AN EXPEDITED ACT to:

(1) repeal provisions of County law which identify lending activities that constitute discriminatory housing practices; increase the limit on compensatory damages for humiliation and embarrassment for all forms of discrimination; apply the housing discrimination law to brokers; mandate reporting requirements; and establish guidelines for the Office of Consumer Protection to process certain claims; and

(2) generally amend County law regarding lending discrimination.

By Amending

Montgomery County Code
Chapter 27, Commission on Human Rights
Sections 27-5, 27-6, 27-8, and 27-12

Chapter 11, Consumer Protection
Sections 11-1-11-2

By Deleting

Section 1 of Chapter 29 of the Laws of Montgomery County 2005
Chapter 11, Consumer Protection
Section 11-6A
Sec. 1. Section 1 of Chapter 29 of the Laws of Montgomery County 2005 is repealed:

Sec. 1. Findings and purpose.

Studies show that discriminatory lending practices have increased in the last few years and that some lenders aggressively market high-cost home loans with exorbitant and unnecessary fees and engage in other unfair credit practices that strip families of the equity in their homes.

Discriminatory lending practices impair the economic strength of County homeowners, families, and neighborhoods.

It is the intent of the County Council to prevent discriminatory lending practices directed at households because of their race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age. Some indicators of discriminatory lending practices include, but are not limited to:

(1) marketing or refinancing mortgages that a borrower cannot afford to repay based on income and credit levels;
(2) charging abusive prepayment penalties;
(3) financing excessive points and fees;
(4) steering a borrower to a more expensive mortgage by any of the following activities: discouraging a person from a mortgage loan with more favorable terms; directing a person away from a housing or mortgage loan product, program, or service with more favorable terms; offering more limited mortgage loan opportunities or less favorable mortgage loan terms; or delaying a mortgage loan application or approval; and
(5) financing single premium credit insurance.

In the County, studies have shown that subprime mortgages are disproportionately offered to and entered into by minority homeowners. Although not all subprime loans are the product of discriminatory lending practices, studies demonstrate that a substantial percentage of people with subprime loans could qualify for loans with more favorable terms. The purpose of this legislation is not to restrict the subprime lending market, but to identify and regulate mechanisms, policies, or terms that discriminate against protected classes of individuals.

Sec. 2. Sections 27-4, 27-5, 27-6, 27-8, and 27-12 are amended as follows:

(a) The executive director of the Commission heads the Office of Human Rights and must assist the Commission to implement this article.

* * *

(d) The Office of Human Rights must educate County residents about discriminatory lending practices through the use of literature, counseling, educational workshops, or public fora. The Office may work with the Commission for Women, the Office of Consumer Protection, and any other government or non-government agency or organization to identify and educate the public about discriminatory lending practices.]

27-5. Duties generally.

(a) The Commission must:

* * *

(11) Provide to the County Executive and County Council:

(A) a quarterly written or oral report of Commission activities and recommendations within 30 days after each calendar quarter;

(B) an annual written report summarizing Commission activities, goals, needs, and recommendations promptly after each calendar year. [;

and

(C) by March 1 of each year, an annual written report, compiled by the Office of Human Rights, for the preceding calendar year detailing the number and type of housing discrimination complaints received under this Section, including the age, gender, and race of the complainant, the area where complainant resides, the decision of the Commission, and the type and amount of the penalty imposed. This report must also identify overall lending patterns in the County for prime and subprime loans as compiled from Home Mortgage Disclosure Act and Fair Housing Administration data. This report must be separate from the Commission’s annual report.]

* * *
27-6. **Definitions.**

The following words and phrases have the following meanings, unless the context indicates otherwise:

* * *

**Lending institution** means any bank, insurance company, savings and loan association, or any other person or organization regularly engaged in the business of lending money or guaranteeing loans. **Lending institution** includes a department, agency, or instrument of the County or, to the extent allowed by law, of the federal, State, or local government, that lends money or guarantees loans.

* * *

**Mortgage loan** means the making of a loan or providing other financial assistance to purchase, refinance, construct, improve, repair, or maintain a dwelling that is secured by real property, or any other type of loan that is secured by a dwelling.]

**Person** means an individual; a legal entity; or a department agency, or instrument of the County, or to the extent allowed by law, of federal, State, or local government. [A lending institution, including any bank, insurance company, savings and loan association, or other organization regularly engaged in the business of lending money, brokering money, or guaranteeing loans, is a person.]

* * *

27-8. **Penalties and relief.**

(a) **Damages and other relief for complainant.** After finding a violation of this Article, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:

1. compensation for:
   1. reasonable attorney’s fees;
   2. property damage;
   3. personal injury;
   4. unreimbursed travel or other reasonable expenses;
   5. [damages not exceeding $500,000] up to $5,000 for humiliation and embarrassment, based on the nature of the humiliation and
embarrassment, including its severity, duration, frequency, and
breadth of observation by others;

[(F) financial losses resulting from the discriminatory act;] and
[(G) interest on any damages from the date of the discriminatory act, as
provided in subsection (c).

(2) equitable relief to prevent the discrimination and otherwise effectuate the
purposes of this Chapter;

(3) consequential damages, such as lost wages from employment discrimination
or higher housing costs from housing discrimination, for up to 2 years after
the discrimination, not exceeding the actual difference in expenses or
benefits that the complainant realized while seeking to mitigate the
consequences of the discrimination (such as income from alternate
employment or unemployment compensation following employment
discrimination); and

(4) any other relief that furthers the purposes of this Article or is necessary to
eliminate the effects of any discrimination prohibited under this Article.

* * *


(a) A person must not, because of race, color, religious creed, ancestry, natural origin,
sex, marital status, disability, presence of children, family responsibilities, source of
income, sexual orientation, or age:

(1) refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent,
assign, or otherwise transfer the title, leasehold, or other interest in any
housing;

(2) represent that housing is not available for inspection, sale, lease, sublease,
rental, assignment, or other transfer when it is available;

(3) otherwise deny or withhold any housing from any person;

(4) include in the terms, conditions, or privileges of any sale, lease, sublease,
rental, assignment, or other transfer of any housing, any clause, condition, or
restriction discriminating against any person in the use or occupancy of that
housing; and
(5) discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy of any person.

(b) A [person] lending institution must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age discriminate in:

(1) lending [or brokering] money;

(2) guaranteeing [, servicing, or purchasing] loans;

(3) accepting a deed of trust or mortgage;

(4) making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing;

(5) fixing the rates, terms, conditions, or provisions of any financial assistance; or

(6) extending any other service in connection with housing finance.

(c) Without limiting the general application of Subsection (b), a person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age:

(1) Engage in steering, which means:

(A) restricting or attempting to restrict a person’s choices because of factors other than a person’s income or credit level in connection with seeking, negotiating, buying, or renting a dwelling, including seeking a mortgage loan for a dwelling;

(B) discouraging a person from a particular mortgage loan with more favorable terms if the person may qualify for that particular mortgage loan;

(C) directing a person away from a housing or mortgage loan product, program, or service with more favorable terms if the person may qualify for that particular product, program, or service; or

(D) offering less favorable mortgage loan terms than would otherwise be offered;
(2) Make available a mortgage loan which:

(A) includes the financing of single premium credit life insurance;

(B) provides for excessive upfront points, excessive fees, or excessive prepayment penalties; or

(C) provides compensation paid directly or indirectly to a person from any source.

[(d) (c) (1) A person must not:

(A) publish or circulate, or cause to be published or circulated, any housing notice, statement, listing, or advertisement;

(B) announce a policy, or use any form of application for the purchase, lease, rental, or financing of any housing; or

(C) make any record or formal business inquiry in connection with the prospective purchase, lease, rental, or financing of any housing; indicating that race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age could influence or affect any act described in subsections (a) and (b), and (c).]

[(e) (d) A person must not:

[f] (e) A person must not:

[g] (f) A person must not retaliate against a person for:

[(h) (g) A person, must not because of race, color, religious creed, ancestry, national origin,]

[(i) (h) A person must not discriminate against a person with a disability in the sale or rental of housing such as by:

Sec. 3. Sections 11-1 and 11-2 are amended as follows and Section 11-6A is deleted:

11-1. Definitions.
In this Chapter, the following words and phrases have the following meanings:

* * *

[**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.]

* * *

**11-2. Office of Consumer Protection.**

The Office has the following duties, powers, and authority:

* * *

[(n) To undertake activities and establish procedures to identify, and assist consumers with respect to, any discriminatory, predatory, or abusive lending practice.]

**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 Office 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.
The Office, in conducting activities to identify and educate consumers about discriminatory, predatory, or abusive lending practices, may work with non-government organizations.]

Sec. 4. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

________________________________________________________________________
George L. Leventhal, President, County Council       Date

Approved:

________________________________________________________________________
Douglas M. Duncan, County Executive              Date

This is a correct copy of Council action.

________________________________________________________________________
Linda M. Lauer, Clerk of the Council          Date