

Georgia Fair Lending Act Amended! [March 7, 2003]

NEWS FROM McCALLA, RAYMER, PADRICK, COBB, NICHOLS & CLARK Mortgage Bankers Association of Georgia - 478-743-8612

On March 6, 2003 The Georgia Senate approved Substitute SB 53, the bill favored by the lending, industry by a vote of 29 to 26. On Friday, March 7, 2003 at 2:00 PM, the Governor signed this bill into law, and it became effective immediately. The most substantial changes made to the Georgia Fair Lending Act are as follows:

1. Excluded from the points and fees calculations are the bona fide fees paid to a federal or state government agency that insures all or part of the payment of a home loan such as the FHA MIP, the VA Funding Fee, the United States Department of Agriculture fees for rural development loans, and the Georgia Housing and Finance Authority fees.

2. "Covered loans" have been eliminated from GFLA

3. "Flipping" a home loan is the consummation of a high cost home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances, including, but not limited to the terms of both the new and refinanced loans, the cost of the new loans, and the borrower's circumstances. This change means "flipping" applies only to a refinance where the new loan is a high cost loan and the net tangible benefit is not met. Since members of the Mortgage Bankers Association of Georgia do not make high cost loans, the use of the net tangible benefit form will no longer be required.

4. Changes the definition of "total loan amount" to conform to the TILA definition at 12 C.F.R. 226.32(a). Provides that the APR is the same as 15 U.S.C. Section 1606 together with the regulations promulgated in the Official Staff Commentary on Regulation Z which will eliminate many of the problems in calculating the tests under this act for variable rate loans.

5. Interest paid through the end of the month on FHA loans is not to be considered a prepayment penalty. Under the original GFLA, this payment of advance interest on the payoff of an FHA loan was considered a penalty and had to be included in the points and fees calculations. That will no longer be the case.

6. The term "creditor" is defined as the person to whom the debt arising from the home loan is initially payable. The definition then further states that a creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi governmental entity. This definition would entirely limit assignee liability except for a provision contained in Section 7-6A-6. This section was amended to retain assignee liability for the purchase of high cost home loans unless the assignee can prove by a preponderance of evidence that it exercised reasonable due diligence at the time of the purchase of the loan or within a reasonable time thereafter. "Due diligence" is not defined. This same provision limits suits against assignees to individual (not class) actions. Assignee liability is also capped at "the sum of all remaining indebtedness of the borrower under such loan and reasonable attorneys' fees." This amendment places a one year statute of limitations on suits against assignees, which begins to run on the "date of the violation" which should be no later than the date of closing. There are certain exceptions to this one year limitation such as at the time of acceleration of foreclosure. We are told that Standard & Poors and other rating agencies are satisfied with this limitation on assignee liability and will immediately begin to rate Georgia loans once again.

7. Provides that state chartered depository institutions shall be exempted from GFLA to the extent federal law precludes or preempts any federally chartered depository institution from GFLA except this exclusion is inapplicable if the loan is originated through a mortgage broker in a transaction table funded by the state chartered depository institution.

8. Excludes certain loans from the GFLA such as temporary bridge loans, temporary construction loans and lot purchase loans, and tax advantage loans where the primary collateral is personal property and the home is used secondary collateral for tax purposes.

9. Amended the late payment restrictions to allow late payments to be applied in the order of maturity so long as only one late charge is charged for each particular late payment. Under the original GFLA, if a borrower missed January and February payments and then sent in the March payment on time but without the two previous delinquent payments, the servicer could not charge a late charge on the March payment. This amendment will now allow a late charge for this late payment since the two previous payments have not been made.

10. Provides specific authority for the Georgia Department of Banking and Finance to issue interpretive regulations for GFLA.

A complete text of the amended Georgia Fair Lending Act is available at www.legis.state.ga.us/legis2003_04/fulltext/sb53.htm

Our lobbyist, Mo Thrash, has done an outstanding job along with others in the financial industry to correct a law that had to be amended if Georgia homeowners were to continue to have access to loans in order to continue to purchase and refinance their homes. If there are any questions about the amendments to this law, you may call Richard Raymer, Scott Michalov, Tom Shealy, or Mo Thrash at (770) 804-0700. *This bulletin can also be emailed on request by emailing the Association Office at mbag@mbag.org.*