 30-7 et seq.; licensing of closing-out sales, § 30-9 et seq.; motor vehicle repair and maintenance regulations, § 31A-10 et seq.; new home warranty and builder licensing, ch. 31C; radio, television and electrical appliance installation or repairs, ch. 38A; secondhand personal property, ch. 44A; vendors, ch. 47; tenant displacement aid fund, § 56-33 et seq.

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