

# Mortgage Fraud

This Act creates a mortgage fraud statute with criminal penalties and authorizes the state Attorney General to take action to enforce the statute. The bill also authorizes a private right of action for violations of the statute in specified circumstances. Sections about seizing and disposing property involved with mortgage fraud can be found in the Maryland law but are excluded from this SSL draft.

Submitted as:

Maryland

[Chapter 4, 2008](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Mortgage Fraud Protection Act.”

2  
3           Section 2. [*Definitions.*] As used in this Act:

4           (a) “Mortgage loan” means any loan or other extension of credit that is secured, in whole  
5 or in part, by any interest in residential real property in this state; and if for personal, household, or  
6 family purposes, in any amount; or if for commercial purposes, not in excess of [\$75,000].  
7 “Mortgage loan” does not include any loan for commercial purposes that is secured, in whole or in  
8 part, by any interest in residential real property in this state; in excess of [\$75,000]; and supported  
9 by independent evidence of the commercial purpose.

10           (b) “Mortgage lending process” means the process by which a person seeks or obtains a  
11 mortgage loan. “Mortgage lending process” includes the solicitation, application, origination,  
12 negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan; and the  
13 notarizing of any document in connection with a mortgage loan.

14           (c) “Mortgage fraud” means any action by a person made with the intent to defraud that  
15 involves:

16                   (1) knowingly making any deliberate misstatement, misrepresentation, or omission  
17 during the mortgage lending process with the intent that the misstatement, misrepresentation, or  
18 omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending  
19 process;

20                   (2) knowingly using or facilitating the use of any deliberate misstatement,  
21 misrepresentation, or omission during the mortgage lending process with the intent that the  
22 misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any  
23 other party to the mortgage lending process;

24                   (3) receiving any proceeds or any other funds in connection with a mortgage  
25 closing that the person knows resulted from a violation of item (1) or (2) of this subsection;

26                   (4) conspiring to violate any of the provisions of item (1), (2), or (3) of this  
27 subsection; or

28                   (5) filing or causing to be filed in the land records in the county where a residential  
29 real property is located, any document relating to a mortgage loan that the person knows to contain  
30 a deliberate misstatement, misrepresentation, or omission.

31 (d) “Pattern of mortgage fraud” means [two or more] incidents of mortgage fraud that  
32 involve [two or more] residential real properties; and have similar intents, results, accomplices,  
33 victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.

34 (e) “Residential real property” means property improved by [four or fewer] single family  
35 dwelling units or as defined under [insert citation].

36  
37 Section 3. [*Mortgage Fraud: Penalties.*]

38 (a) A person may not commit mortgage fraud.

39 (b) The [attorney general] or the [commissioner of financial regulation] may seek an  
40 injunction to prohibit a person who has engaged or is engaging in a violation of this Act from  
41 engaging or continuing to engage in the violation.

42 (c) A [court] may enter any order or judgment necessary to:

43 (1) prevent the use by a person of any prohibited practice;

44 (2) restore to a person any money or real or personal property acquired from the  
45 person by means of any prohibited practice; or

46 (3) appoint a receiver in the case of a willful violation of this Act.

47 (d) The [attorney general] and the [state’s attorney] are authorized to conduct a criminal  
48 investigation and prosecution of all cases of mortgage fraud under this Act.

49 (e) The [attorney general] or the [state’s attorney], as appropriate, shall promptly report a  
50 conviction under this Act to the unit of state government that has regulatory jurisdiction over the  
51 business activities of the person convicted.

52 (f) In any action brought by the [attorney general] or [commissioner] under this section, the  
53 [attorney general] or [commissioner] is entitled to recover the costs of the action for the use of the  
54 state.

55 (g) In addition to any action authorized under this Act and any other action otherwise  
56 authorized by law, a person may bring an action for damages incurred as the result of a violation  
57 of this Act.

58 (h) A person who brings an action under this Act and who is awarded damages may also  
59 seek, and the court may award, reasonable attorney’s fees.

60 (i) If the court finds that the defendant violated this Act, the court may award damages  
61 equal to [three times the amount of actual damages].

62 (j) Except as provided in subsections (k) and (l) of this Section, a person who violates this  
63 Act is guilty of a felony and on conviction is subject to a fine not exceeding [\$5,000 or  
64 imprisonment not exceeding 10] years or both.

65 (k) If a violation involves a victim who is a vulnerable adult as defined under [insert  
66 citation], a person who violates this Act is guilty of a felony and on conviction is subject to a fine  
67 not exceeding [\$15,000] or imprisonment not exceeding [15 years] or both.

68 (l) If a violation involves engaging or participating in a pattern of mortgage fraud or a  
69 conspiracy or endeavor to engage or participate in a pattern of mortgage fraud, a person who  
70 violates this Act is guilty of a felony and on conviction is subject to a fine not exceeding  
71 [\$100,000] or imprisonment not exceeding [20 years] or both.

72 (m) (1) A person convicted of violating this Act shall pay restitution to any person  
73 damaged by the violation.

74 (2) Restitution shall be ordered in addition to a fine or imprisonment or both.

75 (n) Each residential real property transaction subject to a violation of this Act constitutes a  
76 separate offense, and shall not merge with any other crimes set forth in the [insert citation].

77  
78 Section 4. [*Venue.*] For the purpose of venue under Sections 2 and 3 of this Act, a violation  
79 of this Act shall be considered to have been committed:

80 (1) in the county in which the residential real property is located for which a  
81 mortgage loan is being sought;  
82 (2) in the county in which an act was performed in furtherance of the violation;  
83 (3) in the county in which a person alleged to have violated this Act had control or  
84 possession of any proceeds of the violation;  
85 (4) if a closing occurred, in the county in which the closing occurred; and  
86 (5) in the county in which a document containing a deliberate misstatement,  
87 misrepresentation, or omission is filed in the land records.

88  
89 Section 7. [*Severability.*] [Insert severability clause.]

90  
91 Section 8. [*Repealer.*] [Insert repealer clause.]

92  
93 Section 9. [*Effective Date.*] [Insert effective date.]