

# LEGISLATIVE BULLETIN

**Mortgage Bankers Association of Georgia**  
**McCalla, Raymer, Padrick, Cobb, Nichols & Clark**  
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## GEORGIA LEGISLATION

The 2006 session of the Georgia General Assembly came to a close at midnight on March 30, 2006. All bills which were opposed by MBAG either died in committees or were amended so that we were able to support them. Mo Thrash, our lobbyist, described the 2006 legislative session as a great year for your association. Mo was guided by the Legislative Committee of MBAG under the leadership of Tyler Wood and by Connie Lussier, President of MBAG. Some of the important bills which affected the mortgage lending industry and followed closely by MBAG are as follows:

### EXEMPTIONS OF CERTAIN PERSONS FROM MORTGAGE BROKER LICENSING REQUIREMENT - SB 505

This bill was drafted by Primerica to exempt from the mortgage broker licensing requirements insurance agents who work for financial institutions as defined in the Bank Holding Act of 1956 (which means bank of thrift owned) and who are under an exclusive independent contractor agreement to sell loans only to that financial institution which is regulated by OCC or OTS. The bill was amended by the Department of Banking and Finance to provide that the bank or thrift holding company must provide a surety bond equal to the lesser of \$1,000,000 or \$50,000 per exempt person and must provide for full and direct financial responsibility for the mortgage broker activities of each exempted person, provide for the education of the exempt persons and the handling of complaints related to the exempt persons, and provide for the supervision of the mortgage broker activities of the exempt persons.

The bank or thrift subsidiary must obtain a mortgage broker or mortgage lender license, and all loans originated must be through and made by the licensed subsidiary or its affiliate.

MBAG supported this bill with the amendments by the Department of Banking and Finance. THIS BILL PASSED.

### NEW MANUFACTURED HOUSING CONVERSION TO REAL PROPERTY WITHOUT REQUIREMENT FOR A MOTOR VEHICLE TITLE CERTIFICATE - SB 253

Under current Georgia law, lenders who wanted to make real estate mortgage loans secured by manufactured housing that was attached to the ground had to convert the personal property interest subject to the Georgia Motor Vehicle Certificate of Title Act into a real property interest which would be subject to Georgia real property law. Four steps had to be taken to change the designation of the manufactured housing from personal to real property. The manufacturer's certificate of origin had to be sent to the Department of Motor Vehicle Safety to issue a motor vehicle certificate of title. A Certificate of Permanent Location is then filed with the Clerk of Superior Court where the land on which the manufactured housing is to be placed. This Certificate, after being filed, is sent back by the Clerk to the Department of Motor Vehicle Safety which in turn cancels the motor vehicle certificate of title and confirms this fact to the Clerk of Superior Court. The time requirements for this type of transaction meant that many Georgia lenders would not close loans on manufactured housing. This bill provides that new manufactured housing can be converted to real property using the manufacturer's certificate of origin and eliminates the need to obtain a motor vehicle title certificate.

MBAG supported this bill. THIS BILL PASSED.

### NOTICE OF SETTLEMENT - HB 1282

This bill provides for the recording, by any party, or their legal representative, to a settlement which will convey legal or equitable title real estate or create a lien by way of a deed to secure debt, mortgage or other instrument, of an instrument with the Clerk of Superior Court in which the land is located to be designated as a "notice of settlement". This notice of settlement shall be filed, permanently recorded, and indexed by the Clerk of the Superior Court in the same manner as real estate records of the county and shall be effective notice for a thirty day period subject to one thirty day renewal thereafter. After the filing of the notice of settlement, any

person claiming title to, an interest in, or lien up the real estate described in the notice through any part in the notice shall be deemed to have acquired said title, interest, or lien with knowledge of the anticipated settlement and shall be subject to the terms, conditions, and provisions of the deed or mortgage between the parties during the 30 day period or one additional 30 day renewal period.

The form must be executed by a party or legal representative to the transaction. If a notice is executed by anyone other than an attorney at law in Georgia, it must be executed and acknowledged or proved in the same manner as a deed.

MBAG did not oppose or support this bill. THIS BILL PASSED. Effective Date 1/1/07.

#### CREDIT REPORT SECURITY FREEZE - HB 966 AND HB 1389

This bill would have allowed consumers concerned about identity theft to freeze their credit report preventing credit reporting agencies from releasing any information from their credit reports without express authorization of the consumer. This bill did not get out of committee.

MBAG opposed this bill. THIS BILL DID NOT PASS

#### LOANS TO ILLEGAL IMMIGRANTS - HB 1447

This bill would have prohibited the act of extending a loan to a person whom the broker or lender knows is an illegal immigrant.

MBAG opposed this bill. THIS BILL DID NOT PASS

#### LIMITATION OF TITLE AGENCY TO ATTORNEYS - HB 1356

This bill required that no person other than an attorney shall be authorized to act as an agent for a title insurance company.

MBAG opposed this bill. THIS BILL DID NOT PASS

#### FEDERAL LEGISLATION AND REGULATIONS

##### RESPA REFORM

So far this year, HUD has said or done very little about RESPA reform reaffirming the belief of many that HUD has abandoned the idea of the guaranteed mortgage package and its safe harbor from Section 8 violations is now focusing on the Good Faith Estimate. Hurricane Katrina has absorbed most of the department's time for the past several months.

##### NATIONAL FAIR LENDING LAW

It would appear that the Nay Kanjorski bill is dead for this session, and there will not be any legislation establishing a national fair lending law preempting various state laws at least until the next session of Congress and even then the preemption part of such a bill is very much in doubt.

##### MARKUPS OF SETTLEMENT SERVICES

HUD has always maintained that marking up the costs of appraisals and other settlement services provided by third party vendors violates RESPA. The first three cases which were appealed to the U. S. Courts of Appeal held against HUD stating RESPA prohibited fee splitting between two parties and not markups by a single party. However, in the latest three cases to go to the U. S. Appeal Courts, the courts have ruled in favor of HUD by stating that Section 8(b) of RESPA allows a cause of action for unearned markups. Since there is a split among the courts, the issue hasn't finally been determined, but HUD most likely with the last three wins will probably begin to bring actions against parties marking up third party vendor fees. There is a feeling among some inside the beltway that HUD will be looking for egregious markups like 100%. In any event, it would be wise to show added value to any markup made by a lender or other party.

**If you have any questions or would like a copy of any material in this news bulletin, please contact  
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