

In items (3) and (4) of this section, the words "in connection with" are substituted for the phrase "in aid of" for clarity.

The first sentence of present Art. 66, § 41, which states that no person except for a financial institution subject to certain other laws may "make or negotiate, or offer to make or negotiate, any secondary mortgage loan except under the provisions of this subtitle" is deleted as unnecessary and potentially misleading. The substantive prohibition repeats the one contained in CL § 12-412 and, therefore, is unnecessary. The exception implies that any financial institution whose power to engage in mortgage loan transactions is regulated by any other law of this State or of the United States is exempted completely from the Maryland Secondary Mortgage Loan Law. This implication is misleading. The prohibition in CL § 12-412 applies to a "lender", which, as defined in CL § 12-401(c), covers both a licensee and a person who is exempted expressly from the licensing requirements of this subtitle. The intent of the reference to regulated financial institutions is to exempt them only from additional licensing provisions.

Therefore, the second sentence of present Art. 66, § 41(3), which indicates that persons who make less than ten secondary mortgage loans a year may not charge interest that exceeds the limits of the Maryland Secondary Mortgage Loan Law — Credit Provisions, is deleted as unnecessary. As persons expressly exempted from licensing, these persons are within the defined term "lender" in CL § 12-401.

While the former law might be interpreted to the effect that these loans are subject to other credit provisions, it is clear that these exempted persons are lenders under the Maryland Secondary Mortgage Loan Law and, as such, are subject to the credit provisions of that law when making second mortgage loans. See Schmidt v. Beneficial Finance Co., 42 Md. App. 148, 159 (1979).

12-303. RULES AND REGULATIONS.

THE BANK COMMISSIONER MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from Art. 66, § 70.

12-304. LICENSE REQUIRED.
