

# Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

## 09.03.15 Shared Appreciation Agreements

Authority: Financial Institutions Article, §§2-105.1, 12-926, and 12-1030, Annotated Code of Maryland

### Notice of Proposed Action

[24-070-P]

The Commissioner of Financial Regulation proposes to adopt new Regulations .01—.05 under a new chapter, **COMAR 09.03.15 Shared Appreciation Agreements**.

### Statement of Purpose

The purpose of this action is to modernize Maryland's consumer lending laws as a result of the Legislature's adoption of Ch. 568 (H.B. 1150), Acts of 2023, which confirmed shared appreciation agreements are subject to the Maryland Mortgage Lender Law (Commercial Law Article, §§12-901(a), 12-1001(a), 12-901(g) and (g-1)—(l), 12-913.1, 12-922, 12-1001(j) and (k-1)—(m), 12-1013, 12-901(n), 12-926, 12-1001(o), and 12-1030; Financial Institutions Article, §§11-501(a), 11-501(h-1)—(q), and 11-501(r); Annotated Code of Maryland) and aligning Maryland with other states already regulating shared appreciation agreements.

This action enhances the Office of Financial Regulation's (OFR's) licensing regulations by adding:

- (1) Definitions for certain undefined terms used in shared appreciation agreements;
- (2) A description of the required disclosures in shared appreciation agreements;
- (3) Procedures for the calculation of a property value; and
- (4) A description of the ability to repay standard.

### Estimate of Economic Impact

**I. Summary of Economic Impact.** The economic impact of the proposed action is expected to be low.

### II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Non-depository licensees	(-)	Minimal
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:		
Consumers	(+)	Impactful

### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. The proposed action imposes no additional fees or charges. The proposed action may, in some cases, increase record-keeping and compliance costs for regulated entities. The Commissioner cannot provide exact estimates of these costs; however, in most instances, it is expected that the aggregate impact on any licensee is unlikely to be significant.

F. It is expected that the public will directly benefit from the proposed disclosures and clarity they provide regarding these types of transactions as well as by establishing an ability to repay standard.

### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

### Opportunity for Public Comment

Comments may be sent to Amy Hennen, Director of Legislative Response, Office of Financial Regulation, 1100 Eutaw St. Ste. 611, Baltimore, MD 21201, or call 4102306094, or email to amy.hennen@maryland.gov. Comments will be accepted through August 12, 2024. A public hearing has not been scheduled.

**NOTE:** [Click here for the Appendix A referenced in the chapter](#) .

#### **.01 Definitions.**

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

(1) "Actual change in value" means, with respect to each scenario included on the disclosure form found in Appendix A of this chapter, the average annual change in value for homes in the State of Maryland over the most recent number of years used in that scenario.

(2) "Annual percentage rate" has the meaning stated in 12 CFR §1026.22(a), as amended from time to time.

(3) "Annualized cost" means a measure of the cost of credit, expressed as a yearly rate, provided to allow a borrower to compare the cost of a shared appreciation agreement with the cost of other forms of credit.

(4) "Arms-length sale" means a transaction for the sale of property between two unrelated and unaffiliated parties of equal bargaining power acting independently and in their respective self-interests.

(5) "Automated valuation model" or "AVM" means a statistically based estimate of a property's value based on publicly available information such as comparable sales, property characteristics, and price trends.

(6) "Borrower" means a person who receives funds under a shared appreciation agreement.

(7) "Broker price opinion" or "BPO" means an estimate, provided by a real estate broker licensed by the State or another qualified professional, of the price for which a property is likely to sell.

(8) "Commitment" has the meaning stated in Commercial Law Article, §12-922, Annotated Code of Maryland.

(9) "Estimated fair market value" means:

(a) An estimate of value determined through either the use of an appraisal from an appraiser licensed by the State or the use of an automated valuation model or broker price opinion; or

(b) An estimate of value provided by the borrower, if a disclosure is provided before the lender obtains an appraisal, automated valuation model, or broker price opinion.

(10) "Final payment amount" means the amount a borrower will be required to pay the lender at the termination of the shared appreciation agreement.

(11) "Final value" means the value of the property at the termination of the shared appreciation agreement as calculated using the estimated fair market value of the property, or, in an arms-length sale, the sale price of the property.

(12) "Financing agreement" has the meaning stated in Commercial Law Article, §12-922, Annotated Code of Maryland.

(13) "Lender" means a person who makes a mortgage loan under a shared appreciation agreement.

(14) "Share based repayment amount" means the lender's share of the property's appreciation or value at the termination of the shared appreciation agreement as calculated without regard to any contractual limit on the repayment amount.

(15) "Shared appreciation agreement" has the meaning stated in Financial Institutions Article, §11-501(r), Annotated Code of Maryland.

(16) "Starting value" means the estimated fair market value of a property minus any discount applied by the lender.

(17) "Truth in Lending Act" refers to 15 U.S.C. 1601, et seq., and its implementing regulations under 12 CFR 1026.

#### **.02 Required Disclosures.**

*A. Financing Agreements and Commitments.*

(1) In addition to providing any other disclosures required by Commercial Law Article, Title 12, Subtitles 9 and 10, Annotated Code of Maryland, a lender receiving an application for a shared appreciation agreement shall, regardless of lien position, provide a borrower with a financing agreement.

(2) The lender shall satisfy the requirement to provide a financing agreement for a mortgage loan made under a shared appreciation agreement in the following manner:

(a) By providing the disclosure form found in Appendix A of this chapter, or a substantially similar form, within 10 business days after the date an application for a shared appreciation agreement is completed; and

(b) By calculating the annualized cost based on the term in each scenario within the form in Appendix A of this chapter using the method prescribed in 12 CFR Part 1026 Appendix J for calculating an annual percentage rate.

(3) If the terms of the disclosure provided by the lender under §A(2) of this regulation are subject to change, a lender offering a shared appreciation agreement, regardless of lien position, shall provide a borrower with a commitment.

(4) The lender shall satisfy the requirement to provide a commitment for a mortgage loan made under a shared appreciation agreement in the following manner:

(a) By providing the disclosure form found in Appendix A of this chapter, or a substantially similar form, with a statement that the terms therein are not subject to change, at least 72 hours before the settlement time agreed to by both parties; and

(b) By calculating the annualized cost based on the term in each scenario within the form in Appendix A of this chapter using the method prescribed in 12 CFR Part 1026 Appendix J for calculating an annual percentage rate.

*B. Compliance with Disclosures in Appendix A of this Chapter.*

(1) A form will be considered substantially similar to the one in Appendix A of this chapter if it includes all information provided in Appendix A of this chapter.

- (2) A lender shall disclose the following information regarding the estimated fair market value of the property:
- (a) The method used to calculate the estimated fair market value;
  - (b) The amount, if any, by which the lender is discounting the estimated fair market value in establishing the property's initial value;
  - (c) The estimated fair market value of the property and any discount applied to that value in determining the starting value; and
  - (d) The potential impact of that discount on their repayment amount.

C. *Compliance with Applicable Law.* Compliance with this regulation shall constitute compliance with any requirements under Commercial Law Article, §12-922 or 12-1022, Annotated Code of Maryland, to provide a financing agreement or a commitment.

**.03 Calculation of Property Value.**

*A. Means of Calculating the Property Value.*

- (1) The lender shall use the estimated fair market value to determine the starting value of the property.
- (2) The starting value may represent a discount of the estimated fair market value at the time the shared appreciation agreement is executed.
- (3) Except as provided in §B of this regulation, the lender shall use the same method for calculating the estimated fair market value in connection with determining the starting value and the final value.
- (4) An appraisal, AVM, or BPO used to determine fair market value shall be obtained by the lender from an unaffiliated third-party.
- (5) In complying with the requirements of Regulation .02A(2) of this chapter, a lender may use a value stipulated by the borrower as the estimated fair market value if the lender has not yet obtained an appraisal, BPO, or AVM and the terms of the disclosure provided under Regulation .02 of this chapter are subject to change.
- (6) In complying with the requirements of Regulation .02A(4) of this chapter, a lender shall use an appraisal, BPO, or AVM.

*B. Sale of Property.*

If a shared appreciation agreement terminates with the sale of the property, the final value may not exceed the sale price if:

- (1) The sale was an arms-length sale;
- (2) The property was not sold as part of a foreclosure; and
- (3) The borrower did not retain an interest in the property, including an interest as a life estate.

**.04 Calculating Values in Appendix A of this Chapter.**

*A. Actual Appreciation.* Actual change in value shall be calculated using the All-Transactions House Price Index as published by the Federal Reserve Bank of St. Louis unless this index becomes unavailable, in which case the Commissioner may designate an alternate index.

*B. Final Payment Amount.* The final payment amount shall be the lender's share of appreciation or equity, plus, if applicable under the terms of the agreement, any other amounts payable by the borrower at termination, minus any amount over any repayment limit to which the lender and the borrower have agreed.

**.05 Ability to Repay.**

A lender offering a shared appreciation agreement is deemed to have given due regard to a borrower's ability to repay if disclosures are provided by the lender to the borrower in compliance with Regulation .02 of this chapter, provided that:

- A. The shared appreciation agreement does not require periodic payments prior to termination of the agreement; and
- B. The term of the shared appreciation agreement is no less than 5 years.