

TENNESSEE MORTGAGE BANKERS ASSOCIATION

TENNESSEE LEGISLATIVE REPORT

Friday, February 19, 2010

BANKING & CREDIT

SB 0036*

HB 0369

Delaying of foreclosure proceedings and eviction of tenant. Delays foreclosure proceedings and the eviction of a tenant residing in a single-family residence as long as the tenant is current on the lease payments. (S: Kyle; H: Odom)

Senate Status: Taken off notice in Senate Commerce, Labor & Agriculture 04/21/2009.

House Status: Referred to House Commerce Utilities & Banking Subcommittee.

SB 0186

HB 0235*

Creditors to meet with debtors to avoid foreclosure. Requires a creditor to conduct an in-person meeting with debtors in default to provide options that will allow the debtor to avoid foreclosure. Specifies a creditor must do this only when he has knowledge of the following circumstances of the debtor: an immediate family member of the debtor has died or has a catastrophic illness, the debtor has become unemployed due to circumstances beyond his control, or the debtor is suffering from any catastrophic situation beyond the debtor's control that has caused extreme financial hardship. Details terms for documentation of such meetings and reporting dates. Broadly captioned. (S: Harper; H: DeBerry J.)

Amendment: House Commerce Utilities & Banking Subcommittee amendment 1, as amended, rewrites the bill. Requires a creditor to send notice by certified mail to debtor prior to first published notice of foreclosure. Requires that such certified letter include the return address of the sender. Makes applicable to foreclosures that are initiated for publication on or after September 1, 2009.

Senate Status: Taken off notice in Senate Commerce, Labor & Agriculture 05/05/2009.

House Status: House Commerce Utilities & Banking Subcommittee deferred to 2010.

SB 0711

HB 0008*

Fee charged for pay-off statement provided to borrower. Limits to ten dollars the fee that high-cost home loan lenders can charge for any additional requests for a pay-off statement during any twelve-month period. (S: Tate; H: Hardaway)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Held on House clerk's desk.

SB 0749*

HB 1926

Requirements for lenders of high-cost home loans. Requires a lender of a high-cost home loan to verify that the borrower has received appropriate housing counseling. (S: Marrero; H: Richardson)

Senate Status: Taken off notice in Senate Commerce, Labor & Agriculture 04/28/2009.

House Status: Taken off notice in House Commerce Utilities & Banking Subcommittee 04/28/2009.

SB 1425*

HB 1712

Commissioner of financial institutions - annual report. Requires the commissioner to prepare and submit to the governor and general assembly, annually, an analysis and recapitulation of the reports for the preceding calendar year, for the purpose of reflecting the general results of operation. (S: Stanley; H: Sargent)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: House Commerce Utilities & Banking Subcommittee deferred to last calendar.

SB 2877

HB 2919*

Judicial or trust sales of land: advertisement requirements. Clarifies that any sale of land to foreclose a deed of trust, mortgage, or other lien securing any item of value or under court order must be advertised in a newspaper either published or distributed in the county where the sale is located. (S: Haynes J.; H: Fincher)

Senate Status: Referred to Senate Judiciary.

House Status: Caption bill held on House clerk's desk.

SB 3197*

HB 3771

Unlawful gratuity or compensation by bank officer. Adds receiving or agreeing to receive property or a thing of value or of personal advantage for procuring any person a loan to the acts of unlawful gratuity by a bank officer. (S: Finney L.; H: Pitts)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Caption bill held on House clerk's desk.

SB 3203

HB 3203*

Bankruptcy: increased personal property exemption & credits. Increases the amount of personal property a debtor can claim from \$4,000 to \$10,000 and exempts all money

received due to federal earned income credit and federal child tax credit. (S: Finney L.; H: Eldridge)

House Co-Sponsors: Dennis; Shaw

Senate Status: Set for Senate Judiciary Committee 02/23/2010.

House Status: Set for House Judiciary Committee 02/23/2010.

SB 3223

HB 3179

Mandatory mediation required prior to foreclosure. Requires mandatory mediation between a bank or other financial institution and a borrower before foreclosure proceedings may be instituted on a deed of trust, mortgage, or other lien securing the payment of money or other thing of value. (S: Harper; H: Turner M.)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Caption bill held on House clerk's desk.

SB 3368*

HB 3706

Written explanation regarding fees. Requires each institution regulated by the department of financial institutions to have a written explanation that clearly explains to the customer information concerning any fee assessed by the institution to the customer. Also requires instructions to be provided for employees to clearly explain the fee information if the customer requires further explanation. (S: Marrero; H: Towns)

House Co-Sponsor: Turner M.

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Commerce Utilities & Banking Subcommittee.

SB 3388*

HB 3593

Loans protected under TN Home Loan Protection Act of 2006. Applies loans protected under the Tennessee Home Loan Protection Act of 2006 to include purchase money mortgages as well as non-purchase money mortgages. Creates a pilot project in Shelby County for voluntary mediation prior to the foreclosure of loans entered into under such act. (S: Marrero; H: Turner J.)

House Co-Sponsors: Jones U.; Miller L.; DeBerry J.; Pruitt; DeBerry L.; Richardson

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Commerce.

SB 3519

HB 3588*

Legal notice of foreclosure. Requires lender, trustee, or other creditor to send the debtor a notice of the right to foreclose via regular mail prior to the first publication of a notice

of a foreclosure sale. Requires the notice to be sent no less than 60 days prior to the first publication. (S: Overbey; H: Coleman)

House Co-Sponsor: Moore

Senate Status: Referred to Senate Judiciary.

House Status: Caption bill held on House clerk's desk.

HJR 0146

Urges Congress to act on Homeowners & Bank Protection Act. Urges Congress to implement the Homeowners and Bank Protection Act. (H: Towns)

House Status: House Commerce Utilities & Banking Subcommittee deferred to 2010.

COMMERCIAL LAW

SB 0627*

HB 1239

Purchase-money security interest. Requires a purchase-money security interest to be perfected within 60 days rather than 30 in order to have priority over a conflicting security interest. (S: Southerland; H: Curtiss)

Senate Status: Taken off notice in Senate Commerce, Labor & Agriculture 04/28/2009.

House Status: Caption bill held on House clerk's desk.

SB 2016

HB 0704*

Mortgage counselor to be consulted on ARMs. Requires any person seeking a mortgage to consult a mortgage counselor before an adjustable rate mortgage can be completed. (S: Ford O.; H: Turner J.)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: House sponsor changed from Turner L. to Turner J. on 02/11/2010.

SB 3862*

HB 3817

Violations of Fair Debt Collection Practices Act. Makes engaging in any prohibited practice while attempting to collect or collecting a debt a violation of the Consumer Protection Act of 1977. (S: Kyle; H: Turner M.)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Consumer Affairs Subcommittee.

FAMILY LAW

SB 0848

HB 0637*

Divorce - documentation of marital property. Requires parties in a divorce to file real estate disclosure, CLUE report, home inspection report copy and termite letter, and the written results of a title search with the court or with the mediator if the marital property includes any real property owned by one or both parties and used as primary residence by both parties during the marriage. Specifies that if the property will continue to be used as the primary residence of one of the parties, such party must provide evidence of ability to qualify to individually refinance or obtain loan on the property that releases the other party as a co-borrower. Makes applicable to any divorce petition filed on or after bill's effective date and to any pending divorce filed less than sixty days prior to such date. (S: Black; H: Maggart)

House Co-Sponsor: Casada

Amendment: House Children & Family Affairs amendment 1 rewrites the bill. Requires both parties in a divorce proceeding to submit a real estate disclosure form for review that is signed by both parties. Removes the fiscal note.

Senate Status: Taken off notice in Senate Judiciary 05/06/2009.

House Status: House Children & Family Affairs deferred to 2010 after adopting amendment 1.

JUDICIARY

SB 1589*

HB 2000

Recovery of deficiency judgment after foreclosure. Provides that in case of foreclosure when the creditor files suit for the amount due on the note, the complaint must set forth the entire amount of the indebtedness that was secured by the deed of trust, the amount for which the property was sold, and the fair market value of the property as of the date of the sale. States that before rendering judgment, the court must determine the fair market value of the property as of the date of the sale and may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses, exceeds the fair market value of the property as of the date of the sale. Provides that if the property is later sold by the judgment creditor to a third party for an amount greater than the fair market value as determined by the court, the deficiency judgment must be reduced by the difference in such amount, less the expenses of the sale. (S: Finney L.; H: Curtiss)

Senate Status: Senate Judiciary deferred to summer study.

House Status: House Civil Practice Subcommittee deferred to summer study.

PROPERTY & HOUSING

SB 0552

HB 0124*

Filing deadline for deeds of trust. Requires an assignment of a deed of trust to be recorded with the register of deeds in the county in which the property is located within ten days of the date of assignment. (S: Norris; H: Hardaway)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Caption bill held on House clerk's desk.

SB 1158

HB 1297*

Person entitled to redeem property. Redefines "person entitled to redeem property" to include only persons who on the date of the tax sale own a legal or equitable interest in the property sold at the tax sale. (S: Finney L.; H: Maddox)

Senate Status: Re-referred to Senate Calendar Committee 05/07/2009.

House Status: House passed 05/18/2009.

SB 1172*

HB 2012

Requirements for exempt status from property disclosure. Increases to four from three years time period owner must not have resided at transferred property to be exempt from residential property disclosure. (S: Finney L.; H: Harmon)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Commerce Industrial Impact Subcommittee.

SB 1333

HB 1151*

Deeds and the acreage of affected real property. Prohibits the county register from receiving or filing an instrument by which the title to real estate is conveyed unless the acreage of the real estate is clearly stated in the instrument. (S: Yager; H: Ferguson)

Senate Status: Taken off notice in Senate Judiciary 05/06/2009.

House Status: Taken off notice in House Civil Practice Subcommittee 05/06/2009.

SB 1341

HB 0023*

Homeowners' Emergency Assistance Fund Loans. Authorizes the THDA to make uninsured homeowners' emergency mortgage assistance fund loans to certain, eligible homeowners. Establishes the Homeowners' Emergency Mortgage Assistance Fund. Specifies that to be eligible, a homeowner must be in default, or at risk of default due to an interest rate reset on a conventional subprime adjustable rate mortgage loan used to purchase the homeowner's principal residence. Stays all foreclosure action against any

homeowner actively pursuing a homeowners' emergency mortgage assistance fund loan under certain circumstances. (S: Tate; H: Hardaway)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Taken off notice in House State Government Subcommittee 05/06/2009.

SB 1434*

HB 2080

Requirements for owners of former meth houses. Prohibits the selling of any residence where a clandestine methamphetamine laboratory is known by the seller of such property to have been operated until the property has been properly decontaminated and cleaned by a certified CML cleanup contractor and certified that such property is safe for human use by a certified industrial hygienist. Requires the seller of such property to provide any prospective buyers with notice that a CML has been operated at the residence and certification of the required cleanup. Creates a Class A misdemeanor for such violation. (S: Stanley; H: Towns)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Taken off notice in House Criminal Practice Subcommittee 03/25/2009.

SB 1467*

HB 1431

Expiration of nonconforming use status. Requires a nonconforming industrial, commercial or business establishment to cease from that land area once expiration of 20 years from date of attaining such status or 20 years from this act's effective date, unless a shorter time period for expiration is specified by law. (S: Haynes J.; H: Sontany)

Senate Status: Taken off notice in Senate State & Local Government 03/24/2009.

House Status: Referred to House Local Government Subcommittee.

SB 1509*

HB 1576

Damages based on a home inspection report. Establishes a one year statute of limitations for actions to recover damages arising from a home inspection report. (S: Burchett; H: Johnson P.)

House Co-Sponsor: P.

Senate Status: Referred to Senate Judiciary.

House Status: House Civil Practice Subcommittee deferred to summer study.

Other Status: Referred to Judicial Council for review.

SB 1521

HB 0691*

Tennessee Employer Assisted Housing Development Program. Requires THDA to establish a program to help employers develop an employer assisted housing development program and an employer assisted housing fund. Specifies that all

employees of an employer whose annual household income is equal to or less than 120 percent of the area median income are eligible to participate in the program or receive funds from it. Requires 25 percent of such aid be distributed to employees whose annual household income is equal to or less than 80 percent of the area median income. Prohibits more than 30 percent of an employer's real property being zoned as commercial or nonresidential from being used for this program. Requires real property in this state sold, leased or donated by the employer for the program to be sold or rented to employees who meet the income requirements set forth in this part and meet any further requirements set forth by the agency. Specifies that employers must designate a private for-profit or not-for-profit developer that is not an affiliate, subsidiary, or other entity of such employer to be responsible for the sale, rental, day-to-day management and operation of the housing units. Allows employers to claim a credit from the taxpayer's franchise tax liability of one dollar for the current or any fiscal year for every one dollar of the assessed value of real property contributed to or used in any such fiscal year up to \$5,000,000 annually. Permits any tax credit not used in the tax year during which the investment was made to be carried forward for the five immediately succeeding tax years until the full credit has been allowed. Allows two or more taxpayers to participate jointly in one or more programs under this part. Prohibits the sum of the tax credits granted under this subsection from exceeding \$100,000 annually per taxpayer. Also prohibits the total amount of all tax credits allowed to all taxpayers under this subsection from exceeding \$2,000,000 in any fiscal year. (S: Burchett; H: Fincher)

Senate Status: Referred to Senate General Welfare.

House Status: Taken off notice in House State Government Subcommittee 03/18/2009.

SB 1576

HB 1394*

Notice to terminate tenancy - foreclosure. Requires any person or entity that acquires a residential property to provide 30 days' written notice prior to terminating the tenancy of a residential tenant who occupies the residential property at the time of the state. Establishes that this section applies to all residential rental property including, without limitation, residential rental properties located in any county governed by the Uniform Residential Landlord and Tenant Act. (S: Crowe; H: Johnson P.)

Senate Status: Taken off notice in Senate Commerce, Labor & Agriculture 05/05/2009.

House Status: House Judiciary Committee deferred to summer study.

SB 1599*

HB 2060

Residential property condition disclosure form. Requires a HOA which has any authority over the subject property to attach to the disclosure form a copy of the bylaws of the HOA, as well as the names of the present officers of the association and their contact information. (S: Beavers; H: Rowland)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Commerce Industrial Impact Subcommittee.

SB 1676
HB 0049*

Negotiation period for owner-occupied single family homes. Specifies that the required advertisements published prior to any sale of land to foreclose a deed of trust, mortgage or other lien must be published at least 60 days prior to the sale when they involve owner-occupied single family residences. Requires the trustee or financial institution to offer a good faith negotiation period of no more than seven months to any debtor who indicates a desire to arrive at an equitable and just solution within ten days of the date the notice was sent to him. Sets a cap for the monthly payment amounts the debtor can be charged at thirty-one percent of the debtor's gross monthly income. Authorizes the debtor to pay a higher percentage upon agreement with the financial institution. (S: Tate; H: Gilmore)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Taken off notice in House Commerce Utilities & Banking Subcommittee 04/28/2009.

SB 1764*
HB 2103

Delaying the sale of foreclosed property. Requires the first publication of notice of the sale of any owner-occupied single family residence to be given at least 60 days previous to such sale. (S: Herron; H: Shepard)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Caption bill held on House clerk's desk.

SB 1903*
HB 1637

Protections for true owners of residential real property. Revises the law concerning qualifications for and practices of notary publics in certain circumstances. Creates protections for true owners of residential real property where deeds have been signed by persons involved in fraudulent and criminal activities concerning such property. (S: Marrero; H: Jones U.)

Amendment: House Judiciary amendment 1 prohibits notaries from having been convicted of a felony and raises their bond from \$10,000 to \$25,000. Creates a civil cause of action for someone who is a victim by a notary and allows them to recoup attorneys fees and costs.

Senate Status: Senate Judiciary deferred to 05/19/2009.

House Status: Referred to House Finance Budget Subcommittee.

SB 1937*
HB 1443

Time extension for foreclosure notices. Extends the time for the initial public foreclosure notice from 20 days to 90 days. Requires that notice be given to the borrower

about foreclosure counseling. Requires mortgage loans be based upon ability of borrower to repay such loans. (S: Ford O.; H: Turner J.)

Senate Status: Senate Commerce, Labor & Agriculture deferred to first calendar of 2010.

House Status: House sponsor changed from Turner L. to Turner J. 02/11/2010.

SB 2311

HB 2323*

Penalty for failure to enter acceptance of partial payment. Requires mailing address of property owner be included on deed of conveyance of real property that is received for recording by any register of deeds. Increases penalty for failure to enter acceptance of partial payments in a timely manner. Makes other changes concerning recorded instruments. (Part of Administration Package) (S: Kyle; H: Turner M.)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Judiciary Civil Practice Subcommittee.

SB 2524

HB 2545*

Housing Relief Restricted Special Revenue Act. Enacts the "Housing Relief Restricted Special Revenue Act" to provide grants to homebuyers purchasing a newly constructed residence. Subject to availability of funds, the Tennessee Housing Development Agency shall award a grant of \$6,000 to a person who finances a newly constructed residence using a 30-year fixed interest rate note and mortgage and who meets the specified income limits. Excludes single persons making more than \$75,000 or married couples making more than \$150,000. Establishes Housing Relief Restricted Special Revenue Fund to be comprised of monies received from the American Recovery and Reinvestment Act of 2009. Monies deposited in the fund shall be reserved for the purposes consistent with this act and will not revert to the general fund if funds are left over at the end of the fiscal year. (S: Johnson J.; H: Casada)

Senate Status: Referred to Senate State & Local Government.

House Status: Referred to House State & Local Government. House Government Operations will review if recommended.

SB 2995*

HB 3238

Housing rehabilitation loans. Revises commitments for housing rehabilitation loans. (S: Bunch; H: McCord)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House State Government Subcommittee.

SB 3039
HB 3057*

Balances due upon sale real property in foreclosure. Requires cause of action to recover balance due upon sale of real property to foreclose a deed of trust, mortgage or other lien where the mortgaged property sells for less than the amount due. (S: Faulk; H: Dennis)

House Co-Sponsor: Pitts

Senate Status: Senate Judiciary 02/16/2010 recommended. Sent to Calendar Committee.

House Status: Referred to House Judiciary Civil Practice Subcommittee.

SB 3446
HB 2437*

Notice given to defendant for writ of possession. Requires sheriff or constable to give at least 24 hour written notice prior to the execution of the writ of possession. Requires notice to be posted on the door of the premises described in the writ of possession and to specify the date and time of the removal of the defendant's personal property from the premises. Specifies that removal of property can only occur between the hours of eight o'clock a.m. and five o'clock p.m. Holds plaintiff civilly liable for damages to defendant's removed personal property if notice requirements are not followed. (S: Tate; H: Hardaway)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Judiciary Civil Practice Subcommittee.

SB 3462
HB 2999*

Acceptable time for foreclosure sales. Alters the acceptable time for foreclosure sales to noon to 7:00 p.m., rather than 10:00 a.m. through 4:00 p.m. (S: Stewart E.; H: Jones S.)

Senate Status: Referred to Senate Judiciary.

House Status: Caption bill held on House clerk's desk.

SB 3554
HB 3224*

Attachment of liens - visible commencement of operations. Clarifies the definition of the visible commencement of operations related to construction services and products. (S: Ketron; H: McCord)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Judiciary Civil Practice Subcommittee.

SB 3555
HB 3239*

Attachment of liens - visible commencement of operations. Clarifies the meaning of

the visible commencement of operations related to construction services and products and to the attachment of liens. (S: Ketron; H: McCord)

Senate Status: Referred to Senate Commerce, Labor & Agriculture.

House Status: Referred to House Judiciary Civil Practice Subcommittee.

TAXES PROPERTY

SB 0448

HB 0523*

Requirements for determining recordation tax. Requires the grantor, the grantor's agent or a trustee acting for the grantor as well as the grantee, the grantee's agent or a trustee acting for the grantee to each state under oath the value paid when realty is transferred to determine the recordation tax due. Specifies that such requirements apply to quitclaim deeds as well. (S: Overbey; H: Brooks, Harry)

Senate Status: Senate Finance Tax Subcommittee deferred to next calendar.

House Status: Taken off notice in House Finance Budget Subcommittee 04/29/2009.

SB 3109

HB 2643*

Suits to invalidate a tax title. Provides that a property owner suing to invalidate a tax sale may not recover damages from the delinquent tax sale purchaser for the purchaser's improvements to the property which increased its value. (S: Marrero; H: Cooper B.)

Senate Status: Referred to Senate Judiciary.

House Status: Referred to House Local Government Subcommittee.