

Mortgage Bankers Association of Georgia Legislative Update 3/19/2010

The 2010 Georgia Legislative Session continues to be dominated by the massive budget shortfall and water. This past week, March 16 – 18, consisted of legislative days 25, 26 and 27. This means the session is now three 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.

There was some major legislation on the move this week as the 30th day of legislation approaches. The Senate passed a bill that will ban texting while driving, SB 360. It has gained a lot of support around the Capitol and was passed unanimously by the Senate. Another bill that passed out of the Senate with a unanimous decision was SB 299, giving principals and school systems more discretion in how they handle disciplinary cases in their schools. The bill targets the widespread use of “zero tolerance” in schools and would prevent a standing court order that now mandates that a student be arrested or jailed immediately without a hearing. It also would ban the charging of a student as a designated felon unless he used a weapon in an assault or brought a gun to school, and it would give judges more discretion in how they handle cases. SB 317, a bill that states that no law shall compel any person to participate in any health care system, was passed out of the Senate this week. A bill that seems to be divided by party lines, there will surely be opposition as it continues along the legislative process.

As far as MBAG is concerned, seven new bills were introduced. They were HB 1351, barring tenants from entry if they have not met demands of past due rent, HB1354, permitting the electronic signature of architects, engineers, and land surveyors, HB 1369, affecting data shown on maps and plats, HB1384, removing a prohibition relating to the constitutional zoning authority of local governments, SB 483 affecting mortgage loan origination, SB 494, prohibiting a fee for a future conveyance of residential real property, and SB 495, affecting bankruptcy for residences and burial plots.

Two bills of concern, HB 1050 and HB1191, were passed on the House Floor this week. HB 1050 adds regulations for the establishment and maintenance of a real estate appraisal management company and HB 1191 changes 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.

SB 57 will have a hearing Wednesday, March 24th. SB 57 may have language added to it from HB 972 and HB 1228 to include changing notification of foreclosures to 90 days, the right to cure and the right of redemption. SB 417, requiring inspections for termites and wood destroying organisms, was defeated in committee this week. This is good news for MBAG but HB 1048, a bill with the same language, is still alive in the House Rules Committee. Your legislative team is keeping a close eye on these bills and is making sure the voices of MBAG are being heard. SB 483, affecting a special entity from

loan origination licensing, has had its committee meeting postponed due to negotiations between the Georgia Department of Banking and the interested party(Prime America and City Corp.). 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 1351: Bar Tenant Entry Sponsored by Rep. Smith

Provide that after a demand for past due rent, a landlord may secure the premises and bar the tenant from entry and that the tenant may regain possession by paying rent dues. HB 1351 has been assigned to the House Judiciary Committee.

HB 1354: Electronic Signature for Certain Professions Sponsored by Rep. Rice

Provides that an electronic signature is permitted for certain documents that require the signature of architects, engineers, and land surveyors. HB 1354 has been assigned to the House Judiciary Committee.

HB 1369: Data Shown on Maps and Plats Sponsored by Rep. Kaiser

Provides that certain data shall be shown on certain maps and plats and to provide for certain restrictions regarding a plat of a subdivision. HB 1369 has been assigned to the House Judiciary Committee.

HB 1384: Constitutional Zoning Authority
Sponsored by Rep. Taylor

Removes a prohibition relating to the constitutional zoning authority of local governments. HB 1384 has been assigned to the House Judiciary Committee.

SB 483: Mortgage Loan Originator
Sponsored by Sen. Balfour

Revises the exemption for a person who originates mortgage loans for only one depository institution as an independent contractor. SB 483 has been assigned to the Senate Banking and Finance Committee.

SB 494: Residential Real Property
Sponsored by Sen. Hamrick

Prohibits a fee for a future conveyance of residential real property. SB 494 has been assigned to the Senate Judiciary Committee.

SB 495: Bankruptcy for Residences and Burial Plots
Sponsored by Sen. Davis

Changes certain provisions relating to the exemption from bankruptcy for residences and burial plots and the amounts of certain property exemptions. SB 495 has been assigned to the Senate Special Judiciary 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 on the House Floor and has been assigned to the Senate Regulated Industries and Utilities Committee.

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 was passed on the House Floor and has been assigned to the Senate Finance 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 was passed on the House Floor and has been assigned to the Senate Finance 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.

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.

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 passed out of the House Ways and Means Committee and is awaiting a vote in the House Rules 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.