

Bill No. 36-04  
Concerning: Commission on Human  
Rights—Discrimination in  
Housing—Amendments  
Revised: November 29, 2005 Draft No. 6  
Introduced: October 26, 2004  
Enacted: November 29, 2005  
Executive: December 7, 2005  
Effective: March 8, 2006  
Sunset Date: None  
Ch. 29, Laws of Mont. Co. 2005

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Councilmembers Perez, Subin, and Floreen

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**AN ACT to:**

- (1) identify specific [[categories of]] practices related to lending activities that constitute discriminatory housing practices;
- (2) clarify that [[individuals]] a person must not engage in discriminatory lending practices;
- (3) [[authorize]] increase compensatory damages [[consistent with the federal Fair Housing Act]] for humiliation and embarrassment for all forms of discrimination;
- (4) require the [[Commission on]] Office of Human Rights to provide the Executive and Council with an annual report on discriminatory lending practices in the County; [[and]]
- (5) require the Office of Human Rights to educate the public about discriminatory lending practices; [[and]]
- (6) establish procedures for the Office of Consumer [[Affairs]] Protection to [[identify and process a complaint based on]] assist potential victims of discriminatory, predatory, or abusive lending practices; and
- (7) generally amend County law regarding discrimination in real estate.

**By Amending**

Montgomery County Code  
Chapter 27, Commission on Human Rights  
Division 2. Discrimination in Real Estate  
Sections 27-5, 27-6, 27-8, and 27-12

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

**By Adding**

Chapter 11, Consumer Protection  
Section 11-6A

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1           **Sec. 1. Findings and purpose.**

2           Studies show that ~~[[predatory]] discriminatory~~ lending practices have increased in

3 the last few years and that some lenders aggressively market high-cost home loans with

4 exorbitant and unnecessary fees and engage in other unfair credit practices that strip families

5 of the equity in their homes.

6           ~~[[Predatory]] Discriminatory~~ lending ~~[[impairs]]~~ practices impair the economic

7 strength of County homeowners, families, and neighborhoods.

8           It is the intent of the County Council to prevent ~~[[predatory]] discriminatory~~ lending

9 practices directed at households because of their race, color, religious creed, ancestry,

10 national origin, sex, marital status, disability, presence of children, family responsibilities,

11 source of income, sexual orientation, or age. Some indicators of ~~[[predatory]]~~

12 discriminatory lending practices include, but are not limited to:

13           (1) marketing or refinancing mortgages ~~[[with no tangible net benefit to the~~

14 borrower]] that a borrower cannot afford to repay based on income and

15 credit levels;

16           (2) charging abusive prepayment penalties;

17           (3) financing excessive points and fees;

18           (4) steering ~~[[borrowers]]~~ a borrower to a more expensive mortgage~~[[s than what~~

19 they would otherwise qualify for;]] by any of the following activities:

20 discouraging a person from a mortgage loan with more favorable terms;

21 directing a person away from a housing or mortgage loan product, program,

22 or service with more favorable terms; offering more limited mortgage loan

23 opportunities or less favorable mortgage loan terms; or delaying a mortgage

24 loan application or approval; and

25           (5) financing single premium credit insurance.

26 In the County, ~~[[some]]~~ studies have shown that subprime mortgages are  
27 disproportionately offered to and entered into by minority homeowners~~[[~~, as documented by  
28 the Calvin Bradford and Associates study, “Overview of Home Lending in Montgomery  
29 County (1999-2000)”~~]]~~. Although not all subprime loans are the product of ~~[[predatory]]~~  
30 discriminatory lending practices, studies demonstrate that a substantial percentage of people  
31 with subprime loans could ~~[[quality]]~~ qualify for ~~[[less expensive]]~~ loans with more  
32 favorable terms. The purpose of this legislation is not to restrict the subprime lending  
33 market, but to identify and regulate mechanisms, policies, or terms that discriminate against  
34 protected classes of individuals.

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

36 **27-4. Commission staff and Office of Human Rights.**

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

39 \* \* \*

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

46  
47 **27-5. Duties generally.**

48 (a) The Commission must:

49 \* \* \*

- 50 (11) Provide to the County Executive and County Council:
- 51 (A) a quarterly written or oral report of Commission activities and
  - 52 recommendations within 30 days after each calendar quarter; [and]
  - 53 (B) an annual written report summarizing Commission activities, goals,
  - 54 needs, and recommendations promptly after each calendar year[.];
  - 55 and

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

\* \* \*

67 **27-6. Definitions.**

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

- 70 [(a)] \* \* \*
- 71 [(b)] \* \* \*
- 72 [(c)] \* \* \*
- 73 [(d)] \* \* \*
- 74 [(e)] \* \* \*
- 75 [(f)] \* \* \*
- 76 [(g)] \* \* \*
- 77 [(h)] \* \* \*
- 78 [(i)] \* \* \*
- 79 [(j)] \* \* \*
- 80 [(k)] \* \* \*
- 81 [(l)] \* \* \*
- 82 [(m)] \* \* \*
- 83 [(n)] \* \* \*
- 84 [(o)] \* \* \*
- 85 [(p)] \* \* \*

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

91 [(r) \* \* \*

92 [(s) \* \* \*

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

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

101 [(u) \* \* \*

102 [(v) \* \* \*

103 [(w) \* \* \*

104 [(x) \* \* \*

105 [(y) \* \* \*

106 [(z) \* \* \*

107 [(aa) \* \* \*

108 [(bb) \* \* \*

109 [(cc) \* \* \*

110 [(dd) \* \* \*

111 [(ee) \* \* \*

112 [(ff) \* \* \*

113 [(gg) \* \* \*

114 **27-8. Penalties and relief.**

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

- 118 (1) compensation for:
  - 119 (A) reasonable attorney's fees;
  - 120 (B) property damage;
  - 121 (C) personal injury;
  - 122 (D) unreimbursed travel or other reasonable expenses;
  - 123 (E) damages [up to \$5,000] [[up to]] not exceeding \$500,000 for  
124 humiliation and embarrassment, based on the nature of the  
125 humiliation and embarrassment, including its severity, duration,  
126 frequency, and breadth of observation by others; [and]
  - 127 (F) financial losses resulting from the discriminatory act; and  
128 [(F)] (G) interest on any damages from the date of the discriminatory act, as  
129 provided in subsection (c)[[.]];
- 130 (2) equitable relief to prevent the discrimination and otherwise effectuate the  
131 purposes of this Chapter;
- 132 (3) consequential damages, such as lost wages from employment discrimination  
133 or higher housing costs from housing discrimination, for up to 2 years after  
134 the discrimination, not exceeding the actual difference in expenses or  
135 benefits that the complainant realized while seeking to mitigate the  
136 consequences of the discrimination (such as income from alternate  
137 employment or unemployment compensation following employment  
138 discrimination); and
- 139 (4) any other relief that furthers the purposes of this Article or is necessary to  
140 eliminate the effects of any discrimination prohibited under this Article.

141 \* \* \*

142 **27-12. Discriminatory housing practices.**

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

- 146 (1) refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent,
- 147 assign, or otherwise transfer the title, leasehold, or other interest in any
- 148 housing;
- 149 (2) represent that housing is not available for inspection, sale, lease, sublease,
- 150 rental, assignment, or other transfer when it is available;
- 151 (3) otherwise deny or withhold any housing from any person;
- 152 (4) include in the terms, conditions, or privileges of any sale, lease, sublease,
- 153 rental, assignment, or other transfer of any housing, any clause, condition, or
- 154 restriction discriminating against any person in the use or occupancy of that
- 155 housing; or
- 156 (5) discriminate in the furnishing of any facilities, repairs, improvements, or
- 157 services, or in the terms, conditions, privileges, or tenure of occupancy of
- 158 any person.

159 (b) A ~~[[lending institution or a]]~~ person must not, because of race, color, religious creed,

160 ancestry, national origin, sex, marital status, disability, presence of children, family

161 responsibilities, source of income, sexual orientation, or age, discriminate in:

- 162 (1) lending or brokering money;
- 163 (2) guaranteeing, servicing, or purchasing loans;
- 164 (3) accepting a deed of trust or mortgage;
- 165 (4) making available funds for the purchase, acquisition, construction, alteration,
- 166 rehabilitation, repair, or maintenance of any housing;
- 167 (5) fixing the rates, terms, conditions, or provisions of any financial assistance;
- 168 or
- 169 (6) extending any other service in connection with housing finance.

170 (c) ~~[[A]]~~ Without limiting the general application of Subsection (b), a person must not,

171 because of race, color, religious creed, ancestry, national origin, sex, marital status,

172 disability, presence of children, family responsibilities, source of income, sexual

173 orientation, or age~~[[, discriminate in a loan for a dwelling by]]~~:

- 174 (1) Engage in steering, which means:
- 175 (A) restricting or attempting to restrict a person's choices because of
- 176 factors other than a person's income ~~[[and]]~~ or credit level in

177 connection with seeking, negotiating, buying, or renting a dwelling,  
 178 including seeking a mortgage loan for a dwelling[.]; [[Steering  
 179 includes: (1)]]

180 (B) discouraging a person from a particular mortgage loan with more  
 181 favorable terms if the person may qualify for that particular mortgage  
 182 loan; [(2)]

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

186 (D) offering [[more limited]] less favorable mortgage loan  
 187 [[opportunities or less favorable mortgage loan]] terms than would  
 188 otherwise be offered[.]; or (4) delaying a mortgage loan application  
 189 or approval;];

190 (2) [[originating a predatory mortgage loan, as determined by evaluating one or  
 191 more of the following factors: if the loan product is suitable for the borrower  
 192 based on income and credit levels; if the loan product includes the financing  
 193 of single premium credit insurance, excessive points, fees, prepayment  
 194 penalties or a mandatory arbitration clause; or if the mortgage does not  
 195 provide a tangible net benefit to the borrower; or]] Make available a  
 196 mortgage loan which:

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

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

200 (C) provides compensation paid directly or indirectly to a [[mortgage  
 201 broker]] person from any source[.] [[; or]].

202 [(3) engaging in any practice described in this Section by adopting, applying, or  
 203 using a policy or practice that operates to discriminate without a compelling  
 204 business justification and without establishing that there is no less  
 205 discriminatory way to advance the business justification with a less  
 206 discriminatory effect.]]

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



- 208 (A) publish or circulate, or cause to be published or circulated, any
- 209 housing notice, statement, listing, or advertisement;
- 210 (B) announce a policy, or use any form of application for the purchase,
- 211 lease, rental, or financing of any housing; or
- 212 (C) make any record or formal business inquiry in connection with the
- 213 prospective purchase, lease, rental, or financing of any housing;
- 214 indicating that race, color, religious creed, ancestry, national origin,
- 215 sex, marital status, disability, presence of children, family
- 216 responsibilities, source of income, sexual orientation, or age could
- 217 influence or affect any act describe in subsections (a), [and] (b), and
- 218 (c).

219 (2) This subsection does not prohibit:

- 220 (A) use of a logo or other means of advertising that housing is suitable or
- 221 adapted to use by persons with a disability; or
- 222 (B) keeping records or making reports required by federal, State, or
- 223 County law.

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

- 225 (1) assist in, compel, or coerce any discriminatory practice under this
- 226 subdivision,
- 227 (2) obstruct or prevent enforcement or compliance with this subdivision, or
- 228 (3) attempt directly or indirectly to commit any discriminatory practice under
- 229 this subdivision.

230 [(e)] (f) A person must not:

- 231 (1) directly or indirectly induce or attempt to induce any person to transfer an
- 232 interest in any housing by representations regarding the existing or potential
- 233 proximity of real property owned, used, or occupied by any person of any
- 234 particular race, sex, color, religious creed, ancestry, national origin,
- 235 disability, source of income, sexual orientation, age, the presence of children,
- 236 or family responsibilities.
- 237 (2) promote, induce, influence, or attempt to promote, induce, or influence by
- 238 the use of postal cards, letters, circulars, telephone, visitation, or any other

239 means, directly or indirectly, a property owner, occupant, or tenant to list for  
240 sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any  
241 housing having the effect of inciting neighborhood unrest or community  
242 tension in any street, block, neighborhood, or any other area by referring to  
243 the race, sex, color, religious creed, ancestry, national origin, disability,  
244 presence of children, family responsibilities, source of income, sexual  
245 orientation, or age of actual or anticipated neighbors, tenants, or other  
246 prospective buyers or occupants of any housing.

247 (3) make or cause another person to make a statement or in any other manner  
248 attempt to incite neighborhood unrest or community tension in any street,  
249 block, neighborhood, or any other area to obtain a listing of any housing for  
250 sale, rental, assignment, transfer, or other disposition by referring to the race,  
251 sex, color, religious creed, ancestry, national origin, disability, presence of  
252 children, family responsibilities, source of income, sexual orientation, or age  
253 of actual or anticipated neighbors, tenants, or other prospective buyers or  
254 occupants of any housing where the statement is false or materially  
255 misleading or where there is insufficient basis to judge its truth or falsity to  
256 warrant making the statement.

257 (4) make any representation to any prospective purchaser or lessee that any  
258 housing in a particular block, neighborhood, or area may undergo, is  
259 undergoing, or has undergone a change with respect to racial, color,  
260 religious, nationality, presence of children, family responsibilities, source of  
261 income, disability, sex, sexual orientation, age, or ethnic composition.

262 (5) place a sign or other display either purporting to offer for sale, lease,  
263 assignment, transfer, or other disposition, or tending to lead to the belief that  
264 a bona fide offer is being made to sell, lease, assign, transfer, or otherwise  
265 dispose of any housing that is not in fact available or offered for sale, lease,  
266 assignment, transfer, or other disposition.

267 (6) induce or attempt to induce the sale or listing for sale of any housing by  
268 representing that the presence or anticipated presence of persons of any  
269 particular race, sex, color, religious creed, ancestry, national origin,

270 disability, presence of children, family responsibilities, source of income,  
 271 sexual orientation, or age in the area will or may result in:

- 272 (A) lower property values;
- 273 (B) increased criminal or antisocial behavior in the area; or
- 274 (C) a decline in quality of the schools serving the area.

- 275 (7) induce or attempt to induce the sale or listing for sale of any housing by
- 276 representing that the presence or anticipated presence of persons of any
- 277 particular race, sex, color, religious creed, ancestry, sexual orientation,
- 278 presence of children, family responsibilities, source of income, or national
- 279 origin in the area will or may result in a change in the racial, color, religious,
- 280 age, nationality, or ethnic composition of the block, neighborhood, or area
- 281 where the property is located.

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

- 283 (1) lawfully opposing any discriminatory practice under this subdivision, or
- 284 (2) filing a complaint, testifying, assisting, or participating in any manner in an
- 285 investigation, proceeding, or hearing under this subdivision.

286 ~~[(g)]~~ (h) A person, must not because of race, color, religious creed, ancestry, national origin,  
 287 sex, marital status, disability, presence of children, family responsibilities, source of  
 288 income, sexual orientation, or age deny any other person:

- 289 (1) access to or membership or participation in any multiple-listing service, real
- 290 estate brokers' organization, or other service, organization, or facility
- 291 relating to the business of buying, selling, or renting housing in the County,
- 292 or
- 293 (2) discriminate against any person in the terms or conditions of the access,
- 294 membership, or participation in any multiple-listing service, real estate
- 295 brokers' organization, or other service, organization, or facility relating to the
- 296 business of buying, selling, or renting housing.

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

- 299 (1) refusing to allow a person with a disability to make reasonable modifications
- 300 to existing premises that the person does or would occupy, despite the

301 person's willingness and ability to pay for the modifications, and reasonably  
302 restore any interior modification upon vacating, if the modifications are  
303 necessary to provide full enjoyment of the premises; or

- 304 (2) refusing to make reasonable accommodations necessary to afford a person  
305 with a disability the equal opportunity to use and enjoy a dwelling.

306 **Sec. 3. Sections 11-1 and 11-2 are amended as follows and Section 11-6A is added as**  
307 **follows:**

308 **11-1. Definitions.**

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

310 \* \* \*

311 Predatory or abusive lending practice: Any representation or marketing practice that is  
312 intended to misrepresent terms or mislead a consumer about the value of financing or buying real  
313 estate, consumer goods, or consumer services.

314 Real estate: Leaseholds and all other tangible interests in residential real property,  
315 dwellings, buildings or other structures situate on residential real property, including condominium  
316 units.

317 **11-2. Office of Consumer [[Affairs]] Protection.**

318 The [[Department]] Office has the following duties, powers, and authority:

319 \* \* \*

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

322 \* \* \*

323 **11-6A. Discriminatory, predatory, or abusive lending practices.**

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

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

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

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

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

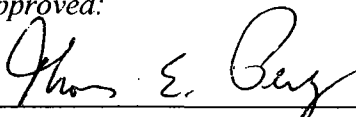
334 (iii) provide the consumer with information, education, counseling, or a referral  
335 to an appropriate outside agency, group, or organization.

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

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

344

345 *Approved:*

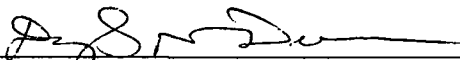
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Thomas E. Perez, President, County Council

12/1/05

Date

347 *Approved:*

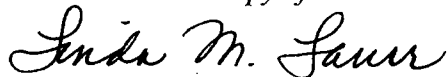
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Douglas M. Duncan, County Executive

12/1/05

Date

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

350 

Linda M. Lauer, Clerk of the Council

12/8/05

Date