

LEGISLATIVE BULLETIN

Mortgage Bankers Association of Georgia

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The 2008 session of the Georgia General Assembly ended on April 4, 2008 with several bills affecting the mortgage lending industry carefully being watched by the Mortgage Bankers Association of Georgia under the direction of Rick Floyd, president, and Debbie Pennington, legislative chairperson. This session was extremely difficult and important as many different bills were introduced in an attempt to prevent or prolong foreclosures and to stop "predatory lending practices" mentioned daily by the news media. Mo Thrash worked very hard as your lobbyist to make sure that these bills did not seriously affect the supply of credit for Georgia homeowners. Here are a few of the more important bills introduced this year affecting the mortgage lending industry in Georgia.

GEORGIA LEGISLATURE 2008

Georgia Credit Freeze-HB 130 and SB 361.

1. A consumer may place a security freeze on the consumer's credit report by using a toll free telephone number, internet based system, or by certified mail and may also temporarily lift a security freeze or completely remove a security freeze using the same methods.
2. The consumer will be issued a unique personal identification number or password to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time.
3. The consumer must provide to the credit reporting agencies, in order to request a temporary freeze, the following:
 - a. Proper identification
 - b. The unique personal identification number
 - c. The time period for which the freeze shall be lifted and credit reporting is to be made available to users of the consumer credit report
 - d. The payment of a \$3.00 fee, however, there is no fee to anyone 65 years of age or older.
4. A security freeze will be lifted within three business days after receiving a written request or 15 minutes using the internet or telephone.
5. A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-credit relationship for the purposes of reviewing the active account or collecting the financial obligations owing for the account, contract or debt.

Good Funds-SB 355

Effective July 1, 2008, settlement agents of all real estate closing may disburse settlement funds from an escrow account only upon receipt of "collected funds" (defined as funds actually credited to the settlement agent's escrow account. The following four types of funds are considered as "collected funds" under this act and will be sufficient for disbursement at the time of closing.

1. A cashier's check from a federally insured bank, savings bank, savings and loan association, or credit union and issued by a lender for a closing or loan transaction and provided such funds are immediately available and cannot be dishonored or refused when negotiated or presented for payment. Please note that cashier's may only be used for disbursement when such checks are issued by the federally insured lender as loan proceeds. Borrowers will be required to have "collected funds": such as wire transfers credited to the settlement agent's account before or at the time of closing if the required borrower's funds exceed \$5,000.
2. A check drawn on the escrow account of a licensed Georgia attorney or real estate broker, if the settlement agent has reasonable grounds to believe the check will constitute collected funds within a reasonable period.
3. A check issued by the United States or the State of Georgia.
4. A personal check not exceeding \$5,000 per closing.

Appraisals-SB 496

Code Section 7-1-1013 of the Official Code of Georgia Annotated, relating to the prohibition of certain acts by persons involved in transacting a mortgage business has been amended to add the following prohibition as it relates to appraisers:

“(12) A person involved in transacting a mortgage business may not knowingly compensate, instruct, induce, coerce, or intimidate or attempt to compensate, instruct, induce coerce, or intimate an appraiser for the purpose of corrupting or improperly influencing the independent judgment of such appraiser with respect to the value of property offered as security for repayment of a mortgage or loan.”

Foreclosure Notices-SB 531

1. This act would require that the debtor be given notice of the initiation of proceedings to exercise a power of sale in a security deed or other lien contract no later than 30 days prior to the date of the proposed foreclosure. Such notice shall be in writing and include the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor. Nothing in this act shall be construed to require a security creditor to negotiate, amend, or modify the terms of a mortgage instrument.

2. The security instrument or assignment vesting the security creditor with title to the security instrument shall be filed in the office of the Clerk of Superior Court of the county in which the real property is located prior to the time of the actual foreclosure sale.

Mortgage Cancellations-HB 1093

This bill provides that whenever the indebtedness secured by any instrument is paid in full the lender or holder of the instrument shall, within 60 days of receipt of the payoff, mail a notice to the borrower, at the borrower's last known address, written notice of the instrument's satisfaction or cancellation as required by the statute (cancellation sent to the clerk of superior court where the instrument is recorded or to the attorney requesting the satisfaction or cancellation). Failure to submit the cancellation as required by this statute subjects the lender to a statutory penalty of \$500 as liquidated damages and such additional sums for any loss caused to the borrower, plus reasonable attorney's fees provided the borrower makes a written demand for such liquidated damages to the lender on or after 61 days from the payoff date. No settlement agent or attorney may take an assignment of the right to the \$500 liquidated damages. At least 15 days prior to filing a civil action to recover liquidated damages the borrower shall provide notice in writing to the lender that the lender:

1. Failed to comply with the obligation required by this statute and code section.
2. Owes the borrower liquidated damages in the amount of \$500.
3. May be sued by the borrower for the failure to comply with the provisions of this statute.

The following bills did NOT pass

Judicial Foreclosure-SB 527

This bill would have deemed all instruments given as security for performance of an obligation to be an equitable mortgage and thus requiring a judicial foreclosure proceeding. This bill was defeated in committee, but an attempt was made to attach it to SB 531 on the last day of the legislative session. Only through the efforts of our lobbyist, Mo Thrash, was this amendment defeated. This bill did not get out of committee.

Georgia Fair Lending Act-SB 475

Senator Fort reintroduced the original Fair Lending Act which was passed in 2002. This bill did not get out of committee.

Foreclosure Advertising-SB 459

This bill would have changed the current advertising period to exercise a power of sale contained in a security deed from four weeks to ten weeks. This bill did not get out of committee.

Foreclosure Notices-SB 519

This bill would have required that the debtor receive a written notice 120 days prior to the lender initiating foreclosure proceedings. This bill did not get out of committee..

The usual bills introduced to increase the Georgia intangibles tax and state transfer tax were defeated in committee.

FEDERAL ISSUES

RESPA Reform

On March 14, 2008 HUD released its proposed RESPA reforms in a 270 page document in the Federal Register which included a new four page Good Faith Estimate form. The industry was obviously hoping for a more simplified reform proposal. There is already serious speculation about whether parts of this new proposal will ever survive the mounting criticism. MBA has asked for HUD to delay the comment period from the current 60 day period (May 13, 2008) for an additional 120 days. HUD has replied that it is not intending to extend the comment period stating that “these are familiar issues, which have been commented on before.”

This new proposal is supposed to allow consumers to obtain multiple GFE’s in order to shop for the best loan available at the lowest price. This GFE will include detailed loan information and to terms and costs. While there is no APR the interest rate of the loan and the monthly payment info is required including various monthly payments for ARM loans showing the maximum amount of the month payment. Settlement costs are grouped into two categories one of which cannot vary (lender’s service charge, government fees and taxes, etc.) and lender required services which can vary by only 10%. There is no limit on charges if the borrower does not use the lender recommended services (title insurance etc.). Average pricing may be used for some of the estimated costs. There will also be a “closing script” that the settlement agent would read to the borrower by the settlement agent at closing comparing the GFE to the actual charges at the closing.

MBAG will be sending a comment letter concerning this extensive HUD reform proposal. Please send your comments to Richard Raymer, McCalla Raymer, LLC, Six Concourse Parkway, Suite 3200, Atlanta, GA 30328.

National Policy Conference

Rick Floyd, MBAG president, Mo Thrash, MBAG lobbyist, and Richard Raymer, MBAG general counsel, attended the MBA’s National Policy Conference in Washington DC, April 16th and 17th. While in Washington MBAG met with Senator Isakson and Senator Chambliss and seven Georgia members of the U. S. House of Representatives on issues critical to the mortgage lending industry. We were well received on our Capitol Hill visits. Joining us were Kieran Quinn, CEO of Column Financial (a division of Credit Suisse) in Atlanta, Chairman of MBA this year and three other MBA members.

The main focus of MBA at this time is to attempt to stabilize the housing market by:

1. Modernize FHA, support FHA Secure, and continue to seek enactment of meaningful FHA reform.
2. Reform the regulation of the GSE’s (FNMA, FHLMC, and FHLB’s) by having a single bank type regulator with powers to ensure the GSE’s focus on their core mission goals. MBA is opposed to statutory capital requirements.
3. Use tax incentives (Senator Isakson’s proposals) to stop the decline in home prices.
4. Support reasonable “rescue plans” being introduced to help stem the tide of foreclosures.
5. Preventing future foreclosures by having a uniform national standards which would give borrowers a clear understanding of what the rules are and give the lenders one set of laws to adhere to. Also have all loan originators registered in a nationwide database. Continue to try to make the loan process as transparent as possible for borrowers by having good effective disclosures.

If you have any questions about anything contained in this bulletin, please call Richard Raymer or Mo Thrash at (678) 281-6500.