

Expedited Bill No. 4-06
Concerning: Commission on Human Rights—Discrimination in Housing—Repeal
Revised: March 9, 2006 Draft No. 1
Introduced: March 14, 2006
Expires: September 14, 2007
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Knapp and Denis

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 1 of Chapter 29 of the Laws of Montgomery County 2005 is repealed:**

2 **[Sec. 1. Findings and purpose.**

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

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

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

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

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

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

33 **27-4. Commission staff and Office of Human Rights.**

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

36 * * *

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

43

44 **27-5. Duties generally.**

45 (a) The Commission must:

46 * * *

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

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

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

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

63 * * *

64 **27-6. Definitions.**

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

67 * * *

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

73 * * *

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

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

82 * * *

83 **27-8. Penalties and relief.**

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

- 87 (1) compensation for:
 - 88 (A) reasonable attorney’s fees;
 - 89 (B) property damage;
 - 90 (C) personal injury;
 - 91 (D) unreimbursed travel or other reasonable expenses;
 - 92 (E) [damages not exceeding \$500,000] up to \$5,000 for humiliation and
 - 93 embarrassment, based on the nature of the humiliation and

94 embarrassment, including its severity, duration, frequency, and
95 breadth of observation by others;

96 [(F) financial losses resulting from the discriminatory act;] and

97 [(G)] (F) interest on any damages from the date of the discriminatory act, as
98 provided in subsection (c).

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

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

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

110 * * *

111 **27-12. Discriminatory housing practices.**

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

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

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

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

121 (4) include in the terms, conditions, or privileges of any sale, lease, sublease,
122 rental, assignment, or other transfer of any housing, any clause, condition, or
123 restriction discriminating against any person in the use or occupancy of that
124 housing; and

125 (5) discriminate in the furnishing of any facilities, repairs, improvements, or
126 services, or in the terms, conditions, privileges, or tenure of occupancy of
127 any person.

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

131 (1) lending [or brokering] money;

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

133 (3) accepting a deed of trust or mortgage;

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

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

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

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

143 (1) Engage in steering, which means:

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

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

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

154 (D) offering less favorable mortgage loan terms than would otherwise be
155 offered;

- 156 (2) Make available a mortgage loan which:
157 (A) includes the financing of single premium credit life insurance;
158 (B) provides for excessive upfront points, excessive fees, or excessive
159 prepayment penalties; or
160 (C) provides compensation paid directly or indirectly to a person from
161 any source.]

- 162 [(d)] (c) (1) A person must not:
163 (A) publish or circulate, or cause to be published or circulated, any
164 housing notice, statement, listing, or advertisement;
165 (B) announce a policy, or use any form of application for the purchase,
166 lease, rental, or financing of any housing; or
167 (C) make any record or formal business inquiry in connection with the
168 prospective purchase, lease, rental, or financing of any housing;
169 indicating that race, color, religious creed, ancestry, national origin, sex,
170 marital status, disability, presence of children, family responsibilities, source
171 of income, sexual orientation, or age could influence or affect any act
172 described in subsections (a)[,] and (b)[, and (c)].

173 * * *

- 174 [(e)] (d) A person must not:

175 * * *

- 176 [(f)] (e) A person must not:

177 * * *

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

179 * * *

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

181 * * *

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

184 * * *

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

186 **11-1. Definitions.**

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

188 * * *

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

192 * * *

193 **11-2. Office of Consumer Protection.**

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

195 * * *

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

198 **[11-6A. Discriminatory, predatory, or abusive lending practices.**

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

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

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

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

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

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

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

216 (d) The Office, in conducting activities to identify and educate consumers about
217 discriminatory, predatory, or abusive lending practices, may work with non-
218 government organizations.]

219 **Sec. 4. Expedited Effective Date.**

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

222 *Approved:*

223

George L. Leventhal, President, County Council Date

224 *Approved:*

225

Douglas M. Duncan, County Executive Date

226 *This is a correct copy of Council action.*

227

Linda M. Lauer, Clerk of the Council Date