

Mortgage Bankers Association of Georgia Legislative Update 3/26/2010

This past legislative week finally saw the arrival of crossover day at the Capitol. Friday March 26th, the 30th legislative day, better known as crossover day, was the last day for legislation to pass its respected chamber. Legislators in both the House and Senate chambers worked late into the night in order to pass or defeat legislation. The Senate heard 33 bills and adjourned shortly after 7PM. Heading into Friday, the House had scheduled 36 bills to be heard but would add to that with 2 supplemental calendars, making the total number of bills 51. There were a number of winners and losers on crossover day, as some bills were left on the table as state lawmakers in the House worked until midnight to pass as many bills as possible before the crucial 30 day deadline. Disagreement to many bills on the floor from an opposing party lead to delays in the voting process and is a major reason for the late night. This was such an important day because any bill that didn't pass at least one chamber by the end of business day is dead for the session.

Among the winners are health insurance companies from out of state. The house passed a bill to allow the sale of health insurance across state lines. Physicians who own surgical clinics were also successful in being exempt from the 1.45 percent hospital bed tax, which did pass the house. Among the losers, a new Milton county and the city of Macon. A measure to create the new county wasn't considered, neither was a hotel tax for Macon to keep the Sports and Music Halls of fame open there. House Speaker David Ralston says the clock simply ran out, "We had Republican bills that didn't make it. We had Democratic bills that didn't make it. it's just the nature of the process and that's where we are." Even Governor Sonny Perdue is susceptible to the difficulties of crossover day as some of his bills were left on the table. His idea to have future Governors appoint some commissioners and the School Superintendent did not get a vote. And performance based teacher pay was not considered.

There are ten more days for bills to pass the other chamber in order to become law. The Governor does still have hope on one of his major transportation funding bills, despite the fact that it was not heard on crossover day. The bill that lets voters decide whether they want a regional one percent sales tax for transportation projects in their areas has now moved into a committee of both chambers. The conference committee was set-up for last year's Senate and House transportation funding bills. This year, lawmakers will revise the old bills according to the governor's plan. But just how much the plan will resemble the governor's will be up for heavy debate in the coming weeks. The current version includes a regional opt-out if locals cannot agree on a list of projects says the House Transportation Chairman Republican Jay Roberts. "After about a year and a half no list could be agreed to then there would be no vote taken in that region for a year and a half," says Roberts. Governor Perdue has said he will not sign a bill with an opt-out provision.

As far as MBAG is concerned, SB 57 will have a hearing Tuesday, March 30th. SB 57 had a productive hearing this past week working on the language of the bill where language was added from HB 972 and HB 1228 to include changing notification of foreclosures to 45 days, the right to cure and the right of redemption. This is all still being debated. This week's meeting will be to revise a newer and more current version drafted

by the committee of SB 57. SB 417 and HB 1048, both requiring inspections for termites and wood destroying organisms, were defeated this session before crossover day, day 30. 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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 failed to gain traction this session and died in the Senate Banking and Finance Committee.

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 failed to gain traction this session and died in the Senate Banking and Finance Committee.

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. HB 5 failed to gain traction this session and died.

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 failed to gain traction this session and died in the House Committee on Judiciary.

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 failed to gain traction this session and died in the House Committee on Judicial Non-Civil.

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 failed to gain traction this session and died in the House Judiciary Committee.

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 failed to gain traction this session and died in the House Committee on Judiciary.

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 failed to gain traction this session and died in the House Committee on Banks and Banking.

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 failed to gain traction this session and died in the House Committee on Governmental Affairs.

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 failed to gain traction this session and died in the House Banks and Banking Committee.

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

Enacts the "Georgia Foreclosed Property Upkeep Act." HB 627 failed to gain traction this session and died in the House Judiciary Committee.

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 failed to gain traction this session and died in the House Ways and Means

Committee.

**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 failed to gain traction this session and died in the House Judiciary Committee.

**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 failed to gain traction this session and died in 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. HB 1048 failed to gain traction in the House Rules Committee this session and died. *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 failed to gain traction this session and died in 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 failed to gain traction this session and died in 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. HB 1271 failed to gain traction this session and died in 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 failed to gain traction this session and died in the Senate Committee on Banking and Finance.

SB 236: Property Development Moratoriums

Sponsored by Sen. Ralph Hudgens

Provides the procedures for local governments to adopt property development

moratoriums. SB 236 failed to gain traction this session and died in the Senate Committee on State and Local Government Operations.

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 failed to gain traction this session and died in the Senate Banking and Finance Committee.

SB 251: Tax Executions
Sponsored by Sen. Bill Hamrick

Changes certain provisions regarding collection of costs, commissions, interest, and penalties. SB 251 failed to gain traction this session and died in the Senate Committee on Finance.

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 failed to gain traction this session and died in 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 failed to gain traction this session and died in the Senate Banking and Financial Institutions Committee.