

LEGISLATIVE BULLETIN

FEBRUARY 27, 2009

Several bills have been introduced in this legislative session of the Georgia General Assembly affecting the mortgage lending industry. These bills have been carefully monitored by the MBAG Legislative Committee under the leadership of **Gary Royal**, Chairman, and **Debbie Pennington**, President of MBAG. Working with **Mo Thrash**, MBAG's lobbyist, **Rick Floyd**, **Loretta Salzano**, and **Richard Raymer** have all testified at hearings on various bills that have been introduced. As of the date of this Bulletin, here are the bills on which MBAG has devoted most of its efforts:

SB 57-Amendment to the Georgia Fair Lending Law-Senator Hamrick

The original SB 57 has now been divided into four separate bills: SB 57 as amended, SB 139, SB 140 and SB 141. SB 57 as amended would designate the "subprime loan" as a new category of loans. The original bill was vague as to the definition of a subprime loan, and Senator Hamrick has now clarified the definition to mean **loans with an APR equal or greater than the yield on comparable Treasury Securities plus 3% or 5% if the loan is secured by a subordinate loan**. The calculation of the difference between the annual percentage rate and the yield on United States Treasury securities having comparable periods of maturity shall be determined using the same procedure and calculation methods application to loans that are subject to the reporting requirements of the federal Home Mortgage Disclosure Act. The points and fees test of a total of 5% of the total loan amount over \$20,000 would not include any bona fide discount points. The original bill would include any FHA or VA charges over 1%. If the loan is determined to be a subprime loan, the following prohibitions apply:

1. No prepayment penalty may be charged. FHA interest charges are excluded.
2. No lender may provide and no mortgage broker may charge any compensation that is based on, or varies with the terms of any FHA or subprime loan. It does not prohibit compensation based on the principal balance of the loan.
3. No creditor shall make a subprime loan to a borrower unless the creditor reasonably believes the borrower can make the payments including escrows for taxes and insurance. The determination of the ability to pay a subprime loan shall include the borrowers current and expected income, credit history, current obligations, etc.
4. The calculations assumptions used in evaluating the ability to pay subprime loans shall include the fully indexed rate at the time of closing, and verification of all sources of income by tax returns, payroll receipts or other similar reliable documentation.
5. The practice of flipping a subprime loan is prohibited. Flipping is defined as a refinance of an existing loan without any tangible net benefit to the borrower.

There is a section of this bill that would make the mortgage broker an agent of the borrower in all cases and shall require the mortgage broker to:

1. Act in the borrower's best interest and in the utmost good faith toward the borrower.
2. Safeguard and account for any money handled for the borrower.
3. Follow reasonable and lawful instructions from the borrower.
4. Use reasonable, skill, care and diligence.
5. Notify each lender, if more than one loan is being made to the borrower, of the particulars of each loan.
6. Clearly disclose to the borrower the total compensation the broker would receive from any of the loan options the broker presents to the borrower, and
7. Make a reasonable effort to secure a loan that is in the best interests of the borrower considering all of the circumstances.

An effort was made to include an assignee liability provision in this bill. **This effort was vigorously opposed by MBAG.**

SB 57 was passed by the Senate Banking Committee on Wednesday, Feb. 25, 2009 and will now go to the House where there will likely be some additional changes. MBAG did not oppose this amended bill.

SB 139-Mortgage Fraud-Senator Hamrick

This bill would require judicial foreclosure where various acts of mortgage fraud have been perpetrated against a borrower. **MBAG** has had input on the wording of this bill. This bill is still in the Senate Banking Committee.

SB 140-Tenants in Possession After Foreclosure-Senator Hamrick

This bill would require the foreclosing lender to send any occupant (tenant) of the property being foreclosed a letter by regular mail 30 days prior to an anticipated foreclosure. The tenant would have certain rights to remain in the property for up to 60 days after the foreclosure by paying rent into the court registry. No landlord/tenant relationship would be created by the tenant remaining in possession and paying rent into the registry of the court. **MBAG** has had input into the wording of this bill. This bill is still in the Senate Banking Committee.

SB 141-Recording Requirements of Foreclosure Deeds-Senator Hamrick

This bill is meant to speed the recording of foreclosure deeds so municipalities and county governments will be able to cite the lawful owner for any housing code violations, which is apparently a big problem for local governments. As a result, the following fines have been proposed in SB 141:

1. A fine of \$250 for deeds filed more than 30 days after the foreclosure.
2. A fine of \$500 for deeds filed more than 60 days after the foreclosure.
3. A fine of \$5,000 for deeds filed more than 90 days after foreclosure.

MBAG has worked to reduce these fines by 50% over the original proposed amounts which were \$500, \$2000, and \$10,000 respectively. This bill remains in the Senate Banking Committee but will most likely be approved by the committee at its next meeting.

There have been numerous other bills which **MBAG** has opposed and which have not been filed as of this date. These bills will be reported in our final legislative bulletin.

FEDERAL RULEMAKING

MBA in Washington, on February 9, 2009, along with other industry groups, wrote a letter to HUD Secretary Donovan urging withdrawal of the RESPA rule that became final on January 16, 2009. The letter asked that HUD needs to coordinate its efforts with the Federal Reserve's TILA reform efforts. Since the new GFE and HUD 1 requirements of the new rule do not go into effect until January 1, 2010, there is ample time to make sure that all of the required disclosures are complimentary. Successive disclosure changes, by HUD and then by the Federal Reserve Board would be unnecessarily costly for the industry at a time when the industry and consumers can ill-afford extra costs.

If you have any questions about anything contained in this bulletin, you may contact Richard Raymer at richarderaymer@aol.com or Mo Thrash at Mo.Thrash@mccallarayer.com.