

Mortgage Bankers Association of Georgia Legislative Update 3/12/2010

The 2010 Georgia Legislative Session continues to be dominated by the massive budget shortfall and water. This past week, March 8 – 12, consisted of legislative days 21, 22, 23, and 24. This means the session is now six legislative days from day 30, known as Crossover Day. Legislation has to be passed out of its original chamber before or on Crossover Day, or it is considered “dead”. This does not mean the language in one of these bills is dead, as there will be attempts and some success at placing a “dead” bill’s language on another “alive” bill. A bill that is “alive” means it has passed out of it’s originating chamber before Crossover Day this session or during the 2009 session. The Georgia General Assembly has been one of early mornings, long days, and late nights as committees have worked on legislation, as legislators and industries push or attempt to stop legislation passing before or on Crossover Day. So far, there have been 4,751 Bills and Resolutions introduced during the 2009 and 2010 legislative cycle.

This past week saw the passage of two major pieces of legislation dealing with water, as the full House and Senate both passed their own versions of water conservation bills. The House’s River Basin Protection Act (House Bill 1301) would tighten rules on the so-called inter-basin transfer of water. The Water System Interconnection Redundancy and Reliability Act (Senate Bill 442) would investigate contingency plans to head off a water emergency such as a drought. A federal judge ruled last summer that Georgia has no legal right to take so much water from Lake Lanier. Senior U.S. District Judge Paul Magnuson ruled that metro Atlanta will no longer be able to tap much of Lanier if no water-sharing deal with Alabama and Florida is worked out by mid-2012. Both HB 1301 and SB 442 aim to prepare Georgia for the situation, where a water-sharing deal is not agreed upon by Georgia, Florida, and Alabama.

The budget has revolved around cuts, layoffs of state employees, fee increases, hospitals, and education. With Monday's release of February state revenue numbers showing a 15th consecutive month of declining tax collections, the governor announced that the state budget is under water for the current fiscal year by \$342 million. He also said that his original \$18.2 billion budget for the fiscal year that begins July 1 must be cut by \$443 million. This is much less than the rumors of a needed \$1 billion in additional cuts for a 2011 budget that would spend \$17.7 billion. The hole in the current 2010 budget will be filled with federal stimulus funds that the governor had planned to spend in 2011. Hospitals would face hundreds of millions in new fees and taxes under Gov. Sonny Perdue's revised budget plan released Thursday. Governor Perdue’s recommendation finds \$244 million in new revenue through fee increases, taking away the sales tax exemption that nonprofit hospitals enjoy for purchases, and reducing the rate by which hospitals and doctors are reimbursed for treating Medicaid patients by 10.25 percent. Hospitals are fighting this. Higher education and Kindergarten -12th grade local schools emerged in better shape than feared.

There are still proposals being considered to help fund the budget gap. One is a higher tobacco tax. Another is a 1.6 percent provider fee from hospitals. The latest idea that is catching a lot of momentum is increasing a host of user fees in hopes of raising about \$100 million more next year. The proposal is to let agencies set fees. The legislators proposing this say allowing agencies to control their user fees would take

some of the politics out of the process. All of these proposals face a great deal of opposition from different groups and legislators and will most likely evolve or be “killed”. As is obvious from reading this, Georgia is facing a very difficult budget year and our leaders have extremely tough decisions to make.

As far as MBAG is concerned, two new bills were introduced. They were HB 1228 and HB 1271. Both relate to the right of redemption of foreclosed mortgages under certain circumstances, and say that a victim of commercial mortgage fraud shall have the right to present a case to the grand jury, respectively.

Two bills of concern, HB 1048 and SB 417, were brought up before their respective committees for hearings this week. Both bills have slightly similar language and require inspection for termites and other wood destroying organisms in residential and commercial structures before a residential purchase. After lengthy debate and heated discussions, HB 1048 passed out of the House Agriculture and Consumer Affairs Committee with an amendment by a slim margin. The amendment makes HB 1048 only apply to single family dwellings and says the bill shall not apply when the purchaser waives the certification. SB 417 was only brought up for a hearing in its Senate Committee and no action has been taken on the bill as of yet.

There will be more hearings to follow throughout the session concerning SB 57 (predatory lending), HB 972 – foreclosures (notification and right to cure), HB 1048, and SB 417, and your legislative team is making sure the voices of MBAG are being heard at each. SB 57 and HB 972 will most likely see action in the next two weeks. Along with these bills, hundreds of other pieces of legislation affecting the mortgage industry are “alive” for passage. We will continue to monitor any new bills that will be introduced in the House and Senate affecting MBAG throughout the 2010 session.

As always, rest assured your government affairs firm of Mo Thrash, John Haliburton, and their team is effectively representing our needs and concerns on all matters affecting our industry. Below you will find a list of bills that affect our industry. Please call us with any questions or anything at all!

Bills of Concern

SB 57: Foreclosures and Predatory Lending Sponsored by Sen. Bill Hamrick

This bill was redrafted into three different bills, SB 139, 140, and 141. These bills were aimed to prevent any type of predatory lending and aid those in the foreclosure process. SB 57 was passed and adopted by the Senate on 3/10/2009. SB 57 is now in the House Judiciary Committee awaiting a vote.

HB 972: Delivery Time of Foreclosure Notice Sponsored by Rep. Billy Mitchell

Changes the time for the delivery of a notice of the initiation of foreclosure proceedings and to provide, under certain circumstances, for an opportunity, prior to foreclosure, for a debtor to cure a foreclosure and bring the debt current by making all past due payments

along with any late fees and charges. HB 972 has been assigned to the House Judiciary Committee.

HB 1228: Right of Redemption
Sponsored by Rep. Bob Bryant

Allows for the right of redemption of foreclosed mortgages under certain circumstances and to provide for certain information to be included in the advertisements of certain foreclosure sales. HB 1228 has been assigned to the House Judiciary Committee.

HB 1271: Georgia Commercial Mortgage Fraud Act
Sponsored by Rep Toney Collins

Provides that a victim of commercial mortgage fraud shall have the right to present a case to the grand jury and provide for duties of the grand jury. It also includes commercial mortgage fraud within the definition of racketeering activity. It has been assigned to the House Judiciary Non-Civil Committee.

SB 139: Instruments of Conveyance
Sponsored by Sen. Bill Hamrick

Delineates the factors when determining an instrument of conveyance that purports to be a deed. SB 139 returned to the Senate Banking and Finance Committee and is awaiting a vote.

SB 140: Tenants in Foreclosed Property
Sponsored by Sen. Bill Hamrick

Enables tenants to remain in a foreclosed property for 60 days upon notification of the foreclosure as long as the tenant has a valid lease and pays monthly rent to the clerk of the court. SB 140 returned to the Senate Banking and Finance Committee and is awaiting a vote.

HB 5: Income Tax Credit Bill
Sponsored by Rep. Kevin Levitas

This Bill will defines the term 'qualified ad valorem tax expense' to mean; funds paid by taxpayers for ad valorem taxes on real property, and allows for a tax credit for those who qualify. This bill was prefiled on 11/17/2009, but has not come up on the House floor.

HB 40: Foreclosure and Deed Recording Bill
Sponsored by Rep. Billy Mitchell

This changes the amount of time a deed under power by the purchaser of real property must be filed to 45 days. After the 45 days, the responsible party will have to pay no lesser than \$50 per day, up to \$1000, to the clerk of superior court in which the deed

under power is recorded. HB 40 returned to the House Committee on Judiciary and is awaiting a vote.

HB 42: Offenses for Residential Mortgage Fraud
Sponsored by Rep. Billy Mitchell

Defines the term ‘mortgage foreclosure process’ to mean the process by which a person’s ownership interest in his or her primary residence is foreclosed on or threatened to be foreclosed on and adds those who knowingly use a deliberate misstatement, misrepresentation, or omission to obtain remuneration from a homeowner to forestall an impending foreclosure, when such person is not reasonably able to forestall the foreclosure. HB 42 returned to the House Committee on Judicial Non-Civil and is awaiting a vote.

HB 264: Regulation of Security Conveyances
Sponsored by Rep. Jeff May

Revises provisions relating to regulation of security conveyances; repeals certain obsolete provisions relating to due on sale clauses which have been preempted by federal law; provides certain new regulations with respect to certain residential mortgages and deeds to secure debt; prohibits prepayment penalties, negative amortization, and yield spread compensation of loan originators and requires loan originators to verify ability to repay. HB 264 returned to the House Judiciary Committee and is awaiting a vote.

HB 340: Tenants Residing in Foreclosed Property
Sponsored by Rep Margaret Kaiser

Prohibits Sheriffs from turning out any debtor or tenant without proof that the notices of eviction were given at least 30 days prior to the date of the eviction. HB 340 returned to the House Committee on Judiciary and is awaiting a vote.

HB 374: Withholding of Income Tax
Sponsored by Rick Crawford

When one sells or transfers real property the seller shall deliver to the buyer or transferee all forms or other documents incident to determining the appropriate amount of tax to be withheld or the appropriate amount exempt from withholding. HB 374 was passed by the House Ways and Means Committee and is now awaiting a vote in the House Rules Committee.

HB 398: Taxes for Mortgage Lenders with Escrow Accounts
Sponsored by Rep. Bob Smith

Any mortgage lender which maintains an escrow account for the payment of ad valorem taxes relative to the secured real property shall not send a check directly to the taxing unit, but issue a check payable jointly to the borrower and the taxing unit and deliver the

check to the borrower, who in turn must send the check to the taxing unit within 7 days. Our lobbyists have worked with the author and the Committee Chairman to make sure the language is in MBAG's favor it is to move. HB 398 returned to the House Committee on Banks and Banking and is awaiting a vote.

HB 505: Sheriff's Service Fees
Sponsored by Rep. Len Walker

Increases the service fees that Sheriff's charge for certain actions for serving or dispossessing tenants or intruders from \$25 to \$50. HB 505 returned to the House Committee on Governmental Affairs and is awaiting a vote.

HB 508: Stop Mortgage Foreclosure Rescue Act of 2009
Sponsored by Billy Mitchell

Provides homeowners relief from unfair practices related to foreclosure and foreclosure rescue schemes. HB 508 returned to the House Banks and Banking Committee and is awaiting a vote.

HB 627: Georgia Foreclosed Property Upkeep Act
Sponsored by Rep. Margaret Kaiser

Enacts the "Georgia Foreclosed Property Upkeep Act." HB 627 returned to the House Judiciary Committee and is awaiting a vote.

HB 645: Tax Executions Collection of Costs
Sponsored by Rep Jay Roberts

Changes provisions regarding the collection of costs, commissions, interest and penalties. HB 645 returned to the House Ways and Means Committee and is awaiting a vote.

HB 761: Notice of Impending Sale to Occupant in Foreclosed Property
Sponsored by Rep. Billy Mitchell

Provides a person living in a property, which has been foreclosed upon, a notice of an impending sale of the property. HB 761 returned to the House Judiciary Committee and is awaiting a vote.

HB 970: Property Boundaries
Sponsored by Rep. Ellis Black

Changes certain provisions relating to the application for a new survey, marking of lines, and notice to owners of adjoining lands. HB 970 has been assigned to the House Judiciary Committee.

HB 1048: Require Inspection For Termites and Other Wood-Destroying Organisms

Sponsored by Rep. Tom McCall

Each conveyance of real property on which is located a residential or commercial structure shall require a certification that such structure has been inspected for termites and other wood-destroying organisms. HB 1048 passed out of the House Agriculture and Consumer Affairs Committee and is now awaiting a vote in the House Rules Committee. *Our legislative team has met with the House Rules Committee Chairman, Rules Committee members, House leadership, and the Agriculture Committee Chairman about this bill and its affect on our industry. We will keep you updated on where this bill goes from here.*

HB 1050: Add Regulations for the Appraisal of Management Companies
Sponsored by Rep. Tommy Benton

Add regulations for the establishment and maintenance of a real estate appraisal management company. HB 1050 was passed by the House Regulated Industries Committee and the House Rules Committee. It is now awaiting vote on the House Floor.

HB 1191: Change certain provisions relating to recording, payment, and distribution of the intangible tax
Sponsored by Rep. Larry O'Neal

To change certain provisions relating to recording, payment, and distribution of the intangible tax when encumbered property is located in more than one county or is located within and outside the state. HB 1191 has been assigned to the House Ways and Means Committee.

HB 1192: Provisions relating to payment and distribution of the real estate transfer tax
Sponsored by Rep. Larry O'Neal

To change certain provisions relating to payment and distribution of the real estate transfer tax when property is located in more than one county. HB 1192 has been assigned to the House Ways and Means Committee.

HB 1209: Notice Regarding Flood Plains
Sponsored by Rep. Don Wix

To provide that certain notice shall be provided to mortgage customers regarding flood plains. HB 1209 has been assigned to the House Banks and Banking Committee.

HR 1: Property Freeze Tax Assessment Caps
Sponsored by Rep. Edward Lindsey

Freezes property values of both commercial and residential properties. This bill is being reconsidered in House Rules. It failed to receive the 120 votes necessary to pass as a

resolution. HR 1 returned to the House Ways and Means Committee.

SB 54: Georgia Fair Lending Act
Sponsored by Sen. Steve Thompson

Prohibits abusive home loan practices. SB 54 returned to the Senate Committee on Banking and Finance and is awaiting a vote.

SB 236: Property Development Moratoriums
Sponsored by Sen. Ralph Hudgens

Provides the procedures for local governments to adopt property development moratoriums. SB 236 returned to the Senate Committee on State and Local Government Operations and is awaiting a vote.

SB 249: Exemptions from Levy and Sale
Sponsored by Sen. Ed Tarver

Changes the nonbankruptcy exemptions from levy and sale; changes provisions relating to the exemption from bankruptcy for residences and burial plots and changes the amounts of certain property exemptions. SB 249 returned to the Senate Banking and Finance Committee and is awaiting a vote.

SB 251: Tax Executions
Sponsored by Sen. Bill Hamrick

Changes certain provisions regarding collection of costs, commissions, interest, and penalties. SB 251 returned to the Senate Committee on Finance and is awaiting a vote.

SB 371: Fraudulent Real Estate Transactions
Sponsored by Sen. Bill Cowsert

Provides the Georgia Bureau of Investigation with the authority to investigate certain offenses involving fraudulent real estate transactions and provides the Georgia Bureau of Investigation subpoena power for such investigations. SB 371 was passed on the Senate Floor and has now been assigned to the House Judiciary Non-Civil Committee.

SB 417: Require Inspection For Termites and Other Wood-Destroying Organisms
Sponsored by Sen. John Bulloch

Each conveyance of real property on which is located a residential or commercial structure shall require a certification that such structure has been inspected for termites and other wood-destroying organisms. SB 417 has been assigned to the Senate Agriculture and Consumer Affairs Committee.

SR 759: Mortgage Lending Institutions Adopting Rent to Own Programs
Sponsored by Sen. Gail Buckner

Requests the adoption of rent-to-own programs by mortgage lending institutions to help eliminate unnecessary home mortgage foreclosures. SR 759 returned to the Senate Banking and Financial Institutions Committee and is awaiting a vote.