

LEGISLATIVE BULLETIN

January 28, 2009

The legislative committee of MBAG under the leadership of Gary Royal, chairman, met in early January with Mo Thrash to discuss legislation which might be possibly introduced in the 2009 session of the Georgia General Assembly. It was noted that the 2009 session will likely see several bills targeting the mortgage lending industry reflecting the continued press coverage of the real estate industry woes. The issues of fair lending, foreclosure reform, tenants in possession after foreclosure were thought to be at the forefront of new legislation to be introduced this session. So far only one major bill has been introduced affecting the mortgage lending industry.

SB 57-Georgia Fair Lending Act Amendments--Senator Hamrick

This bill has multiple provisions revising Georgia's Fair Lending Act. The important provisions are listed below.

1. Limits to 1% the amount of FHA and VA insurance and guarantee fees which can be excluded in calculating the 5% high cost loan calculation.
2. All prepayment penalties would be prohibited.
3. No person may provide, and no mortgage broker may receive, directly or indirectly, any compensation that is based on or varies with the terms of any subprime home loan.
4. No creditor shall make a home loan to a borrower unless a reasonable creditor would believe at the time the loan is closed that the borrower residing in the home will be able to make the scheduled payments, real estate tax payments, and insurance payments associated with the loan.
5. A mortgage broker shall be considered an agent of the borrower in all cases including acting in the borrowers best interests; use reasonable skill and due diligence; clearly disclose to the borrower in a timely fashion all information that might affect the borrower's rights interests, or ability to receive the borrower's intended benefit from the home loan, including total compensation the broker would receive from any of the loan options the broker presents to the borrower; and make reasonable efforts to secure a loan that is in the bests interests of the borrower.
6. Provides for a penalty for failure to file the deed under power (foreclosure deed) in a timely fashion. The penalties are very unreasonable beginning with \$500 for 30-60 day filing, \$2,500 for 60-90 day filing, and over 90 days a penalty of \$10,000.
7. Allows a tenant in possession under a lease with a foreclosed landlord to remain in the property for 60 days after tending one month's rent to the court and with another rent payment to the court in 30 days and after a writ in possession has been obtained by the foreclosing lender.

8. Provides for 30 day certified mail notice to anyone in possession of the property that the lender proposes to foreclosure on the property.
9. Provides for a judicial foreclosure, as opposed to the present non-judicial foreclosure, where certain fraudulent acts have been perpetrated against homeowners.

There is at least one additional proposed bill, which as of this date has not yet been introduced, that would prohibit all prepayment penalties, all negative amortization loans, and all payment to a loan originator in the form of yield spread premiums, yield differential, or service release fees.

FEDERAL ISSUES

HUD's RESPA rule, which was finalized on November 17, 2008, contained a provision which was to become effective on January 16, 2009 and which would prevent builders from offering incentives to steer homebuyers to affiliated lenders. HUD has extended the deadline for compliance for 90 days probably because of a suit by the National Home Builders Association. Under the revised RESPA rule, builders would no longer be allowed to offer buyers special deals on a house contingent on the use of a specific lender. Brian Sullivan speaking for HUD stated, "Nothing in this final rule prevents a builder from offering incentives or discounts and nothing in this rule prevents a builder from suggesting a consumer consider using an affiliated or preferred lender. The only thing this rule does is de-link these incentives or disincentives from the required use of affiliated service providers." This delay in implementation of this portion of the RESPA rule will give the Obama administration time to decide whether to keep or fight the rule.

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