



# MARYLAND COMMISSIONER OF FINANCIAL REGULATION

## INDUSTRY ADVISORY REGULATORY GUIDANCE



May 12, 2022

### **NOTICE TO LENDERS AND SERVICERS: COURT DECISION ON SO-CALLED “CONVENIENCE FEES” (Fees For Loan Payments Might Not Be Collectable)**

The purpose of this Advisory is to put industry on notice of the recent decision issued by the U.S. Court of Appeals for the Fourth Circuit in *Ashly Alexander, et. al. v. Carrington Mortgage Services, LLC*, Case No. 20-2359 (4th Circuit, January 19, 2022) and to direct lenders and servicers to review their practices in charging consumer borrowers loan payment fees both to ensure on-going compliance with the law and to determine whether any improper fees have previously been assessed so that they can undertake appropriate reimbursements to affected borrowers.

The Court ruled that collecting fees on any form of loan payment violates the Maryland Consumer Debt Collection Act as amended effective October 1, 2018 (MCDCA) if the fees are not set forth in the loan documents<sup>1</sup>. As a result, any fee charged, whether for convenience or to recoup actual costs incurred by lenders and servicers for loan payments made through credit cards, debit cards, the automated clearing house (ACH), etc., must be specifically authorized by the applicable loan documents. If such a fee is not provided for in the applicable loan documents, it would be deemed illegal. Further, attempts to circumvent this fee restriction by directing consumers to a payment platform associated with the lender or servicer that collects a loan payment fee or requiring consumers to amend their loan documents for the purposes of inserting such fees could also violate Maryland law.

Please note that, while loan payment “convenience” fees may historically relate to mortgage loans, this decision applies to all lenders and servicers of all extensions of consumer credit made to Maryland residents. The MCDCA is a law of general applicability that applies to all lenders and servicers collecting or attempting to collect an alleged debt arising out of a consumer transaction. Under the October 1, 2018, amendment to the MCDCA, when collecting or attempting to collect an alleged debt, a lender or servicer may not engage in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act (FDCPA). This holds true regardless of whether the lender or servicer is subject to the FDCPA under federal law. Accordingly, the conclusions reached in the *Carrington* decision extend to all lenders and servicers, as well as any other person seeking to collect a consumer debt.

<sup>1</sup> The Court indicated a lender or servicer could also charge a fee if applicable law expressly authorized such fee. The lender could not identify any law expressly authorizing the fees charged.

To the extent any lenders or servicers decide to discontinue offering certain payment options, the Commissioner requests that such lenders or servicers promptly notify their customers of such change. Lenders and servicers are encouraged to work with consumers to minimize the impact any change in payment options could have, including where possible, continuing such payment options without fees, especially when consumers are attempting to pay their obligations in a timely manner. Lenders and servicers should commence a review of their records to determine whether any improper fees have previously been assessed and undertake appropriate reimbursements to affected borrowers. Finally, lenders and servicers should be aware that the Commissioner is issuing a consumer advisory regarding this subject and should ensure that staff members who interact with Maryland consumers are aware of the implications of the *Carrington* decision and do not convey inaccurate information to Maryland consumers.

The Office of the Commissioner of Financial Regulation intends to monitor the impact that the *Carrington* decision has on lender and servicer fee practices and they can expect Office follow-up on this topic in the coming months.

For questions about this advisory, please contact Clifford Charland, Acting Assistant Commissioner, at 410-230-6167, or by e-mail at [clifford.charland@maryland.gov](mailto:clifford.charland@maryland.gov).

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*The Office of the Commissioner of Financial Regulation, a division of the Maryland Department of Labor, is Maryland's consumer financial protection agency and financial services regulator. For more information, please visit our website at [www.labor.maryland.gov/finance](http://www.labor.maryland.gov/finance).*



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