

# LEGISLATIVE BULLETIN

## Mortgage Bankers Association of Georgia

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### GEORGIA LEGISLATION

The Mortgage Division of the Georgia Department of Banking and Finance in its "housekeeping bill" for the upcoming Georgia legislative session is asking the Legislature to approve an enabling bill to allow Georgia to participate and be a part of a nation wide program by the National Association of State Regulators to set up a system to license, monitor or register all loan originators. The Georgia Legislature would still be required to act on any requirement for registration or licensing of loan originators. The MBAG board will not oppose this bill.

For the past two years, legislation has been filed to allow individuals to freeze their credit reports. Because of concerns from the business community, MBAG and the credit reporting agencies on the possible detrimental effects to credit availability in Georgia these bills have not been voted out of committee. The main objection to the credit report freezes is the length of time it would have taken to unfreeze a report for a credit transaction. The credit reporting agencies themselves have worked out a solution (which they will voluntarily accept) that would allow a five-minute window to unfreeze a credit report at the request of the consumer and payment of a small fee. Mo Thrash thinks that even with the voluntary compliance with the freeze and unfreeze requests, there will be some legislation this session to establish this type of credit freeze a state law.

There will be several bills offered this year to change the way in which loans may be foreclosed in Georgia.

### FEDERAL LEGISLATION AND REGULATIONS

H.R. 3915-The Mortgage Reform and Anti-Predatory Lending Act of 2007

On November 15, 2007 the U. S. House of Representatives passed, by a vote of 291 to 127, H. R. 3915 which proposes to reform the mortgage lending process and to stop predatory lending practices. This bill was passed by the House Financial Services Committee on November 6, 2007 by a vote of 45 to 19. The speed with which this bill moved is similar to the movement of the Georgia Legislature for licensing after the "Color of Money" articles in the Atlanta newspapers in the early 90's. There have been almost daily articles concerning the problems in the subprime lending markets with a steady emphasis on the need to legislation to solve the problem. In fact, most of the problems have already been corrected by the discipline of the market. H. R. 3915 is an 89 page piece of legislation so it will be impossible to detail every feature of this bill in this article. Listed below are some of the main features of this bill:

#### 1. Establishes a Licensing System for Residential Mortgage Loan Originators

Provides that all loan originators, which includes banks, thrifts, mortgage bankers, and mortgage brokers, shall be a part of the Nationwide Mortgage Licensing System and Registry (NMLSR). Applicants for State license registration will furnish certain information to NMLSR including fingerprints and personal history and experience and meet minimum standards including pre-licensing education and written tests. Federal bank regulators will develop and maintain a system for registering employees of banks and their subsidiaries. If a State does not meet the minimum standards or participate in NMLSR, then HUD will establish a backup licensing system and have enforcement authority for loan originators that operate in that State

#### 2. Creates Residential Mortgage Loan Origination Standards

All loan originators will be subject to a federal duty of care that requires:

- (1) Licensing and Registration as applicable under State or Federal law.
- (2) Presenting consumers with appropriate mortgage loans (i.e. consumer has reasonable ability to repay and in the case of a refinance receive a net tangible benefit), and loan does not have predatory characteristics.
- (3) Making full disclosure to consumers
- (4) Certifying to lenders compliance with mortgage origination requirements
- (5) Including a mortgage originator's unique identifier in loan documents.

For mortgage loans that are not prime loans, no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premiums) that varies with the terms of the loan (except for the size and number of loans). Regulations will be

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promulgated to prohibits mortgage originators from steering any consumer to a loan that the consumer lacks a reasonable ability to repay, making a loan that does not have a net tangible benefit or has predatory characteristics, steering a consumer from a prime loan to a subprime loan, and engaging in any practices that promote disparities among consumers or equal credit worthiness but different race, ethnicity, gender or age

### 3. Creates Minimum Standards for All Mortgages

Creditors must make a reasonable determination at the time the mortgage is consummated that the consumer has a reasonable ability to repay the loan or, for refinancing, the refinanced loan will provide a net tangible benefit to the consumer. A presumption can be made that the minimum standards (reasonable ability to repay and net tangible benefit) are met for “qualified mortgages) and “qualified safe harbor mortgages.” Qualified mortgages (prime loans) are presumed to meet the minimum standards and this presumption may not be rebutted (safe harbor). For qualified safe harbor loans, the presumption may be rebutted only against creditors. Qualified safe harbor mortgages are loans with documented consumer income, underwriting process based on fully indexed rate, no negative amortization, other requirements to be established by regulation, and one of the following: (1) fixed payments for at least 5 years, (2) for variable rate-loans, APR that varies less than 3% over the interest-rate index, OR (3) DTI not greater than a percentage prescribed by regulation.

### 4. Creates Limited Assignee Liability

This bill would provided a limited assignee liability by holding only the securitizers, funding lenders, and originating brokers liable for the loan as opposed to the investor who ultimately buys the loan. However, the securitizer would not be held liable if the loan were a “qualified mortgage,”(prime loan). The second class of loans (non prime) exempted from liability, “qualified safe harbor loans,” must meet the criteria listed above as minimum standards for all such mortgages, i.e. documented income, etc. The effect of having these safe harbors obviously is that loans will only be made which meet those safe harbor provisions.

### 5. Effects on State Law

This bill provides limited preemption of State laws relating only to assignee/securitizer liability (but not with other creditor liability). Representative Frank who is chairman of the House Financial Services Committee stated that he intends this bill to be a floor and not a ceiling. He said he wants to allow states to go further in crafting rules governing lending standards, but he does want to preempt state laws on assignee liability. He stated that to allow states to go further on assignee liability would disrupt the secondary market. Such problems, as we had in Georgia’s original anti predatory lending law, have already surfaced where states intended to hold the buyers or mortgages responsible for the original loan. The securitizer liability will be one uniform national standard and there would be no way for states to vary this standard..

### 5. Defense to Foreclosure

When the holder of a mortgage loan or anyone acting on behalf of the holder initiates a judicial or non-judicial foreclosure, the consumer who has a rescission right under this bill may assert such right as a defense to foreclosure against the holder to forestall foreclosure, or if the rescission right has expired, the consumer may seek actual damages ( plus costs) against the creditor, assignee or securitizer.

### 6. Renters

This bill provides protection for bona fide renters (renters before the foreclosure process is started) when the homes they rent go into foreclosure. A bona fide renter without a lease would be able to remain in the property for 90 days (and up to six months with a bona fide lease) after being given notice to vacate.

### 7. Additional Standards and Requirements

This bill would prohibit prepayment penalties under certain conditions, as well as single premium credit insurance and mandatory arbitration for mortgage loans. Class action lawsuits against securitizers would be prohibited. A new mandatory uniform disclosure would be mandated showing total compensation to the mortgage broker (consumer and lender payments), and fully indexed monthly payments. The triggers for HOEPA loans would be lowered from 10/8 to 8/5.

### Outlook for Passage

MBA is opposing this bill as passed by the House. MBA in Washington does not expect the Senate to vote on legislation similar to this bill until next year. Because of the complexity of this bill and the opposition from lenders it may make it hard to reach any compromise. Senator Dodd who chairs the Senate Committee on Banking, Housing. And Urban Affairs stated that the bill he will introduce will include strong consumer protections and provide for strong enforcement and remedies. Dodd is quoted as saying, “Together strong standards and tough remedies will reward affordable loans and punish predatory lending. This is the measure of a successful bill and this is what my bill will do.”

The lack of a federal preemption of State laws on this subject, exposure to lenders in the secondary market to liability and renter provisions all contribute to the MBA’s failure to support this bill. The Senate will however be the place where MBA will attempt to make the changes to make this bill more acceptable to the mortgage lending industry.

If you have any questions concerning this article or need further information, please contact Richard Raymer or Mo Thrash at (678) 281-6500.